Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise Petition and Order for Dismissal, forms CR-180 and CR-181

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf, 415-865-7961,eve.hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 2015
Project description from annual agenda:
Item 3: Recommend Judicial Council approval of various rule and form proposals to promote timely, consistent, and effective criminal case processing, including revisions to dismissal and criminal protective order forms.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Dismissals for victims of human trafficking under Penal Code section 1203.49 as a result of recent legislation, AB 1585 (Alejo; Stats. 2014, ch. 708). Provides victims of human trafficking with a process for dismissal relief.

Forms CR-180 and CR-181

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 26, 2015

Title
Criminal Procedure: Petition and Order for Dismissal; Human Trafficking Victims

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, 2016

Date of Report
August 13, 2015

Contact
Eve Hershcopf, 415-865-7961
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Executive Summary

In response to 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 1203.49 for victims of human trafficking. The committee also recommends revising both forms to incorporate reductions of misdemeanors to infractions under Penal Code section 17(d)(2) and to improve the format, advisements, and instructions on both forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add new item 4 to form CR-180, including a check box and related instructions, to facilitate requests for dismissal under Penal Code section 1203.49, and add a check box for Penal Code section 1203.49 to the request for relief.

2. Revise items 1 and 2 on form CR-181 to include reductions from a misdemeanor to an infraction under Penal Code section 17(d)(2) and to clarify whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case.

3. Add check boxes to items 3 and 4 on form CR-181 for courts to grant or deny dismissal relief under Penal Code section 1203.49 for all or some of the convictions.

4. Add new item 5 to form CR-181 to facilitate the ordering of relief when the court grants the petition under Penal Code section 1203.49 to indicate whether the court is ordering all or some of the relief described in Penal Code section 1203.4.

5. Delete the following phrase (item 6(c) on form CR-181) to reduce confusion about alternative forms of relief: "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."

6. Add new item 7 to form CR-181 to notify the Department of Justice, when relief is granted under Penal Code section 1203.49, that the petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.

7. Add a reference to Penal Code section 1203.49 to the advisement in item 8, and references to Penal Code sections 17(d)(2) and 1203.49 to the advisements in item 9 on form CR-181.

8. Revise the format, advisements, and instructions by (a) adding a reference to Penal Code section 1203.49 and 17(d)(2) to the caption of both forms; (b) removing the box for specifying the titles of the offenses for which the petitioner is seeking dismissal in item 1 on form CR-180, and adding the word "offenses" to the introductory sentence; and (c) adding a box to item 1 on form CR-180 for specifying whether each offense is "[e]ligible for reduction to infraction under Penal Code section 17(d)(2) (Yes or No)."

The proposed revised forms are attached at pages 5–8.

Previous Council Action

Both forms were previously revised by the Judicial Council on October 28, 2014, with an effective date of January 1, 2015, in response to criminal justice realignment legislation that provided a new statutory basis for dismissals. The revisions added data fields to facilitate dismissals under Penal Code section 1203.41 for cases in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5), assist the court in specifying the granting or denial of a dismissal request for each conviction in a case, and confirm which convictions, if any, to reduce from felonies to misdemeanors under Penal Code section 17(b).

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, 1203.4a, and 1203.41. In 2014, legislation added Penal Code section 1203.49 to authorize a defendant who has been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who has completed a term of probation for that conviction, to petition the court for dismissal relief.[1] If the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the legislation authorizes the court to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal Code section 1203.4, and (3) notifies the Department of Justice that the petitioner was a victim of human trafficking and of the relief ordered.

Because the framework for relief under Penal Code section 1203.49 is similar to dismissals under Penal Code sections 1203.4, 1203.4a, and 1203.41,[2] the committee recommends adding the new statutory basis for relief to the existing petition and order for dismissal forms.

Comments, Alternatives Considered, and Policy Implications

The attached forms were circulated for public comment from April 17, 2015, to June 17, 2015. A total of 13 comments were received; of those, four agreed with the proposal, and nine agreed if modified. No commentators opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 9–26.

Notable comments

Notable comments and committee responses include:

- ***Misdemeanor reductions under Penal Code section 17(d)(2).*** The Superior Court of Los Angeles County noted that some petitioners request to have their misdemeanor convictions reduced to infractions under Penal Code section 17(d)(2), and that forms CR-180 and CR-181 currently do not provide for this option. In response, the committee added references and check boxes to both forms to facilitate determinations to grant or deny reductions to an infraction under Penal Code section 17(d)(2).

- ***Reference to maximum sentence for misdemeanors.*** Six commentators noted that Penal Code section 18.5, effective January 1, 2015,[3] provides that, "[e]very offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a

[1] Assem. Bill 1585 [Alejo]; Stats. 2014, ch. 708.
[2] Please note that the committee is separately recommending adoption of a new set of optional forms (CR-183/MIL-183 and CR-184/MIL-184) to facilitate requests for dismissal relief under Penal Code section 1170.9, which is available to certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.
[3] Sen. Bill 1310 [Lara]; Stats. 2014, ch. 174.

period not to exceed 364 days." The commentators requested that form CR-181 be revised to include language noting the maximum sentence for misdemeanors as set forth in Penal Code section 18.5 because this information can be significant for immigration and other purposes. In response, the committee revised item 1 on form CR-181 to include the requested language.

- ***Reference to certificate of rehabilitation.*** One commentator suggested deleting item 6(c) on form CR-181: "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." In *People v. Moreno* (2014) 231 Cal.App.4th 934, the court held that that if a petitioner's crimes are reduced to misdemeanors and dismissed, the petitioner no longer qualifies for a certificate of rehabilitation. In light of this recent ruling, the committee deleted the advisement to reduce confusion about the application of other forms of relief following reductions.

Alternatives considered

One commentator requested that the *Petition for Dismissal* (form CR-180) provide examples of documentation for establishing a presumption that the petitioner is a victim of human trafficking and that his or her crime is a result of that status. The commentator noted that providing this information to petitioners would increase court efficiency and reduce the likelihood of retraumatizing the victim, given the sensitive nature of these crimes. Although the committee declined to add the suggested examples to form CR-180, the committee is separately developing an informational form to accompany the dismissal forms that would explain the requirements for each basis for dismissal and provide instructions for completing the forms. As part of that effort, the committee will consider providing the suggested examples.

The committee also 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 to facilitate court implementation of the recent legislation. The committee believes the revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve conviction reduction and dismissal procedures by enhancing the information on these optional 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 and Links

1. Judicial Council forms CR-180 and CR-181, at pages 5–8
2. Chart of comments, at pages 9–26

ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NO:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	**DRAFT** **Not Approved by the** **Judicial Council**
TELEPHONE NO.:	FAX NO. :	
E-MAIL ADDRESS:		
ATTORNEY FOR (*Name*):		
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**		*FOR COURT USE ONLY* Date: Time: Department:

1. On *(date):* _____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses:

Code	Section	**Type of offense:** *(Felony; Misdemeanor; Infraction)*	**Eligible for reduction to misdemeanor under Penal Code § 17(b)** *(Yes or No)*	**Eligible for reduction to infraction under Penal Code § 17(d)(2)** *(Yes or No)*

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***

Probation was granted on the terms and conditions 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 *(check one)*:

a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***

b. ☐ should be granted relief in the interests of justice. *(Please note: You 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.)*

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

4. ☐ **Misdemeanor conviction under Penal Code section 647(b) *(Pen. Code, § 1203.49)***

The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).

The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the Attached* Declaration *(form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5. ☐ **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, and should be granted relief in the interests of justice, and *(check one)*:

a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); ***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) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

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, ☐ 1203.41, or ☐ 1203.49 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: 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*):	**DRAFT** **Not Approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**	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 (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code ☐ § 1203.4, or ☐ § 1203.4a, or ☐ § 1203.41, or ☐ § 1203.49, 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 for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only 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, or ☐ § 1203.49 for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

5. In granting this order under the provisions of Penal Code section 1203.49:
   a. The court finds that the petitioner was a victim of human trafficking when he or she committed the crime.
   b. ☐ The court orders the relief described in section 1203.4, or
      ☐ The court orders the relief described in section 1203.4, with the following exceptions *(specify)*:

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

6. 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., Pen. Code, § 290.5.)

7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.

8. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in 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.

9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

FOR COURT USE ONLY

Date:

_____

(JUDICIAL OFFICER)

SPR15–14
Criminal Procedure: Petition and Order for Dismissal (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Alameda County Public Defender Raha Jorjani, Immigration Defense Attorney	A	I would urge that CR-181 be amended to state that '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 which carry a potential maximum of 364 days, as provided by Penal Code s. 18.5.	To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 1 on form CR-181.
2.	Coalition to Abolish Slavery & Trafficking (CAST) Kay Buck, Executive Director	NI	I am writing to submit the Coalition to Abolish Slavery and Trafficking's (CAST) comments to revise forms CR-180 and CR-181. Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. Additionally, CAST opened the first shelter in the country exclusively dedicated to providing physically and psychologically safe housing for survivors. CAST serves male, female, and child victims of trafficking. CAST clients come from almost every region of the world including Asia, Latin America, Eastern Europe, Africa and the United States. To date, CAST has provided services to over 1000 survivors and their family members, as well as thousands of hours of technical consultation to organizations working on this issue across the country and internationally. Our experience providing legal and social services to survivors daily gives us critical information about the real-life experiences of trafficking victims and how the proposed amendments to the forms impact them.	

	Commentator	Position	Comment	Proposed Advisory Committee Response
			First, we would like to commend the Judicial Council for taking prompt action in response to Assembly Bill 1585 (Alejo) which provided for a separate standard for certain victims of human trafficking to: (1) petition the court for dismissal or relief of a conviction for prostitution or solicitation charges; (2) notify the Department of Justice that the petition was a victim of human trafficking and the relief ordered; and (3) prohibit the Department of Justice from disseminating the petitioner's record of conviction when information is being used for employment or licensing. Although we were happy to see the updates provided to the forms by the Criminal Law Advisory Committee, CAST suggests that additional information/guidance be provided in the updates to the forms and additional training be in place to ensure the best implementation of the bill. These suggestions will also ensure that victims of human trafficking who already have likely suffered years of trauma and abuse are not re-traumatized by the court process when seeking relief. **Establishing Burden of Clear and Convincing Evidence That the Crime is A Result of Human Trafficking** CAST requests that the method for establishing that a petitioner is a victim of human trafficking be further clarified. The updated form currently indicates that:	• Although the committee declines to add the suggested examples to form CR-180, the committee is separately developing an informational form to accompany the dismissal forms that would explain the requirements for each basis for dismissal and provide instructions for completing the forms. As part of that effort, the committee will

	Commentator	Position	Comment	Proposed Advisory Committee Response
			"The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. (Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)" CAST suggests the following changes to this language tracked in red: "The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. (Please note: You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking. *Documents that can be used to establish a presumption that the petitioner is a victim of human trafficking and that his or her crime is a result of the human trafficking include: 1) the petitioner was designated a material witness and/or provided testimony to federal or state law enforcement officials under a federal and/or state law for human trafficking, or (2) the federal or state government certifies that the petitioner is a human trafficking survivor, or (3) state or federal law enforcement certifies that the petitioner is a human trafficking survivor, or (4)*	consider providing the suggested examples.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			a victim services or social service agency certifies that the petitioner has received services as a human trafficking survivor due to exploitation during the relevant time period, or (5) a licensed therapist or medical doctor submits a declaration stating that the petitioner is a survivor of human trafficking during the relevant time period, or (6) the victim submits an affidavit detailing the elements of the crime for which dismissal is sought and the elements of the human trafficking experienced that were related to such crime during the relevant time period. No oral testimony from a victim is required to establish he or she was a victim of human trafficking. This additional language provides further guidance to both the court and to the petitioner on the type of documentation a survivor of human trafficking can use to prove they were a victim of this type of abuse. Given the sensitive nature of this crime, ensuring that the court can approve a petition based on outside supporting statements or documents is important and will lead to both court efficiency and also reduce the trauma of asking a trafficking victim to relive his or her trafficking experience. It is also important to further clarify that since many victims of trafficking may not have any other proof of their victimization because of the nature of the abuse and the length of time that may have elapsed since their victimization, that their own written statement is sufficient. It is important to clarify that this type of statement	

	Commentator	Position	Comment	Proposed Advisory Committee Response
			and no oral examination is necessary as victims may be hesitant to use this process if they felt like they might have to re-live their experience in court.[1] (*footnote 1*: If the council does not want to include the more descriptive language provide above it could also include the language adopted by the Uniform Act on Human Trafficking which indicates in regard to expungement provisions that: "*No official determination or documentation is required to grant a motion… but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.*" Available at: http://uniformlaws.org/Act.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking) **Training For Court Personnel and Judges** Assembly Bill 1585 (Alejo) requires Judges and Court Personnel to understand the complex legal definition and dynamics of human trafficking to grant a motion to dismiss a conviction under this new provision. Given that the crime of human trafficking enumerated in CA penal code 236.1, human trafficking, is currently underutilized in criminal prosecutions or civil proceedings despite being passed into law in California in 2005, CAST strongly urges	• The committee agrees about the importance of human trafficking issues and has referred the suggestion to the Center for Judicial Education and Research.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			the Judicial Council to prioritize training for the Courts on the crime of human trafficking as well as the new petition for relief available under AB 1585. At a minimum Courts should be provided a copy of: A Guide to Human Trafficking for State Courts, By John A Martin, Center for Public Policy Studies, available at: http://www.htcourts.org/guide-chapter1.htm. If the cost or need for training creates any barrier to updating or implementing the forms in a timely manner, CAST would prefer to see the forms updated rather than delayed for training purposes. Human trafficking victims cannot wait to have their records cleared, as they have often lived under this burden for years. **Updating Forms Will Save Court Time and Money** On April 28, 2015, CAST filed its own motion under new provisions. CAST is waiting for a determination. CAST believes updating forms will save courts time and streamline the process. Court review of CR-180 and CR-181 with either of the above mentioned certification letters or affidavits is less time intensive than review of a motion and subsequent motion hearing. **Timing** CAST applauds the Judicial Council of California's timeline for updating its forms in two months time. CAST will begin to use these forms promptly with its clients who are waiting for relief once the forms are updated. We	• No response required. • No response required.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			believe it will create a far more streamed-lined process for relief. Since the updates to these forms are eminent we also commit to beginning to educate our own partners and legal networks on this new measure of protection for trafficking victims in California. **Conclusion** Thank you for considering these comments when updating the relevant forms and materials with regard to SB 1585. CAST and the survivors we serve greatly appreciate this effort by the California Judicial Counsel to amend these critical forms.	
3.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	Request the inclusion of the fee amount ordered by the judge as part of the CR-181 form changes. This would allow the bench officer to make an order of the fees as part of the actual order, not just the minutes.	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
4.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	NI	**<u>Suggested Amendments to CR-180</u>** 1. *Suggestion:* Remove all references to section 1203.49 relief from the proposed CR 180 & CR 181 and create separate a separate petition and order for section 1203.49 relief that includes confidentiality provisions similar to those on the CR 150 form (Certificate of Identity Theft: Judicial Finding of Factual Innocence, Penal Code § 530.6). Ideally, the 1203.49 forms would include the relief for Penal Code sections 1203.45 and 1203.47, along with section	• The committee declines the suggestion to create separate forms because the revisions to current forms CR-180 and CR-181 adequately incorporate the relief provided by Penal Code section 1203.49. The committee also declines to add provisions to facilitate the sealing of records because the statute does not expressly authorize such an order, and separate provisions of law govern record sealing (see, e.g., California Rules of Court, Rules 2.550 and 2.551).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			1203.49, as they all provide for somewhat related relief and present the same confidentiality challenges. *Reason:* Section 1203.49 requires a petitioner to establish that s/he was the victim of human trafficking. Petitioners or their counsel are required to file documents in support of their petition that are likely to include: police reports that are not properly redacted and may contain information about juvenile suspects or victims; documents and sworn declarations that contain sensitive information about the petitioner's experiences of sexual trauma or other victimization; reports from medical or mental health experts subject to HIPAA; and/or documents containing information about other people who were involved in the petitioner's trafficking, either as victims or perpetrators. Attached as exhibits to a filed petition, these documents will become part of publicly accessible court records, which could compromise the petitioner's safety, and/or unnecessarily disclose confidential or sensitive information, and/or lead to the violation of laws regarding disclosure of confidential or protected information or reports. 2. *Suggestion:* On section 1, remove "Offense" Box. *Reason*: A petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 1 on form CR-180 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *1. On (date) _____, the petitioner (the defendant in the above-*

	Commentator	Position	Comment	Proposed Advisory Committee Response
			box will create room to increase the size of the "Code" and "Section" boxes, which are too small. **<u>Suggested Amendments to CR-181</u>** 1. *Suggestion:* Amend section 1 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "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 <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5</u>." *Reason for request:* Having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. 2. *Suggestion:* Remove references to Penal Code section 1203.49 for the reasons stated	*entitled criminal action) was convicted of a violation of the following <u>offenses</u>:* • See related response to Commentator #1, above. • See response to "Suggested Amendments to CR-180," number 1, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			above. 3. *Suggestion*: Remove section 6(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." *Reason*: This advisement is most helpful only if it includes additional info, probably too much include on the this order (i.e., the new limitations under People v. Moreno, 231 Cal. App. 4th 934, the limitations of Penal Code section 290.5, etc.). 4. *Suggestion:* Add a subsection to Number 6 that includes the following advisement: "The petitioner may also be eligible to obtain a reclassification of a felony to a misdemeanor pursuant to Penal Code section 1170.18" and/or add a box between the current numbers 2 and 3 that reads: "Court reclassifies this felony to a misdemeanor under Penal Code section 1170.18." *Reason:* These additions alert petitioners about the Prop 47 relief, which is particularly important for pro se petitioners. In some jurisdictions, judges are currently writing in by hand this relief on the CR 181 orders.	• In *People v. Moreno* (2014) 231 Cal.App.4th 934, the court held that that if a petitioner's crimes are reduced to misdemeanors and dismissed, the petitioner no longer qualifies for a certificate of rehabilitation. In light of this recent ruling, the committee agrees to delete the advisement to reduce confusion about application of other forms of relief following reductions. • The committee declines to revise forms CR-180 and CR-181 to address Penal Code section 1170.18 relief due to its time-limited nature.
5.	Azar Elihu Criminal Defense Attorney	AM	Victims of human trafficking who are convicted of solicitation or prostitution should get their	The committee declines the suggestion as Penal Code section 1385 relief is beyond the scope of

	Commentator	Position	Comment	Proposed Advisory Committee Response
	Los Angeles		case dismissed for all purposes under PC 1385 instead of 1203.4/1203.49 which are referred to expungement. 1203.4 dismissals result in some disabilities and economic obstacles that victims of human trafficking and sex crimes don't deserve to endure. If those victims prove they were forced to commit those crimes, they should get complete relief under PC 1385 that completely eradicate their convictions. Please see my April 23, 2015 Daily Journal article on this subject: Conviction Dismissed or Expunged	the proposed revisions to incorporate dismissal relief under Penal Code section 1203.49.
6.	Lawyers' Committee for Civil Rights Rose Cahn, Director, Immigrant Post-Conviction Relief Project	AM	Please include a notation that all felonies reduced to misdemeanors carry a maximum possible punishment of 364 days pursuant to Penal Code s. 18.5 (E.g., "The misdemeanor carries a maximum potential sentence pursuant to Pen. C. 18.5."). This minor change, which accurately states the law, has tremendous potential benefits to immigrants. As of January 1, 2015, all one-year misdemeanor convictions will carry a potential sentence of 364 days, down one day from the prior maximum of 365. See Cal. Pen. C. § 18.5. The legislature specifically enacted the new 364-day maximum to eliminate certain grounds of deportability and open up potential pathways for immigration relief.	See related response to Commentator #1, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			People who have already completed their sentences and who are now seeking reductions of felonies to misdemeanors can take advantage of the new misdemeanor maximum by specifying that the newly reduced misdemeanor is punishable under 18.5. As advocates in the field of criminal and immigration law, we are encouraging every one seeking reductions to secure orders specifying the new maximum. Ensuring that CR-180 and CR-181 state the max on the face of the order would help every defendant. The majority of immigrants are unassisted by counsel in removal proceedings. To avoid sentence-based grounds of removability, immigrants need criminal court documents that clearly delineate the potential maximum sentence a conviction carries.	
7.	Legal Services for Prisoners with Children Dorsey Nunn, Executive Director	NI	**Suggested Amendments to CR-180** Legal Services for Prisoners With Children ("LSPC") writes to inform you to make the following suggestions for Petition for Dismissal (form CR-180) and Order for Dismissal (form CR-181). First, remove all references to section 1203.49 relief from the proposed CR 180 & CR 181 and create separate a separate petition and order for section 1203.49 relief that includes confidentiality provisions similar to those on the CR 150 form (Certificate of Identity Theft: Judicial Finding of Factual Innocence, Penal Code § 530.6). Ideally, the 1203.49 forms would	• See related response to Commentator #4, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			include the relief for Penal Code sections 1203.45 and 1203.47, along with section 1203.49, as they all provide for somewhat related relief and present the same confidentiality challenges. The intent of these suggestions are for the following reasons, Section 1203.49 requires a petitioner to establish that s/he was the victim of human trafficking. Petitioners or their counsel are required to file documents in support of their petition that are likely to include: police reports that are not properly redacted and may contain information about juvenile suspects or victims; documents and sworn declarations that contain sensitive information about the petitioner's experiences of sexual trauma or other victimization; reports from medical or mental health experts subject to HIPAA; and/or documents containing information about other people who were involved in the petitioner's trafficking, either as victims or perpetrators. Attached as exhibits to a filed petition, these documents will become part of publicly accessible court records, which could compromise the petitioner's safety, and/or unnecessarily disclose confidential or sensitive information, and/or lead to the violation of laws regarding disclosure of confidential or protected information or reports. Another suggestion to form CR-180, is on section 1, remove "Offense" Box. A petitioner or attorney may not know the exact title of the	• See related response to Commentator #4, above. • See related response to Commentator #4, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. **<u>Suggested Amendments to CR-181</u>** LSPC suggest amending section 1 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "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 <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5</u>." The intent of these suggestions are for the following reasons, having an order that clearly states the potential <u>364-day maximum sentence</u> on a newly reduced misdemeanor is essential to immigrants. This one- day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. Another suggestion would be to remove references to Penal Code section 1203.49 for the reasons stated above. Also, add a subsection to	• See related response to Commentator #1, above. • See related response to Commentator #4, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			Number 6 that includes the following advisement: "The petitioner may also be eligible to obtain a reclassification of a felony to a misdemeanor pursuant to Penal Code section 1170.18" and/or add a box between the current numbers 2 and 3 that reads: "Court reclassifies this felony to a misdemeanor under Penal Code section 1170.18." The intent of these suggestions are for the following reasons, these additions alert petitioners about the Prop 47 relief, which is particularly important for pro se petitioners. In some jurisdictions, judges are currently writing in by hand this relief on the CR 181 orders.	
8.	Michael K. Mehr, Esq. Santa Cruz	AM	CR-181 (page 6) should be amended to state: '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 which carry a potential maximum of 364 days, as provided by Penal Code 18.5.'" The intent of P.C. 18.5 was to avoid adverse immigration consequences based on a 365 day sentence rather than a 364 day sentence or less. If this amendment to the form is added, this will further the legislative intent. At the very least, in the absence of case law about retroactivity of this section, a judge should be able to make a decision as to whether it is appropriate. There already is case law under In re Estrada that P.C. 18.5 should be applied to crimes committed before the effective date of 1/1/15 when P.C.	See related response to Commentator #1, above.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			18.5 took effect. The fact that the convictions may be final is not a bar to benefiting from the one-day sentence reduction contained in Penal Code 18.5. Statutory penalty reductions may apply retroactively to final convictions. See In re Chavez, 114 Cal.App.4th 989, 1000 (2004) ("There is nothing in Estrada that prohibits the application of revised sentencing provisions to persons whose sentences have become final if that is what the Legislature intended or what the Constitution requires."); People v. California Community Release Board, 96 Cal.App.3d 792, 799 (1979); Way v. Superior Court, 74 Cal.App.3d 165, 168 –69 (1977). Here, the State Legislature's intent was to eliminate the grounds of removability faced by immigrants sentenced to 365-day misdemeanors. Sen. Rules Com., Off. Of Sen. Floor Analyses, Bill No. SB1310, p.3.; Sen Com. On Public Safety Analysis, SB 1310, p. 5. "This small change will ensure, consistent with federal law and intent, legal residents are not deported from the state and torn away from their families for minor crimes." Assem. Com. on Public Safety, Analysis on SB 1310, p. 2. The San Francisco Superior Court has this as part of their Prop 47 reclassification form.	
9.	Orange County Bar Association Ashleigh Aitken, President	A	*Does the proposal appropriately address the stated purpose?* Yes *Are the proposed revisions an effective way to*	No response required.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			address the legislation that added Penal Code section 1203.49? Yes.	
10.	Santa Clara County Public Defender's Office Elizabeth Chance, Deputy Public Defender	AM	I agree if amended to state that "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 which carry a potential maximum of 364 days, as provided by Penal Code s. 18.5" This will make it clear to the immigration court and immigration officials that where a potential sentence of a year or more is relevant, the non-citizen is not convicted of a crime with a potential sentence of a year or more. This will have the additional benefit of giving pro se immigrants in immigration proceedings clear records without the need of counsel to argue what the maximum potential sentence is. This is important in immigration contexts where there is no right to appointed counsel.	See related response to Commentator #1, above.
11.	State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The proposal would allow petitioners to have their records expunged and sealed if they were victims of sexual/human trafficking. The form is one of the most heavily used by self-represented litigants, so it would be beneficial to have it available for those individuals. Are the proposed revisions an effective way to address legislation that added Penal Code	No response required.

SPR15–14
Criminal Procedure: Petition and Order for Dismissal (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			section 1203.49? Yes.	
12.	Superior Court of Los Angeles County	A	There are occasions when a reduction from a misdemeanor to an infraction occurs pursuant to Penal Code Section 17(d)(2). Although rare, it might be useful to include that type of reduction as an alternative on these forms rather than creating a new set of forms for this classification of cases.	To enhance the efficiency and usefulness of the forms, the committee agrees to revise form CR-180 to include an option for petitioners to request reduction of eligible misdemeanors to infractions under Penal Code section 17(d)(2), and to include checkboxes on form CR-181 for the court to grant or deny the requested reduction.
13.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.

Item number: 02

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise Petition and Order for Dismissal (Military Personnel), forms CR-183/MIL-183 and CR-184/MIL-184

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf, 415-865-7961,eve.hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 2015
Project description from annual agenda:
Item 3: Recommend Judicial Council approval of various rule and form proposals to promote timely, consistent, and effective criminal case processing, including revisions to dismissal and criminal protective order forms.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Dismissals for current or former military personnel under Penal Code section 1170.9(h) as a result of recent legislation, Assem. Bill 2371 (Butler); Stats. 2012, ch. 403. Provides current and former military personnel who meet statutory requirements with a process for dismissal relief.

Forms CR-183/MIL-183 and CR-184/MIL-184.

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 26, 2015

Title
Criminal Procedure: Petition and Order for Dismissal (Military Personnel)

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-183 and CR-184

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 13, 2015

Contact
Eve Hershcopf, 415-865-7961
eve.hershcopf@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) and an *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184), to facilitate court implementation of recent legislation that authorizes courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, adopt:

1. *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) for use by petitioners who acquired a criminal record due to a mental health disorder stemming from service in the United States military to request dismissal relief from courts;

2. *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184) for use by courts to order dismissal relief for petitioners who acquired a criminal record due to a mental

health disorder stemming from service in the United States military and who meet the statutory requirements.

The proposed forms are attached at pages 5–8.

Previous Council Action

There has been no previous council action regarding these recommended forms.

Rationale for Recommendation

Recent legislation[1] added Penal Code section 1170.9(h) to authorize a defendant to petition the court for dismissal relief if the defendant was, or currently is, a member of the United States military, acquired a criminal record due to a mental health disorder stemming from service in the military, was granted probation, and has substantially complied with the conditions of probation.

In determining whether granting restorative relief under Penal Code section 1170.9 is in the interests of justice, the court may consider, among other factors, the defendant's completion and degree of participation in education, treatment, and rehabilitation. If the court finds that the defendant satisfies each of the requirements, Penal Code section 1170.9(h) authorizes the court to:

- Deem all conditions of probation, other than court-ordered victim restitution, to be satisfied and terminate probation prior to the expiration of the term of probation;
- Reduce eligible felonies to misdemeanors pursuant to Penal Code section 17(b); and
- Grant relief in accordance with Penal Code section 1203.4.

In addition, a defendant granted a dismissal under Penal Code section 1170.9(h) is released from all penalties and disabilities resulting from the conviction, with certain exceptions,[2] and:

- The court has discretion to order the sealing of police records of the arrest and court records of the dismissed action, which are thereafter viewable by the public only in accordance with a court order;
- The defendant is not obligated to disclose the arrest or the set-aside conviction when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except in response to a direct question in a questionnaire or application for any law enforcement position; and
- The dismissal is a bar to any future action based on the conduct in the dismissed action, though the set-aside conviction may be pleaded and proved as a prior conviction in any subsequent prosecution or for administratively revoking or suspending the defendant's driving privilege.

[1] Assem. Bill 2371 (Butler); Stats. 2012, ch. 403.

[2] The defendant's DNA sample remains in the DNA databank, and the defendant is not authorized to own, possess, or have a firearm in his or her custody or control.

Although there are currently other Judicial Council forms—*Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181)—to facilitate dismissal procedures under Penal Code sections 1203.4, 1203.4a, and 1203.41,[3] the dismissal procedures authorized by section 1170.9(h) differ in two significant ways: the manifold eligibility criteria and the more extensive relief provided to eligible defendants.

By specifically detailing the requirements for a dismissal under Penal Code section 1170.9(h), and the relief available, the forms are designed to facilitate court implementation of a new procedure with unique procedural requirements, and promote access to justice for self-represented defendants with military histories.

Comments, Alternatives Considered, and Policy Implications

The attached forms were circulated for public comment from April 17, 2015, to June 17, 2015. A total of nine comments were received; of those, four agreed with the proposal, and five agreed if modified. In addition, the Veterans Subcommittee of the Collaborative Justice Courts Advisory Committee reviewed the proposed dismissal forms. No opposition to the proposal was received. A chart with all comments received and the committee's responses is attached at pages 9–15.

Notable comments

Notable comments and committee responses include:

- ***Dual titles.*** As circulated, the proposed forms were numbered "CR-183" and "CR-184." Justice Eileen Moore of the Fourth Appellate District, Division Three, suggested that the forms be given dual numbers with a "MIL" prefix to clearly identify the forms as military-related forms as well as criminal forms. In response, the committee added a "MIL" prefix to the form numbers: "CR-183/MIL-183" and "CR-184/MIL-184."

- ***Sealing records and notifying the Department of Justice.*** Justice Moore also suggested that form CR-184/MIL-184 include a check box for the court to order the sealing of the police and court records in the dismissed action, and another check box for the court to inform the Department of Justice that the court has ordered the records sealed. Under Penal Code section 1170.9(h)(4)(D), the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action. In response to Justice Moore's comment, the committee added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added a check box to item 7 on form CR-184/MIL-184 to facilitate the court's action in ordering the police and court records sealed. The committee also added item 8 to form CR-184/MIL-184 to provide a check box for the court to order that the Department of Justice be notified of the sealing order.

[3] The committee is separately recommending revisions to existing council forms to incorporate similar dismissal procedures for victims of human trafficking under newly enacted Penal Code section 1203.49.

- ***Ordering fees.*** Another commentator suggested that form CR-184/MIL-184 include a check box for the court to order the amount of the "fees due for the order." The committee, however, declined the suggestion because the statute does not expressly authorize the imposition of fees.

Alternatives considered

In consideration of the additional burden that any new forms place on the courts, the committee considered postponing or declining to propose new forms to implement the provisions of Penal Code section 1170.9(h). Alternatively, the committee considered implementing the provisions of Penal Code section 1170.9(h) through revisions to existing Judicial Council dismissal forms, *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181). The committee decided, however, to recommend two new optional forms to implement the provisions of Penal Code section 1170.9(h) because of the legislature's emphasis on providing dismissal relief for eligible defendants who were, or are, members of the United States military and, as noted above, because of the significant differences between Penal Code section 1170.9(h) dismissals and those granted under sections 1203.4, 1203.4a, and 1203.41. The committee determined that providing a separate set of forms that detail the requirements for Penal Code section 1170.9 dismissals will reduce confusion for petitioners and assist courts in providing appropriate dismissal relief to current or former military personnel.

Implementation Requirements, Costs, and Operational Impacts

Because the forms are optional, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Judicial Council forms CR-183/MIL-183 and CR-184/MIL-184, at pages 5–8
2. Chart of comments, at pages 9–15

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	***FOR COURT USE ONLY*** **DRAFT** **Not Approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
PETITION FOR DISMISSAL (Military Personnel) **(Pen. Code, §§ 17(b), 1170.9(h))**	CASE NUMBER:

INSTRUCTIONS

Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.

1. **HEARING INFORMATION:** A hearing on this petition for dismissal has been scheduled as follows:

   Date: Time: Department:

   Location *(if different than court address above):*

   If an interpreter is needed, please specify language:

2. On *(date):* _____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses:

Code	**Section**	**Type of offense:** *(Felony or Misdemeanor)*	**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).

3. **Felony or misdemeanor with probation granted (Pen. Code, § 1170.9(h)):**
   Petitioner was granted probation on the terms and conditions set forth in the docket of the above-entitled court. At the time probation was granted, the petitioner was a person described in Penal Code section 1170.9(a) (a member of the United States military suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of his or her service) and the petitioner:

   - is in substantial compliance with the conditions of that probation;
   - has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems stemming from military service;
   - does not represent a danger to the health or safety of others; and
   - has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief would be in the interests of justice.

   (Note: You may complete and attach the Attached Declaration *(form MC-031) or submit other relevant documents in support of one or more of the above statements.)*

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

4. **The petitioner has *(check all that apply):***

   a. ☐ participated in education, treatment, and rehabilitation as ordered by the court (indicate the degree of participation and whether it was completed).

   b. ☐ progressed in formal education.

   c. ☐ developed career potential.

   d. ☐ demonstrated leadership and personal responsibility efforts.

   e. ☐ contributed service in support of the community.

   f. ☐ other factors.

   (Note: You may complete and attach the Attached Declaration *(form MC-031) or submit other relevant documents in support of one or more of the statements checked above to explain why granting a dismissal would be in the interests of justice.)*

5. **The petitioner requests that the court order *(check all that apply):***

   a. ☐ deem all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs, and terminate probation prior to the expiration of the term of probation.

   b. ☐ reduce the eligible felony offenses listed above to misdemeanors under Penal Code section 17(b).

   c. ☐ permit the petitioner to withdraw the plea of guilty, or set aside the verdict or finding of guilt and enter a plea of not guilty, and the court dismiss this action and grant relief in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C).

   d. ☐ seal police records of the arrest and court records of the dismissed action in accordance with Penal Code section 1170.9(h)(4)(D).

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: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	***FOR COURT USE ONLY*** **DRAFT** **Not Approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL (Military Personnel) **(Pen. Code, §§ 17(b), 1170.9(h))**	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that granting restorative relief is in the interests of justice, and that the petitioner *(the defendant in the above-entitled criminal action)* is eligible for and ORDERS the following requested relief:

1. ☐ The court deems all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs.

2. ☐ The court terminates probation prior to the expiration of the term of probation, if the term of probation has not yet expired.

3. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

4. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for the following felony convictions:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

5. The court **GRANTS** the petition for dismissal regarding the following felony convictions in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C), 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 FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

6. The court **DENIES** the petition for dismissal regarding the following felony convictions under Penal Code section 1170.9(h):
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

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

7. ☐ The court ORDERS, in accordance with Penal Code section 1170.9(h)(4)(D), the sealing of police records of the arrest and court records of the dismissed action, hereafter viewable by the public only in accordance with a court order.

8. ☐ The court ORDERS that the Department of Justice be notified of the sealing order.

9. If this order is granted under the provisions of Penal Code section 1170.9(h):

   a. The petitioner is released from all penalties and disabilities resulting from the offense(s) of which he or she has been convicted in the dismissed action.
   b. Dismissal of the conviction does not *automatically* relieve a person from the requirement to register as a sex offender under Penal Code section 290. (See, e.g., Pen. Code, § 290.5.)
   c. The petitioner is not obligated to disclose the arrest on the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except when he or she is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.
   d. The dismissal of the action shall be a bar to any future action based on the conduct charged in the dismissed action.
   e. In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal had not been granted.
   f. A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the petitioner's driving privilege on the ground of two or more convictions.
   g. The petitioner's DNA sample and profile in the DNA data bank shall not be removed by a dismissal.
   h. Dismissal of an accusation, information, or conviction does not authorize a petitioner to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction pursuant to Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

10. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b) or 1170.9(h) 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 he or she 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)

SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	Need information as to whether these forms are subject to a similar administrative fee charged by the court on 1203.4 petitions. If so, we would request that the order from CR-184 have a section where the judge can enter the fees due for the order.	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
2.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	AM	**Suggested Amendments to CR-183** 1. *Suggestion:* On section 1, remove "Offense" Box. *Reason*: A petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. 2. *Suggestion:* Should section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4"? **Suggested Amendments to CR-184** 1. *Suggestion:* Amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *1. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			convictions to misdemeanors <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5</u>." *Reason for request:* Having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. 2. *Suggestion:* Should section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h)<u>, in accordance with § 1203.4</u>"?	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184/MIL-184 to read: "…in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>"
3.	Azar Elihu Criminal Defense Attorney Los Angeles	A	(no comments were provided)	No response required.
4.	Legal Services for Prisoners with Children Dorsey Nunn, Executive Director	AM	**<u>Suggested Amendments to CR-183</u>** Legal Services for Prisoners With Children ("LSPC") writes to inform you to make the	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-

	Commentator	Position	Comment	Proposed Advisory Committee Response
			following suggestions on Petition For Dismissal (Military Personnel) (form CR-183), on section 1, remove "Offense" Box. The intent of these suggestions are for the following reasons, a petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. LSPC also suggest, section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4". **Suggested Amendments to CR-184** LSPC also suggest to amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "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 which carry a potential maximum of 364 days, as provided by Penal Code section 18.5." The intent of these suggestions are for the following reasons, having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of	183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *2. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. Another suggest Order for Dismissal (Military Personnel) (Form CR-184) section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), in accordance with § 1203.4".	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)."
5.	Hon. Eileen C. Moore Associate Justice of the Court of Appeal Fourth Appellate District, Division Three (Santa Ana)	AM	1. Item 8 (i) on proposed from CR-184 does not have any stated statutory basis and there is nothing about public office in Penal Code § 1170.9. I suggest this subdivision be deleted. 2. The title of the forms [CR-183; CR-184] is of concern to me. All of the other military forms have a title beginning with MIL. In other areas [AT-138/EJ-125 for example], forms have two titles. Because I fear people will not know to look at CR for military forms, I suggest the form be given dual titles: CR-183/MIL-XXX; CR-184-MIL-XXX. Because of the passage of Penal Code § 858, it is obvious to me the Legislature has concern that the veteran be personally told of his/her rights. I assume the Legislature thinks that criminal defense lawyers are not advising their veteran clients about their rights. Thus, I think finding	• Penal Code section 1170.9(h)(4) releases the defendant from all penalties and disabilities resulting from the offense except for those provided in that paragraph; a prohibition on holding public office is not one of the exceptions, and therefore the committee has deleted item 8(i) on form CR-184/MIL-184. • The committee agrees with the suggestion that it would be helpful to include a prefix to clearly identify these optional Judicial Council forms as military-related forms as well as criminal forms, and has added a "MIL" form number: "CR-183/MIL-183" and "CR-184/MIL-184".

	Commentator	Position	Comment	Proposed Advisory Committee Response
			forms that specifically relate to veterans should be made as easy as possible.	
			3. Before I make my next suggestion, I want to give some background. The Collaborative Courts Advisory Committee has been trying to solve a problem concerning the restoration of rights granted to a defendant by the court under Penal Code § 1170.9. The problem is that the veteran who has had his/her rights restored states "no arrest/no conviction" on job application and it turns out the potential employer has information about the arrest/conviction already. We realized that one of the problems has been that the Dept. of Justice does not have a place on their forms for the clerks to check. We have tried to plug that hole and may have done so. We think the DOJ has added a place on their form, but I am not certain of that. Another hole which needs to be plugged is at the individual clerk level. That is, the clerk in the very same courthouse does not know the defendant's file should be sealed. Now to my suggestion: It would seem to me that CR-184 is a perfect place to have the judge who restores the veteran defendant's rights also order the DOJ be notified and that the clerk of the court seal the records.	• The committee agrees with the suggestion. Under Penal Code section 1170.9(h)(4)(D) the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action; the committee has added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added check boxes as items 7 and 8 on form CR-184/MIL-184 for the court to order sealing and that the Department of Justice be notified of the sealing order.
			4. By far, this comment is the least of my concerns, but with regard to proposed form CR-183, at subdivision 4(b), it says "formal	• The committee declines the suggestion. "Formal education" is the term included in Penal Code section 1170.9(h)(2)(B) and the

	Commentator	Position	Comment	Proposed Advisory Committee Response
			education." I wonder why the court is only interested in "formal" education, as opposed to education in a trade. In fact, most of the veterans I see when I go to Veterans Court as a mentor are striving toward something like plumbing or electronics.	forms track the language of the statute on form CR-183/MIL-183, item 4b.
6.	Orange County Bar Association Ashleigh Aitken, President	A	Does the proposal appropriately address the stated purpose? Yes Are the proposed new forms, Petition for Dismissal (Military Personnel) (form CR-183) and Order for Dismissal (Military Personnel) (CR-184), an effective way to address the legislation adding Penal Code section 1170.9(h)? Yes.	No response required.
7.	State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The proposal would allow petitioners to obtain relief pursuant to Penal Code section 1170.9(h). Are the proposed new forms, Petition for Dismissal (Military Personnel)(form CR-183) and Order for Dismissal (Military Personnel)(CR-184), an effective way to address the legislation adding Penal Code Section 1170.9(h)?	No response required.

SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			Yes. The forms provide uniformity and clarity to the courts and to self-represented litigants requesting relief under the new Penal Code section.	
8.	Superior Court of Los Angeles County	A	(no comments were provided)	No response required.
9.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.

Item number: 03

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act.
Adopt Judicial Council forms GC-360, GC-361, and GC-362; revise form GC-310

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

Staff contact (name, phone and e-mail): Douglas C. Miller, (818) 558-4178, douglas.c.miller@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2014
Project description from annual agenda: Develop and propose revision of one Judicial Council form and adoption of three new forms necessary to implement provisions of the California Conservatorship Jurisdiction Act (Chapter 8 of Part 3 of Division 4 of the Probate Code, commencing with section 1980), added by SB 940 (Stats. 2014, ch. 553), § 20.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
N/A

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 27, 2015

Title
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act

Rules, Forms, Standards, or Statutes Affected
Adopt forms GC-360, GC-361, and GC-362; revise form GC-310

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair
Douglas C. Miller
SeniorAttorney
Judicial Council Legal Services Office

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
Douglas C. Miller, (818) 558-4178
douglas.c.miller@jud.ca.gov

Executive Summary

Legislation enacted in 2014 added the California Conservatorship Jurisdiction Act (CCJA) to the Probate Code. This legislation requires the Judicial Council to revise an existing form and adopt new forms to implement the act. To comply with this mandate, the Probate and Mental Health Advisory Committee proposes revision of the existing form and adoption of three new forms.

Recommendation

The Probate and Mental Health Advisory Committee recommends that, effective January 1, 2016, the Judicial Council:

1. Adopt three new forms required by the CCJA to implement the foreign conservatorship registration provisions of the law, the *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California* (form GC-360); the *Notice of*

Intent to Register Conservatorship (form GC-361), and the *Conservatorship Registrant's Acknowledgment of Receipt of* Handbook For Conservators (form GC-362); and

2. Revise the *Petition for Appointment of Probate Conservator* (form GC-310) to add an inquiry, required by the CCJA, about the proposed conservatee's possible connections to a federally-recognized Indian tribe and also to inquire about the petitioner's state of knowledge about conservatorship or similar proceedings filed concerning the proposed conservatee in jurisdictions other than California.

The new and revised forms are attached at pages 7–22.

Previous Council Action

The CCJA[1] is California's version of a uniform law, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This law was recommended to the Legislature for adoption in California by the California Law Revision Commission. During the progress of development of the commission's final recommendations to the Legislature in 2013, the Judicial Council, through its Policy Coordination and Liaison Committee, authorized the Probate and Mental Health Advisory Committee and the State Court and Tribal Court Forum to make recommendations to the Commission for modification of portions of the proposed law affecting California Indian tribal courts, tribal-member conservatees, and their relations with California state courts. A significant portion of these recommendations were accepted by the Law Revision Commission and became part of the CCJA.

The Judicial Council adopted the *Petition for Appointment of Probate Conservator* (form GC-310), effective July 1, 1979; which was also the effective date of the entire Guardianship-Conservatorship Law, commencing at Probate Code section 1400. The form has been revised seven times since then, the last revision effective on July 1, 2009.

Rationale for Recommendation

The CCJA addresses, among many other things, jurisdictional disputes between states and between states and tribal courts of federally-recognized Indian tribes, concerning what in California are conservatorship proceedings under the Probate Code. The law authorizes a conservator appointed in one jurisdiction to transfer the case to another jurisdiction and the latter jurisdiction to accept the transfer, without requiring the conservator to close the original case and seek appointment as conservator in the receiving jurisdiction. The law also permits a conservator appointed in another jurisdiction to register with a California state court if the conservatee is not

[1] Unless otherwise stated, all code references are to the Probate Code.

The CCJA was enacted by Senate Bill 940 (Stats. 2014, ch. 553). It is located in a new chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980. The entire law was effective on January 1, 2015, but it will not become operative until January 1, 2016, except Probate Code section 2023, which became operative this year (see Sen. Bill 940, §§ 20 and 23). A link to the legislation is provided at the end of this report.

a resident of California[2] and thereafter to act in California, for example, handling a real property transaction involving the conservatee's California property or making placement or medical decisions for a conservatee temporarily here, without court appointment in California.

Registration of foreign conservatorships

The three new forms recommended in this report are required with considerable specificity by the CCJA.[3] They are to be used by foreign conservators to register their conservatorships in this state. Form GC-360 is the basic registration document, referred to as a cover sheet because it must be filed together with documents required by the law.[4]

Notice of intent to register must be given at least 15 days before registration to the foreign appointing court and to the persons entitled to notice of an appointment petition under the laws of that state and of California. Proposed form GC-361 is the form of the notice required by sections 2014 and 2023(b)(3). The contents of the notice in item two on page one of the form is required by section 2014(b). Perhaps the most significant portion of that notice is items 2a and 2b, which advise that a registrant may not act in ways not authorized for domestic conservators in this state and California law applies to all actions taken by a registrant here, including the same court approval of the action and notice of the application for that approval that would be required for the action in a domestic conservatorship. Pages 3 and 4 of form GC-361 contain instructions for delivery of the notice and a proof of delivery by mailing that is modeled after similar proofs of mailing commonly used in probate proceedings.[5]

Form GC-362 is the registrant's acknowledgment of receipt of the information about the duties and responsibilities of conservators that section 1834 requires of domestic conservators. Delivery of that information to the registrant and the registrant's receipt of it are required by sections 2015 and 2023(b)(4).

Revision of form GC-310

The proposal also recommends revision of the *Petition for Appointment of Probate Conservator* (form GC-310) to include an inquiry, also required by the CCJA, about the proposed conservatee's relationship with an "Indian tribe with jurisdiction."[6] Finally, in response to a

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[2] Excepting a conservator appointed by a court of a California Indian tribe, who may register the conservatorship with a California state court despite the conservatee's residence in the state. See sections 2023(b)(1) and (c), and 2019.

[3] See sections 2011–2013, concerning, respectively, registration of conservatorships of the person, the estate, and the person and estate; and section 2023. A copy of the latter section follows this report as Attachment A.

[4] The documents are required by sections 2011–2013 and are listed on page two of the new form. They are (1) certified copies of the foreign court's appointment order and Letters of Conservatorship or other letters of office and of any bond, and (2) proof of the notice required by section 2014.

[5] See *Attachment to Notice of Hearing Proof of Service by Mail* (form GC-020(MA)).

[6] An "Indian tribe with jurisdiction" is defined in section 2031(b) as a federally-recognized Indian tribe with a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorships.

comment of the Judicial Council's State Court-Tribal Court Forum, the proposal includes a revision of form GC-310 to ask the petitioner if he or she has knowledge of the filing of a conservatorship or equivalent proceeding concerning the proposed conservatee in another jurisdiction, including a court of an Indian tribe with jurisdiction. Disclosure of a potential competing petition for appointment of a conservator in another jurisdiction before a California appointment is made should serve to identify potential jurisdictional disputes addressed by the CCJA at the earliest possible time.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment in the regular spring 2015 comment cycle. Possibly because of the very specific and detailed requirements for the new and revised forms enacted in the CCJA, only six comments were received. All commentators approved the proposal, three without specific comments. One commentator, the Superior Court of Los Angeles County, responded only to the questions in the Invitation to Comment directed to courts concerning the effect of the proposal on court operations and expenses.

Two commentators, the State Court-Tribal Court Forum, and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees recommended changes.

The Forum requested that the conservatorship petition, form GC-310, be revised to inquire of the petitioner whether there is a conservatorship proceeding pending for the proposed conservatee in a tribal court. The advisory committee accepted this recommendation in a modified form. The committee added a new item 3g at the top of page four of the form, part of the section that addresses jurisdictional issues. The item would provide:

> So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee [ ] has not [ ] has been filed in another jurisdiction, including a court of an Indian tribe with jurisdiction (see Prob. Code 2031(b)).
> *(If you answered "has," identify the jurisdiction and state the date the case was filed):*

The reference to an "equivalent proceeding" reflects the fact that in many jurisdictions, the matters that would be probate conservatorships in this state are identified by other names, such as guardianships or protective proceedings.

The Joint Rules Subcommittee requested that the contents of one of the forms recommended in this report, the *Conservatorship Registrant's Acknowledgment of Receipt of* Handbook for Conservators (form GC-362) be folded into one of the other two new forms, to reduce the number of new forms. The committee regretfully concluded that this could not be done for the following reasons:

1. Combination of the contents of form GC-362 with the *Notice of Intent to Register Conservatorship* (form GC-361) is not appropriate because the latter form is not filed, except perhaps as an exhibit, and it must be prepared and delivered to the persons entitled to notice before the basic registration form, form GC-360, is filed with the registering court (see § 2014(a)).

2. The CCJA expressly permits combination of the *Conservator's Attestation of Conservatee's Non-Residence in California* with the basic registration form, form GC-360, an invitation that was accepted by the committee (see page 3 of form GC-360 and §§ 2017(a)(3) and 2023(b)(2)). No such permission was given for the required acknowledgment of receipt proposed here as form GC-362.

3. Probate Code section 2015 requires the court, upon registration, to provide the foreign conservator with the information about a conservator's rights, duties, limitations, and responsibilities in California identified in section 1835. The *Handbook for Conservators,* published by the Judicial Council, is that information. This would mean, if the contents of form GC-362 were placed in form GC-360, a foreign conservator would apply for registration by presenting a form to the court that includes a signed receipt for material the court is not to deliver to him until after completion of registration.

The advisory committee will, however, consider making a recommendation for council sponsorship of legislation to amend section 2015 to permit moving the contents of form GC-362 to form GC-360 in the future.

Internal comments

The advisory committee reviewed the proposed new and revised forms upon their return from public circulation. In addition to the changes noted above in response to comments received, the committee unanimously made the following additional revisions of the forms circulated for comment:

1. The committee added a list of the attachments required by section 2013 to be filed with the *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California* (form 360), on page 2 of the form.

This change should inform registrants what documents are to be attached to and filed with the cover sheet and reduce inadvertent failures to attach them.

2. The committee changed the attestation of receipt required by sections 2015 and 2023(b)(4) to read: "I acknowledge that I have received or accessed electronically the *Handbook for Conservators* adopted by the California Judicial Council."

The revised acknowledgment accurately reflects the current situation in California, in which newly appointed conservators either access the *Handbook* electronically from the judicial branch public Website at no cost to them or pay to the appointing court the sum authorized by section 1835(f) for a printed copy reproduced by the court from the electronic copy.

Alternatives

The CCJA is very specific about the forms it requires the council to develop, and very thorough and precise in prescribing the contents of those forms. Therefore, no alternatives to their development and few alternatives to the contents of the forms were considered. The committee was unanimous in its approval of the forms for public circulation, the changes to the forms proposed in this report, and its recommendation for adoption or revision of the forms.

Implementation Requirements, Costs, and Operational Impacts

The Superior Court of Los Angeles County advised that the new forms recommended in this proposal would add to the court's workload. The court was unable to determine that the forms would reduce any existing costs, but advised that management as well as clerical staff would require training, and possible changes in procedures and modification and addition of codes in the court's case management system would be necessary.

The committee's view is that the additional workload and costs for the courts stem from implementation of the registration process by the CCJA rather than from the adoption of the forms required by that act for that process. This increase will be offset to some extent by the new registration fee of $30, authorized by Government Code section 70663, added by section 2 of the CCJA.

Attachments and Links

1. Judicial Council forms GC-360, GC-361, GC-362, and GC-310, at pages7–22
2. Chart of comments, at pages 23–26
3. Attachment A: Probate Code section 2023, at page 27
4. The California Conservatorship Jurisdiction Act, Senate Bill 940 (Stats. 2014, ch. 553), at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB940&search_keywords*

GC-360

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

TEL NO.: FAX NO.:

E-MAIL ADDRESS*:*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR RECORDER'S USE ONLY

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):*

CONSERVATEE

CALIFORNIA REGISTRATION NUMBER

FOR COURT USE ONLY

Draft
Not Approved by the
Judicial Council

CONSERVATORSHIP REGISTRATION COVER SHEET AND ATTESTATION OF CONSERVATEE'S NON-RESIDENCE IN CALIFORNIA

(California Conservatorship Jurisdiction Act)

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:

COURT:	DEPT.:	CASE NUMBER:

TITLE OF PROCEEDING:

INFORMATION AND INSTRUCTIONS FOR REGISTRANTS

The California Conservatorship Jurisdiction Act (Prob. Code §§1980–2300) is California's modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Terms and phrases used in this Cover Sheet that are defined in California Probate Code sections 1982 or 2031 are in italics and have the meanings provided in those sections; all further statutory references are to that code. A *conservator of the person* in California is a fiduciary that is referred to in many other states or jurisdictions as the guardian of the person of an adult; a *conservator of the estate* in California is a person who is referred to in many other states or jurisdictions as the guardian of the estate of an adult or a person authorized by law to preserve and manage the property and finances of a protected person, who is a person for whom a court has issued a protective order; a *conservator of the person and estate* in California is a person who has the combined powers and authority of a *conservator of the person* and a *conservator of the estate* of an adult person, who is referred to in California as the *conservatee*. A *conservator* may be a conservator of the person, of the estate, or of the person and estate of a *conservatee*.

A *conservator* appointed by a court of a state other than California; or by a court of the District of Columbia, Puerto Rico, United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States; or by a court of an *Indian tribe with jurisdiction*, including a *California tribe*, may register the *conservatorship order* with a California superior court in accordance with sections 2011 *(conservatorship of the person),* 2012 *(conservatorship of the estate),* or 2013 *(conservatorship of the person and estate)*. Registration is accomplished, after giving notice as required by section 2014, by **filing a signed and initialed copy of this Cover Sheet together with proof of notice** and **certified copies of (1) the appointing court's *conservatorship order*, (2) Letters of Conservatorship or other letters of office, and (3) any surety bond** with an appropriate California superior court identified in sections 2011, 2012, or 2013.

Upon registration and receipt of the written information concerning a *conservator's* rights, duties, limitations, and responsibilities in California described in sections 1835 and 2015, and the filing of the *conservator's* written acknowledgement of receipt of that information, the *conservator* may, while the *conservatee* resides outside of California or if the *conservatorship order* was made by the court of a *California tribe,* exercise in any county of this state all of the powers authorized in the *conservatorship order,* except as prohibited by the law of California, including maintaining actions and proceedings in this state (subject to any conditions imposed on nonresident parties if the *conservator* is not a resident of California). See section 2016.

*** Court where registration is made *(prepare separate cover sheet for each court where registration is to be made).***

Form Adopted for Mandatory Use
Judicial Council of California
GC-360 [New January 1, 2016]

Probate Code, §§ 2011—2013, 2017, 2023;
www.courts.ca.gov

CONSERVATORSHIP OF *(name):* CONSERVATEE	CALIFORNIA REGISTRATION NUMBER:

Registration may be available if **all** of the following facts are true:

1. The *conservatee* is over the age of 18 years *(place your initials here):* _____ ;

2. Under the law under which his or her *conservator* was appointed, the *conservatee* may not be involuntarily committed to a mental health facility or subjected to other involuntary mental health care that is similar to the California mental health proceedings listed in section 1981(b) *(place your initials here):* _____ ; and

3.There is no petition pending in a California state court for the appointment of a *conservator* for the *conservatee.*

EFFECT OF CALIFORNIA LAW AND CONSERVATEE'S RESIDENCE IN CALIFORNIA

A *conservator* acting under the authority of a registration under sections 2011, 2012, or 2013 is subject to the law of California governing the action, including all applicable court procedures, and is not authorized to take any action prohibited by that law. If a California law, including sections 2356.5, 2540, 2543, 2545, or 2591.5, or article 2 (commencing with section 1880) of chapter 4 of part 3 of division 4 of the code, mandates compliance with special requirements to exercise a particular power or take a particular step, a *conservator* registered under sections 2011, 2012, or 2013 may not exercise that power or take that step without first complying with those requirements. If the requirement is to obtain court approval or take other action in court, the *conservator* must seek that approval or otherwise proceed as needed in an appropriate California state court. California law also includes limitations on the authority of fiduciaries who are not authorized to practice law in California, including *conservators*, to appear in California state courts without attorneys so authorized.

Except in the case of the registration of a *conservatorship order* of a *California tribe*, registration is effective only while the *conservatee* resides outside California and does not authorize the *conservator* to take any action while the *conservatee* resides in California.

ATTACHMENTS TO REGISTRATION COVER SHEET
(Probate Code section 2013)

Attached to this cover sheet, presented for filing with it, are:

1. A certified copy of the order appointing the fiduciary in the court of the jurisdiction identified on page 1;

2. A certified copy of the Letters of Guardianship or Conservatorship or other letters of office issued by the court of the jurisdiction identified on page 1;

3. ☐ A certified copy of the bond required by the court of the jurisdiction identified on page 1. ☐ No bond was required.

4. Proof that notice of intent to register conservatorship (California Judicial Council form GC-361) was given in the manner and to the persons as required by California Probate Code section 2014.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF REGISTRANT)

CONSERVATORSHIP OF *(name):* CONSERVATEE	CALIFORNIA REGISTRATION NUMBER:

CONSERVATOR'S ATTESTATION OF CONSERVATEE'S NON-RESIDENCE IN CALIFORNIA
(Probate Code section 2017)

I am the registrant named below and the conservator of the conservatee named above.

☐ The conservatee does not reside in the State of California as of the date shown below.

☐ The conservatee resides in California as of the date shown below. My appointment as conservator was made by a court of a *California tribe*, which is an *Indian tribe with jurisdiction* under the California Conservatorship Jurisdiction Act (chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980). (See section 1982.)

I promise to notify promptly any person to whom I have delivered a copy of this Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California if the conservatee becomes a resident of the State of California. This promise does not apply to a conservatee who resides in California if his or her conservator was appointed by a court of a *California tribe* that is an *Indian tribe with jurisdiction* under the California Conservatorship Jurisdiction Act.

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF REGISTRANT)

CALIFORNIA ATTORNEY OR INTENDED REGISTRANT WITHOUT CALIFORNIA ATTORNEY: STATE BAR NUMBER:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY: STATE: ZIP:

TELEPHONE NO.: FAX NO. :

E-MAIL ADDRESS:

ATTORNEY FOR *(Name):*

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NOTICE OF INTENT TO REGISTER CONSERVATORSHIP*

(California Conservatorship Jurisdiction Act)

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:

COURT:	DEPT.:	CASE NUMBER:

TITLE OF PROCEEDING:

1. NOTICE is given that *(name):*
   (specify fiduciary or representative capacity):
   intends to register the conservatorship proceeding identified above with the following California superior court:
   Superior Court, County of , on or after *(specify date**):* .

2. NOTICE is further given that:

a. A conservator in a conservatorship registered in California under the California Conservatorship Jurisdiction Act (chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980) taking an action under the Act is fully subject to the law of California governing the action, including all applicable court procedures concerning the action, and is not authorized to take any action prohibited by that law.

b. If a conservator in a conservatorship registered in California under the Act proposes to take a specific action that requires court approval or other action in court under California law, the conservator will be required to notify any person entitled to receive a copy of this Notice of the request for court approval or other court action. The person notified will have an opportunity to object or otherwise participate in the court proceeding at that time, in the same manner as other persons are entitled to object or otherwise participate under the law of California.

c. Information about a conservator's rights, duties, limitations, and responsibilities under California law may be found in a publication titled *Handbook for Conservators,* which is posted on the Judicial Council of California's website at: *www.courts.ca.gov/documents/handbook.pdf.*

d. Except in the case of a conservatorship filed in and supervised by the court of a California Indian tribe with jurisdiction, registration of a conservatorship in California is effective only while the conservatee resides outside California and does not authorize the conservator to take any action while the conservatee resides in California.

*** Prepare and serve (deliver) a separate *Notice of Intent to Register Conservatorship* for each court in which you intend to register this conservatorship.**

**** The date of registration must be 15 or more days after this notice is mailed or personally delivered (Prob. Code, § 2014(a)) .**

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

INSTRUCTIONS FOR DELIVERY OR SERVICE OF NOTICE OF INTENT TO REGISTER

A copy of this *Notice of Intent to Register Conservatorship* must be delivered, at least 15 days before registration of the conservatorship in California, to (1) the court that is supervising the conservatorship or guardianship proceeding in the state or other jurisdiction other than California shown on the first page of this form; (2) each person who has the right under the law of that jurisdiction to notice of the date, time, and place of a court hearing on a petition for the appointment of a guardian of an adult or a conservator; and (3) each person who would be entitled to notice of the date, time, and place of a court hearing on a petition for the appointment of a conservator in California (see Prob. Code §§ 1821–1824). These copies may be delivered by mail. However, copies of this Notice may be personally delivered instead of mailed. The registrant (the person who intends to register the conservatorship in California) must show the court that copies of this Notice have been delivered in compliance with applicable law. The registrant does this by performing the delivery and completing and signing a proof of delivery. The Notice is then combined with certified copies of the conservatorship appointment order, Letters of Conservatorship or other letters of office, any surety bond, and the original signed *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Nonresidence in California* (form GC-360) for filing in the California court selected for registration (see Prob. Code §§ 2011–2013).

Pages 2–4 of this form contain a proof of delivery that may be used only to show delivery by mail. To show personal delivery, each person who performs the delivery must complete and sign a proof of personal delivery or service, and each signed copy of that proof must be attached to this Notice when it is delivered to the court to complete registration. You may use form number POS-020(P) to show personal delivery of this Notice. A fillable copy of that form (and all other forms, listed by their form numbers) may be found on the Judicial Council's Internet website, at *www.courts.ca.gov/formnumber.htm.*

PROOF OF DELIVERY BY MAIL

1. I am over the age of 18 years. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*

3. I delivered the foregoing *Notice of Intent to Register Conservatorship* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
   b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 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.

4. a. Date mailed: b. Place mailed *(city, state):*

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

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*
1. Appointing or Supervising Court	
2. Conservatee or Ward	

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*

3. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator or Guardian in Appointing Court

☐ Additional persons listed on Attachment 3 (you may use form POS-30(P) for this purpose).

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*

4. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator in California (Prob. Code, §§ 1821–1824)*****

☐ Additional persons listed on Attachment 4 (you may use form POS-30(P) for this purpose).

*** You do not need to repeat names, relationships to Conservatee, and addresses of persons listed in item 3.**

CALIFORNIA ATTORNEY OR REGISTRANT WITHOUT CALIFORNIA ATTORNEY STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: 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: *** Court where registration is filed.**	
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* CONSERVATEE	
CONSERVATORSHIP REGISTRANT'S ACKNOWLEDGMENT OF RECEIPT OF *HANDBOOK FOR CONSERVATORS* * **(California Conservatorship Jurisdiction Act)**	CALIFORNIA REGISTRATION NUMBER:

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:		
COURT:	DEPT.:	CASE NUMBER:
TITLE OF PROCEEDING:		

I acknowledge that I have received or accessed electronically the *Handbook for Conservators* adopted by the California Judicial Council.

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 CONSERVATORSHIP REGISTRANT)

*** File this form with each California superior court where you registered the conservatorship proceeding identified above.**

Form Adopted for Mandatory Use
Judicial Council of California
GC-362 [New January 1, 2016]

CONSERVATORSHIP REGISTRANT'S ACKNOWLEDGMENT OF RECEIPT OF *HANDBOOK FOR CONSERVATORS*
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1835, 2015, 2023;
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*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:	
CONSERVATORSHIP OF *(name):* (PROPOSED) CONSERVATEE	
PETITION FOR APPOINTMENT OF ☐ SUCCESSOR PROBATE CONSERVATOR OF THE ☐ PERSON ☐ ESTATE ☐ **Limited Conservatorship**	CASE NUMBER: HEARING DATE AND TIME: DEPT.:

1. **Petitioner *(name):*** **requests that**

   a. *(Name):* *(Telephone):*
   (Address):

   be appointed ☐ successor ☐ conservator ☐ limited conservator
   of the PERSON of the (proposed) conservatee and Letters issue upon qualification.

   b. *(Name):* *(Telephone):*
   (Address):

   be appointed ☐ successor ☐ conservator ☐ limited conservator
   of the ESTATE of the (proposed) conservatee and Letters issue upon qualification.

   c. (1) ☐ bond not be required ☐ because the proposed ☐ successor conservator is a corporate fiduciary or an exempt government agency. ☐ for the reasons stated in Attachment 1c.

   (2) ☐ bond be fixed at: $ to be furnished by an authorized surety company or as otherwise provided by law. *(Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code section 2320.)*

   (3) ☐ $ in deposits in a blocked account be allowed. Receipts will be filed.
   (Specify institution and location):

   d. ☐ orders authorizing independent exercise of powers under Probate Code section 2590 be granted. Granting the proposed ☐ successor conservator of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship estate. *(Specify orders, powers, and reasons in Attachment 1d.)*

   e. ☐ orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted. *(Specify orders, facts, and reasons in Attachment 1e.)*

   f. ☐ orders relating to the powers and duties of the proposed ☐ successor conservator of the person under Probate Code sections 2351–2358 be granted. *(Specify orders, facts, and reasons in Attachment 1f.)*

   g. ☐ the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer and that the proposed ☐ successor conservator of the person be granted the powers specified in Probate Code section 2355. *(Complete item 9 on page 6.)*

Do NOT use this form for a temporary conservatorship.

Form Adopted for Mandatory Use
Judicial Council of California
GC-310 [Rev. January 1, 2016]

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1820, 1821, 2680–2682
www.courts.ca.gov

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

1. h. ☐ *(for limited conservatorship only)* orders relating to the powers and duties of the proposed limited conservator of the person under Probate Code section 2351.5 be granted. *(Specify orders, powers, and duties in Attachment 1h and complete item 1j.)* ☐ successor *****

   i. ☐ *(for limited conservatorship only)* orders relating to the powers and duties of the proposed limited conservator of the estate under Probate Code section 1830(b) be granted. *(Specify orders, powers, and duties in Attachment 1i and complete item 1j.)* ☐ successor *****

   j. ☐ *(for limited conservatorship only)* orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. *(Specify limitations in Attachment 1j.)*

   k. ☐ orders related to dementia placement or treatment as specified in the *Attachment Requesting Special Orders Regarding Dementia* (form GC-313) under Probate Code section 2356.5 be granted. A *Capacity Declaration—Conservatorship* (form GC-335) and *Dementia Attachment to Capacity Declaration—Conservatorship* (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure with at least two years experience diagnosing dementia, ☐ are filed herewith. ☐ will be filed before the hearing.

   ☐ (appointment of successor conservator only) will not be filed because an order relating to dementia placement or treatment was filed on *(date):* . That order has neither expired by its terms nor been revoked.

   l. ☐ other orders be granted. *(Specify in Attachment 1*l*.)*

2. (Proposed) conservatee is *(name):* *(Telephone):*
   (Present address):

3. a. ☐ **Jurisdictional facts** *(initial appointment only)* The proposed conservatee has no conservator in California and is a
   (1) ☐ resident of California and
   (a) ☐ a resident of this county.
   (b) ☐ not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
   (2) ☐ nonresident of California but
   (a) ☐ is temporarily living in this county, or
   (b) ☐ has property in this county, or
   (c) ☐ commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.

   b. **Petitioner** *(answer items (1) and (2) and check all other items that apply)*
   (1) ☐ is ☐ is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
   (2) ☐ is ☐ is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
   (3) ☐ is the proposed ☐ successor conservator.
   (4) ☐ is the (proposed) conservatee. *(If this item is* **not** *checked, you must also complete item 3f.)*
   (5) ☐ is the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
   (6) ☐ is the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
   (7) ☐ is a relative of the (proposed) conservatee as *(specify relationship):*
   (8) ☐ is an interested person or friend of the (proposed) conservatee.
   (9) ☐ is a state or local public entity, officer, or employee.
   (10) ☐ is the guardian of the proposed conservatee.
   (11) ☐ is a bank ☐ is other entity authorized to conduct the business of a trust company.
   (12) ☐ is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. *(Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)*

*** See item 5b on page 4.**

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

3. c. **Proposed** ☐ **successor** **conservator** is *(check all that apply)*

(1) ☐ a nominee. *(Affix nomination as Attachment 3c(1).)*
(2) ☐ the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
(3) ☐ the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
(4) ☐ a relative of the (proposed) conservatee as *(specify relationship):*
(5) ☐ a bank. ☐ other entity authorized to conduct the business of a trust company.
(6) ☐ a nonprofit charitable corporation that meets the requirements of Probate Code section 2104.
(7) ☐ a professional fiduciary, as defined in Business and Professions Code section 6501(f). His or her statement concerning licensure or exemption is provided in item 1 on page 1 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
(8) ☐ other *(specify):*

d. ☐ Engagement and prior relationship with petitioning professional fiduciary *(complete this item if petitioner is licensed by the Professional Fiduciaries Bureau.)*

(1) ☐ Statements of who engaged petitioner, or how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family or friends, are provided in item 2 on page 2 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/ GC-310(A-PF) for this attachment.)*

(2) ☐ A petition for appointment of a temporary conservator is filed with this petition. That petition contains statements of who engaged petitioner, how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family and friends.

e. **Character and estimated value of the property of the estate** *(complete items (1) or (2) and (3), (4), and (5)):*

(1) ☐ (For appointment of successor conservator only, if complete Inventory and Appraisal filed by predecessor):
Personal property: $, per Inventory and Appraisal filed in this proceeding on
(specify dates of filing of all inventories and appraisals):

(2) ☐ Estimated value of personal property: $

(3) Annual gross income from
(a) real property: $
(b) personal property: $
(c) pensions: $
(d) wages: $
(e) public assistance benefits: $
(f) other: $

(4) **Total** of (1) or (2) and (3): $

(5) Real property: $
(a) ☐ per Inventory and Appraisal identified in item (1).
(b) ☐ estimated value.

f. ☐ Due diligence *(complete this item if the (proposed) conservatee is not a petitioner):*

(1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).

(2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

3. g. So far as known to Petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee

☐ has not ☐ has been filed in another jurisdiction concerning the proposed conservatee, including a court of an Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

(If you answered "has," identify the jurisdiction and state the date the case was filed):

4. **(Proposed) conservatee**

a. ☐ is ☐ is not a patient in or on leave of absence from a state institution under the jurisdiction of the California Department of Mental Health or the California Department of Developmental Services *(specify state institution):*

b. ☐ is receiving or entitled to receive ☐ is neither receiving nor entitled to receive benefits from the U.S. Department of Veterans Affairs *(estimate amount of monthly benefit payable):*

c. ☐ is ☐ is not able to complete an affidavit of voter registration.

d. ☐ is ☐ is not, so far as is known to petitioner, a member of a federally recognized Indian tribe.

(If you answered "is," complete items (1)–(4)):

(1) Name of tribe:

(2) Location of tribe *(if the tribe is located in more than one state, the state that is the tribe's principal location):*

(3) The proposed conservatee ☐ does ☐ does not reside on tribal land.*

(4) So far as known to petitioner, the proposed conservatee ☐ owns ☐ does not own property on tribal land.

5. a. ☐ Proposed conservatee *(initial appointment of conservator only)*

(1) ☐ is an adult.
(2) ☐ will be an adult on the effective date of the order *(date):*
(3) ☐ is a married minor.
(4) ☐ is a minor whose marriage has been dissolved.

b. ☐ Vacancy in office of conservator *(appointment of successor conservator only. A petition for appointment of a limited conservator after the death of a predecessor is a petition for initial appointment. (Prob. Code, § 1860.5(a)(1).)*

There is a vacancy in the office of conservator of the ☐ person ☐ estate for the reasons ☐ specified in Attachment 5b. ☐ specified below.

***"Tribal land" is land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country," as defined in 18 U.S.C. § 1151.**

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5.c. **(Proposed) conservatee** requires a conservator and is

(1) ☐ unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter.
Supporting facts are ☐ specified in Attachment 5c(1) ☐ as follows:

(2) ☐ substantially unable to manage his or her financial resources or to resist fraud or undue influence.
Supporting facts are ☐ specified in Attachment 5c(2) ☐ as follows:

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5. d. ☐ (Proposed) conservatee voluntarily requests the appointment of a ☐ successor conservator. *(Specify facts showing good cause in Attachment 5(d).)*
   e. ☐ *Confidential Supplemental Information* (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*
   f. (**Proposed) conservatee** ☐ is ☐ is not developmentally disabled as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. *(Specify the nature and degree of the alleged disability in Attachment 5f).*

6. ☐ **Petitioner or proposed ☐ successor conservator is the spouse of the (proposed) conservatee.**
   (If this statement is true, you must answer a or b.)
   a. ☐ The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
   b. ☐ Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
      (1) ☐ a ☐ successor conservator be appointed.
      (2) ☐ the spouse be appointed as the ☐ successor conservator.
      (If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)

7. ☐ **Petitioner or proposed ☐ successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** *(If this statement is true, you must answer a or b.)*
   a. ☐ The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
   b. ☐ Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
      (1) ☐ a ☐ successor conservator be appointed.
      (2) ☐ the domestic partner or former domestic partner be appointed as the ☐ successor conservator.
      (If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)

8. **(Proposed) conservatee** *(check all that apply)*
   a. ☐ will attend the hearing AND ☐ is the petitioner ☐ is not the petitioner AND ☐ has ☐ has not nominated the proposed ☐ successor conservator.
   b. ☐ *(initial appointment of conservator only)* is able but unwilling to attend the hearing AND ☐ does ☐ does not wish to contest the establishment of a conservatorship, ☐ does ☐ does not object to the proposed conservator, AND ☐ does ☐ does not prefer that another person act as conservator.
   c. ☐ *(initial appointment of conservator only):* is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner ☐ is filed with this petition. ☐ will be filed before the hearing.
   d. ☐ *(initial appointment of conservator only)* is not the petitioner, is out of state, and will not attend the hearing.
   e. ☐ *(appointment of successor conservator only)* will not attend the hearing.

9. ☐ **Medical treatment of (proposed) conservatee**
   a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
   b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,
      ☐ is filed with this petition. ☐ will be filed before the hearing. ☐ will not be filed for the reason stated in c.
   c. ☐ *(appointment of successor conservator only)* The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on *(date):*
      That order has neither expired by its terms nor been revoked.
   d. (Proposed) conservatee ☐ is ☐ is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

10. ☐ **Temporary conservatorship**
Filed with this petition is a *Petition for Appointment of Temporary Conservator* (form GC-111).

11. **(Proposed) conservatee's relatives**

The names, residence addresses, and relationships of the spouse or registered domestic partner and the second-degree relatives of the (proposed) conservatee (his or her parents, grandparents, children, grandchildren, and brothers and sisters), so far as known to petitioner, are

a. ☐ listed below.

b. ☐ not known, or no longer living, so the (proposed) conservatee's deemed relatives under Probate Code section 1821(b)(1)–(4) are listed below.

	Name and relationship to conservatee	Residence address
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
(11)		
(12)		
(13)		
(14)		
(15)		
(16)		

☐ Continued on Attachment 11.

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

12. ☐ **Confidential conservator screening form**

Submitted with this petition is a *Confidential Conservator Screening Form* (form GC-314) completed and signed by the proposed ☐ successor conservator. *(Required for all proposed conservators except banks and trust companies.)*

13. ☐ **Court investigator**

Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

14. Number of pages attached:

Date:

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

(All petitioners must also sign (Prob. Code, § 1020; Cal. Rules of Court, rule 7.103).)

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 PETITIONER) ▶ (SIGNATURE OF PETITIONER)

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

SPR15-29

Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jursidiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)

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

	Commentator	Position	Comment	Committee Response
1.	California Tribal Court–State Court Forum by Jennifer Walter, Attorney San Francisco	AM	We submit these comments on RUPRO Proposal SPR15-29 on behalf of the California Tribal Court–State Court Forum. The subject proposal revises one form and adopts three new forms to implement the California Conservatorship Jurisdiction Act (CCJA) (SB 940 Jackson, Stats. 2014 Ch. 553), which is the California version of the Uniform Adult Guardianship and Protective Proceedings Act. In recognition of the concurrent jurisdiction that California state courts and California tribal courts may exercise over tribal members in conservatorship proceedings, the CCJA contains unique jurisdictional provisions for federally recognized tribes exercising jurisdiction over conservatorship matters. These provisions are contained in Article 6 (sections 2031 – 2033). The CCJA specifically requires the Judicial Council to revise the Petition for Appointment of Conservator (form GC-310) (see Probate Code § 1821(k)). Section 2023 of the Act also requires the Judicial Council to develop court rules and forms, as necessary, for the implementation of this chapter (Chapter 8. Interstate Jurisdiction, Transfer and Recognition: California Conservatorship Jurisdiction Act) "including but not limited to …" a variety of matters.	Please see below.

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

SPR15-29
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			In reviewing the proposed revisions to the GC-310, we note that the proposed amendments are limited to the specific language required by section 1821(k). In order to avoid potential conflicts between tribal and state courts over jurisdiction, we recommend including a question under section 3a or 4d (or both) of the revised GC-310 form asking for information about conservatorship proceedings pending in a tribal court. Although this language is not explicitly required by section 1821(k) of the Probate Code, without it, there is a substantial risk that a proceeding could be filed in both courts. We believe inclusion of this information on the GC-310 form would assist state courts in more efficiently dealing with cases in which a state court and tribal court may share concurrent jurisdiction over a case. Accordingly inclusion of this language falls within the general goal of efficient implementation encompassed by section 2023 of the Act.	The advisory committee has revised form GC-310 to add, at the top of page four, a new item 3g. This item asks the petitioner to respond to the following: "So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee *[ ]* has not *[ ]* has been filed in another jurisdiction, including a court of a federally recognized Indian tribe. *(If you answered "has," identify the jurisdiction and state the date the case was filed):"*
2.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	A	No specific comment.	No response necessary.
3.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager Los Angeles	A	**Does the proposal appropriately address the stated purpose?** Yes **Would the forms proposal, as opposed to the entire foreign conservatorship registration**	The committee thanks the court for this comment.

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

SPR15-29
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jursidiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			process required by the CCJA, provide cost savings? If so quantify. Unable to determined cost savings, if any. The new forms created appear to add to the workload. **What would the implementation requirements be for courts?** This would require training of clerical staff and management, possible revising of procedures and/or adding/modifying/codes in CMS. **How well would this proposal work in courts of different sizes?** The proposal will work the same regardless of size.	
4.	Superior Court of Riverside County by Marita Ford Riverside	A	No specific comment.	No response necessary
5.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No specific comment.	No response necessary.
6.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee San Francisco	A	The JRS supports this proposal. However, the JRS recommends that the content of proposed form GC-362 (*Conservatorship Registrant's Acknowledgment of Receipt of Handbook For Conservators*) be merged with the other proposed forms, if possible, to reduce the number of forms that the courts will need to process.	The advisory committee thanks the JRS for its comments. However, its recommendation to fold the contents of form GC-362 into one of the other forms would present difficulties for the following reasons: 1. Combination with the *Notice of Intent to Register Conservatorship* (form GC-361) could

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

	Commentator	Position	Comment	Committee Response
			Additionally, the JRS concluded that some courts may need to update their case management systems and conduct minimal training.	not be done because that form is not filed, except perhaps as an exhibit, and it is prepared and served before the basic registration form, form GC360, is filed with the registering court. 2. The CCJA expressly permits combination of the *Conservator's Attestation of Conservatee's Nonresidence in California* with the basic registration form, form GC-360, an invitation that was accepted by the committee (see page 3 of the revised form GC-360 (page 2 of the draft of the form circulated for comment) and Probate Code sections 2017(a)(3) and 2023(b)(2)). No such permission was given for the required acknowledgment of receipt that became form GC-362. 3. Probate Code section 2015 requires the court, *upon registration,* to provide the foreign conservator with the information about a conservator's rights, duties, limitations, and responsibilities in California identified in section 1835. The *Handbook for Conservators* is that information. This would mean, if the contents of form GC-362 were placed in form GC-360, a foreign conservator would apply for registration by presenting a form to the court that would include a signed receipt for material the court is not to deliver to him until after completion of registration.

State of California
PROBATE CODE
DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHERPROTECTIVE PROCEEDINGS
PART 3. CONSERVATORSHIP
Chapter 8. Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act

Article 5. Miscellaneous Provisions

§ 2023

2023. (a) On or before January 1, 2016, the Judicial Council shall develop court rules and forms as necessary for the implementation of this chapter.

(b) The materials developed pursuant to this section shall include, but not be limited to, all of the following:

(1) A cover sheet for registration of a conservatorship under Section 2011, 2012,or 2013. The cover sheet shall explain that a proceeding may not be registered under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover sheet shall further explain that a proceeding in which a person is subjected to involuntary mental health care may not be registered under Section 2011, 2012, or 2013. The cover sheet shall require the conservator to initial each of these explanations. The cover sheet shall also prominently state that when a conservator acts pursuant toregistration, the conservator is subject to the law of this state governing the action,including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c),the cover sheet shall also prominently state that the registration is effective only while the conservatee resides in another jurisdiction and does not authorize the conservator to take any action while the conservatee is residing in this state. Directly beneath these statements, the cover sheet shall include a signature box in which the conservator attests to these matters.

(2) The form required by paragraph (3) of subdivision (a) of Section 2017. If the Judicial Council deems it advisable, this form may be included in the civil cover sheet developed under paragraph (1).

(3) A form for providing notice of intent to register a proceeding under Section2011, 2012, or 2013.

(4) A form for a conservator to acknowledge receipt of the written information required by Section 2015.

(c) The materials prepared pursuant to this section shall be consistent with Section 2019.

(Added by Stats. 2014, Ch. 553, Sec. 20. (SB 940) Effective January 1, 2015. Operative January 1,2015, by Stats. 2014, Ch. 553, Sec. 29.)

ATTACHMENT A

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**
RUPRO Meeting: *September 8, 2015*

Title of proposal:
Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Staff contact (Name, phone and e-mail):
Mr. Douglas C. Miller, 818-558-4178, douglas.c.miller@jud.ca.gov
Mr. Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov
Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 2014
Project description from annual agenda: Special Immigrant Juvenile Status
Family and Juvenile Law Advisory Committee
To enrich recommendations to the council and to avoid duplication of efforts, the committee will collaborate with the Probate and Mental Health Advisory Committee and the CJER Governing Committee to implement Senate Bill 873 (Stats. 2014, ch. 685) and other issues related to service of process in international child custody proceedings (Hague Service Convention, the Inter-American Convention on Letters Rogatory and Additional protocol (IACAP); subject matter jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)) and develop rules and forms, educational events, informational materials, and other resources to aid judges and court staff as well as justice partners and court users accessing the court system.

Probate and Mental Health Advisory Committee
The committee must coordinate activities and work with the Family and Juvenile Law Advisory Committee in areas of common concern and interest. (Rule 10.44(b).)

Implement, in probate guardianship proceedings, the directives contained in SB 873 (Stats. 2014, ch. 685) § 1, which added Chapter 7 to Title 1 of Part 1 of the Code of Civil Procedure, commencing with section 155, concerning findings in state court proceedings involving qualified minors that would support their applications for favored immigration status as Special Immigrant Juveniles.
If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JC-224

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 27, 2015

Contact
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Douglas C. Miller, 818-558-4178
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Executive Summary

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend adopting one rule of court, adopting four Judicial Council forms (including a joint findings form), and revoking two separate findings forms. The rule and forms are needed to implement Senate Bill 873 (Stats. 2014, ch. 685), which clarified the superior court's authority to make the factual findings needed for an undocumented child to apply for federal classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act into California law. The rule and forms are intended to guide a party requesting SIJ findings from a superior court in a child custody, guardianship, or

juvenile dependency or delinquency proceeding, and to supply the court with a sufficient factual basis to make accurate, just, and effective findings under California law.

Recommendation

The Family and Juvenile Law (F&J) and the Probate and Mental Health (PMHAC) Advisory Committees recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 7.1020 of the California Rules of Court to specify procedural requirements for seeking SIJ findings in probate guardianship proceedings;

2. Adopt *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) to request SIJ findings in a family law custody proceeding;

3. Adopt *Petition for Special Immigrant Juvenile Findings* (form GC-220) to request SIJ findings in a probate guardianship proceeding;

4. Adopt *Request for Special Immigrant Juvenile Findings* (form JV-356) to request SIJ findings in a juvenile dependency or delinquency proceeding;

5. Adopt *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357); and

6. Revoke *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224).

The text of rule 7.1020 and the new and revoked forms are attached at pages 14–28.

Previous Council Action

The Judicial Council has not previously adopted any California Rules of Court[1] related to Special Immigrant Juvenile (SIJ) findings.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224) for mandatory use, effective January 1, 2007, and revised it once, effective July 1, 2011.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) for mandatory use, effective January 1, 2014.

Rationale for Recommendation

In response to the increase in unaccompanied, undocumented children entering the southwestern United States and being released to sponsors around the country,[2] as well as perceived

[1] All subsequent rule references are to the California Rules of Court unless otherwise specified.

uncertainty over the authority of the superior courts to make SIJ findings, California enacted a new law regarding immigrant children, effective September 27, 2014.[3] New section 155 of the Code of Civil Procedure[4] incorporates many of the provisions of the federal SIJ statute as interpreted by the California Court of Appeal. Subdivision (a) codifies the holding in *B.F. v. Superior Court* that the superior court has jurisdiction to make the SIJ findings in appropriate child custody proceedings.[5] Subdivision (b) requires the superior court to make those findings when requested if there is sufficient evidence to support them and provides that the evidence may consist of, but is not limited to, a credible declaration by the child who is the subject of the requested findings. Subdivision (b) also incorporates, almost verbatim, the elements of the federal SIJ definition that require documentation by state court findings. Subdivision (e) of section 155 specifically requires the Judicial Council to adopt any rules of court and forms needed to implement the new section. This recommendation constitutes the first and most extensive effort to fulfill the statutory mandate.

Underlying federal law

Special Immigrant Juvenile (SIJ) status was created by federal law in 1990 in response to concerns raised at the national level by local California child welfare agencies that child welfare and child custody determinations—especially permanent placements in juvenile dependency proceedings—were being undermined, and the health, safety, and welfare of undocumented children were being placed in jeopardy by the risk of these children's deportation. To mitigate that risk, Congress amended the Immigration and Nationality Act (INA)[6] to include specified immigrant children within the class of "special immigrants," eligible for admission to the United States and authorized to apply for adjustment to lawful permanent resident (LPR) status.[7]

The INA defines an SIJ as an immigrant child[8] present in the United States: (1) "who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an

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[2] Of the 68,541 unaccompanied children detained entering the U.S. in federal fiscal year 2014 (Oct. 1, 2013–Sept. 30, 2014), 53,550 of those children were released from custody to private sponsors. A sponsor may be an adult relative (parent, aunt or uncle, sibling, cousin), family friend, or volunteer. Of the 5,842 unaccompanied children released to sponsors in California, more than half of those went to in Los Angeles County.

[3] Stats. 2014, ch. 685 (Sen. Bill 873), §§ 1–2, 12–13, 15–16, 20, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873.

[4] Added by Sen. Bill 873 (Stats. 2014, ch. 685), § 1.

[5] See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627–629 (*B.F.*). (The order appointing a guardian under the Probate Code was a "juvenile court" custody determination placing the children in the custody of an individual appointed by the court.)

[6] Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

[7] Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978), § 153.

[8] Under the INA, a child is an unmarried person under 21 years old. 8 U.S.C. § 1101(b)(1), (c)(1). Compare the definition of an "unaccompanied alien child" in the Homeland Security Act of 2002 as, among other elements, "a child … who has not attained 18 years of age…." 6 U.S.C. § 279(g)(2).

individual or entity appointed by a State or juvenile court located in the United States"; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) for whom it has been determined, by a juvenile court or authorized administrative agency, that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.[9]

To be eligible to apply for SIJ classification, a child must first obtain a "juvenile court order" finding that the applicant satisfies each of these three elements of the statutory SIJ definition.[10] The INA relies on state court findings, made under state law, in recognition that the federal immigration agencies are neither authorized nor competent to make child custody and child welfare decisions or resolve issues of abuse, neglect, abandonment, or a child's best interest.

Since their adoption, the SIJ implementing regulations have defined a "juvenile court" broadly as "a court located in the United States having jurisdiction to make judicial determinations about the custody and care of" children.[11] A straightforward application of this definition to California courts would include not only superior court divisions with jurisdiction over dependency and delinquency proceedings under the Juvenile Court Law (Welf. & Inst. Code, §§ 200–987), but also court divisions with jurisdiction over custody proceedings brought under the Family Code[12] and under the guardianship provisions of the Probate Code.[13] The original statutory definition of an SIJ, however, required the child to have been declared a dependent of the state court and deemed eligible for long-term foster care.[14] These provisions restricted requests for SIJ findings in California to juvenile dependency proceedings. Amendments to the INA by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 expanded the SIJ definition so that all California courts fitting the regulatory definition of "juvenile court" now have jurisdiction to make the determinations necessary to file a federal SIJ petition.[15]

To help protect immigrant child victims of human trafficking, the TVPRA expanded the INA's definition of an SIJ in two significant ways. First, it expanded the types of state court orders that a child could use to satisfy the first SIJ criterion to include (1) an order committing a child to a state agency or department and (2) an order placing the child under the custody of a state agency

[9] INA, 8 U.S.C. § 1101(a)(27)(J).

[10] See 8 C.F.R. § 204.11(d)(2).

[11] *Id.,* at § 204.11(a); 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

[12] See Cal. Fam. Code, §§ 200, 3020–3048.

[13] See Cal. Prob. Code, §§ 800, 1510–1516.

[14] Immigration Act of 1990, *supra* note 6, at § 153. To curb perceived abuses, the definition was further restricted in 1997 to children deemed eligible for long-term foster care "due to abuse, neglect, or abandonment." Pub.L. No. 105-119, § 113 (Nov. 26, 1997) 111 Stat. 2440, 2460–2461.

[15] Pub.L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044; see *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 349 (*Leslie H.*).

or department or an individual or entity appointed by the court.[16] The addition of an order of commitment opened the possibility that a ward of the juvenile court under section 602 of the Welfare and Institutions Code would qualify for the findings.[17] Furthermore, the inclusion of an order placing the child in or under the custody of an individual or entity opened the possibility that a child placed in the custody of a legal guardian or in the sole custody of one parent would also qualify.[18]

Second, the TVPRA eliminated the requirement that the child be eligible for long-term foster care, with its implication that the child not be able to reunify with any parent. In its place, the TVPRA inserted the requirement that the child not be able to reunify with "1 or both" parents because of "abuse, neglect, abandonment, or a similar basis" under state law.[19] The United States Citizenship and Immigration Services (USCIS) consistently adjudicates SIJ petitions of children placed in the custody of one parent, but unable to reunify with another parent because of abuse, neglect, abandonment, or similar conduct by the latter parent.[20]

The TVPRA also added protection against "aging out" of the jurisdiction of the state court and eligibility for SIJ classification.[21] Today, USCIS will not, based on age or custody status, deny an SIJ petition if, at the time of filing, the youth was under 21 years of age and had been the subject of a valid state court order that was terminated solely because the youth reached the age of majority under state law.[22]

Rule 7.1020

Other than form GC-224, adopted last year, no statewide guidance has been developed for requesting or making SIJ findings in probate guardianship proceedings. The Probate and Mental Health Advisory Committee has developed proposed rule 7.1020 to provide that guidance.

The rule requires a request for SIJ findings to be made by verified petition (rule 7.1020(b)(2)(A)). Whether filed concurrently with a petition for the appointment of a guardian or later in the guardianship proceeding, the SIJ petition must be filed as a separate petition (rule

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[16] TVPRA, *supra* note 15, at § 235(d)(1)(A).

[17] See *Leslie H.*, 224 Cal.App.4th at pp. 351–352 (adjudication as a ward, placement in juvenile hall, and commitment to ongoing supervision on release are sufficient to satisfy the first SIJ criterion).

[18] See *B.F., supra* note 5, at pp. 627–629.

[19] TVPRA, *supra* note 15, at § 235(d)(1)(A).

[20] See *In re Israel O.* (2015) 233 Cal.App.4th 279, 291 (*Israel O.*) (citing United States Citizenship and Immigration Services, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working With Abused Children* (April 2014)).

[21] TVPRA, *supra* note 15, at § 235(d)(6).

[22] See U.S. Citizenship and Immigration Services, *Policy Memorandum: Implementation of the Special Immigrant Juvenile* Perez-Olano *Settlement Agreement* (June 25, 2015; PM 602-0117), at p. 2.

7.1020(b)(2)(B)). However, an SIJ petition filed concurrently with an appointment petition may be heard and determined together with the latter (rule 7.1020(e)(1).

The majority of requests for SIJ findings come before the probate court in uncontested guardianship proceedings. In that context, the probate court must receive the verified petition as evidence (Prob. Code, § 1022, and rule 7.1020(e)(5)) and may decide whether to make the requested findings based on the facts alleged in the petition. However, the committee believes that if evidence is taken in a contested matter in support of or opposition to the requested findings, it should be heard and weighed in open court subject to cross-examination, and not simply in declarations (see rule 7.1020(e)(4)).

Any person eligible to petition for the appointment of a guardian under Probate Code section 1510, including the minor if over the age of 12 years, may file a request for SIJ findings (rule 7.1020(b)(1)). In a case with multiple minors, each age-eligible minor may file a petition only for him- or herself; however, his or her petition could be heard and determined with the SIJ petitions by or on behalf of other minors in the same guardianship proceeding (rule 7.1020(b)(1)(A), (e)(2)).

The rule requires notice of a hearing on the petition and a copy of the petition to be served by mail on the minor's parents and the persons listed in Probate Code section 1460(b) (rule 7.1020(c)). Any person entitled to notice of the petition may object or file an opposition to it (rule 7.1020(d); see also Prob. Code, § 1043). The rule also confirms the court's authority to either appoint counsel for the minor under Probate Code section 1470 or appoint a guardian ad litem under section 1003 for a minor who files a request for SIJ findings in a guardianship proceeding or who is the subject of a petition filed on his or her behalf by another (rule 7.1020(b)(1)(B)).

In cases involving more than one (proposed) ward seeking SIJ findings, the court is required to issue separate findings for each qualified minor in the case (rule 7.1020(f)). Separate findings are advisable because the federal immigration court proceedings for all qualified minors in the same guardianship case may not be similarly combined.

Forms for requesting SIJ findings

Proposed new *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Petition for Special Immigrant Juvenile Findings* (form GC-220), and *Request for Special Immigrant Juvenile Findings* (form JV-356) provide separate, but similar, formats for requesting SIJ findings. Each form is intended to solicit all information necessary for the superior court to determine a request for SIJ findings.

Format. The probate guardianship petition follows the text of rule 7.1020 and is somewhat more formal in tone and structure than the family and juvenile forms, in keeping with the procedural requirements of the Probate Code and title 7 of the California Rules of Court. The form must be filed as a separate, verified petition. Item 1 on the form tracks the requirements of Probate Code

section 1510 and proposed rule 7.1020(b)(2) as to the identity of the petitioner or petitioners. The form also tacitly incorporates the ordinary procedural requirements of guardianship practice under the Probate Code and title 7 of the rules of court.

The family law request form is styled as an attachment to a petition, response, *Request for Order* (form FL-300), or other request or responsive filing. It enumerates in item 5 the range of Family Code actions that typically underlie a request for SIJ findings. The common denominator of these actions is that all may support a request for child custody under division 8 (beginning with section 3000) of the Family Code.

On the other hand, the juvenile law request form is intended to stand alone. A child or person on behalf of the child may request SIJ findings at any point in the proceedings after the court has made the necessary underlying order. In family law and probate guardianship proceedings, on the other hand, the request for findings may be filed concurrently with or after the initial petition.

First finding. The first required finding—that the child has been declared a dependent of the court or committed to or placed under the custody of a state agency or department or an individual or entity appointed by the court—depends on the court's decision in the underlying state law "custody" proceeding. The forms, therefore, ask the person requesting the findings to document that the necessary relief has been requested and to state whether that request is pending or has been granted. If the court has granted the underlying relief at the time the SIJ request is filed, the forms also require the requesting person to indicate the date of the court order. The forms specify the nature of the relief that would warrant the court making the first finding.

The family and juvenile law request forms go on to request expressly that the court make the first finding. The probate guardianship form leaves that request implicit in the statements in items 3 and 4.

Second finding. The forms next provide the opportunity to request the second finding of fact needed to enable a child to file a federal petition for SIJ classification: that reunification of the child with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under California law.[23] The forms provide space for detailed statements of facts in support of this finding to allow the court to make an accurate and just decision.

The finding that family reunification is not viable includes two parts: (a) that reunification is not viable; and (b) that abuse, neglect, abandonment, or conduct fitting a similar description under

[23] Until this year, it was uncertain whether a child, placed with one parent but unable to reunify with the other parent because of abuse, neglect, or abandonment by that parent, qualified for this finding under California law. Two recent appellate cases, *Israel O., supra* note 20, in the First Appellate District, and *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319 (*Eddie E. 2*), in the Fourth Appellate District, have made clear that a child in those circumstances does qualify for this finding.

California law is the basis for that finding. With respect to reunification, an order denying or terminating reunification services in a juvenile dependency or delinquency foster care case would almost certainly be sufficient. Other juvenile dispositional orders, such as placement with a previously noncustodial parent or appointment of a guardian, with or without declaring dependency, might also suffice. Item 5 on the juvenile request form requires the identification by date of any orders relevant to the viability of the child's reunification with one or both parents.

In family and probate guardianship law, the precise meaning of reunification is less firmly established than in juvenile law. Because orders may be modified on a showing that the circumstances that required the initial order have changed and that modification would be in the child's best interest, no family court custody order or guardianship is ever truly final or permanent.[24] Reunification—in the sense of the child's return to the physical custody of the noncustodial parent—is never completely foreclosed. However, part 2 of division 8 of the Family Code (beginning with section 3020), which governs both family law custody and probate guardianship determinations, provides a clue to the effect of a guardianship or custody order on the prospects of family reunification. Specifically, Family Code section 3026 expressly prohibits the court from ordering reunification services in the context of a child custody or visitation proceeding.[25] The court must base its custody determination not on the child's short-term best interest, but on his or her overall, long-term best interest. Thus, reunification with a parent who is not awarded custody or guardianship of the child, even under a plan agreed on by the parties, is outside the scope of the family or probate court's authority and, therefore, arguably not viable as a matter of law as long as that order remains in effect.[26] This interpretation is consistent with juvenile law, which regards court-ordered placement of a child in the physical custody of a previously noncustodial parent or appointment of a legal guardian for the child as "permanent plans" available only after reunification services have been denied or terminated.[27]

If facts constituting abuse, neglect, abandonment, or a similar basis for denying custody to one or more parents have not been shown to the court's satisfaction in the underlying guardianship, custody, dependency, or delinquency proceeding, the requesting party will need to show that reunification is not viable on one of those grounds. Under California law, many different definitions of abuse, neglect, or abandonment exist.[28] For purposes of supporting the SIJ finding, parental conduct falling within any of those definitions would seem to suffice. In addition, other grounds under California law, such as a finding that placement with a parent would be

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[24] This is also true in juvenile proceedings, unless parental rights have been terminated. See Welf. & Inst. Code, §§ 366.26, 366.3, 388.

[25] See *In re Kaylee J.* (1997) 55 Cal.App.4th 1425, 1430–1433 ("Once a … guardianship is established and a nonparent guardian is appointed …, the court has no authority to take steps to return custody to a parent" while the guardianship is in effect.)

[26] *Id.*

[27] See Welf. & Inst. Code, §§ 361.2(b), 361.5, 366.26(b), 727.2, 727.3(b).

[28] See, e.g., Fam. Code, §§ 6203, 6211, 7822–7823; Pen. Code §§ 270–273.5, 11165.1–11165.6; Welf. & Inst. Code, §§ 300, 361, 361.5.

detrimental to the child's health, safety, or welfare under Family Code section 3041, may supply a sufficiently similar basis for the finding. Persons requesting findings should be prepared to include detailed statements of facts supporting the reasons that reunification is not viable.

Third finding. The third necessary finding, as indicated above, is that it is not in the child's best interest to be returned to the child's or parent's country of nationality or last habitual residence. Under California law, all determinations affecting child custody, whether in family, juvenile, or probate court, are guided by the standard of the best interest of the child. An award of custody under California law to an individual or entity located in the United States could be understood to imply that the child's best interest will not be served by removing the child from that custodial placement and returning him or her to his or her country of nationality. Nevertheless, the person requesting this finding should be prepared to introduce evidence of the circumstances facing the child in the country of nationality or last habitual residence in the event that the court has occasion to question the basis for this finding.

Form for making SIJ findings

The committees propose adopting a joint form for the superior court in a family law custody proceeding, a probate guardianship proceeding, a juvenile dependency proceeding, or a juvenile delinquency proceeding to make the SIJ findings when requested, warranted under California law, and supported by sufficient evidence. This joint form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357), replaces the existing standalone SIJ findings forms *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224), which are revoked. In fashioning the new combined form, the committees changed the title of the revoked forms to clarify that the superior court is not making a determination of a child's eligibility for immigration relief. The court is rather documenting findings of fact and conclusions under state law that are necessary, but not sufficient, conditions for USCIS to consider an application for SIJ status.

In addition to combining the existing guardianship and juvenile SIJ findings forms into a single multipurpose form, the new form gives the family court a platform for making the SIJ findings. The use of a joint form ensures that California forms submitted to USCIS in support of an SIJ petition share a common format and articulate a reasonable factual basis for the judicial findings.

The joint findings form gives the court space to make detailed findings and to specify the grounds for each of its findings. In addition, the trial court, if it has "reason to doubt the petitioner's good faith," may take the opportunity urged on it by the Fourth Appellate District, in *Eddie E. 2,* to "include findings of any relevant facts that the court deems pertinent to the federal government's inquiry."[29]

[29] *Eddie E. 2, supra* note 22, 234 Cal.App.4th at p. 333.

Comments, Alternatives Considered, and Policy Implications

External comments

As part of the spring 2015 invitation-to-comment cycle (April 17 to June 17), the proposal was sent out for public comment to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. In addition, committee staff sent the proposal to immigration attorneys, nonprofit immigrants' rights organizations, and the USCIS Office of Policy and Strategy. Eighteen comments were received; all commentators supported the proposal in principle.[30] Four commentators agreed with the proposal as circulated, while 14 commentators suggested modifications.

The committees requested comment on whether a rule of court for requesting SIJ findings in proceedings under the Family Code would be useful. The six commentators who addressed this question all agreed that a family law rule would be useful in promoting the fairness and efficiency of proceedings on requests for SIJ findings. The Family and Juvenile Law Advisory Committee considered trying to incorporate a family law rule into this proposal, but determined that the rule would benefit from more extended consideration and circulation for public comment. The committee intends to develop a family law rule for circulation in winter 2016.

The committees also requested comment on the usefulness of an information sheet or form to guide litigants and pro bono counsel through the process of requesting SIJ findings in proceedings under the Family or Probate Code. The three commentators who responded to this question agreed that an information sheet would be useful. The committees intend to consider the appropriate format and content for an information sheet in the coming months.

Several commentators suggested that the probate rule and the family, juvenile, and probate request forms be modified to clarify that a petitioner or requesting party is permitted to attach additional documents, including declarations and memoranda of points and authorities. The PMHAC has determined that the suggested clarification is not needed. Although addenda are permitted to be attached to mandatory Judicial Council forms in probate matters under rule 7.101, the inclusion of all necessary information in the verified petition will promote more effective and efficient proceedings. F&J agreed that inclusion of as much information as possible in the request forms is desirable, but recognized that circumstances may arise in which attachment of additional documents is necessary. The committee has added an item to the family and juvenile law SIJ request forms to indicate when additional documents are attached.

Many commentators suggested clarifying rule 7.1020 to specify that there is no separate filing fee for a petition for SIJ findings. The PMHAC declined to address this issue in the rule. Filing

[30] A chart providing the full text of the comments and the complete committee responses is attached at pages 27–101.

fees for proceedings under the Probate Code are set by sections 70650–70663 of the Government Code. The committee does not have authority to depart from or waive those fees in a rule of court. The committee anticipates, however, that almost all SIJ petitions will be filed concurrently with petitions for appointment of a guardian of the person only, or after such a guardian has been appointed. In those circumstances, Government Code sections 70657(e), 70658(c)(1), and 70658.5 provide that no fee may be charged for filings in those circumstances. In other circumstances, the petitioner may seek a waiver of fees under Government Code sections 68630–68641 and new rule 7.5, effective September 1, 2015. F&J intends to consider whether a provision clarifying fees is necessary and appropriate when developing the family law rule referred to above.

Some commentators also suggested that rule 7.1020 and form GC-220 be modified to permit multiple wards to file a single, joint request for SIJ findings in a guardianship proceeding. The PMHAC declined to make the suggested change. The court is required to issue separate SIJ findings for each child who warrants them. The requirement of a separate SIJ petition for each child is intended to ensure that the court receives facts applicable to each individual child so that it may tailor its findings to the specific circumstances of each child. For the same reasons, the family and juvenile SIJ request forms also require submission of a separate request for each child. The committees note that the SIJ petitions may be consolidated for hearing if sufficient common elements exist.

Commentators also suggested eliminating the requirement for a separate notice of hearing on an SIJ petition in guardianship proceedings. The PMHAC does not recommend eliminating this requirement. The rule's notice requirements are quite limited. In addition to the guardian and the ward, the rule requires that the child's parents receive notice. Parental notice is appropriate because the SIJ findings, especially a finding that parental conduct constituted abuse, neglect, or abandonment of the child, may have collateral legal consequences for the parent. Furthermore, the court may, under section 1460(e) of the Probate Code, dispense with notice for good cause.

Several commentators suggested explicitly requiring the court to hold a hearing on an uncontested SIJ petition before denying the petition. The PMHAC has concluded that there is no need to require a hearing in the rule because sections 1041 and 1043 of the Probate Code require a hearing to be held on every petition, contested or not. Indeed, because section 1043(b) permits an objection to be raised orally at the hearing, the court has no way to determine that a petition is uncontested without holding the hearing set under section 1041.

Many commentators suggested revising the presentation of "a similar basis under California law" on all forms. Most of these commentators suggested incorporating this language into each of the three enumerated bases—abuse, neglect, and abandonment—for determining that reunification with one or both parents is not viable. The committees do not recommend this change. Eliminating the "similar basis" as a separate, fourth basis and, instead, incorporating it into the specified bases might unnecessarily restrict the bases that a party might assert or a court might

deem sufficiently similar to make the finding. F&J has revised the family and juvenile forms to simplify the language soliciting an alternative basis for requesting the finding.

Some commentators suggested that form FL-356, the family law SIJ request, be made a standalone form instead of an attachment to promote confidentiality and procedural clarity. F&J does not recommend that form FL-356 be a standalone form. Confidentiality may be protected by attaching the request to a separate *Request for Order* (form FL-300) rather than to a petition, response, or combined request for order. The court may then place the request in the confidential portion of the family law file, as it does with other confidential documents. The clarity sought by commentators would compromise the court's flexibility to consider and determine SIJ requests in a variety of procedural contexts. The lack of flexibility might, in turn, operate to preclude the court from granting relief in a timely manner or otherwise harm the petitioner's interests.

For confidentiality reasons, most commentators objected reasons to the requirement on form JV-356, the juvenile request form, that the underlying juvenile court findings and orders be attached. F&J has revised the form to require specification of the dates of the underlying orders. The committee has concluded that the date should be enough information for judicial officers or court staff to identify and access the relevant orders.

Two commentators requested that the committees add an item and additional space to the joint SIJ findings form for the court to use to deny the request and give its reasons. The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the U.S. Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the findings form in the space under the appropriate finding or on the minute order will suffice to provide a basis for the requesting party to seek a writ.

The committees also made several clarifying modifications to the forms in response to comments received.

Alternatives considered

The committees considered whether existing rules and forms were adequate to address the mandates of SB 873, and determined that a new probate rule and new forms are needed. The current "order" forms, GC-224 and JV-224, solicit only conclusions from the court without providing sufficient opportunities for the court to specify the factual bases for those conclusions. Furthermore, the absence of forms for requesting SIJ findings had led to great variation in the structure and content of the requests. This variation in turn, frustrated the development of standard procedures for adjudicating the requests. The proposed request forms encourage parties to frame their requests to bring material issues to the court's attention by tying relevant supporting evidence and information to the specific findings requested.

The Family and Juvenile Law Advisory Committee considered proposing the adoption of rules of court to specify procedures for requesting SIJ findings in family and juvenile court proceedings. The committee determined provisionally that the recommended forms solicited the information required for the court to make determinations necessary for the findings, and that requests could be filed under existing request for order procedures in family and juvenile law proceedings. Commentators, however, uniformly supported the development of a rule for bringing and adjudicating requests for SIJ findings in proceedings under the Family Code. The committee intends to develop a rule for SIJ findings in family law as soon as possible.

The committees also considered the alternatives presented by each suggestion submitted by commentators and modified the rule and forms in several respects in response, as documented in the attached chart of comments.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal should require only modest implementation and training costs. The adoption of standard forms for requesting SIJ findings that elicit the required information, in formats familiar to the court divisions receiving the requests, should reduce overall court costs by narrowing the issues, ensuring that relevant evidence is linked to those issues, and reducing the need for contested hearings. Implementing the requirements of Code of Civil Procedure section 155 without the structural guidance of the proposed forms, in the face of an anticipated increase in requests for SIJ findings, would almost certainly be less efficient and effective.

The forms will require some training of family, juvenile, and probate court staff. Family law and probate divisions will require training on processing requests and proposed SIJ findings in any event. Juvenile court staff familiar with SIJ findings will need training only in processing the forms. The joint findings form will promote uniformity in the content of the findings in the trial courts and should enhance the effectiveness of the underlying state court order by preventing its vitiation by inconsistent federal immigration rulings.

Attachments and Links

1. Cal. Rules of Court, rule7.1020, at pages 14–16
2. Forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357, at pages 17–28
3. Chart of comments, at pages 29–103

Rule 7.1020 of the California Rules of Court is adopted, effective January 1, 2016, to read:

Rule 7.1020. Special Immigrant Juvenile Findings in Guardianship Proceedings

(a) Application

This rule applies to a request by or on behalf of a minor who is a ward or a proposed ward in a probate guardianship proceeding for judicial findings needed as a basis for filing a petition for classification as a Special Immigrant Juvenile (SIJ) under federal immigration law. The term "request under this rule" as used in this rule refers exclusively to such a request. This rule also applies to any opposition to a request under this rule, any hearing on such a request and opposition, and any findings of the court in response to such a request.

(b) Request for findings

(1) *Who may file request*

Any person or entity authorized under Probate Code section 1510 to petition for the appointment of a guardian of the person of a minor, including the ward or proposed ward if 12 years of age or older, may file a request for findings regarding the minor under this rule.

(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so only for himself or herself.

(B) The court may appoint an attorney under Probate Code section 1470 or a guardian ad litem under Probate Code sections 1003 and 1003.5 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor's behalf by another.

(2) *Form of request*

(A) A request for findings under this rule must be made by verified petition. A separate request must be filed for each minor seeking SIJ findings.

(B) A request for findings under this rule by or on behalf of a minor filed concurrently with a petition for the appointment of a guardian of the person of the minor must be prepared and filed as a separate petition, not as an attachment to the petition for appointment.

(c) Notice of hearing

Notice of a hearing of a request for findings under this rule, and a copy of the request, must be sent to the minor's parents and the persons listed in section 1460(b) of the Probate Code, in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1 of that code.

(d) Opposition to request

Any of the persons who must be given notice of hearing of a request for findings under this rule may file an objection or other opposition to the request.

(e) Hearing on request

(1) If filed concurrently, a request for findings under this rule by or on behalf of a minor and a petition for appointment of a guardian of the person of that minor may be heard and determined together.

(2) Hearings on separate requests for findings under this rule by or on behalf of more than one ward or proposed ward in the same guardianship proceeding may be consolidated on the motion of any party or on the court's own motion.

(3) Hearings on requests for findings under this rule by or on behalf of minors who are siblings or half-siblings and are wards or proposed wards in separate guardianship proceedings may be consolidated on the motion of any party in either proceeding or on the motion of the court in either proceeding. If multiple departments of a single court or courts in more than one county are involved, they may communicate with each other on consolidation issues in the manner provided for inter-court communications on venue issues in guardianship and family law matters under section 2204 of the Probate Code and rule 7.1014.

(4) Hearings on contested requests for findings under this rule must be conducted in the same manner as hearings on other contested petitions under the Probate Code.

(5) Probate Code section 1022 applies to uncontested requests for findings under this rule.

(f) Separate findings in multi-ward cases under this rule

The court must issue separate findings for each minor in a guardianship proceeding in which more than one minor is the subject of a request under this rule.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW
—This is not a court order—

Attachment to:

☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**

☐ Other *(specify):*

1. I am the ☐ petitioner ☐ respondent ☐ other parent or party. I allege the following facts and request that the court make the specified findings and conclusions.

2. This court has jurisdiction to make a child custody determination about the child in item 3 under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, §§ 3400–3465.) If not currently on file with the court, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) is attached.

3. Child's name:* *(date of birth):*
   is a national of *(country):*

4. The child's parents are *(name each):*
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent

5. A petition has been filed ☐ earlier in this proceeding ☐ at the same time as this request ☐ in a different family law case *(specify court and case number):*
   a. ☐ *Petition—Marriage/Domestic Partnership* (form FL-100), asking for sole physical custody.
   b. ☐ *Petition to Establish Parental Relationship* (form FL-200), asking for sole physical custody.
   c. ☐ *Petition for Custody and Support of Minor Children* (form FL-260), asking for sole physical custody.
   d. ☐ *Request for Domestic Violence Restraining Order* (form DV-100), asking for sole physical custody.
   e. ☐ *Adoption Request* (form ADOPT-200).
   f. ☐ Another petition or request for sole physical custody of the child *(specify):*

6. ☐ This court made an order about physical custody of the child on *(date):* . That order remains in effect.
   ☐ The case in item 5 is pending in this court.

7. After the court has granted the orders requested in item 5, the child will be legally placed under the custody of an individual appointed by the court. The court has jurisdiction to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.

8. I understand that section 3026 of the Family Code prohibits the court from ordering reunification services as part of a child custody proceeding. After the court has ordered sole physical custody to one parent, return of the child to the physical custody of another parent (reunification) will not be legally permissible while that order is in effect.

***** (***Prepare a separate form FL-356 for each child for whom you are requesting Special Immigrant Juvenile findings.)***

Form Adopted for Mandatory Use
Judicial Council of California
FL-356 [New January 1, 2016]

REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW

Code Civ. Proc., § 155; Fam. Code, §§ 3020–3031;
8 U.S.C. § 1101(a)(27)(J);
8 C.F.R. § 204.11
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

9. The child has been placed in the physical custody of *(name):* ,
   who is an individual appointed by the court as described in the order referred to in items 5 and 6.

10. Reunification of the child with ☐ the mother ☐ the father ☐ the other legal parent is not viable under California law because of *(check all that apply):*
    - ☐ abuse
    - ☐ neglect
    - ☐ abandonment
    - ☐ another legal basis *(specify):*

      .

    Facts supporting this finding *(specify):*

    ☐ Continued on Attachment 10.

11. It is not in the best interest of the child to be returned to the child's or the parent's country of nationality or country of last habitual residence *(specify country or countries):*

    Facts supporting this finding *(specify):*

    ☐ Continued on Attachment 11.

12. ☐ Additional documents in support of the request are attached and incorporated into this form. *Number of pages attached:* ____

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date:

▶ _____
(SIGNATURE)

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*):	**Draft** **Not Approved by the** **Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ MINOR ☐ MINORS	
PETITION FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

Petitioner *(name each):* alleges:

1. Petitioner is *(check all that apply to a single petitioner or to more than one petitioner):*
   a. ☐ The proposed guardian of the person or the person and estate of the minor named in item 2. This petition is filed concurrently with the petition for my appointment as guardian.
   b. ☐ The guardian of the person or the person and estate of the minor named in item 2. The order appointing me was filed in this case on *(date):* . Letters of Guardianship were issued on *(date):* .
   c. ☐ The minor named in item 2. I am at least 12 years of age. I was born on *(date):* .
   If there are two or more wards or proposed wards in this case, I am asking the court for an order only for myself.
   d. ☐ The *guardian ad litem* for the minor named in item 2. A certified or conformed copy of the *Order Appointing Guardian Ad Litem—Probate* (form GC-101) is attached to this petition as Attachment 1d.
   e. ☐ An adult relative *(specify relationship):* or other person on behalf of the minor named in item 2.

2. *(Name of Minor):**
   is a national of *(country):* .

3. This court has jurisdiction under California law "to make judicial determinations about the custody and care of juveniles" within the meaning of section 101(a)(27)(J) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a). The minor named in item 2 is under this court's jurisdiction and will remain under that jurisdiction if the court appoints (or has appointed) a guardian of his or her person in this proceeding.

4. If a guardian of the person of the minor named in item 2 has been appointed and has qualified in this proceeding, the minor is placed under the custody of an individual or entity appointed by a California state or juvenile court located in the United States within the meaning of INA section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

**** (In a guardianship case involving more than one ward, prepare a separate petition for each ward for whom you are seeking SIJ findings.)***

GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

Requested Findings

5. Reunification of the minor named in item 2 with ☐ one parent ☐ both parents is not viable under California law because of *(check all that apply):*

   ☐ abuse
   ☐ neglect
   ☐ abandonment
   ☐ another legal basis *(specify):*

   Facts in support of this finding are stated below *(for each parent with whom reunification is not viable, state the reasons that apply to that parent):*

☐ Additional facts are stated on Attachment 5 to this petition. *(You may use* Attachment to Judicial Council Form *(form MC-25) for this purpose.)*

GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

6. It is not in the best interest of the minor named in item 2 to be returned to the minor's or the parent's previous country of nationality or country of last habitual residence. (*specify country or countries):*

Facts in support of this finding are stated below:

☐ Additional facts are stated on next page.

GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

6. *(continued):*

☐ Additional facts are stated on Attachment 6 to this petition. *(You may use* Attachment to Judicial Council Form *(form MC-25) for this purpose.)*

7. All attachments to this form are incorporated by this reference as though placed here in this form. There are ___ pages attached.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

▶ (SIGNATURE OF ATTORNEY*)

*** All petitioners must also sign (Prob. Code, § 1020).**

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)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

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*):	**Draft** **Not Approved by the** **Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

I allege the following:

1. The child *(name):** *(date of birth):*
   is a national of *(name of country):*

2. The child's parents are *(name each):*
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent

3. The court found that the child was described by Welfare and Institutions Code section ☐ 300 ☐ 602 ☐ other *(specify):*
   and assumed jurisdiction over the child on *(date):* .
   The child is currently under the court's jurisdiction.

4. The child was *(check all that apply):*
   ☐ declared a dependent child of the court on *(date):*
   ☐ ordered committed to a state agency or department *(name):*
   on *(date):* for a term of months. The commitment order remains in effect.
   ☐ ordered placed under the custody of an individual or entity *(name, unless confidential):*

   on *(date):* . The placement or custody order remains in effect.

5. The court *(check and complete all that apply):*
   ☐ ordered the child removed from the custody of *(name(s)):* on *(date):*
   ☐ declined to place the child in the custody of *(name(s)):* on *(date):*
   ☐ denied services to *(name(s)):* on *(date):*
   ☐ terminated services to *(name(s)):* on *(date):*
   ☐ appointed *(name):* as the child's guardian on *(date):*
   ☐ terminated the parental rights of *(name):* on *(date):*

(Prepare a separate form JV-356 for each child for whom you are requesting Special Immigrant Juvenile findings.)

Form Adopted for Mandatory Use
Judicial Council of California
JV-356 [New January 1, 2016]

Code Civ. Proc., § 155;
8 U.S.C. § 1101(a)(27)(J);
8 C.F.R. § 204.11
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

6. The child has been *(check all that apply):*
   - ☐ declared a dependent of the court
   - ☐ committed to the custody of *(name of state agency or department):*
   - ☐ placed in or under the custody of *(name of individual or entity, unless confidential):*

   by virtue of the court order referred to above in item 4.
7. Reunification of the child with *(name(s)):*
   - ☐ mother ☐ father ☐ other legal parent is not viable under California law because of *(check all that apply):*
   - ☐ abuse
   - ☐ neglect
   - ☐ abandonment
   - ☐ another legal basis *(specify):*

   Facts supporting this finding, including any order listed in item 5 *(specify):*

   ☐ Continued on Attachment 7.
8. It is not in the best interest of the child to be returned to the child's or parent's country of nationality or country of last habitual residence *(specify country or countries):*

   Facts supporting this finding *(specify):*

   ☐ Continued on Attachment 8.
9. ☐ Additional documents in support of the request are attached and incorporated into this form. *Number of pages attached:*

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date:

▶ _____
(SIGNATURE)

REQUEST FOR
SPECIAL IMMIGRANT JUVENILE FINDINGS

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	*FOR COURT USE ONLY* **Draft** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

1. Child's name: Date of birth:
2. ☐ The petition or request for Special Immigrant Juvenile (SIJ) findings was heard:
   a. Date of hearing: Time: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons and attorneys present *(names):*

The court has reviewed the evidence and finds the following:

3. Notice of the underlying proceeding was given as required by law.
4. a. ☐ The child was declared a dependent of the juvenile court of the county of *(specify):*
   on ***(date):***
   and remains under the court's jurisdiction.

   OR

   b. ☐ The child was
      i. ☐ placed under the custody of an individual *(name, unless confidential):*
      ii. ☐ placed under the custody of an entity *(name):*
      iii. ☐ committed to a state agency or department *(name):*

      appointed by this court or another California court on ***(date):***

   The custody or commitment order remains in effect.

Supporting legal conclusions or factual findings, if necessary:

☐ Continued on Attachment 4.

Form Adopted for Mandatory Use
Judicial Council of California
FL-357/GC-224/JV-357 [New January 1, 2016]

Code Civ. Proc., § 155;
8 U.S.C. § 1101(a)(27)(J),
8 C.F.R. § 204.11
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

5. Reunification of the child with his or her *(check all that apply):* ☐ mother ☐ father ☐ other legal parent is not viable under California law because of parental ☐ abuse, ☐ neglect, ☐ abandonment, or ☐ a similar legal basis *(specify):*

   ,

   as established on ***(date):*** , for the following reasons *(for each parent with whom reunification is not viable, state the reasons that apply to that parent):*

☐ Continued on Attachment 5.

6. It is not in the child's best interest to be returned to the child's or parent's country of nationality or country of last habitual residence *(specify country or countries):*
   for the following reasons:

☐ Continued on Attachment 6.

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

SPECIAL IMMIGRANT JUVENILE FINDINGS

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:	
GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ MINOR ☐ MINORS*	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP	CASE NUMBER:

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. *(Name):* ☐ the minor ☐ one of the minors named above, was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by this court, on *(specify date):* . He or she remains under this court's jurisdiction.
2. Reunification of the minor with one or both of his or her parents was deemed not to be viable on *(date):* . This finding was made by reason of the abuse, neglect, or abandonment of the minor or by reason of a similar basis under California law.
3. It is not in the best interest of the minor to be returned to his or her previous country of nationality or country or countries of last habitual residence *(specify country or countries):*

   or to his or her parents' previous country or countries of nationality or country or countries of last habitual residence *(specify country or countries):*
4. It is in the minor's best interest to remain in the United States.
5. ☐ Additional findings about the minor or his or her parents are ☐ provided on Attachment 5. ☐ stated below:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

* ***(In a guardianship case involving more than one ward, prepare a separate order for each ward whose eligibility for special immigrant juvenile status is at issue.)***

Form Adopted for Mandatory Use
Judicial Council of California
GC-224 [New January 1, 2014]

ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP
(Probate—Guardianships and Conservatorships)

Immigration and Nationality Act, § 101(a)(27)(J), 8 U.S.C. § 1101 (a)(27)(J); 8 C.F.R. § 204.11
www.courts.ca.gov

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:	
CHILD'S NAME:	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS	CASE NUMBER:

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602.
   The child was declared dependent on the juvenile court of the county of *(specify):*
   The child was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by a state or juvenile court, on *(specify date):*
   The child remains under this court's jurisdiction.

2. Reunification of the child with one or both of the child's parents was deemed not to be viable on *(specify date):*
   This finding was made by reason of the abuse, neglect, or abandonment of the child or by reason of similar basis under California law.

3. It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence *(specify country or countries):*
   or his or her parents' country or countries *(specify country or countries):*
   It is in the child's best interest to remain in the United States.

4. ☐ Specific factual findings about the child and/or the child's parents are set forth below or provided on Attachment 4.

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
JV-224 [Rev. July 1, 2011]

Immigration and Nationality Act, § 101(a)(27)(J),
8 U.S.C. § 1101 (a)(27)(J),
8 C.F.R. § 204.11 (2009)
www.courts.ca.gov

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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.	Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney Los Angeles	AM	While Bet Tzedek is grateful for the clarity that passage of SB 873 has provided and supports the adoption of Rules of Court to better implement the process of securing the predicate findings required for specific relief as a Special Immigrant Juvenile, the proposed rule and proposed forms do not adequately meet that goal and, in some circumstances, may hinder application of the legislation. Therefore, Bet Tzedek opposes their adoption unless several modifications, discussed below, are made. * * * Bet Tzedek is grateful for passage of SB 873 and similarly supports the adoption of Rules of Court and forms to implement California Code of Civil Procedure section 155. The modifications discussed in the comments above, however, are necessary if the proposed rule and proposed forms are to achieve their purposes and comply with the spirit and intent [of] existing law. Therefore, Bet Tzedek opposes the adoption of the proposed rule and forms as written. *See comments on specific issues, below.	The Family and Juvenile Law Advisory Committee (FJLAC) and the Probate and Mental Health Advisory Committee (PMHAC) (jointly, committees) thank you for your comment. See further responses to specific comments, below.
2.	Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright Oakland	AM	As a relatively new attorney with four years of practice in immigration law, I specialize in SIJS cases and have represented clients in probate and family courts in Contra Costa, Alameda, San Francisco, San Mateo, Santa Clara, and San Joaquin counties. I have also mentored a number of pro bono attorneys. I have nothing but the highest praise for California's recent legislation	The committees thank you for your comment. See further responses to specific comments, below.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			supporting immigrant youth, and the Judicial Council's response to *B.F. v. Superior Court of Los Angeles County* and the appellate cases—*Leslie H.*, *Eddie E.*, and *Israel O.*—that followed. This is my first time responding to an Invitation to Comment. **<u>SIJS issues in Probate Court: the matter of "one-parent" guardianships in probate courts</u>** As a matter of federal law, California courts now acknowledge that "reunification with one or both parents is not viable due to abandonment, abuse, or neglect" means that a state court may properly issue *SIJS factual findings* if a child lives with one parent. However, as a matter of probate law, a threshold issue still remains: whether a probate court can appoint a *guardian* when the child's parent also lives in the home. The CEB Guardianship Practice Manual clearly refers to the one-parent guardianship scenario as a "technical change of custody," as in cases where the grandparent has medical coverage but the parent does not; where the parent lives in the home but has a drug problem; or where the parent has a terminal illness. With respect to SIJS cases, some probate courts have also granted one-parent guardianships based on the argument that the parent is undocumented or already has an order of deportation, and as such cannot guarantee that he or she will always be	The PMHAC does not recommend addressing this issue in the rules of court, as it raises a substantive legal question appropriately resolved by the appellate courts or the Legislature.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			there to act in the child's best interest. Appointing a close relative or family friend as guardian will give the child an additional level of safety and security that the parent cannot offer. However, other probate courts (San Mateo County comes to mind) have flatly refused to grant a single-parent guardianship and completely rejected the CEB practice manual's reference to "technical change of custody." **<u>SIJS "Age-Out" Issues for both Probate and Family Courts</u>** Finally, one more comment with respect to SIJS cases in California. The federal statute states that a young person can file his or her I-360 SIJS petition with USCIS up until age 21. However, in California the actual cutoff age is 18, the age of majority in this state. As a result, many young people and their advocates are scrambling to file cases in superior courts before the minor's 18th birthday; otherwise, three years of additional eligibility under the federal standard are lost. Some courts will honor and accommodate the urgency of an age-out filing; others will not, and the result may literally be a matter of life or death for some young people. Some judges have asked why the minor waited so long to file a guardianship or family law petition. It's not always a matter of procrastination on the part of a minor or his/her attorney; many young people are escaping from gang-related violence	The committees do not recommend addressing this issue through the rules of court. The age of majority in California is set at 18 by sections 6500–6502 of the Family Code. Under current law, the superior court loses authority to appoint a guardian or award custody when a child reaches age 18. Although the court may expedite review of a petition for guardianship or a request for custody because of exigent circumstances, that decision is properly left to the discretion of the court in each case.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			that reaches a point of critical mass as they enter their late teens. I would think that age-out cases also place additional strain on the superior courts, most of whom are already dealing with budget cuts. The great majority of my own SIJS cases have come from low-income families that easily qualified for fee waivers. The courts' caseloads are increasing as more and more SIJS cases are filed, particularly age-out cases, but with reduced staffing, reduced hours at filing windows, etc., I hope the Judicial Council's committees will be able to explore ways that California courts may ease the strain on everyone involved by granting SIJS orders beyond a young person's 18th birthday. *See additional comments on specific issues, below.	The committees do not recommend addressing this issue through a rule of court. The jurisdiction of the superior court is conferred by statute over specified proceedings. If the Legislature wishes to expand the court's jurisdiction, it may do so. SIJ request cases may indeed place a strain on the superior courts. But it seems counterintuitive to expand the superior court's jurisdiction to hear additional cases that include requests for SIJ findings as a way to reduce that strain.
3. s	California Judges Association Joan P. Weber, President	A	The proposed rule and forms are needed to implement SB 873, which clarified the superior court's authority to make predicate findings to enable an undocumented child to petition the federal government for classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act (INA) into California law. The proposed rule and forms are intended to specify the process for requesting SIJ predicate findings from a court in a family law, probate guardianship, juvenile dependency, or juvenile delinquency proceeding, and to supply the court	The committees thank you for your comment. See further responses to specific comments, below.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
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			with a sufficient factual basis to make accurate, just, and effective findings if warranted under California law. We support the proposed rule and forms. Not only does this improve the findings forms with one form for Family/Juvenile/Probate, but it also creates a Request for findings form which, in effect, requires the requesting party to state a detailed basis which can then be used on the findings form. This now places the burden on the requesting party to provide the Court with the detailed findings.	
4.	Immigrant Legal Resource Center San Francisco Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	AM	The Immigrant Legal Resource Center (ILRC) submits the following comments.… The ILRC has extensive experience working at the cross-section of state juvenile court systems and immigration law. In our work with immigrant youth advocates, we have seen many youth in California who meet the federal eligibility requirements for [Special Immigrant Juvenile Status (SIJS)] struggle to navigate through the state court systems that are empowered to make predicate eligibility findings for SIJS. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed Rule of Court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes for SIJS-eligible youth in our state courts.	The committees thank you for your comment. See further responses to specific comments, below.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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**
			*See additional comments on specific issues, below.	
5.	Legal Advocates for Children and Youth (LACY), San Jose Neha Marathe, Senior Attorney	AM	LACY supports the comments to the Proposed Rules and Forms submitted by the Immigrant Legal Resource Center (ILRC) to the Judicial Council. In addition, as advocates providing direct representation to SIJS-eligible children and youth in state court, we would like to emphasize certain points below. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
6.	Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	AM	We are family law and immigration advocates … with experience working with clients in Special Immigrant Juvenile Status (SIJS) cases. We have reviewed the Judicial Council's SPR15-28 relating to SIJS findings and we respectfully offer the following comments, feedback, and suggestions. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
7.	Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	AM	Legal Services for Children submits the following comments.… [LSC] has been representing children in [SIJS] cases since the law was first passed in 1990. Since that time, our staff and pro bono attorneys have represented hundreds of youth in [SIJS] petitions. We have sought SIJS predicate findings from state juvenile and probate courts, for youth in foster care, on probation, or in probate guardianships. …	The committees thank you for your comment. See further responses to specific comments, below.

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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**
			Through both our individual clients and our consultations with other advocates around California, we have seen too many youth … who meet the federal SIJS eligibility criteria fall through the cracks because they are unable to obtain the state court predicate order necessary to apply. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed rule of court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes to SIJS-eligible youth in our state courts. *See additional comments on specific issues, below.	
8.	Los Angeles County Counsel's Office Dawyn Harrison, Assistant County Counsel	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
9.	Orange County Bar Association Ashleigh Aitken, President	A	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
10.	Public Counsel Kristen Jackson, Senior Staff Attorney	A	I am writing in support of the Immigrant Legal Resource center's (ILRC) comments on the Judicial Council's proposed rule of court and forms related to Special Immigrant Juvenile Status (SIJS).… Public Counsel is widely recognized as a leader on SIJS cases.… Since the Judicial Council issued its Invitation to Comment, we have collaborated closely with the ILRC to shape its recommendations. Our attorneys with SIJS	The committees thank you for your comment. See further responses to specific comments, below.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			expertise in juvenile, probate, and family court provided input during the drafting process. We are in full support of the ILRC recommendations, and we look forward to the expansion of access to SIJS in the California court system. *See additional comments on specific issues, below.	
11.	San Diego Volunteer Lawyer Program Amy Fitzpatrick, Chief Executive Officer	AM	San Diego Volunteer Lawyer Program, Inc., (SDVLP) writes in support of the proposed rules and forms regarding SPR15-28, if modified. *[The SDVLP submitted comments identical to those submitted by the ILRC. For brevity and ease of review, these comments and the committees' responses are presented together below, with both organizations credited.]	The committees thank you for your comment. See further responses to specific comments, below.
12.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modifications. *See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
13.	State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	AM	**Does the proposal appropriately address the stated purpose?** Yes. The proposal appropriately addresses the stated purpose of implementing Senate Bill 873. The only other existing form adopted last year, GC-224, as mentioned in the background did not fully satisfy the requirements needed of a predicate finding. *See additional comments on specific issues,	The committees thank you for your comment. See further responses to specific comments,

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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**
			below.	below.
14.	Superior Court of Los Angeles County	AM		The committees thank you for your comment. See further responses to specific comments, below.
			Does the proposal appropriately address the stated purpose? Yes.	No response required.
			Would the proposal provide cost savings? If so please quantify. If modified, the proposal may result in shorter hearings and reduce the likelihood of additional hearings.	See responses to specific comments, below.
			What would the implementation requirements be for the 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. New document, party type (GAL) and result codes need to be created in CMS. Staff will need to be trained and be familiarized with the new forms. If the petition may be filed within an open family law case, it may create additional work to keep these documents confidential within an otherwise public file.	The committee acknowledges that implementation will require trial courts to make some procedural changes, though the committee does not understand why the court would consider a guardian ad litem (GAL) to be a new party type. The committee intends the proposed forms to streamline the SIJ findings process for both courts and litigants.
			Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Probably.	No response required.
			Would this proposal have different effects on	

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			courts of different sizes? How so? Probably not. *See additional comments on specific issues, below.	No response required.
15.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
16.	Superior Court of Sacramento County Tim Ainsworth, Executive Officer	AM	"… the person requesting this finding should be prepared to introduce evidence of conditions in the child's country of nationality or last habitual residence" This statement is contrary to case law—*Israel O.* *See additional comments on specific issues, below.	The committees thank you for your comment. The committees do not recommend withdrawing this statement and have included a similar statement on page 9 of the Judicial Council report. A person seeking a judicial determination that a child's best interest requires permission to remain in the U.S. rather than to return to his or her country of origin would be well advised to offer all evidence relevant to that determination, including the circumstances to which the child would return. Nothing in *Israel O.* counsels otherwise. The court in that case limited its observations regarding the best interest finding to these: "[T]he juvenile court did not address the question of whether a return to his home country was in Israel's best interest. [citation omitted] Although nothing in this record indicates that care and support is available for Israel in Mexico, a finding on this issue is best made by the juvenile court in the first instance." (*In re Israel O.* (2015) 233 Cal.App.4th 279, 291.) These observations imply that evidence of

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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**
				conditions in the child's country of origin, including but not necessarily limited to whether care and support would be available there, would appropriately inform the trial court's determination of the issue. See further responses to specific comments, below.
17.	Superior Court of San Diego County Mike Roddy, Executive Officer	A	No narrative comments submitted.	The committees thank you for your comment. No further response required.
18.	Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee (JRS)	A	This proposal simplifies and clarifies the *State* findings that must be made to support the minor's request for special immigrant status in the minor's *Federal* immigration proceeding. The current procedure requires lawyers and the courts to rewrite existing forms, and often leads to multiple hearings to get the California order to include the language required by the Federal court. The only impact is that it is another form for each court to implement, but it will create operational efficiencies. The clerks and self-help staff will have less work after very brief initial training; those who seek these orders will find it a faster, simpler and less mystifying process. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright	**Draft a Rule of Court on Procedure in Family Court.** (This is an excellent recommendation, as many family courts are just becoming familiar with SIJS and some judges, despite multiple trainings on the immigration impact of family court decisions, appear to be unable or unwilling to accept requests for SIJS findings and in more than one county have gone to amazing lengths to circumvent granting an SIJS order, including redefining the hearsay rule in order to exclude a minor's testimony about a parent's *actions.*)	The FJLAC agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee intends to develop a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code and circulate that rule for public comment at the earliest opportunity.
	The ILRC recommends a Rule of Court stating that a finding of paternity (or maternity, for that matter) is <u>not</u> required prior to making SIJS findings. There are many cases where a father's name is not on a child's birth certificate; certain Central Americans will not state the father's name if he was not personally present to register the child's birth. Some family law courts do not want to accept the other parent's word alone, even in a verified declaration, which allows them to circumvent adjudicating <u>both</u> petitions for custody and for SIJS factual findings. I agree with this recommendation. * * * It would be extremely helpful if the Judicial Council could issue Rules of Court or some other form of state-wide guidance for family courts regarding the following:	The committee will consider, but is not likely to recommend, addressing this issue in a rule of court. Whether the parentage of a custodial parent must be legally established for the court to award custody to that parent and make SIJ findings is a substantive legal question better left to the appellate courts or the Legislature to resolve. Similarly, whether parentage of a noncustodial parent must be conclusively established for the court to find that reunification with that parent is not viable is also a substantive legal question better left to the appellate courts or the Legislature to resolve.
	1. Whether one parent may seek sole custody for SIJS purposes if the other parent is deceased.	1. The committee will consider whether to incorporate the suggested provision into a future rule of court.
	2. Whether, in family law cases, a parent's inability to provide for a child due to poverty may also be considered a form of	2. The committee will consider whether to incorporate the suggested provision into a future rule of court.

Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
	neglect. (This is a valid argument in probate courts, but was rejected by a family court in Alameda County.)	
	3. That abandonment by a parent need not be willful, e.g., where a parent died without making adequate provisions for the child's future care. (This was recently addressed in *D.L. v. Superior Court of San Mateo County,* [2015], case number A144960, an unpublished appellate decision overturning the family court's refusal to issue SIJS findings because it held that the parent's death did not constitute *willful* abandonment.)	3. The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. Whether and in what circumstances a parent's death constitutes abandonment of the child is a substantive legal question. The federal INA relies on state laws to define abuse, neglect, and abandonment. The Legislature has addressed abandonment in sections 3402 and 7822 of the Family Code and section 300(g) of the Welfare and Institutions Code. As the commentator notes, the Court of Appeal has found no requirement in these provisions that parental abandonment have been willful. Rule 7.1020, as circulated, does not include such a requirement. The committee perceives no ambiguity appropriate for clarification in a rule.
	4. Flexibility in requirements for personal service of process when the non-custodial parent cannot be found. As an immigration attorney, I rely on family court practitioners for guidance in parental custody cases. They consistently advise that family courts require proof of personal service in parentage/custody cases. However, there are numerous cases where a child has been abandoned and the non-custodial parent's whereabouts are now unknown.	4. The committee will consider, but is not likely to recommend, modifying the requirements for notice and service of process through the rules of court. Notice requirements are governed by state and federal statutes within the United States, as well as by international treaties, including the Hague Service Convention, when serving notice abroad. These laws include provision for substitute service when a party cannot be located through the exercise of due diligence.
	In guardianship cases, the petitioner and the attorney can both file verified declarations of due diligence and the probate court can dispense with the requirement of notice. The family courts should be able to do the same; custody orders are not	The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. The Code of Civil Procedure, supplemented by the Family Code, specifies detailed procedural requirements

Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
	necessarily permanent, and the non-custodial parent can always request that a custody order be modified if circumstances change.	for serving notice to parties in proceedings under the Family Code. When a party lives abroad, these requirements operate in conjunction with federal statutes and rules as well as international treaties, such as the Hague Service Convention.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Draft a Rule of Court on Procedures in Family Court.** Given the newness of the practice of requesting SIJS findings in family court custody cases, the lack of clarity on a range of procedural issues that have arisen, and the inconsistency in how these requests are handled in different jurisdictions and courtrooms, we believe that a rule of court clarifying the procedure in family court custody cases is necessary. It would be helpful for such a rule to address the following: • that a minor over the age of 12 can be the petitioner in a parentage or custody proceeding; • that the court properly exercises jurisdiction over a minor until the day he or she turns 18 for purposes of child custody determinations;	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 7630 of the Family Code expressly permits a child to bring a parentage action. Sections 7630(b) and 7650 permit "any interested person" to bring an action to establish, respectively, a mother-and-child or presumed–parent-and-child relationship. Section 7635 expressly permits or, if the child is 12 years of age or older, requires the child whose parentage is at issue to be made a party to the action. • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 3010 of the Family Code establishes a parental right to custody of an "unemancipated minor child." Section 3022 grants the court authority to make an order for custody of a

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		child "during minority." Section 6500 clearly states that a child remains a minor until the first minute of the day on which he or she reaches 18 years of age. It is unlikely that a rule of court would provide additional clarity.
	• under what circumstances a guardian ad litem is required in custody cases;	• The committee will consider whether to include in the proposed rule a provision clarifying when the court should appoint a guardian ad litem for a minor child in a parentage action.
	• that a paternity/maternity finding is not required prior to making SIJS findings;	• The committee will consider whether to incorporate the suggested provision in the proposed rule.
	• that personal jurisdiction over the non-custodial parent is not required if the court otherwise has jurisdiction over the child custody matter under the UCCJEA;	• The committee will consider, and is likely to recommend, including the suggested provision in the proposed rule. Although the comment raises a substantive legal issue, the court of appeal settled that issue in 1981, holding that the "stringent notice requirements" and "integrated, detailed plan for jurisdiction in child custody proceedings" in the predecessor to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) satisfied the requirements of due process and that personal jurisdiction over an out-of-state parent is therefore not required to make a binding custody determination. (*In re Marriage of Leonard* (1981) 122 Cal.App.3d 443, 458–459.) The notice requirements under the current UCCJEA are, if anything, more stringent that those under the earlier statute. This case remains binding legal precedent.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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	• whether a single request may be filed for multiple children who are part of the same case; and • any other matters that the Judicial Council finds germane to the efficient and consistent adjudication of these requests.	• The committee will consider whether to include the suggested provision in the proposed rule. • The committee intends to develop a rule of court that will promote the consistent and efficient adjudication of requests for SIJ predicate findings in proceedings under the Family Code.
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**Ambiguities to be Resolved by Analogous SIJS Rules in Family Court Proceedings** Although SPR15-28 only proposed rule 7.1020, which involves guardianship proceedings, it would be useful to propose analogous rules in the family law context. There is much confusion regarding SIJS requests among the courts, counsel, and litigants. First, similar to the proposed rule 7.1020, analogous rules in the family court should stipulate who may file a request for SIJS orders. Specifically, the minor child himself/herself should be allowed to petition for a SIJS order in a paternity action. In fact, many advocates in Los Angeles have already structured paternity actions as child versus parent, although not all courts accept this form of paternity action. However, an action brought by the child against a parent for paternity is permissible under Family Code section 7630. In particular, this type of action is often necessary where one parent has abandoned the child and that parent cannot be located. Thus, the only manner in which a SIJS request could be brought forth would be under a paternity action where the child sues the parent whose whereabouts are known. Thus, any proposed rule should make clear that SIJS orders may be obtained in a paternity action where the child is the petitioner.	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. The committee will consider whether to include the suggested provision in the proposed rule.

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	Second, proposed rules for family court should also specify that any SIJS hearing could proceed by default, as with all other family law cases. In Los Angeles, several bench officers have raised the issue of "collusion" where the responding party in the family law case fails to respond. The judges surmise that the respondent does not respond on purpose and that petitioner and respondent parents are "in collusion" in order to confer an immigration benefit onto the child. These assertions are speculative at best and prejudicial at worst. Many family law cases proceed by default, without any negative inference of "collusion". Therefore, the proposed rules should also clarify that while a judicial officer may conduct a default evidentiary hearing in order to make the necessary findings, the bench cannot make any presumptions of collusion in a default case where one party has failed to respond to the SIJS order request.	The committee will consider whether to include the suggested provision in the proposed rule.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	**Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify?** Yes. Rules of procedure analogous to proposed rule 7.1020 would be useful to courts, counsel, and litigants. Ambiguities that the rules should attempt to clarify are what a description of the similar basis under California law would be. Although it is noted that abuse, neglect and abandonment would qualify under California law under the footnote provided in the background section, it is still unclear what other basis would be acceptable for a predicate finding under California law. This description should be included in any informational form as well. The rules of procedure for requesting SIJS findings, similar to proposed Rule 7.1020, would be helpful in family law court proceedings	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity.

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	because SIJS cases are a newer practice area. Ideally, rules of procedure would set forth the step by step application process, requests for hearing, notice requirements, opportunity to respond and contest, and issuance of findings. The Rule would help establish a standard statewide procedure to avoid variability between counties. SCDLS also suggests the adoption of forms and rules of procedure specific to implementing the confidentiality requirements under the new law, and providing a less complex and entailed procedure for requests for sealing SIJS proceedings records in family law, notwithstanding Rules of Court, rule 2.550 and 2.551.	The committee does not recommend the suggested change at this time. The current statutory and rule-based confidentiality and sealing provisions provide a level of protection for children seeking SIJ findings in state court. In addition, pending legislation would modify and, in some respects, simplify the process of sealing court records in juvenile proceedings. The committees will consider proposing rules and forms in a future cycle if experience shows they are needed.
Superior Court of Los Angeles County	**Would the rules of procedure requesting SIJS findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel and litigants? If so, what ambiguities should these rules attempt to clarify?** Yes.	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court at this time.
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	**Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to prosed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify?** Rules analogous to proposed rule 7.1020, would be helpful to counsel/parties to better understand required forms, filing fees	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose

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	(if any), and litigation type filing guidelines. We also need direction on denied petitions - are they appealable? **Does the proposal appropriately address the stated purpose?** The proposal addresses the stated purpose. However, clarification is needed when processing these petitions in family court. Is there a filing fee? What are the hearing requirements (e.g., are *Memos to Set* required)? Are there recommended processing time standards? Are courts required to provide interpreters for these hearings?	circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court proceedings at this time. The committee intends to clarify issues within its purview through the development of a rule for requesting and considering SIJ findings in proceedings under the Family Code.

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Need for Information Form		
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State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	An informational form would indeed be useful especially because the proposed rule 7.1020 is very brief and the language of an informational form would also help pro per litigants without any reference to the proposed rule. Specifically, the informational form could help the self-represented better understand: 1) the steps for requesting SIJS findings; 2) the purpose of the form; and 3) the information the form solicits for purposes of the requested findings to ensure the court's order is sufficient.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Los Angeles County	**Would an informational form to accompany from FL-[356] or any other of the forms in this proposal be useful, for example to explain the process for requesting SIJS findings?** Yes.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Orange County Family and Juvenile Court Operations Managers	It would be beneficial to create an informational form that would provide information on the following: 1. Limitations of the superior court with regard to making the findings 2. Litigation type filing guidelines 3. Filings fees, if any 4. Options when petitions are denied (are they appealable)? Further, we recommend the information form be created in multiple languages.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code. The committees recommend and anticipate that any immigration-related Judicial Council forms will be translated into Spanish and any other language for which a sufficient demand exists.

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Permit attachments to the petition, including memorandums, declarations, etc.		
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	**Eliminate the prohibition of the use of motions, memorandums, and other supporting documents as means of requesting SIJ findings (Rule 7.1020(b)(2)(A)).** Pursuant to California Rule of Court 1.31, forms adopted by the Judicial Council for mandatory use must be used by all parties; whereas, California Rule of Court 1.32 makes the use of forms approved by the Judicial Council optional. Therefore, the adoption of Council's proposed Rule 7.1020(b)(2)(A) and the corresponding proposed form for mandatory use would require a request for SIJS findings in Probate Court to be made by verified petition *exclusively* through the use of the proposed form GC-220. While subsection (b)(2)(A) of the proposed rule does not explicitly prohibit the use of motions requesting SIJ findings, the Invitation to Comment issued by the council specifies that the proposed rule would prohibit a request for SIJS findings made by a motion supported by declarations. Given the expressed objective of this subsection, the proposed rule unnecessarily limits the means by which a request for SIJS findings may be made, eliminating the current, universal practice of filing a petition for SIJS findings accompanied by a memorandum of points and authorities and supporting declarations. The council's own Invitation to Comment fails to provide any compelling reason for this restrictive change; it merely declares that Rule 7.1020 was created because "no statewide guidance has been developed for requesting or making SIJ findings in guardianship proceedings." In fact, while California Code of Civil Procedure section 155 may lack detailed procedural instructions, what technical guidance it does offer, regarding declarations by the child, seems to	The PMHAC does not recommend the suggested change. Nothing in the rule, as circulated, prohibits the inclusion with or attachment to the petition of memorandums, affidavits, declarations, or other supporting documents. The committee recognizes that a number of methods have been used to seek SIJS findings in the past. The committee considered these various methods as part of developing these proposed rules and forms. After careful consideration, the committee concluded that the petition procedure, rather than a motion procedure, would be preferable both for petitioners and for the courts. The petition is intended to provide a common structure to a filing that has proved challenging for litigants and courts. Moreover, the petition is the preferred method of seeking relief in probate proceedings. See Probate Code section 1020. In guardianship proceedings, the petition procedure is intended to conform applications for SIJ findings to familiar probate practice; this conformity should improve efficiency and efficacy for all involved in these proceedings. This procedure gives the petitioner an opportunity to assert in the verified petition all facts that separate declarations would otherwise contain. If unopposed, the petition would be admitted into evidence

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	have been wholly ignored in the creation of these proposed rules and forms. (see section b., below) Since the Trafficking Victims Protection and Reauthorization Act (TVPRA) was enacted in 2008, SIJS has been a potential form of relief for individuals in guardianship proceedings or otherwise under the Probate Court's jurisdiction as a result of guardianship proceedings. Without the guidance of Rule 7.1020 and the GC-220 form, such individuals have been requesting and obtaining SIJ findings through the use of pleadings entitled "Petition" or "Motion," memorandum of points and authorities, and supporting declarations. Given the recent increase in individuals potentially eligible for SIJS relief, executing more efficient policies and procedures is a commendable goal, however, not at the cost of quality. In fact, a more efficient but less effective administration of justice does more harm. To be clear, while it is clear that the adoption of a mandatory form and a rule prohibiting motions and supporting declarations may provide some benefit of uniformity for court personnel, the proposed prohibition diminishes the appearance of, access to, and application of justice. This prohibition of motions and supporting declarations limits the amount and quality of evidence by which a court may make a ruling upon a request for findings and it is therefore contrary to justice. Given the substantial confusion of law which led to the drafting and passage of SB 873, it is baffling that the council would develop a rule that prohibits SIJ finding requests from incorporating statutory and appellate authority.	under section 1022 to support the findings, notwithstanding the petitioner's possible lack of personal knowledge of each fact asserted. If contested, the matter would be set for trial, at which live testimony would be required, subject to exceptions applicable to all civil trials. Neither the rule nor the form prohibits the filing of any other documents, including memorandums of points and authorities or affidavits, *with or as part of* the petition. (See Prob. Code, § 1022, which refers not only to verified petitions, but also to affidavits. Declarations are legally and functionally equivalent to affidavits (Code of Civ. Proc., § 2015.5).) Sufficient evidence in the petition, including any attached declarations, would support an uncontested request for SIJ findings. In a contested matter, neither the petition nor any separate

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		declarations would be sufficient. In that situation, under ordinary legal principles, the witnesses would be required to testify in court and be subject to cross examination. If the witnesses are not available at the time set for trial, there are procedures currently available from regular civil practice to obtain, preserve, and present their testimony at trial.
	It is still frequently necessary, in order to succeed in court, for litigants to be able to cite case law, both in their pleadings and at the hearing, regarding one or more of the SIJ findings. The use of a verified petition in the format of a mandatory form handicaps litigants by disallowing a thorough recitation of facts, law, and the correct application of the latter to the former. Furthermore, the evidence that supports SIJS findings continues to be litigated at the trial and appellate court level; preventing litigants from presenting full and robust legal argument at the petition stage limits their ability to make a record sufficient for shaping and creating appellate case law.	As noted above, nothing in the rule or form precludes a thorough recitation of the facts or presentation of the law as part of the verified petition. The litigant may attach a memo of points and authorities to the petition at the time of filing. At the hearing on the petition, whether contested or not, the petitioner will have the opportunity to present argument on the law and its application to the facts before the court. The committee intends the rule and form to guide litigants, both represented by counsel and self-represented, in presenting relevant facts and applicable law in a format that will allow both the parties and the court to focus on the issues needing resolution.
	Finally, while we believe it to be appropriate, necessary, and permissible, despite the proposed rule and form, to continue to submit a separate Memorandum of Points and Authorities to supplement the petition, it is foreseeable that the proposed rule and form will discourage many litigants and counsel from continuing to adequately present their cases in this manner.	The committee does not believe that the proposed form petition will discourage self-represented persons from seeking SIJ relief. Rather, the committee intends the form to provide guidance as to the legal theories and factual allegations needed to support a petition for SIJ findings. This guidance should encourage eligible self-represented persons to seek relief. The committee fully expects that counsel, including the commentators, will be able to work within the framework present in probate matters. Consultation with experienced probate

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		practitioners will help attorneys with other practice areas to adapt to these procedures.
	Accordingly, we suggest the current use of pleadings entitled "Petition" or "Motion," memorandum of points and authorities, and supporting declarations remain authorized means by which an individual may seek SIJ findings in guardianship proceedings. This current practice can be incorporated into proposed Rule 7.1020(b)(2)(A) rather than prohibited by it. In the alternative, as discussed in detail in the next section of our comment, we suggest altering the proposed form GC-220 to specifically reference and incorporate the attachment of legal argument, points and authorities, and, most importantly, supporting declarations.	For the reasons stated above, the committee does not recommend the suggested change.
	Incorporate the use of declarations as attachments to the petition as evidence in support of the request (Rule 7.1020(b)(2)(A)). In pursuit of the SIJS relief created by federal law, litigants in California are guided by California Code of Civil Procedure Section 155, which details superior courts' authority, the procedure for petitioning to secure predicate findings from such courts, and the evidentiary basis for making such findings. California Code of Civil Procedure section 155 requires a superior court to issue an order making the necessary findings regarding SIJS where there is evidence to support those findings; the statute *specifically* identifies a declaration by the child who is the subject of the petition as a source of such evidence. Despite the fact that this specific reference to such a declaration is within the statute that mandates that the Judicial Council create forms accordingly, the council's proposed form for mandatory use	The committee does not recommend the suggested change. As noted above, nothing in the rule or form bars the submission of a child's supporting declaration with the petition for SIJ findings. The procedure outlined in the rule also permits the inclusion of the essence of the child's testimony in the petition itself, thereby obviating the need, in at least some cases, for the submission of a separate declaration.

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	does not reference the need for or option to submit or attach a declaration of the child; rather, the proposed form GC-220 provides spaces for the petitioner to provide "facts in support of" the requested findings. While the proposed form does allow for additional facts to be submitted by way of an attachment, there is no reference to or instructions for a declaration by any person with personal knowledge of evidence material to the SIJS findings. Furthermore, where the petitioner is not the child, the format of the proposed form provides no method for the child to submit a declaration themselves, again despite the fact that such a declaration was anticipated by the legislature and is referenced in California Code of Civil Procedure section 155 as an evidentiary basis for the requested findings.	
No Separate Filing Fee		
Bet Tzedek Legal Service	**Clarify that there is no separate filing fee for an SIJS petition (Rule 7.1020(b)(2)(B)).** While the expressed purpose of proposed rule 7.1020(b)(2)(B) is to provide guidance, a consequence of the requirement that SIJS findings be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian is the potential for additional fees to be assigned. We oppose the assessment of fees on petitions for SIJ findings because such an assessment is problematic in principle and largely meaningless in practice. The fundamental premise of Special Immigrant Juvenile Status is the recognition of that fact that a child afforded such status has suffered abuse, abandonment and/or neglect; to assess fees for the process of securing findings of those facts runs counter to the humanitarian foundation upon which the relief was created. As a more practical matter, these children are almost exclusively impoverished and have no means by	The committee does not recommend addressing this issue in the rules of court. Fees for civil proceedings, including matters arising under the Probate Code and Family Code, are set by statute (See Gov. Code, §§ 70600–70677). Filings fees for a petition regarding appointment of a guardian of the person are set in section 70654. Section 70658.5 provides that no separate fee will be charged for a petition combining a request for relief with a guardianship petition. Sections 70657(e) and 70658(c)(1) prohibit fees for petitions or applications filed in a proceeding for a guardianship of the person after the issuance of letters of temporary or general guardianship. Section 70670 sets the fee for the initial filing in a proceeding under the Family Code. Section 70677 provides that only one fee will be charged for a filing that combines requests for relief on more than one issue, e.g., parentage, custody, and SIJS.

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	which to pay court fees and costs. Accordingly, we suggest that no fees be created or assessed for petitions requesting SIJ findings. Assessing fees would, at best, incur additional work for court personnel in processing all but certain applications for waiver of fees and costs.	Section 212 of the Welfare and Institutions Code bars fees for filing or serving papers in juvenile dependency or delinquency proceedings. Moreover, sections 68630–68641 of the Government Code provide for fee waivers based on the parties' financial condition. Rules 3.50–3.58 of the California Rules of Court implement the fee waiver statutes by creating procedures and mechanisms for applying for, determining, and modifying fee waivers. In guardianship cases, eligibility for a fee waiver is now based on the ward's financial condition. (See Gov. Code, § 68631.5, eff. Jan. 1, 2015; Cal. Rules of Ct., rule 7.5, eff. 9/1/15.) The committee does not intend the proposed rule to create any new filing fees.
Peggy J. Bristol	Clarify that there is no separate filing fee for the SIJS petition.	See the committee's response to Bet Tzedek's comment, above.
Immigrant Legal Resource Center San Diego Volunteer Lawyer Program, Inc.	**Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)).** Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a	See the committee's response to Bet Tzedek's comment, above.

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	fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts. ***Recommendation***: Clarify that there is no separate filing fee for the SIJS petition.	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)).** Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee, under GC 70657(e), even if the guardianship petition and SIJS petition are filed concurrently. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts, or wait until after the guardianship petition is granted and letters are issued in order to file the SIJS petition, which would create additional delays for eligible youth and might lead to some youth aging out of jurisdiction before obtaining the SIJS predicate order, and would also create administrative inefficiencies. ***Recommendation***: Clarify that there is no separate filing fee for	See the committee's response to Bet Tzedek's comment, above.

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	the SIJS petition.	
Permit Multiple Wards to File a Single Petition for SIJ Findings		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)).** Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or her-self. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request. Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: "If the petition contains a request for more than one minor, specify the factual basis for each minor." If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule. ***Recommendation:*** Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in ~~strikethrough~~, additions underlined):	a. The committee does not recommend the suggested change. In cases involving multiple wards seeking SIJ findings, either at their own request or on the request of others, separate petitions are preferable. The only necessary common element in a multi-ward case is the proposed or appointed guardian (Prob. Code, § 2106). Multiple wards may be wholly unrelated or related only remotely to one another. Cousins, possibly involving common grandparents or more remote ancestors but no common parents, often appear together in these cases. Their factual situations material to SIJS determinations may be entirely distinct. Separate orders on their petitions are necessary because these findings will be presented in separate immigration proceedings for each applicant. On the other hand, if there are significant common elements, say, for whole- or even half-siblings, there is no need to move for "consolidation" of the proceedings in a multi-ward case. There is only one guardianship proceeding. If all the guardianship and SIJ petitions were unopposed, there would be no trial hearing beyond the required probate calendar hearing, which would be on the same date and in the same court department if the petitions are filed together, at which hearing the petitions will be admitted into evidence (Prob. Code, § 1022). If multiple petitions are contested, they may be tried together if there are sufficient common elements, such as witnesses and other evidence.

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so ~~only~~ for himself or herself, or jointly with the other ward(s) or proposed ward(s). **As discussed above, multiple wards should be permitted to request SIJS findings in a joint petition (Rule 7.1020(e)(2)).** For the reasons discussed above, multiple wards should be permitted to request SIJS findings in a joint petition. If multiple wards are required to file separate petitions as contemplated by Rule 7.1020, then they will also have to move to consolidate proceedings as set forth in this subsection, which creates an unnecessary burden on petitioners. ***Recommendation*:** Allow multiple wards to request SIJS findings in a joint petition, which will lessen the need for this provision setting forth the procedure by which proceedings may be consolidated.	See the committee's response, above.
Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney	LACY supports ILRC's recommendation to Proposed Rule 7.1020(b)(1)(A), to allow multiple wards the option of filing a joint request for SIJS findings in a guardianship proceeding. We believe doing so would make the process more streamlined for the proposed wards and guardians and allow traumatized children to achieve stability with greater ease. Further, as LACY can only provide direct representation to minors age 12 and over, allowing a minor to file a petition for SIJS findings jointly for him/herself and his/her younger siblings will ensure that LACY can provide legal representation to all SIJS-eligible minors in the proceeding (rather than the siblings under age 12 needing to secure new counsel to petition for SIJS findings, which would be burdensome and most often unfeasible).	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)).** Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or her-self. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request. Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: *"If the petition contains a request for more than one minor, specify the factual basis for each minor."* If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule. ***Recommendation:*** Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in ~~strikethrough~~, additions <u>underlined</u>):	See the committee's response to the ILRC's comment, above.

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so ~~only~~ for himself or herself, or jointly with the other ward(s) or proposed ward(s).	
No Separate Notice of Hearing on Petition for SIJ Findings		
Bet Tzedek Legal Services	**Eliminate the requirements for a separate notice of hearing on an SIJS petition (Rule 7.1020(c).)** As written, proposed subsection (c) of Rule 7.1020 would require that notice of a hearing on a request for SIJS findings be sent to the persons listed in section Probate Code section 1460(b). The rights of all persons described in section 1460(b) remain completely unimpinged upon the granting of SIJS findings. Similarly, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Therefore, there is simply no need for additional notice to be required as proposed by subsection(c) of Rule 7.1020. Accordingly, we suggest eliminating the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c).	The committee does not recommend the suggested change. In most cases, the rule requires notice only to the proposed ward's parents and, by reference to Probate Code section 1460(b), to the guardian and the ward. The determination of a request for SIJ findings impacts the legal rights of the ward. The guardian, by virtue of the care, custody, and control of the ward with which he or she is charged, also has a legitimate interest in the hearing. The SIJ findings—especially a finding that reunification with one or both is not viable because of abuse, neglect, abandonment, or a similar basis—may also have collateral consequences for the ward's parents. The rule's requirement is not unduly burdensome. Section 1460(e), incorporated in the rule, authorizes the court for good cause to dispense with notice to any person otherwise entitled to notice under section 1460(b). Section 1460.1 limits the duty to provide notice to a ward under the age of 12. The rule also relieves parties of the more extensive notice requirements for a hearing on the underlying guardianship petition in section 1511.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	**Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)).**	See the committee's response to Bet Tzedek's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
San Diego Volunteer Lawyer Program, Inc.	Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor's parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required. However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. Currently, practices range in different counties, with a small number of judges and counties requiring that notice be provided by certified, international mail despite Section 1215. Second, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will	

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	allow parents who may be willing to waive notice of the hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail. ***Recommendation***: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.	
Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney	LACY supports ILRC's recommendation to Proposed Rule 7.1020(c) to eliminate the requirement for a separate notice of hearing of a request for SIJS findings. While notice of a petition for guardianship is expressly required under state law through the Probate Code, we note there is no requirement for notice of a request for SIJS findings under federal law (8 U.S.C. §1101(a) (27)(J)). As the ILRC letter notes, notice of the petition for guardianship will have been provided or attempted in each probate guardianship matter and a request for SIJS findings will not affect parental rights. Imposing additional notice requirements for SIJS petitions that are not required by law would not only be burdensome, but it would force minors to disclose detailed facts regarding past abuse, neglect, and/or abandonment to the very persons responsible for the trauma. Doing so could also put the minors and proposed guardians at risk for retaliatory action and could damage the minor's connections to family members that continue to be important for the minor's well-being. While LACY feels strongly that a separate notice of hearing of a	See the committee's response to Bet Tzedek's comment, above.

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	request for SIJS findings should not be required, if such a requirement remains, we request that parties be permitted to file a request for SIJS findings on an ex parte basis (as permitted by Probate Code section 2250(f) for petitions for temporary guardianship), or request that the court waive notice of the request for SIJS findings for good cause (as permitted by Probate Code section 2250(e) for petitions for temporary guardianship).	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)).** Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor's parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings—the only petition which actually affects the parental rights to custody and care of their child—will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. Additionally, the petitions are frequently heard at the same hearing, and SIJS findings are simply a summary of	See the committee's response to Bet Tzedek's comment, above.

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Commentator	**Comment**	**Committee Response**
	the factual findings that provided the basis for the guardianship and do not affect parental rights. Under California law, all determinations affecting child custody are guided by the standard of the best interest of the child, so in awarding custody of the child to an individual in the United States, the Court has already made a determination that it is not in the child's best interests to return to his or her home country. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required. However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. We would also request that if service by mail is not practicable, that any other reasonable means of service which provides actual notice to the required parties be accepted. Legal Services for Children has found that many SIJS-eligible youth have family members who live in remote areas in other countries where regular mail service is not reliable. We have found that often, family members will receive more timely notice if we ask them to find a local store or internet cafe where we can send them the documents by fax or email, and families are often able to fax or email back a notice and acknowledgement of receipt or consent and waiver of notice. Finally, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will allow parents who may be willing to waive notice of the	The committee does not recommend the suggested change at this time. Rules 7.51 and 7.52 provide detailed guidance on acceptable methods of substituted service. The committee is also concerned that Probate Code section 1215, last amended in 1990 and first enacted in 1987, may not be current on international mailing requirements imposed by treaties, conventions, or changes in U.S. Postal Service mailing policies. Concerning other substitutes for mailing notices of hearing: the Probate Code currently specifies only mailing or personal service. The committee will soon be working on legislation that would modernize all mailing provisions of the Probate Code to permit electronic delivery in lieu of mailing or personal delivery. The committee will examine section 1215's international mailing provision as part of that project. The committee will consider developing a generic waiver of notice form, but suggests that a simple separate waiver of notice may be prepared for that purpose using the waiver language in form GC-211

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Commentator	**Comment**	**Committee Response**
	hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail. ***Recommendation***: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.	modified to refer expressly to the hearing on the SIJS petition. Form GC-211 is designed for use only for waiver of notice of a petition for the appointment of a guardian. It is not suitable for waiver of notice of any other hearing because it also consents to the appointment of the guardian sought in the appointment petition.
Require hearing before denial of uncontested petition for SIJ findings		
Peggy J. Bristol	Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied.	The committee does not recommend addressing this issue by amending the rules of court. Existing statutes and rules provide procedures for filing and adjudicating petitions and requests for orders. For example, sections 210–218 of the Family Code and rules 5.90–5.125 govern filing and processing of requests for orders in proceedings under the Family Code. When a petition is filed under the Probate Code, it is set for hearing before it is served. Petitioner or counsel must be present in court at the hearing. If notice is proper and no objection, written or oral, is raised before or at the hearing, the verified petition may be offered into evidence. If so offered, the court must receive it in evidence. (Prob. Code, § 1022). If the facts alleged in the unopposed petition are sufficient to support the relief requested, the petition will be granted without an additional hearing. That process constitutes the evidentiary hearing in an uncontested matter under the

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		Probate Code. (See Prob. Code, §§ 1041, 1043(a), (b).) If the facts alleged in an unopposed petition are not sufficient to support the relief requested or notice is defective, the probate court—before the hearing through the court's "probate notes" procedure—would require the filing of a supplement to the petition or completion and proof of service to provide the missing facts or establish proper notice. If there were a legal bar to the relief requested disclosed by the allegations of the petition, the petitioner would have an opportunity at the hearing to argue against denial of the petition and establish a clear record for appellate review of the court's action. Thus, in every guardianship case, there will be a hearing.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc.	**Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).** Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court's denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the	See the committee's response to Peggy J. Bristol's comment, above.

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Commentator	**Comment**	**Committee Response**
	event of an appeal. Again, we understand and appreciate the desire to streamline the process for requesting SIJS findings by allowing for a decision without a hearing in uncontested cases, but are deeply troubled by the possibility that a judge could deny a request without ever taking testimony on the matter or hearing legal arguments. Should this situation arise, it would compromise the petitioner's right to fully present his or her case. ***Recommendation***: Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend in the alternative that this subsection be stricken.	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).** Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court's denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the	See the committee's response to Peggy J. Bristol's comment, above.

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Commentator	**Comment**	**Committee Response**
	event of an appeal. In Legal Services for Children's SIJS practice over the past 24 years, we have encountered numerous occasions where a judge was initially inclined to deny an SIJS petition either due to a misunderstanding of the law or confusion regarding the facts which make the child eligible for SIJS. In these cases, we believe it is imperative to have an opportunity to provide legal argument and offer testimony of the child, guardian, social worker, or other relevant party to clarify these concerns. We understand and appreciate that in many cases, children are clearly eligible for SIJS and allowing the Court to make that finding based on the verified petition would be beneficial for the child, who would not have to miss school or endure the anxiety of another hearing, and for the administrative convenience of the Court. However, we do believe that if a Court does not believe the evidence set forth in the petition is sufficient to establish the child's eligibility for SIJS, the child should have the opportunity to provide testimony and further legal argument at a hearing. ***Recommendation***: Keep subsection (e)(5) but add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend that this subsection be stricken.	
Miscellaneous comments on rule 7.1020		
Bet Tzedek Legal Services	**Eliminate Rule 7.1020(e)(4).**	The committee does not recommend the suggested

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Commentator	**Comment**	**Committee Response**
	As discussed above, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Accordingly, we suggest eliminating the subsection (e)(4) of proposed Rule 7.1020.	change. All persons entitled to notice of proceedings under the Probate Code have the right to object. The rule and section 1460(b) prescribe the legally required notice.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Focus on the provision of appointed counsel rather than guardians ad litem (Rule 7.1020(b)(1)(B)).** Subsection (b)(1)(B) would provide that the court may appoint a guardian ad litem under Probate Code sections 1003 and 1003.5, or an attorney under Probate Code section 1470 to file a request for SIJS findings for a minor or to represent the interests of a minor in a proceeding to decide a request for SIJS filed on the minor's behalf by another. Given the provision of this section that allows for the appointment of an attorney under Probate Code section 1470 to file and present a request for SIJS findings or to represent the interests of a minor in a proceeding to decide a request filed on the minor's behalf by another, we find the need for a guardian ad litem to be alleviated. Appointed counsel is preferable because an attorney is better suited to help a child navigate the petitioning process and represent their interests in an adversarial setting. ***Recommendation***: Delete the reference to appointment of a guardian ad litem in Rule 7.1020(b)(1)(B) in the following manner (deletions in ~~strikethrough~~, additions <u>underlined</u>): (B) The court may appoint~~ a guardian ad litem under Probate Code sections 1003 and 1003.5 or~~ an attorney under Probate Code section 1470 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor's	The committee has reversed the order of the two options in the rule.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	behalf by another.	
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	The proposed rule 7.1020 should address what other basis under California law is acceptable if the case does not fall under the purview of abuse, neglect, or abandonment.	The committee does not recommend addressing this issue in a rule of court. Whether another basis for determining that reunification of a child with a parent is not legally viable is sufficiently similar to abuse, neglect, or abandonment is a substantive legal question appropriately left to the Legislature or the appellate courts to resolve.
Superior Court of Los Angeles County	The proposal (page 5) says that a verified petition can be filed concurrently with a petition for GAL or later, but Rule 7.1020 (b)(2)(B) only addresses when it is filed concurrently. Also, we suggest that the Rule address whether the petition should be handled as a petition within another case or if it creates a new case with a separate case number. If a separate case is opened, should it be ordered related or consolidated with any existing Family Law case? If it is filed within an existing case, it will be difficult to ensure the confidentiality of the proceedings.	The committee notes that the discussion at page 5 of the invitation to comment and rule 7.1020(b)(2)(B) address a petition for appointment of a guardian of the person, not a guardian ad litem (GAL). Rule 7.1020(b)(1)(B) addresses appointment of a guardian ad litem (GAL) to pursue SIJ findings on behalf of a proposed ward. That provision covers the only situation where a GAL may file a request for findings under the rule: at the time of or after his or her appointment. A GAL could not file such a request before appointment, so there is no reason to cover that situation in the rule. The committee is not expert on the matter of assigning new case numbers, but it does not perceive any reason that a petition for SIJ findings filed in a guardianship proceeding should not always bear the same case number as the underlying proceeding. Assignment of a different case number might frustrate the effect of the findings when the youth presents them to USCIS.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	"SIJ petition must be filed separately"—Good!	No response required.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Revise presentation of "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 8 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law, and Choose Whether Reunification is Not Viable With the Petitioner, Respondent, or Other Parent.** In number 8 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect. ***Recommendation***: Revise Number 8 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with ~~[] the petitioner [] the respondent [] the other parent~~ the [] mother [] father is not	The FJLAC does not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.

[1] Forms FL-356 and JV-356 were circulated for comment as FL-317 and JV-317. The numbers were revised to associate these request forms more closely with the findings form, FL-357/GC-224/JV-357. The numbers in the comments have been updated in brackets for ease of reference.

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	viable because of [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	
Add an item to indicate that supporting documents may be and are attached		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the FL-[356], beyond the specific attachments that are noted in numbers 10 and 11. However, some petitioners may wish to attach other documents to the FL-[356], such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the [form] is intended to simplify the SIJS request process and that in many cases, the child's eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	The committee agrees with the suggestion and has added item 12 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**Form FL-[356] Should Contain an Advisement Regarding Inclusions of Additional Declarations and Points and Authorities** As the proposal currently stands, Form FL-[356] makes no mention of additional declarations and points and authorities that may be necessary for making a SIJS finding. The proposed FL-[356] makes it seem as though no additional information beyond the form itself would be needed for the issuance of a SIJS order. In addition, Form FL-[356] presumably could only be completed by the parent, who may or not have personal knowledge of the facts and circumstances supporting certain SIJS findings. A child's declaration, however, could be a vital piece of evidence that the court needs in order to make a SIJS finding. In fact, SB 873 specifically states that evidence to support a SIJS finding, "may consist of, but is not limited to, a declaration by the child who is the subject of the petition." Furthermore, SIJS cases are still legally complex cases that involve both state and federal law, and the court may require legal briefing on the issues. Form FL-[356] should advise litigants that they may include additional declarations, including those of the child, and possibly also a memorandum of points and authorities to support the request for SIJS findings.	See the committee's response to the ILRC's comment, above. Nothing prohibits the attachment of the child's declaration or other documents to the request form. The committee will consider ways to clarify the process further when developing the formation form referred to above.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Revise reference to parents in item 8 to be consistent with other SIJ forms		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	With respect to the selection of whether reunification is not viable with the petitioner, respondent, or other parent, we suggest that these choices be deleted, and instead replaced with the selection of mother or father, to more closely track the proposed order. ***Recommendation***: Revise Number 8 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with ~~[] the petitioner [] the respondent [] the other parent~~ the [] mother [] father is not viable …	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child's mother, father, or other legal parent. This requires the addition of an item to the form to identify the child's parents. The committee has incorporated that as item 2 on the form.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child's mother, father, or other legal parent. This requires the addition of an item to the form to identify the child's parents. The committee has incorporated that as item 2 on the form.
Clarify the proper context for filing a request for SIJ findings		
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**The Family Law Request Form Should be Styled as an Attachment to a Petition, a Response, or a Request for Order:** SPR15-28 states that the family law request form is "styled as attachment to a *Request for Order* (form FL-300)." However, a request for order is not the only manner in which a litigant could raise the request for SIJS findings. For example, a litigant could request SIJS orders as a part of the initial family law petition. Should the opposing party fail to respond, the matter could be set for a default trial. If the opposing party responds, then the matter could be set for a contest trial. Similarly, a respondent in a family law proceeding could also request SIJS	The committee agrees and intends that form FL-356 be attachable to a petition, response, request for order, or another appropriate filing. As circulated, the form itself offered these options. The committee regrets any confusion caused by the abbreviated characterization in the invitation to comment.

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	orders as part of the response to any family law proceeding. Litigants seeking SIJS orders should be encouraged to request such orders in a manner that is the most convenient or most efficient for that particular case. There is no reason to limit a request for SIJS order only to hearings as a result of a request for order, when SIJS issues could just as well be decided as a matter for trial. **SIJS Orders Cannot be Affirmatively Requested in a Responsive Declaration to Request for Order** Family Code Section 213 provides that in a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court. There is no authority for the court to consider issues that were not raised in the initial request for order. Thus, if a request for SIJS orders was not raised in the moving papers for a hearing, the opposing party would not be able to raise it in the responsive declaration to request for order. Our recommendation is that the reference on FL-[356] to SIJS orders being raised in a responsive declaration to request for order should be deleted.	The committee does not recommend the suggested change. If custody or visitation are raised in a petition or request for order, then an alternative custody order may be requested in a responsive declaration and a request for SIJ findings, if appropriate, may be attached to the responsive declaration.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	Proposed form FL-[356] might be better suited as a standalone petition or request for SIJS findings similar to Proposed Form JV-[356]—Request for Special Immigrant Juvenile Findings, and Proposed Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings. The proposed format as an attachment can lead to confusion when attached to a Petition or Response. Thus, raising the following questions:	The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	1) At what point will the court render its findings?	1) The court would render its findings at different times depending on the procedure used to request them. For example, the court might enter them as part of a default judgment or at the time of trial if the form were attached to a petition. It might make them at or after a hearing if the form were attached to a request for order.
	2) Will the court set a hearing on its own motion when the attachment for request for SIJS findings is filed along with a petition or a response?	2) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.
	3) Will the requesting party have to file a request for hearing to obtain predicate findings and orders from the court?	3) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request supplies sufficient basis for the court to determine the findings. It might be appropriate for a proposed order to be submitted if a default is possible.
Superior Court of Los Angeles County	1. Family Law Request FL-[356] – Just as the Guardianship and Juvenile requests are standalone forms, we believe the Family Law Request should be a standalone form as well, which would make it easier to manage the confidentiality requirements outlined in CCP 155(c).	1. The committee does not recommend the suggested change at this time. The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider this issue in developing the rule of court.
TCPJAC/CEAC Joint Rules Subcommittee	The JRS recommends that form FL-[356] be a stand-alone document. This would help staff deal with confidentiality.	The committee does not recommend the suggested change at this time. The committee designed form FL-

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
		356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider whether to incorporate clarification regarding confidentiality and the process for filing form FL-356 into a family law rule of court.
Miscellaneous comments on form FL-356		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add an Additional Signature Line in the Event That the Signature of the Guardian ad Litem is Required.** In cases where a child is self-petitioning for custody orders, the appointment of a guardian ad litem may be required. In those cases, the court may then require that the guardian ad litem co-sign forms with the minor. Accordingly, we suggest the addition of an optional signature line for a guardian ad litem, should one be appointed in the case. ***Recommendation***: Add an additional signature line for use by the guardian ad litem, should one be appointed in the case. **Add a Clarifying Note to the FL-[356] That Indicates That the Attachment of the FL-[356] Does Not Itself Trigger a Hearing.** Given that the FL-[356] may be submitted as an attachment to the Petition, Response, Request for Order, Responsive Declaration to Request for Order, or Other, some of which trigger hearings and some of which do not, we believe that to best avoid confusion about whether the attachment of the FL-[356] itself triggers a hearing, a clarifying note should be included, either on the FL-[356] itself, or in an informational	The committee does not recommend the suggested change. If the court appoints a guardian ad litem for the child, the GAL has the authority to sign the form if the request is filed on the child's behalf. The child's signature is not required. If the GAL submits the child's declaration in support of the request, though, the child would need to sign the declaration. The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	sheet that accompanies the Form. ***Recommendation***: Add a clarifying note to the FL-[356] or to an informational sheet for the FL-[356] that makes clear that the attachment of the FL-[356] itself does not trigger a hearing.	
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	Also, it is suggested that item 3 a–f, of the proposed form FL-[356], be revised so that it specifies that both types of custody, legal and physical, are requested in the respective petitions itemized on the form. Therefore, item 3 a–f should be changed from: "…asking for sole custody", to: "…., asking for sole legal and sole physical custody." This is consistent with the requirements for SIJS findings. Further, it is suggested that adopted informational forms be written in simple standard English. FL-[356], No. 9, and JV-[356], No. 8, suggested edit: "It is not in the best interest of the child to be returned to the child's or parent's previous country of nationality or country of last habitual residence."	The committee agrees in part and has revised item 3 to specify that the listed petitions sought sole *physical* custody. If granted, sole physical custody with one parent would be sufficient to sustain a finding that reunification with any other parent is not legally viable. The committee agrees and intends to draft any proposed informational forms using plain-language principles. The committee agrees and has incorporated the suggested language into both forms.
Superior Court of Los Angeles County	FL-[356], item #3 – The form requires entry of the court and case number, but there is no room to insert the information. FL-[356], item #6 – This language is very confusing for a litigant, particularly for an immigrant who may have limited English proficiency.	The committee agrees and has added space to insert the information. The committee acknowledges that the language is complex, and has revised former item 6 (now 8) to clarify it. The committee will consider additional ways to present this information in developing an informational form. The committee also anticipates that this form will be translated into Spanish, thereby assisting a native Spanish speaker.
Superior Court of Orange County Family Law and Juvenile Court	• Item #5 substitute "appointed" with "ordered."	• The committee does not recommend the suggested change. "Appointed" mirrors the language of the

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Operations Managers	• Item #6 remove wording within parenthesis "that is, return of the child to the custody of" to avoid confusion. • Item #7 remove reference to parent – should read, "…placed in the custody of (name)." In this same paragraph substitute "appointed" with "ordered." • Item #8 remove reference to attachment 7, as this number may change if there are multiple children. Instead add, "Continued on Attachment_____."	federal requirement. • The committee agrees that the circulated language was confusing and has revised the item to clarify it. • The committee agrees with the suggestion and has revised the form accordingly. • The committee does not recommend the suggested change. A separate request should be filed for each child seeking SIJ findings, so the form never needs to refer to multiple children. The committee has, however, updated the attachment number to match the item number.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	"4. [ ] The case in 3 is pending. [ ] An order about sole child custody was made on *(date):* *(Attach a copy of the order.)"* Suggestion is to reverse the order of the items.	The committee agrees and has reversed the order of these items.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	Clarify that Attachments Are Permitted	
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	[T]he use of the format chosen for proposed form GC-220 presupposes that the petitioner understands the importance of linking specific facts to specific legal conclusions. In contrast, the ability to file a declaration would allow a petitioner to present information in a manner much more likely to elicit material facts and obviate denials based upon poorly presented facts rather than insufficient merit. Declarations are substantially more beneficial for a court charged with adjudicating a request for SIJS findings. In cases where the petitioner is proceeding in propria persona, a declaration provides a fuller recitation of facts such that the judicial officer may identify determinative facts that the petitioner may not; in cases where the petitioner is represented by counsel, a declaration provides the attorney with concise statements which may be articulated, cited to, and utilized in the application of the law to the specifics of the case. The adoption of a mandatory form may provide uniformity for court personnel; however, the proposed form is not designed to elicit evidence in the manner most useful for proper court review, currently used by such petitioners throughout the state, and arguably anticipated by the legislature, i.e., declarations. Finally, an individual seeking SIJS status may need to attach one or more declarations to the petition in order to ensure that their request for SIJS status, subject to USCIS official scrutiny, demonstrates that sufficient evidence was included in support of the request for findings in the state court. Accordingly, we suggest the elimination of current Items 5	The PMHAC intends the rule and form to guide a litigant or attorney in presenting the facts in a way that links them to the issues to which they are relevant and material. This manner of presentation assumes little knowledge of the legal process and is intended to assist the petitioner in focusing attention on the facts related to each requested finding and supporting any inferences needed to make that finding. The committee intends, and prefers, that all facts be stated in the petition itself. As noted in the committee's response to the comments on rule 7.1020, however, nothing in the rule or form precludes the petitioner from attaching one or more declarations to the petition.

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	and 6 from the proposed form GC-220 and the addition of a line item and box to the proposed form GC-220 indicating the existence of attached supporting declaration(s).	The committee recommends neither the suggested elimination of items 5 and 6 nor the suggested addition of a new item to indicate that supporting declarations are attached. There is no reason to have such a field in the body of the petition. A page inserted after the signature page can be added to identify any other documents attached to the petition, such as points and authorities or additional declarations.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	See the committee's response to Bet Tzedek's comment, above.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition.** There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the GC-220, beyond the specific attachments that are noted in numbers 5 and 6. However, some petitioners may wish to attach other documents to the GC-220, such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the verified petition is intended to simplify the petitioning process and that in many cases, the child's eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be	See the committee's response to Bet Tzedek's comment, above.

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	
Revise item 5's presentation of a "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect.	The committee does not recommend the suggested change. It anticipates that self-represented California petitioners will be able to use "abuse, neglect, or abandonment" in almost every case, and that counsel desiring to use "similar basis under California law" will know that "similar basis" must mean a basis *similar to one of those three terms*, and will know the language to insert from an appellate decision, statute, or regulation. And, in the absence of legislative or appellate guidance, the committee has no grounds for specifying additional bases similar to abuse, neglect, or abandonment.

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	Recommendation: Revise Number 5 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the minor… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. Guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect. ***Recommendation***: Revise Number 5 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the minor… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law	See the committee's response to the ILRC's comment, above.

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	~~☐ A similar basis under California law (specify):~~	
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Item 5 ☐ A similar basis under California law *(specify):* What does this include? Why not use "other"? This language is confusing to SRL's and will result in being left blank instead of the desired factual statement.	See the committee's response to the ILRC's comment, above.
Reduce Blank Space on Form GC-220		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts.** We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding. ***Recommendation***: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.	The committee respectfully declines to recommend this change. The amount of space saved would be minimal, at best. The larger amount of space is desirable because it encourages a showing of all facts available, not just a conclusory paragraph buttressed perhaps by declarations of others. This commentator and others appear to suggest the latter option, but the committee has concluded that the preferred method is to allege as many facts as possible in the petition itself. Moreover, the more space available in the petition, the less often will resort to attached additional pages be necessary.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts.** We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding. ***Recommendation***: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.	See the committee's response to the ILRC's comment, above.
Miscellaneous Comments on Form GC-220		
Los Angeles County Counsel's Office Dawyn Harrison, Assistant County Counsel	Agree with the suggested changes if amended to add a space to form GC-220, section 2, to indicate the child's date of birth.	The committee does not recommend the suggested change. The minor's date of birth is not necessary on this form and is not part of the proof required in the SIJ findings proceeding. Under current law, the ward of a probate guardianship must be under 18 years of age. The ward's date of birth is prominently displayed in the *Petition for Appointment of Guardian of the Person* (form GC-210(P)); or the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)), filed with the *Petition for Appointment of Guardian of Minor* (form GC-210).
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	GC-220 is important because the availability of legal resources for representation is limited in these types of proceedings, leaving many SIJS eligible minors navigating the process without legal representation. Specific comment: p. 14 (GC-220) form should not assume places of birth and country of nationality are related.	No response required. The committee agrees in part with this suggestion. The committee has modified its recommendation to simplify

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	2. (Name of Minor): * Was born in (country): ~~and is a national of that country.~~	the item by deleting the reference to the child's country of birth. Only the country of nationality is relevant to the SIJ findings.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Petitions have fees. Is there intent to impose another petition fee? If so, it should be stated.	The committee does not intend the proposed rules and forms to impose a fee separate from or in addition to those established by statute. See also the committee's response to comment on filing fees submitted in reference to rule 7.1020, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Delete or clarify references to "other parent" in items 2 and 7		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the "Other Parent" Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2.** As proposed, the meaning of the "Other Parent" boxes in number 2 on page 1 is unclear, for example, whether "Other Parent" refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this promises to confuse petitioners. Further, these boxes do not serve a clear purpose. Accordingly, we recommend deletion of these boxes. ***Recommendation***: Delete the "Other Parent" boxes in number 2 on page 1, as well as number 7 on page 2.	The committee recommends retaining an option for a third parent, identified as "other legal parent." Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of items 2 and 7 to allow the identification of the parents no matter their number or identified sex.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Clarify the "Other Parent" Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2.** As proposed, the meaning of the "Other Parent" boxes in number 2 on page 1 is unclear, for example, whether "Other Parent" refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this might confuse petitioners. [We recommend that the council reword the text to say:] "Other legal parent, as defined by State law *(specify)*" ***Recommendation:*** Reword the "Other Parent" boxes in number 2 on page 1, as well as number 7 on page 2 to say "Other legal parent, as defined by State law *(specify)*"	See the committee's response to the ILRC's comment, above.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Insert space to indicate other bases for juvenile court jurisdiction		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add an "Other" box to the options in number 3 on page 1.** We are concerned that the boxes for section [] 300 and [] 602 do not cover all of the potential sections under which a youth may be subject to the court's jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court's transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their situation. Additionally, dual-jurisdiction youth may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an "other" box be added to number 3 on page 1. ***Recommendation***: Make the following changes to Number 3 (deletions in ~~strikethrough~~; additions <u>underlined</u>): The court found that the child was described by section [] 300 [] 602 <u>[] other (specify):___</u> and assumed jurisdiction over the child on…	The committee agrees to add a third box to item 3 to indicate other possible bases for the juvenile court's assumption of jurisdiction.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add an "Other" box to the options in number 3 on page 1.** We are concerned that the boxes for section [] 300 and [] 602 do not cover all of the potential sections under which a youth may be subject to the court's jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court's transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their	See the committee's response to the ILRC's comment, above.

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	situation. Additionally, dual-jurisdiction youth under Welfare and Institutions Code 725 may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an "other" box be added to number 3 on page 1. ***Recommendation***: Make the following changes to Number 3 (deletions in ~~strikethrough~~; additions underlined): The court found that the child was described by section [] 300 [] 602 [] other *(specify):*___ and assumed jurisdiction over the child on…	
Eliminate requirement that the underlying juvenile court findings or orders be attached to request		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the Requirement in Number 3 That the Petitioner Must Attach a Copy of the Court's Jurisdictional Findings.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court's jurisdictional findings. If required, in many cases the child or his or her immigration attorney would have to petition the court for access to a copy of the court's jurisdictional findings through the JV-570 petitioning process (since the immigration attorney would not otherwise have access to the documents, and the child's appointed state court attorney may not be comfortable filing the SIJS request). This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the court already has access to this document in its own files.	The committee agrees to delete the direction to attach a copy of the jurisdictional findings from item 3. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child's immigration attorney might be permitted access to a child's juvenile court records without a court order under section 827(a)(1).

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	Recommendation: Delete the requirement in number 3 that the petitioner must attach a copy of the court's jurisdictional findings. **If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and unnecessary when the court already has access to these orders in its own files. ***Recommendation***: Delete the requirements in numbers 4 and 5 that the petitioner must attach a copy of the underlying juvenile court order(s).	The committee agrees to delete the direction to attach copies of the applicable orders from items 4 and 5. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child's immigration attorney might be permitted access to a child's juvenile court records without a court order under section 827(a)(1).
Legal Advocates for Children and Youth Neha Marathe, Senior Attorney	LACY supports ILRC's comments to the proposed Form JV-[356]. Every effort must be made to protect the statutorily mandated confidentiality of juveniles, as required by Welfare and Institutions Code section 827 and Code of Civil Procedure section 155. Requiring minors to attach the juvenile court's jurisdictional findings and/or order would violate provisions of these sections and is unnecessary because the court has access to its own files. Welfare & Institutions Code section 827 requires the filing of a petition to release these records, which could delay and ultimately deter the SIJS findings.	See the committee's response to the ILRC's comment, above.
Legal Services for Children	**Delete the Requirement in Number 3 That the Petitioner**	See the committee's response to the ILRC's comment,

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
San Francisco Hayley Upshaw, Senior Staff Attorney	**Must Attach a Copy of the Court's Jurisdictional Findings.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court's jurisdictional findings. In dependency matters, the court-appointed counsel for the minor may be uncomfortable or unable to represent the child in the immigration petition before USCIS, and the child may instead be represented by outside immigration counsel, who would have to petition the court for access to a copy of the court's jurisdictional findings through the JV-570 petitioning process. This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the Court already has access to this document in its own files. ***Recommendation***: Delete the requirement in number 3 that the petitioner must attach a copy of the court's jurisdictional findings. **If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and	above.

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	unnecessary when the court already has access to these orders in its own files. ***Recommendation***: If items 4 and 5 are included in the JV-[356], delete the requirements that the petitioner must attach a copy of the underlying juvenile court order(s).	
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	Should the form maintain, in any fashion, paragraphs 4 and 5, FLEXCOM recommends deleting the requirements that Petitioner attach certain documents to the JV-[356] form. This same request applies to the requirement in paragraph 3 that Petitioner attach a copy of the jurisdictional findings. It is rare in a juvenile case that a party is required to attach specific orders to requests for relief. As noted above, the court has easy access to these findings and orders. Further, immigration attorneys that might assist a minor in preparing the JV-[356] will not have access to the requested documents.	See the committee's response to the ILRC's comment, above.
Delete or revise items 4 and 5 because they are underinclusive		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents.** We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated.	The committee recommends retaining items 4 and 5. These items are intended to solicit information relevant to establishing a basis for the requested findings. Item 4 asks the requesting party to identify the court order that supplies the basis for the first SIJ finding. By using the language required for that finding, the committee intends to cover all possible legal bases for it. Item 5 asks the requesting party to specify the legal bases for the first part of the second finding, i.e., that reunification with one or both parents is not legally viable. A court order removing custody of the child from a parent, denying or terminating reunification services, appointing a guardian, and terminating parental rights may be a sufficient basis for determining that reunification is not legally viable. These items remind the requesting party to identify the

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	Recommendation: Delete Numbers 4 and 5 on page 1. **If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an "Other" Box to Accommodate Nonminor Dependents.** If Number 5 is included in Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the *In re Israel O.* decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been "committed to, or placed under the custody of," a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an "other" box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations. ***Recommendation***: Make the following changes to Number 5 (deletions in ~~strikethrough~~; additions <u>underlined</u>): 5. The court (check all that apply): [] ordered the child removed from the custody of (name(s) of parent(s)):… … <u>[] ordered the child home on probation with one parent: [] mother [] father [] other (specify):</u>	specific judicial actions it is relying on and direct the court to the relevant findings and orders. The committee does not recommend adding either suggested box to item 5, which is intended to indicate grounds for finding that reunification with one or both parents is not legally viable. While the juvenile court retains jurisdiction, an order placing the child with one parent, whether on probation or not, has no bearing on whether the child may be reunified with another parent. With respect to a nonminor dependent, the form already solicits sufficient information in items 3—that the court took jurisdiction when the youth was a child and currently has jurisdiction—and 5—that the nonminor dependent was removed from parental custody and may not currently reunify—to provide sufficient legal basis for a finding that reunification is not viable.
Legal Advocates for Children and	[P]roposed form JV-[356] (numbers 4 & 5 on page 1) does	See the committee's response to the ILRC's comment,

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Youth Neha Marathe, Senior Attorney	not reflect the scope of juveniles eligible for SIJS, including nonminor dependents (Welf. & Inst. Code § 450), dual-status youth (Welf. & Inst. Code §241.1) or wards ordered home on probation with one parent (Welf. & Inst. Code § 602).	above.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents.** We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated. ***Recommendation***: Delete Numbers 4 and 5 on page 1.	See the committee's response to the ILRC's comment, above.
	If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an "Other" Box to Accommodate Nonminor Dependents. If Number 5 is not removed from Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the *In re Israel O.* decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been	See the committee's response to the ILRC's comment, above.

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	"committed to, or placed under the custody of," a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an "other" box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations. ***Recommendation***: Make the following changes to Number 5 (deletions in ~~strikethrough~~; additions underlined): 5. The court (check all that apply): [] ordered the child removed from the custody of (name(s) of parent(s)):… … [] ordered the child home on probation with one parent: [] mother [] father [] other (specify):	
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM recommends the deletion of proposed paragraphs 4 and 5 of the JV-[356]. Petitioners can include the requested information when citing facts in support of the findings requested in paragraphs 6 and 7. Additionally, paragraphs 4 and 5 call for information the court will readily have at its disposal or can easily ask the Petitioner to verify orally at a hearing. Lastly, these paragraphs call for certain items of information that are not relevant to the SIJS findings. For example, a Petitioner seeking the findings does not need to establish termination of parental rights. Nor would a petitioner in juvenile court request such findings after the finalization of an adoption, due to the termination of the court's jurisdiction.	See the committee's response to the ILRC's comment, above. In addition, the committee agrees to delete the solicitation of a reference to final adoption orders.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Add an item to indicate that supporting documents may be and are attached		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	The committee agrees with the suggestion and has added item 9 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	See the committee's response to the ILRC's comment, above.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Revise item 7's presentation of a "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** Same comment as [submitted with respect to item 8 on form FL-356], above. ***Recommendation***: Revise Number 7 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	The committee does not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** Same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 7 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law *(specify):*~~	See the committee's response to the ILRC's comment, above.
Miscellaneous comments on form JV-356		

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association Ashleigh Aitken, President	In response to specific requests for comment: A JV form for petitioning the Court for SIJ findings would be beneficial. The existing procedural rules are adequate.	The committee agrees that a JV form for requesting SIJ findings from the juvenile court would be useful and have proposed form JV-356 to serve this function.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	The proposed JV-[356] provides juvenile courts with a Judicial Council form through which a petitioner may request the predicate findings for seeking SIJS relief. FLEXCOM applauds the Judicial Council for seeking to apply structure to the application process. However, FLEXCOM believes the form can be slimmed down in a way that balances the need for the court to have necessary information and the petitioner's ability to expeditiously seek the appropriate findings.	The committee has revised the form to eliminate any identified excess and clarify the process for requesting SIJ findings in juvenile court.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 9, and JV-[356], No. 8, suggested edit: "It is not in the best interest of the child to be returned to the child's or parent's previous country of nationality or country of last habitual residence." JV-[356], No. 7: There is not enough space to write/type a name here.	The committee agrees and has incorporated the suggested language into both forms. The committee agrees and has added space to item 7.
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Item #4, last selection item, add more space to section allotted to write names and relationship of the individuals with whom the child was placed.	The committee recommends striking that part of the item that requests the requesting party to specify the relationship of the custodian to the child. The relationship is not a necessary element of the SIJ findings. The deletion of this element will leave more space to write the custodians' names.

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Do not identify the individual or entity that has custody of the child		
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	**Remove the portion of Item 3b. of the proposed form that calls for the identification of the individual or entity appointed by the court and their relationship to the child.** As designed, the proposed form requires the submission of the identity of the individual or entity appointed by the court and their relationship to the child. This information is not required by federal law, nor is it necessary for United States Citizenship and Immigration Services officials to determine the child's eligibility for SIJS or otherwise adjudicate the child's application. Accordingly, we suggest deleting the portion of Item 3b. of the proposed form that calls for the identification the individual or entity appointed by the court and their relationship to the child.	The committees agree that there is no need to specify the relationship of the custodian to the child and recommends deleting that item from the form. However, the committees do not recommend removing the space for the custodian's name. Inclusion of the custodian's name plays an essential role in supporting a federal application for SIJ status by establishing a connection between the SIJ findings form and the underlying state court custody order, whether the underlying order originate in family, juvenile, or probate court.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court.** Practitioners commonly do not disclose the name of the child's legal guardian or foster parent to immigration authorities, as this would have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child's eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child. ***Recommendation***: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete "foster care" from the parenthetical since it could be a "confidential" delinquency placement.	See the committees' response to Bet Tzedek's comment, above.

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court.** At Legal Services for Children, we do not generally disclose the name of the child's legal guardian or foster parent to immigration authorities, as this could have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child's eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child. ***Recommendation***: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete "foster care" from the parenthetical since it could be a "confidential" delinquency placement.	See the committees' response to Bet Tzedek's comment, above.
Revise item 4's presentation of "a similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law** With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions <u>underlined</u>): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse <u>or a similar basis under California law</u> [] neglect <u>or a similar basis under California law</u> [] abandonment <u>or a similar basis under California law</u> ~~or [] a similar basis~~	With respect to identifying a similar basis under state law, the committees do not recommend the suggested change. In the absence of legislative or appellate guidance, the committees have no grounds to identify other legal bases similar to abuse, neglect, or abandonment. The committees also do not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
	~~under California law (specify):~~ as established on…	finding. The committees do recommend using simpler language on the request forms and have revised those forms accordingly.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law** With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	See the committee's response to the ILRC's comment, above.
Delete or clarify references to "other parent" in item 4		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	With respect to the "other parent" box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above. In addition, we believe that the existence of the "other parent" box on this order (that will be submitted to U.S. Citizenship & Immigration Services (USCIS)) promises to confuse the agency, as USCIS may not understand this field or why it is used. As a result, the existence of this field may jeopardize the success of children's applications for Special Immigrant Juvenile Status with the federal government. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined):	The committees recommend retaining an option for a third parent identified as "other legal parent." Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of item 5 to allow the identification of the parents no matter their number or identified sex.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
	Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	With respect to the "other parent" box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	
Add space for the court to use to deny a request for SIJ findings and give reasons		
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Add a deny option along with a denial reasons section.	The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the United States Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the form in the space under each finding or in the minute order will suffice to provide a basis for the requesting party to seek a writ.
TCPJAC/CEAC Joint Rules	The JRS recommends that form FL-357 include a space for the	See the committees' response to Orange County

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Subcommittee (JRS)	court to explain a reason for the denial of relief.	Superior Court's comment, above.
Miscellaneous Comments on Form FL-357/GC-224/JV-357		
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes it would be beneficial for the order to include a place where the court can indicate the youth's date of birth.	The committees agree and have revised the form to include space for the child's date of birth. Although the child bears the burden of establishing his or her age independently as part of the federal SIJ status application, the inclusion of the child's date of birth on the findings may help to verify the child's identity.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-357/GC-224/JV-357, Special Immigrant Juvenile Predicate Findings, facilitates the SIJS process by standardizing the format for the court's predicate findings in family law, probate and juvenile court. The form would be most helpful for use by self-represented litigants in family law proceedings. Without the availability of this "form" proposed order, self-represented litigants would be tasked with crafting pleadings comprising a proposed order. The proposed Form also facilitates the duty of the court to provide in writing, and not simply on the record, its findings. Use of the form ensures the court's order is sufficient to meet SIJS requirements by containing the following: 1) that the court has jurisdiction under state law to make judicial determinations about custody and care of minors; 2) whether the minor is found to be a dependent of the court, legally committed to a state agency or department, or placed in the custody of an individual or entity; 3) that reunification with one or either parent of the child is not viable due abuse, abandonment, or neglect; and 4) that it is not in the minor's best interest to be returned to his or her country of origin, or place of last habitual residence.	The committees intend the form to be used by self-represented parties and those represented by counsel, as well as trial courts charged with determining requests for SIJ findings. Use of the form is intended to document the state court findings and the factual basis therefor in a form that will be acceptable and comprehensible to a USCIS adjudication officer.

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Recommend adding fields to capture information about the hearing, such as hearing date, judicial officer, hearing date/time, department, and appearances.	The committees agree and have added item 2 to the form to capture the suggested information.

Item number: 05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family and Juvenile Law: Juvenile Court Final Child Custody Orders

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Staff contact (name, phone and e-mail): Mr. Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 2014
Project description from annual agenda: Both family and juvenile courts have expressed frustration at the inability of the current Custody Order—Juvenile—Final Judgment (form JV-200) and Visitation Order—Juvenile (form JV-205) to capture the juvenile court's findings and orders to the extent needed for compliance with the terms of the orders by the parties and for the enforcement or modification of the orders by the family court. The committee will propose and recommend circulation of revisions to the forms designed to reduce the number of enforcement and modification disputes filed in family court and to promote more efficient resolution of any such disputes that do arise by increasing the level of specificity solicited by the forms and incorporating language more familiar to the family court bench and bar.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Family and Juvenile Law: Juvenile Court Final Child Custody Orders

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, and 5.790; revise forms JV-200 and JV-205; approve form JV-206

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 18, 2015

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending four rules of court to clarify the procedures and requirements that apply when the juvenile court terminates its jurisdiction over a child and returns custody of the child to one or more parents. The committee also recommends revising two mandatory Judicial Council forms and approving one optional form to allow the juvenile court to include sufficient information about the circumstances underlying its custody order for the family court in which a request for the order's modification or termination is made to determine whether a significant change of circumstances has occurred and, if so, whether the requested modification is in the best interest of the child. The amendments and revisions also update references to current statutes and rules, incorporate gender-neutral language consistent with Assembly Bill 1403 (Stats. 2013, ch. 510) when appropriate, conform to recent case law, and maintain consistency with recent and recommended revisions to the Judicial Council forms for family court custody orders.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2016, amend four rules of court, revise two Judicial Council forms, and approve one Judicial Council form for optional use, as follows:

1. Amend rule 5.475 to more clearly and accurately describe the statutory duties of a superior court clerk who receives a final custody order transmitted from the juvenile court and to make technical changes;
2. Amend rule 5.620(a) to specify the juvenile court's exclusive jurisdiction, under section 304, to establish a guardianship after a dependency petition is filed until the petition is dismissed or jurisdiction is terminated, and to make technical changes;
3. Amend rule 5.620(c) to distinguish the process for issuing juvenile court custody orders subject to continuing jurisdiction from the process for issuing custody orders and terminating jurisdiction;
4. Amend rule 5.700 to clarify that it applies only when the juvenile court issues final custody orders and terminates jurisdiction, to describe the effect of juvenile final custody orders, and to describe the statutory duties of a superior court clerk who receives a final custody order transmitted from the juvenile court;
5. Amend rule 5.790(c) to distinguish between the process when the juvenile court issues custody or visitation orders and retains delinquency jurisdiction and the process when the court issues those orders and terminates its delinquency jurisdiction;
6. Revise form *Custody Order—Juvenile—Final Judgment* (JV-200) to give the court opportunities to make more detailed custody orders, to solicit on the form the reasons for limitations on custody or visitation, to use language in common with the family law custody forms and attachments, and to cross-reference those attachments where appropriate;
7. Revise form JV-200 to use gender-neutral language where possible, to add space for identification of and orders directed to additional parents, and to provide for attachment of parentage orders when applicable;
8. Revise form JV-200 to permit the juvenile court to specify a minimum amount of visitation if it otherwise permits the parents to arrange shared parenting time;
9. Revise *Visitation Order—Juvenile* (form JV-205) to add "(Parenting Time)" to the title, to use gender-neutral language where possible, to clarify the form's structure, to allow additional detail about supervised visitation and travel with children, and to cross-reference family law attachments where appropriate; and
10. Approve *Reasons for No or Supervised Visitation—Juvenile* (form JV-206) to allow the juvenile court to specify its reasons for denying or limiting visitation or parenting time with a child.

The text of the amended rules and the new and revised forms are attached at pages 10–22.

Previous Council Action

Rule 5.475 was adopted in 2006 and last amended effective January 1, 2013. Rule 5.620 was adopted as rule 1429.1 in 2000 and last amended effective January 1, 2014. Rule 5.700 was adopted as rule 1457 in 1990 and last amended effective January 1, 2007. And rule 5.790 was adopted as rule 1493 in 1991 and last amended effective January 1, 2015, to implement statutory family-finding requirements.

Custody Order—Juvenile—Final Judgment (form JV-200) was adopted for mandatory use in 1990 and has been revised multiple times, most recently effective July 1, 2014, to implement statutory amendments affecting the priority of enforcement of restraining orders.

Visitation Order—Juvenile (form JV-205) was adopted for mandatory use in 2000 and has been revised multiple times, most recently effective July 1, 2014, to implement statutory amendments affecting the priority of enforcement of restraining orders.

Rationale for Recommendation

When the juvenile court terminates jurisdiction over a dependent child or ward of the court and places the child with one or more of his or her parents, the court may issue final custody and visitation orders, sometimes known as "exit orders," under section 362.4 or 726.5 of the Welfare and Institutions Code.[1] These custody orders must be filed in any pending superior court proceeding related to the custody of the child, including dissolution, parentage, Domestic Violence Protection Act, and other family law proceedings as well as probate guardianship proceedings. If no custody proceeding is pending, the juvenile court may order its clerk to transmit the custody orders to the superior court of the county where the parent given physical custody resides. If the juvenile court orders transmission, the clerk of the receiving court must immediately open a file, assign a case number, and file the order.

These juvenile court orders continue in effect until and unless modified by another superior court order. Thus, they govern the custody and visitation of the child indefinitely. The orders need to provide specific direction to the parents and other parties to facilitate compliance and reduce the potential for conflict, especially regarding the parenting time orders and the mechanics of transferring the child from one parent to another.

Juvenile final custody orders also need to provide sufficient detail, and use language familiar to the family law bench and bar, to permit the family court to enforce them if a dispute does arise or to modify or terminate the orders if circumstances change significantly and modification would be in the best interest of the child. The information included in the juvenile court order must address the circumstances that led to the juvenile court's child custody and parenting time orders to enable a family court to determine whether circumstances have changed to a degree that

[1] All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

justifies considering whether the requested modification is in the best interests of the child. The child custody orders need to serve these functions without disclosing juvenile case information that should remain confidential, because juvenile court child custody orders, including attachments, are not themselves confidential. (§ 362.4.)

The proposal addresses these issues by revising *Custody Order—Juvenile—Final Judgment* (form JV-200) and *Visitation Order—Juvenile* (form JV-205) to provide the juvenile court with the opportunity to describe more thoroughly the circumstances underlying its custody and visitation orders. The revisions seek to solicit more information on the face of the form orders and to clarify that certain family law custody and visitation attachments may be used. Further revisions would give the juvenile court the option of referring to specific parts of the juvenile court record in its orders. Under section 827(a)(1)(L)–(M), the record is available without a juvenile court order for inspection by family court judicial officers and staff, as well as guardianship investigators, who are actively participating in a custody proceeding. The committee also proposes approving an optional statewide Judicial Council form, *Reasons for No or Supervised Visitation—Juvenile* (form JV-206), to give the juvenile court specific options for explaining the reasons and circumstances underlying an order denying or limiting visitation or parenting time for a parent with a child.

Finally, the proposal would amend rules 5.475, 5.620, 5.700, and 5.790 to clarify the responsibilities of the juvenile and family courts and clerks when issuing, transmitting, or receiving juvenile court custody orders and to more clearly distinguish the process for issuing custody orders at termination of juvenile court jurisdiction from the process for issuing custody orders and retaining jurisdiction.

In a separate proposal, the committee also proposes revising family court child custody and visitation attachment forms—FL-341(B), FL-341(C), FL-341(D), and FL-341(E)—to indicate that the juvenile court may attach those forms to form JV-200 or JV-205 to add additional detail to its final custody orders.[2]

Comments, Alternatives Considered, and Policy Implications

External comments

The invitation to comment on this proposal was circulated from April 17, 2015, through June 17, 2015, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. Twelve comments were received.[3] Six commentators agreed with the

[2] For more information, please see Fam. & Juv. Law Advisory Comm., Rpt. to Judicial Council, *Domestic Violence—Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law—Changes to Request for Order Rules and Forms* (Oct. 28, 2015, meeting).

[3] A chart providing the full text of the comments and the committee responses is attached at pages 23–39.

proposal as circulated. The remaining six commentators agreed with the proposal and suggested modifications.

Three commentators noted that, in the absence of a pending family law proceeding, rules 5.475 and 5.700 and form JV-200 direct the transmission of the juvenile court custody order to the superior court in the county of residence of the parent holding sole physical custody of the children. The commentators noted that the rules and form do not, however, provide guidance about where to send the form if parents share physical custody. The committee recommends further amending rules 5.475 and 5.700 to affirm the juvenile court's discretion to designate the court to which the order is to be transmitted, subject to the following order of preference: first, the county of residence of the parent awarded sole physical custody; if none, then to the county of the child's primary residence; and if neither circumstance applies, then to a county or location in which a parent resides. Item 15 on form JV-200 asks the court to designate the receiving jurisdiction and provides an opportunity to indicate into which of the categories the designated jurisdiction falls.

Several commentators suggested that the rules or forms be amended to eliminate the requirement that the receiving court send a filed copy of the custody order to the parents and the originating juvenile court by first-class mail; some suggested permitting e-service. Others suggested permitting personal service on the parents as a substitute for mail service. One commentator noted that it made little sense to require first-class mail if the receiving court and the originating court were divisions of the same superior court, or even in the same building. The committee does not recommend eliminating the requirement that the receiving court use first-class mail to send copies of the order. Section 362.4 requires the receiving court to send a copy of the filed order by first-class mail to the parents and the originating court. Although many of the commentators' suggestions have merit, they will need to wait for legislative amendment. The Court Technology Advisory Committee (CTAC) is in the first phase of its Rules Modernization Project. The current phase focuses on technical amendments to rules and forms designed to facilitate electronic filing and service. The second phase, set to begin next year, will focus on substantive statutory and rule amendments, which may include amending section 362.4.

One commentator suggested requiring that the juvenile court use *Confidential Information* (form JV-287) to transmit any confidential address to the designated superior court. The commentator suggested that this practice would permit the receiving court to fulfill its statutory duty—to send a copy of the filed order to all the parents—without disclosing the confidential address. The committee does not recommend the suggested change. The family court needs to have the mailing address of each party bound by the juvenile court custody orders. Section 316.1 requires each parent to designate a permanent mailing address in the juvenile court proceeding. This address is properly included on the juvenile custody order form. In a child custody proceeding, section 3429 of the Family Code requires each party to disclose the child's residential address in its first pleading or affidavit, but prohibits such disclosure in cases involving allegations of domestic violence or child abuse. The committee is aware of no other statute or rule requiring that a party provide a physical or residential address. Under circumstances in which the

disclosure of a home address would pose a safety risk, the party at risk should designate an alternative mailing address, such as a post office box or an attorney's address. Item 17 on form JV-200 is revised to specify that the address to be included is the mailing address.

Several commentators suggested that form JV-206 be made confidential because of the nature of the information on the form. The committee does not recommend the suggested change. Form JV-206 should be attached to the custody and visitation orders issued on forms JV-200 and JV-205 and become a part of those orders. Section 362.4 requires the Judicial Council to "adopt forms for any custody … order issued [when the juvenile court terminates its jurisdiction]. These form orders shall not be confidential." Because form JV-206 will be attached to form JV-200 or JV-205, it is a "form order" as described by section 362.4. Legislative policy seems to require that the form be publicly available to the same extent as the principal order to which it is attached.

Confidentiality protections in juvenile court are intended to protect the child subject to the proceedings.[4] Although the filing of the form in a family law custody file will disclose information about the dependency case, legal and policy considerations dictate that the form be public. First, as discussed above, section 362.4 prohibits the form's confidentiality. Second, if the form were made confidential, it would need to be separated from the principal orders and placed in a confidential portion of the custody file. The information on the form is critical to the family court's disposition of a request to modify the orders. Filing the form separately from the main orders could keep that information from the court. The court might then issue a modification that unintentionally placed the child at risk of physical rather than reputational harm. Third, form JV-206 conveys information about certain parental failures related to the order denying or limiting that parent's visitation rights, along with steps the parent might take to remedy those failures. It neither solicits nor requires a narrative of the events that led to the visitation order.

Two commentators suggested that form JV-206 be adopted as a standalone form rather than as an attachment to the custody or visitation order forms. The suggestion appears intended to facilitate the maintenance of the form in a confidential portion of the family law file. The committee does not recommend the suggested change. Form JV-206 should be an attachment to forms JV-200 or JV-205. Because the information on form JV-206 supports findings and orders made on those covering forms, the committee does not anticipate that the juvenile court would have occasion to use form JV-206 except as an attachment.

Several commentators suggested that form JV-206 be adopted for mandatory use when the juvenile court issues a no-visitation or supervised-visitation order. The committee recommends that JV-206 be approved for optional use. Forms JV-200 and JV-205 have been adopted for mandatory use. Each of these forms requires the juvenile court, when it orders no visitation (JV-

[4] See, e.g., section 346, which requires the child's, but not the parent's, consent before admitting the public to a dependency hearing.

200, items 4 and 5) or supervised visitation (JV-205, item 3), to specify its reasons for these orders. The principal forms permit the court to use either form JV-206 or another attachment. Many courts have already developed local procedures and forms to specify these reasons. Approving form JV-206 for optional use will permit those courts to continue to use the new or their existing forms and, at the same time, will give courts without a local form a template on which to specify their reasons for limiting or denying visitation.

One court commented that the Department of Child Support Services (DCSS) had requested that the court "not file exit orders on DCSS cases because it creates a problem when/if they file a dismissal." The court asked, "If the only open case is a DCSS case, should exit orders be filed on that case?" The committee recommends that the juvenile court custody order not be filed in a pending governmental child support case under section 17400 et seq. of the Family Code unless that is the only pending proceeding under the Family Code and the receiving court has already issued a custody or visitation order in that proceeding. If a DCSS case and another proceeding related to the custody of the child are pending in the receiving court, the juvenile court order should be filed in the other proceeding. If no proceeding related to the custody of the child apart from the DCSS case is pending in the receiving court and the court has not issued a custody order in the child support case, the receiving court must open a new family law custody proceeding and file the juvenile court order in that proceeding.

One commentator suggested that item 16 on form JV-200 be expanded to include all parties to the juvenile court proceeding. The committee does not recommend the suggested change. Rather, it recommends revising item 16 to clarify that its requirements apply not to the juvenile court, but to the superior court that receives a copy of the juvenile court order. The number of persons identified in item 16 may have led to its interpretation as a list of persons to be served with the juvenile court order. But that is not the case. The juvenile court order must be served on the parties to the juvenile court proceeding and their counsel in the same manner as all other juvenile court orders. Item 15 reflects the juvenile court's separate, additional duty to order the transmission of its final custody order to any court in which a specified proceeding is pending or, if no such proceeding is pending, to the court in a county in which a custodial parent resides. Revised items 16 and 17 address the further duties of the clerk of a court that receives a transmitted copy of the juvenile court order. Item 16 directs the clerk of the receiving court to file the order as specified. Revised item 17 directs the receiving court to mail a copy of the newly filed order to the juvenile court to confirm the filing and to the child's parents to inform them of the proper forum and applicable case number to use to seek a modification of the custody order. Therefore, only the parents' mailing addresses are needed here.

One commentator suggested deleting the requirement in rule 5.700(d) that the juvenile court custody order be filed in superior court if no proceeding is pending. The commentator was concerned that filing the order might invite unnecessary litigation. The committee does not recommend the suggested change. Instead, the committee proposes clarifying that rule 5.700 requires the originating juvenile court to direct that the order be transmitted to a specific court if no custody proceeding is pending. This requirement is consistent with rule 7.1008, which

requires the transmission of a former guardian visitation order when no custody proceeding is pending. It is also consistent with prevailing California juvenile court practice and the unpublished ruling of at least one appellate court.[5] Maintaining a copy of the order on file in a superior court is unlikely to promote litigation and will, if litigation does arise, expedite the filing and processing of the case.

One commentator suggested that the juvenile court attach any parentage orders to form JV-200. The committee agrees and recommends that the form direct the attachment of parentage orders if item 9 is completed.

One commentator noted that item 2 on form JV-205, regarding terms of visitation (parenting time), does not indicate clearly that either item 2a or item 2b must be checked, leading parties completing the form to fail to check either item, even when completing subitems (1)–(4) in item 2b. The committee agrees that the existing format is confusing and has modified its recommendation to indicate more clearly that either 2a or 2b, but not both, must be checked. The committee also recommends modifying the "smart" version of the form to permit the subitems under 2b to be checked only if 2b is itself checked.

Finally, several commentators suggested that the committee explore methods other than first-class mail for a receiving court to use to send a copy of the newly filed order to the parents and the originating court. The committee agrees that e-service should be explored. The Court Technology Advisory Committee (CTAC) circulated a separate proposal, SPR15-32, to make technical amendments to the rules of court to facilitate e-business, e-filing, and e-service. Because section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents, an amendment or revision eliminating that requirement would be substantive and must await the next phase of the Rules Modernization Project.

Alternatives

In addition to the alternatives discussed above, the committee considered not amending the rules or revising the forms. The committee rejected this alternative. The amendments and revisions are needed to update the rules and forms to conform to recent legislation; to simplify the procedures involved in transmitting a juvenile court custody order to the proper family court; and, in response to overwhelming demand from family court judicial officers and court staff, attorneys, and self-represented litigants, to allow the juvenile court to specify in more detail the requirements of its orders and the circumstances underlying them. This additional detail will guide the parties in complying with the orders, reduce occasions for conflict arising from uncertainty regarding the orders' requirements, and, if a party does seek modification of the orders in family court, provide the court with sufficient information to make an informed decision on the request.

[5] See *In re L.L.* (Cal. Ct. App. June 26, 2015) C075958, at p. 20.

Policy implications

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees agreed with the proposal. The JRS pointed out that revising and adding forms would have fiscal and operational impacts on the trial courts, but indicated that these impacts would be minor and likely to be outweighed by efficiencies generated by the recommended amendments and revisions.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs to the courts to revise forms, to train court staff about the changes to the rules and forms included in this proposal, and possibly to revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts by clarifying and simplifying filing procedures and case-flow management as well as facilitating the exchange of necessary information between juvenile and family courts.

Attachments and Links

1. Cal. Rules of Court, rules 5.475, 5.620, 5.700, and 5.790, at pages 10–15
2. Judicial Council forms JV-200, JV-205, and JV-206, at pages 16–22
3. Chart of comments, at pages 23–39

Rules 5.475, 5.620, 5.700, and 5.790 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding

(a) Custody and visitation order from other courts or divisions

~~A juvenile court or probate court may transmit a custody or visitation order to a family court for inclusion in a pending family law proceeding or to open a new family law case file, after termination of a juvenile court proceeding or a probate guardianship proceeding under rules 5.700 and 7.1008.~~

On termination of juvenile court jurisdiction under rule 5.700 or termination of a probate guardianship under rule 7.1008, the juvenile court or probate court will direct the transmission of its custody or visitation orders to any superior court in which a related family law custody proceeding or probate guardianship proceeding is pending for filing in that proceeding.

If no such proceeding is pending, the court terminating jurisdiction will direct the transmission of its order to the superior court of, in order of preference, the county in which the parent with sole physical custody resides; if none, the county where the child's primary residence is located; or, if neither exists, a county or location where any custodial parent resides.

(1) *Procedure for filing custody or visitation orders from juvenile or probate court*

(A) ~~The~~ Except as directed in subparagraph (B), on receiving the custody or visitation order of a juvenile court or ~~the visitation order of a former guardian~~ probate court, the clerk of the receiving court must file the order ~~must be filed~~ in any pending nullity, dissolution, legal separation, ~~paternity~~ Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding, or in any probate guardianship proceeding ~~which~~ that affects custody or visitation of the child.

(B) ~~If no dependency, family law, or probate guardianship proceeding affecting custody or visitation of the child is pending, the order may be used as the sole basis to open a file and assign a family law case number.~~ If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

(i) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(ii) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under subparagraph (C).

(C) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the ~~custody or visitation order, without a filing fee, in the file of any family law proceeding affecting the custody and visitation of the child~~ order in the new case file.

(2) *Endorsed filed copy—clerk's certificate of mailing*

Within 15 court days ~~after~~ of receiving the order, the clerk must send~~, by first-class mail,~~ an endorsed filed copy of the order showing the ~~receiving court~~ case number assigned by the receiving court by first-class mail to~~:~~ each of the child's parents and to the court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the issuing court's file.

~~(A) The persons whose names and addresses are listed on the order; and~~

~~(B) The court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the sending court's file.~~

(b) Modification of former guardian visitation orders—custodial parent

When a parent ~~of the child~~ has custody of the child following termination of a probate guardianship, ~~proceedings~~ a former guardian's request for modification of the probate court visitation order, including an order denying visitation, must be ~~determined~~ brought in a proceeding under the Family Code.

(c) * * *

Rule 5.620. Orders after filing under section 300

(a) Exclusive jurisdiction (§ 304)

Once a petition has been filed ~~in juvenile court~~ alleging that a child is described by ~~a subsection of~~ section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has ~~sole and~~ exclusive jurisdiction ~~over matters~~ to hear proceedings relating to the custody of the child and visitation with the child and establishing a guardianship for the child.

(b) * * *

(c) Custody and visitation (§ 361.2)

If the court sustains a petition, ~~and~~ finds that the child is described by section 300, and removes physical custody from a parent or guardian, it may ~~enter findings and orders~~ order the child placed in the custody of a previously noncustodial parent as described in rule 5.695(a)(7)(A) ~~and~~ or (B).

(1) ~~These findings and~~ This order~~s~~ may be entered at the dispositional hearing ~~under rule 5.700~~, ~~or~~ at any subsequent review hearing under rule ~~5.710(g) or 5.715(d)(2) or rule 5.720(b)(1)(B)~~ 5.708(k), or on ~~the~~ granting ~~of~~ a ~~motion~~ request under section 388 for custody and visitation orders.

(2) If the court orders legal and physical custody to the previously noncustodial parent and terminates dependency jurisdiction under rule 5.695(a)(7)(A), the court must proceed under rule 5.700.

(3) If the court orders custody to the noncustodial parent subject to the continuing supervision of the court, the court may order services provided to either parent or to both parents under section 361.2(b)(3). If the court orders the provision of services, it must review its custody determination at each subsequent hearing held under section 366 and rule 5.708.

(d)–(e) * * *

Rule 5.700. Termination of jurisdiction—custody and visitation orders ~~Order determining custody~~ (§§ 302, 304, 361.2, 362.4, 726.5)

~~(a) Order determining custody—termination of jurisdiction~~

~~If the juvenile court orders custody to a parent and terminates jurisdiction, the court may make orders for visitation with the other parent.~~ When the juvenile court terminates its jurisdiction over a dependent or ward of the court and places the child in the home of a

parent, it may issue an order determining the rights to custody of and visitation with the child. The court may also issue ~~orders to either parent enjoining any action specified in Family Code section 2045~~ protective orders as provided in section 213.5 or as described in Family Code section 6218.

~~*(1) Modification of existing custody orders—new case filings*~~

~~The order of the juvenile court must be filed in an existing nullity, dissolution, legal guardianship, or paternity proceeding. If no custody proceeding is filed or pending, the order may be used as the sole basis to open a file.~~

(a) Effect of order

Any order issued under this rule continues in effect until modified or terminated by a later order of a superior court with jurisdiction to make determinations about the custody of the child. The order may be modified or terminated only if the superior court finds both that:

(1) There has been a significant change of circumstances since the juvenile court issued the order; and

(2) Modification or termination of the order is in the best interest of the child.

~~(2)~~**(b) Preparation and transmission of order**

The order must be prepared on *Custody Order—Juvenile—Final Judgment* (form JV-200). The court ~~may~~ must direct either the parent, parent's attorney, county counsel, or ~~the~~ clerk to:

~~(A)~~(1) Prepare the order for the court's signature; and

~~(B)~~(2) Transmit the order within 10 calendar days after the order is signed to ~~the~~ any superior court ~~of the county~~ where a ~~custody~~ proceeding described in (c)(1) is pending ~~has already been commenced~~ or, if no~~ne~~ such proceeding exists, to the superior court of, in order of preference:

(A) The county in which the parent who has been given sole physical custody resides;

(B) The county in which the children's primary residence is located if no parent has been given sole physical custody; or

(C) A county or other location where any parent resides.

~~(3)~~**(c) Procedures for filing order—receiving court**

~~After receipt of the~~ On receiving a juvenile court custody order transmitted under (b)(2), the ~~superior court~~ clerk of the receiving ~~county~~ court must immediately file the juvenile court order ~~in the existing proceeding or immediately open a file, without a filing fee, and assign a case number~~ as follows.

(1) Except as provided in paragraph (2), the juvenile court order must be filed in any pending nullity, dissolution, legal separation, guardianship, Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding and, when filed, becomes a part of that proceeding.

(2) If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

(A) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(B) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under paragraph (3).

(3) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the order in the new case file.

~~(4)~~**(d) Endorsed filed copy—clerk's certificate of mailing**

Within 15 court days ~~after~~ of receiving the order, the clerk of the receiving court must send ~~by first-class mail~~ an endorsed filed copy of the order showing the case number ~~of~~ assigned by the receiving court by first-class mail to ~~(1) the persons whose names and addresses are listed on the order,~~ the child's parents and ~~(2)~~ the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's file.

~~**(b) Order determining custody—continuation of jurisdiction**~~

~~If the court orders custody to a parent subject to the continuing jurisdiction of the court, with services to one or both parents, the court may direct the order be prepared and filed in the same manner as described in (a).~~

Rule 5.790. Orders of the court

(a)–(b) * * *

(c) Custody and visitation (§ 726.5)

(1) At any time ~~while the~~ when a child is a ward of the juvenile court, the court may issue an order determining the custody of or visitation with the child. An order issued under this subdivision continues in effect until modified or terminated by a later order of the juvenile court.

(2) ~~or~~ At the time wardship is terminated, the court may issue an order determining custody of~~,~~ or visitation with~~,~~ the child, as described in rule 5.700.

(d)–(j) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (STATE BAR NUMBER): NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
CUSTODY ORDER—JUVENILE—FINAL JUDGMENT	CASE NUMBER: JUVENILE: FAMILY *(existing, if one; otherwise, new):*

Date of hearing: Dept.:

Judicial officer *(name):*

THE COURT FINDS AND ORDERS

1. a. **Jurisdiction.** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400–3465).

   b. **Notice and opportunity to be heard.** The parties were given notice and an opportunity to be heard as provided by the laws of the State of California.

   c. **Country of habitual residence**. The country of habitual residence of the child or children in this case is

   ☐ the United States ☐ other *(specify):*

   d. **Penalties for violating this order**. If you violate this order, you may be subject to civil or criminal penalties or both.

2. **Parents bound by this order.**

   a. **Name:** ☐ Mother ☐ Father

   b. **Name:** ☐ Mother ☐ Father

   c. **Name:** ☐ Mother ☐ Father

   are the parents of the children listed in item 3.

   Parents ☐ are ☐ are not married to each other.

   Parents ☐ do ☐ do not reside together.

3. **Custody.** Custody of the minor children is ordered as follows:

Child's name	Date of birth	Legal custody to *(name):*	Physical custody to *(name):*	Primary residence with *(name):*

☐ Additional children listed on Attachment 3.

4. ☐ This order reflects a change in the physical custody of the child or children to the custody of a formerly noncustodial parent.

Form Adopted for Mandatory Use
Judicial Council of California
JV-200 [Rev. January 1, 2016]

Family Code, § 3020 et seq.; Penal Code, § 136.2; Welfare & Institutions Code, §§ 302(d), 304, 361.2, 362.4, 726.5; Cal. Rules of Court, rule 5.700
www.courts.ca.gov

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

5. ☐ **Visitation (parenting time) of** *(name of parent):*
This parent may spend time with the children as follows:
☐ All children listed in item 3 ☐ The following children *(name each):*

a. ☐ As arranged by the parents, but no less than *(minimum):* hour(s), times per *(time period):* .
b. ☐ As stated on the attached form JV-205.
c. ☐ No visitation is ordered for the reasons stated ☐ on the attached form JV-206 ☐ on Attachment 4c.

6. ☐ **Visitation (parenting time) of** *(name of parent):*
This parent may spend time with the children as follows:
☐ All children listed in item 3 ☐ The following children *(name each):*

a. ☐ As arranged by the parents, but no less than *(minimum):* hour(s), times per *(time period):* .
b. ☐ As stated on the attached form JV-205.
c. ☐ No visitation is ordered for the reasons stated ☐ on the attached form JV-206 ☐ on Attachment 5c.

7. ☐ **Child abduction prevention.** There is a risk that one parent will take the children out of California without the other parent's permission. *Child Abduction Prevention Order Attachment* (form FL-341(B)) is attached and must be obeyed.

8. ☐ **Change of residence.** Under Family Code section 3024, unless there is prior written agreement to the change, any parent planning to change the residence of the child(ren) for longer than 30 days must provide notice to the other parent(s) at least 45 days before the proposed change to the extent feasible to allow time for mediation of a new plan.

9. ☐ **Parentage *(attach court order).*** *(Name):* was declared or adjudged the ☐ biological ☐ presumed parent of *(names of children):*

by court order *(specify county and case number):*
☐ juvenile court ☐ family court ☐ other *(specify):*
on *(date):*
☐ Additional parentage determination(s) and order(s) listed on Attachment 9.

10. ☐ **Additional physical custody provisions**. The parents will follow the physical custody provisions listed in the schedule
☐ on Attachment 10.
☐ on *Visitation (Parenting Time) Order—Juvenile* (form JV-205).
☐ on *Additional Provisions—Physical Custody Attachment* (form FL-341(D)).

11. ☐ **Holiday schedule**. The children will spend holiday time as listed in the schedule
☐ on Attachment 11.
☐ on *Children's Holiday Schedule Attachment* (form FL-341(C)).

12. ☐ **Joint legal custody**. The parents will share joint legal custody as listed in the plan
☐ on Attachment 12.
☐ on *Joint Legal Custody Attachment* (form FL-341(E)).

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

13. ☐ **Other findings and orders** *(including circumstances underlying any limits on custody or visitation at the time of the order):*

☐ Continued on the attached form JV-206.
☐ Continued on Attachment 13.

NOTICE

The juvenile court has terminated jurisdiction over the children listed in 3.
All requests for modification or termination of these orders must be brought in the family court case in which these orders are filed.

14. a. ☐ A criminal protective order on form CR-160 relating to the parties in this case is currently valid and in effect in case number *(specify):*
in *(specify court, if known):* .
The order is scheduled to expire on *(expiration date):* .

b. ☐ A Domestic Violence Prevention Act protective order on form DV-110, DV-116, DV-130, or DV-730 relating to the parties in this case is currently valid and in effect in case number *(specify):*
in *(specify court, if known):* .
The order is scheduled to expire on *(expiration date):* .

c. ☐ A restraining order (form JV-250, JV-255, or JV-257) is attached.

Instruction for Law Enforcement

Conflicting Orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h)(2), 6405(b).):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders 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.

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

(See reverse for transmittal and filing instructions.)

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

15. The *(check one):* ☐ clerk of the juvenile court ☐ parent given physical custody ☐ parent's attorney ☐ county counsel is directed to transmit this order within 10 calendar days to the clerk of the superior court in any county where a proceeding described in rule 5.700(a)(1) involving the child or children is pending or, if no such case exists, to the clerk of the court in *(specify jurisdiction):*
which is *(in order of preference):*
☐ the county where the parent who holds sole physical custody resides.
☐ the county where the child's or children's primary residence is located *(if no parent holds sole physical custody)*.
☐ a county or location where a parent resides.
☐ other *(name of jurisdiction):*

To the clerk of the receiving court:

16. Immediately on receiving this order, file the order as described in rule 5.475(a)(1) or 5.700(b) in a pending proceeding or a new file.
17. After filing the order, send an endorsed file-stamped copy of this order showing the case number assigned by your court by first-class mail to **the originating juvenile court** and:
a. ☐ The parent in 2a *(name and mailing address):*
b. ☐ The parent in 2b *(name and mailing address):*
c. ☐ The parent in 2c *(name and mailing address):*
d. ☐ Other *(name and mailing address):*

with a completed clerk's certificate of mailing *(see below).*

CLERK'S CERTIFICATE OF MAILING
(To be completed by clerk of receiving court)

I certify that I am not a party to this cause and that an endorsed filed copy of the foregoing order was mailed as follows: Each copy was enclosed in an envelope with postage fully prepaid. The envelopes were addressed to the originating court and to each person whose name and address are given in item 17. Each envelope was sealed and deposited with the United States Postal Service
at *(place):*
on *(date):*

Date: Clerk, by _____, Deputy

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

VISITATION (PARENTING TIME) ORDER—JUVENILE

Attachment to ☐ *Custody Order—Juvenile—Final Judgment* (form JV-200)
☐ *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250)
☐ *Restraining Order—Juvenile* (form JV-255) ☐ *Change to Restraining Order After Hearing* (form JV-257)

1. This order applies to the following children *(name each):*
   a. _____ b. _____ c. _____
   d. _____ e. _____ f. _____

2. ☐ **VISITATION (Parenting Time)** *(name of parent):* will have the children with him or her
   (NOTE:** Either a or b must be checked. If neither is checked, this order may not be enforceable.**)
   a. ☐ as stated in the visitation agreement on Attachment 2a.
   or
   b. ☐ as follows:
      (1) ☐ **Weekends** starting on *(specify date):*

☐ First weekend of the month *(specify day(s) and times):*	from	_____	at	_____	☐ a.m.	☐ p.m.
	to	_____	at	_____	☐ a.m.	☐ p.m.
☐ *Second weekend of the month (specify day(s) and times):*	from	_____	at	_____	☐ a.m.	☐ p.m.
	to	_____	at	_____	☐ a.m.	☐ p.m.
☐ *Third weekend of the month (specify day(s) and times):*	from	_____	at	_____	☐ a.m.	☐ p.m.
	to	_____	at	_____	☐ a.m.	☐ p.m.
☐ *Fourth weekend of the month (specify day(s) and times):*	from	_____	at	_____	☐ a.m.	☐ p.m.
	to	_____	at	_____	☐ a.m.	☐ p.m.
☐ *Fifth weekend of the month (specify day(s) and times):*	from	_____	at	_____	☐ a.m.	☐ p.m.
	to	_____	at	_____	☐ a.m.	☐ p.m.

      (2) ☐ **Alternating weekends** starting on *(specify date):* from _____
      at _____ ☐ a.m. ☐ p.m. to _____ at _____ ☐ a.m. ☐ p.m.
      (3) ☐ **Midweek** from _____ at _____ ☐ a.m. ☐ p.m.
      to _____ at _____ ☐ a.m. ☐ p.m.
      (4) ☐ **Other** *(specify days and times as well as any additional conditions):*

      ☐ Continued on Attachment 2b(4).

3. ☐ **SUPERVISED VISITATION.** Until ☐ further order of the superior court ☐ other *(specify):*
   (name of parent): may have only supervised visitation with the children according to the schedule in 2 for the reasons stated on ☐ the attached form JV-206 ☐ Attachment 3.
   Visit supervisor *(name):* Phone #: E-mail:

4. ☐ **TRANSPORTATION FOR VISITATION AND PLACE OF EXCHANGE**
   a. ☐ Transportation to the visits must be provided by ☐ Parent *(name):*
      ☐ Other *(specify):*
   b. ☐ Transportation from the visits must be provided by ☐ Parent *(name):*
      ☐ Other *(specify):*
   c. ☐ The children must be delivered to and picked up from *(specify location):*
   d. ☐ Other*(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-205 [Rev. January 1, 2016]

Family Code, § 3020 et seq.; Penal Code, § 136.2; Welfare and Institutions Code, §§ 302(d), 304, 362.4, 726.5; Cal. Rules of Court, rule 5.700
www.courts.ca.gov

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

5. ☐ **TRAVEL WITH CHILDREN**. Parent *(name):*

must have written permission from the other parent *(name):* or a court order to take the children out of

a. ☐ the state of California.

b. ☐ the following counties *(specify):*

c. ☐ other places *(specify):*

6. ☐ **Other findings and orders** *(specify circumstances, at the time of the order, underlying any limits on visitation):*

☐ Continued on Attachment 6.

☐ Continued on the attached form JV-206.

Instruction for Law Enforcement

Conflicting Orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h)(2) and 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders 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.

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

REASONS FOR NO OR SUPERVISED VISITATION—JUVENILE

Attachment to ☐ *Custody Order—Juvenile—Final Judgment* (form JV-200)

☐ *Visitation (Parenting Time) Order—Juvenile* (form JV-205)

1. This order applies to the following children *(name each):*

2. This parent *(name):* was ordered to have ☐ no visitation ☐ only supervised visitation with the child or children named in 1 because

   a. this parent ☐ has not completed ☐ has not made substantial progress in the following court-ordered programs:

      ☐ Sexual abuse treatment or awareness program ☐ for offenders ☐ for victims

      ☐ Drug abuse treatment program with random testing

      ☐ Alcohol abuse treatment program with random testing

      ☐ Domestic violence treatment program ☐ for offenders ☐ for victims

      ☐ Anger management training

      ☐ Parenting classes

      ☐ Individual counseling

      ☐ Other *(specify):*

   b. The court denied services to this parent on *(date):* based on a finding, by clear and convincing evidence, that:

      ☐ he or she was responsible for severe sexual abuse of the child as described in section 361.5(b)(6) of the Welfare and Institutions Code.

      ☐ he or she was responsible for severe physical abuse of or severe physical harm to the child as described in section 361.5(b)(5)–(6) of the Welfare and Institutions Code.

      ☐ his or her whereabouts were unknown on that date and remain unknown.

      ☐ other *(specify):*

Completion of one of the programs above *might,* but need not, constitute a significant change of circumstances for purposes of modifying this final custody order. (Welf. & Inst. Code, § 302(d).)

THIS IS A COURT ORDER.

Form Approved for Optional Use
Judicial Council of California
JV-206 [New January 1, 2016]

REASONS FOR NO OR SUPERVISED VISITATION—JUVENILE

Welfare and Institutions Code, §§ 302(d), 304, 361.5, 362.4, 726.5;
Cal. Rules of Court, rule 5.700
www.courts.ca.gov

SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Hon. Joan P. Weber, President	A	The proposal would clarify the procedures and requirements that apply when the juvenile court terminates its jurisdiction over a child and returns custody of the child to one or more parents on terms ordered by the court. The proposal is intended to provide a family court, to which a request for modification or termination of the order is made, with sufficient information to determine whether there has been a significant change of circumstances and, if so, whether the requested modification is in the best interest of the child. The proposed amendments and revisions would also update references to current statutes and rules, incorporate gender-neutral language consistent with AB1403 when appropriate, conform to recent case law, and maintain consistency with recent and proposed revisions to the Judicial Council forms for family court custody orders. The proposal incorporates a form already used by Los Angeles Dependency Court to let the Family Court know why a parent's visits are monitored or why no visits are ordered. With the information Family Law Court can rule more appropriately on a request to change the order, and consider whether there has been an appropriate change of circumstance. Other updates and improvements are made as well. We support the proposal.	Thank you for your comment. No additional response is required.
2.	Hon. L. Michael Clark, Judge Superior Court of Santa Clara County	A	These changes are very much needed. Thank you.	Thank you for your comment. No additional response is required.

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

SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
3.	Dependency Advocacy Center San Jose, California by Hilary Kushins, Attorney	A	The proposed JV-206 will be helpful for parents when exiting the dependency system to provide clarity as to what issues should be addressed in seeking modification in family court of the custody order.	Thank you for your comment. No additional response is required.
4.	Marie Hazlett Head Court Records System Clerk Los Angeles County Sheriff's Department	AM	I agree with all proposed changes, with the suggestion that the revision to JV-205 be modified to remove item 2b as it seems unnecessary. Item 2b is the most frequently overlooked box that is often not checked when the subsequent boxes are checked making it difficult to determine whether the subsequent boxes b(1)–(4) are actually granted. I suggest that it be removed all together. My suggestion is: 2. ☐ VISITATION (Parenting Time) (name of parent):_____will have children with him or her as follows: (a) ☐ as stated in the visitation agreement on Attachment 2a. (b) ☐ Weekends starting on (specify date): ☐First weekend of the month from _____ at _____. ☐First weekend of the month from _____ at _____. (c) ☐ Alternating Weekends starting on (specify date): _____ from _____. (d) ☐ Midweek from _____at _____. (e) ☐ Other (specify days and times):_____.	The committee understands the commentator's concern, but does not recommend the suggested change. As currently formatted, 2a and 2b are intended as alternatives. If 2a is checked, all visitation terms must be set forth on the attachment. If 2a is not checked, then 2b must be checked and all visitation terms must be set forth in 2b or as indicated therein. The committee has proposed modifications to indicate more clearly that either 2a or 2b must be completed.
5.	Joint Rules Subcommittee (JRS) of the	A	The JRS identified the following	The committee acknowledges the potential

SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee		fiscal/operational impact on the trial courts: • **Impacts existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)** Courts *may* need to modify existing programming depending upon their case management systems. However, it is likely that changes would be minimal and limited to adding additional codes or actions which are typical to court business. • **Requires development of local rules and/or forms** Rule changes *may* require some courts to make minimal changes in their local rules, which courts have the opportunity to do twice annually if necessary. • **Results in additional training, which requires the commitment of staff time and court resources** Minimal training on additional forms and processing would be necessary for court staff. • **Increases court staff workload** A slight increase in workload for court staff handling juvenile and family law cases is likely depending upon the court's caseload. However, the benefit of implementation of this process that clarifies orders and improves efficiencies will likely mitigate the increase.	impacts identified by the JRS and agrees that the efficiencies resulting from the recommendation are likely to offset these impacts.

SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
			• **Proposed date for implementation is not feasible or is problematic** Additional implementation time is necessary and appropriate to ensure sufficient time to properly implement all phases of this proposal including changes in case management systems, communication of requirements, forms, training and to ensure all processes are implemented accurately. **The following is a response to the proposal's Request for Specific Comments:** • Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court? ***Yes, the courts believe this form is helpful and will provide consistency throughout the courts.*** • Should the council explore effective means of serving notice of the filing of the order other than first-class mail? ***Unknown at this time, although given many courts are moving to paperless systems exploring other options should be on the horizon. Courts do not want to increase workload and/or expenses with postage costs.*** • Would the proposal provide cost savings? If so please quantify.	The committee acknowledges that full implementation of the processes entailed by the recommended amendments and revisions may take more than 2 months, but believes that courts will be able to implement these processes within the extended timelines in rule 5.504(c).[1] No response required. The committee agrees that increasing workload or costs is undesirable. The committee believes that the recommended revision to items 16 and 17 on form JV-200 will reduce mailing costs by clarifying that section 362.4 requires first-class mail service of the filed copy of the order only to the originating court and the parents.

[1] All rule references are to the California Rules of Court. All statutory references are to the Welfare and Institutions Code unless otherwise specified.

SPR15-18
Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			It is difficult to quantify or conclude given courts would need to know how often cases are reviewed for conflicting orders, etc. However, it is likely in the long run some cost savings could be derived from implementing this change. It might take approximately 15–20 minutes to process the additional new forms for each case, yet if these forms were not available and a clerk had to gather the court file, have a judicial officer review the file, additional orders and make a determination regarding appropriate orders, it may take approximately ½ hour of the clerk's time and an hour of a judicial officer's time. Overall the potential savings would be approximately 2/3 of the time spent on reviewing documents and files that have already been processed.	No response required.
			• 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 systems, or modifying case management systems? ***These will vary among the courts. However, some courts will simply need to add additional codes to indicate the forms have been processed and sent to the appropriate parties. This would require IT staff or a software specialist, operations staff to train clerks on the processing of***	The committee has designed the recommendation to minimize implementation requirements to the extent consistent with achieving the recommendation's policy objectives.

	Commentator	Position	Comment	Committee Response
			forms and procedural changes, and management staff to update local rules if necessary. • Keeping in mind that rule 5.504(c) grants courts one year from their effective date to implement production of new and revised mandatory juvenile forms, would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***No, given that local rules, case management systems, and staff training are all likely necessary, two months is not realistic to ensure all necessary elements of the implementation are efficiently and effectively rolled out.*** • Would this proposal affect small courts differently from large courts? If so, please explain. ***Not necessarily, it depends on the court's availability of staffing, caseload and complications of case management system changes. For example, larger courts may have a larger caseload and more staff to train making the impact on workload greater yet they may have dedicated IT staff easily available to make system changes. While smaller courts may not have IT staff readily available to revise case management systems, they may have a simpler time of implementation in that the case management system may allow for easier manipulation, less training time with***	The committee acknowledges that full implementation of the processes entailed by the recommended amendments and revisions may take more than 2 months, but believes that courts will be able to implement these processes within the extended timelines in rule 5.504(c). No response required.

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Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
			less staff, and a smaller workload.	
6.	Marianna Klebanov, Attorney/Writer San Mateo, California	AM	With respect to the proposed revision to Rule 5.700(d) of the California Rules of Court, I would remove the portion requiring opening a file in the Superior Court if no proceeding is pending. I would be concerned that this may invite excessive litigation in situations where it is unnecessary.	The committee does not recommend the suggested change. The committee believes that the risk of litigation arising from custody orders is best addressed by revising the order forms to provide more specific direction for situations in which uncertainty could lead to conflict among the parties. Some risk of litigation is unavoidable when a court order governs an evolving relationship. Requiring that the order be filed in a designated court selects a forum for resolution of disputes, forestalls forum shopping, and eliminates incentives for a party to race to file the order in a preferred court.
7.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comment submitted.	Thank you for your comment. No additional response is required.
8.	Santa Clara County Office of the County Counsel by Julie Fulmer McKellar Lead Deputy County Counsel	AM	The proposed amendments to JV-200 should include additional space in #9 for children with three legal parents.	The committee does not recommend the suggested change. Only the rarest cases will present more than one parent whose status is or has been in dispute and has been adjudicated. In that event, the party directed to prepare the order may so indicate on an attachment. The committee has modified its recommendation to add a check box to indicate the continuation of item 9 on an attachment and to direct the attachment of the parentage orders if item 9 is completed.
			The modification to CRC 5.475(a)(1)(B) provides for the custody order to be used as the sole basis for "opening a file in the superior court of the county in which the parent given physical custody resides" but doesn't indicate the procedure if both parents are given physical	The committee agrees that additional clarification is needed to address situations in which both parents are given physical custody and (a) the child lives with one parent more than 50 percent of the time or (b) the child lives an equal amount of time with each parent. The committee proposes

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	Commentator	Position	Comment	Committee Response
			custody (as the form allows) and they reside in different counties.	amending rules 5.475 and 5.700 to affirm the juvenile court's authority to direct the clerk or a specific party to transmit the order to a designated superior court for filing.
9.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) by Saul Bercovitch, Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the proposal, revisions, and amended forms. FLEXCOM agrees that the proposed amendments to the California Rules of Court and the proposed revisions to the Judicial Council forms will provide the much needed continuity between juvenile court and family court when a dismissal or termination of dependency occurs. Once an exit order is made using the newly revised Judicial Council forms, the family court will have sufficient information upon which to determine whether there has been a significant change of circumstances under which the exit order could be modified in an action for custody, domestic violence, paternity, etc. The specificity of the orders and the integration of the use of attachments will enable better enforcement of the orders by law enforcement. FLEXCOM agrees that the addition that juvenile court would have any guardianship during the pendency of an action avoids duplicity of actions. FLEXCOM agrees that the automatic venue lies with the custodial parent eliminates forum	See responses to specific comments. No response required. The committee intends this language inserted in rule 5.620(a) to restate existing law. The committee agrees that additional clarification is needed to address situations in which both

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

	Commentator	Position	Comment	Committee Response
			shopping. However, where both parents are awarded joint custody with an equal timeshare, there is not a preferred venue. A remedy is not implicit in the proposal for dealing with this. If both parties simultaneously file in two abutting counties (e.g., Los Angeles and Orange County) which county has venue? Perhaps it is similar to the simultaneous filings of Petitions for Dissolution, where venue would lie with the party who serves the other party first in time.	parents are given physical custody and (a) the child lives with one parent more than 50 percent of the time or (b) the child lives an equal amount of time with each parent. The committee does not wish to promote a race to file or serve the order. The committee proposes amending rules 5.475 and 5.700 to affirm the juvenile court's authority to direct the clerk or a specific party to transmit the order to a designated superior court for filing.
10.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	AM	In new Family Law form FL-300 and associated forms, the word "parenting time" is referenced with "visitation." This is not used in the dependency context. They should be consistent. **Are there specific changes that would improve the rules and forms in this proposal?** 1. JV-200, item # 15—Remove the check box for "parent given physical custody." Leave the other three checkboxes. At the bottom of the paragraph, add in BOLD the following language: *If a parent in the case appears at the Family Law Clerk's*	The committee agrees and intends to incorporate the term "parenting time" into the juvenile court forms to refer to visitation as opportunities to the forms arise. The forms in this proposal have been revised to include "parenting time" to the extent practicable. The committee does not recommend making the suggested change. Section 362.4 authorizes the juvenile court to direct a parent to transmit the order to the receiving court. This check box gives the court an opportunity to exercise its statutory authority, but does not require the court to choose the parent. If, in the circumstances of a particular case, the court determines that directing the parent to transmit the order is inappropriate, the court should direct one of the other persons identified in item 15 to transmit the order. The committee does not recommend making the suggested change. To prevent the filing of multiple family law proceedings or a race by the

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	Commentator	Position	Comment	Committee Response
			Office with the JV-200 Final Judgment, and the case has not been transmitted and family case number assigned, that parent may request that a family case number be issued at that time in order to facilitate the filing of an RFO for modification.	parties to file first, only the party expressly directed by the juvenile court should be permitted to transmit the juvenile court custody order to the designated superior court. Both the party and the court are designated in item 15 of the form, so that the clerk may easily determine whether the parent has come to the proper court.
			In addition, at the bottom of page 4 on the Clerk's Certificate of Mailing, there should be an option to note that the party was personally served at the time they appeared at the filing window and requested a family case number be issued.	The committee does not recommend the suggested change. Although this change makes sense, it appears that section 362.4 requires first-class mail service of the filed copy of the order to the originating court and the parents.
			The JV-287 form should be a mandatory filing in Family Court, along with the JV-200, whenever one of the parties has a confidential address so the Family Court Clerk can effectuate proper service.	The committee agrees that the family court should have access to the mailing address of each party bound by the juvenile court custody orders. The committee does not, however, recommend the suggested change. Section 316.1 requires each parent to designate a permanent mailing address to the juvenile court. This address is properly included on the juvenile custody order form. But no statute or rule requires that a party provide a home address. Under circumstances in which the disclosure of a home address would pose a safety risk, the party at risk should designate an alternative mailing address, such as a post office box or an attorney's address.
			Can more than one box be checked ordering multiple parties to transmit the order? If so, there may be multiple cases opened. It may	The committee intends that the court direct only one of the enumerated persons to transmit the order. The committee has inserted clarifying

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	Commentator	Position	Comment	Committee Response
			be best to have the Clerk transmit the order.	language into item 15.
			2. JV-200, front page. More space is needed to include family law case number.	The committee agrees and has expanded the space available to enter the family law case number.
			3. Mandatory use of the Final Judgment—Exit Order. The Final Judgment—Exit Order as proposed should be mandatory upon termination of all dependency cases in which the child is residing in a home with only one parent present to ensure the orders are clearly conveyed to the Family Court.	The committee agrees. Under section 362.4, the Judicial Council adopted form JV-200 for mandatory use. It remains a mandatory form under the proposed revisions, as well as under the proposed amendments to rule 5.700(c). If the juvenile court issues a custody order when terminating its jurisdiction, it must use form JV-200.
			Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court? Yes.	No response required.
			However, we recommend that the JV-206 be a standalone form and not an attachment to the JV-200.	The committee does not recommend the suggested change. The committee does not anticipate that the juvenile court would have occasion to use form JV-206 except as an attachment to a custody or visitation order issued on form JV-200 or JV-205. Form JV-206 depends on and explains findings and orders on these covering forms.
			Due to the nature of the information (e.g., the reasons for supervised or no visitation) the form should be a confidential form and kept in a confidential envelope within the file.	The committee does not recommend the suggested change. Form JV-206 should be attached to the custody and visitation orders issued on forms JV-200 and JV-205 and become a part of those orders. Section 362.4 requires the Judicial Council

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	Commentator	Position	Comment	Committee Response
			Should the council explore effective means of serving notice of the filing of the order other than first class mail? *Yes, if the statute [allows] for other means.	to "adopt forms for any custody … order issued [when the juvenile court terminates its jurisdiction]. These form orders shall not be confidential." Because form JV-206 will be attached to form JV-200 or JV-205, it is a "form order" as described by section 362.4. Legislative policy seems to require that the form be publicly available to the same extent as the principal order to which it is attached. The committee agrees that e-service should be explored. The Court Technology Advisory Committee (CTAC) circulated a separate proposal, SPR15-32, to make technical amendments to the rules of court to facilitate e-business, e-filing, and e-service. Because section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents, an amendment or revision eliminating that requirement would be substantive and must await the next phase of the Rules Modernization Project.
11.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers by Blanca Escobedo, Principal Administrative Analyst	AM	**Are there specific changes that would improve the rules and forms in this proposal?** If there is a *no visitation* or *monitored visitation* order, the JV-206 should be a mandatory form.	The committee does not recommend the suggested change. Forms JV-200 and JV-205 are mandatory. Each of these forms requires the juvenile court to specify its reasons for ordering no visitation (JV-200, items 4 and 5) or supervised (JV-205, item 3) on either form JV-206 or another attachment. Many courts already have local procedures and

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	Commentator	Position	Comment	Committee Response
				forms in place for specifying these reasons. Approving form JV-206 for optional use will permit these courts to continue to use their existing procedures and, at the same time, will give courts that do not have local forms a format with which to specify their reasons for limiting or denying visitation.
			Our local DCSS has requested our Court not file exit orders on DCSS cases because it creates a problem when/if they file a dismissal. If the only open case is a DCSS case, should exit orders be filed on that case? We recommend adding this clarification to CRC 5.700(b).	The committee has modified its recommendation to specify, in rules 5.475 and 5.700, that a juvenile court custody order should not be filed in a pending governmental child support case unless custody issues have already been addressed in that case. If no other family law custody proceeding is pending and no custody issues have been addressed in the child support proceeding, the receiving court should open a new family law custody proceeding and file the juvenile court order therein.
			Case number boxes on forms JV-200, JV-205, and JV-206 are very small and cannot fit two different case numbers. Please expand or create separate boxes for the juvenile and family law case numbers.	The committee agrees with the suggested change and has expanded the space for entering case numbers.
			Custody Order—Juvenile-Final Judgment (JV-200)	
			o Page 1, header, there is not enough space to write the Family case number.	The committee agrees with the suggested change and has expanded the space for entering case numbers.
			o Page 1, item 3 does not have enough space to	The committee agrees with the suggested change

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	Commentator	Position	Comment	Committee Response
			write the name of the person who has legal custody, physical custody, and primary residence.	and has expanded the space for entering information in item 3.
			o Page 1, item 2 we recommend adding a title to this section. The definition/purpose gets lost because it's at the end of #2, which causes confusion.	The committee agrees with the suggested change and has added a title to item 2.
			o Page 2, item 9 we recommend juvenile courts attach parentage orders to the exit orders so they are also filed in family court case file.	The committee agrees with the suggested change and has revised item 9 to direct the attachment of parentage orders.
			o Page 3, items 11, 12, and 13 - recommend rewording to "Attachment _____" for flexibility rather than adding specific attachment numbers.	The committee does not recommend the suggested change. The attachment numbers correspond to the item numbers on the primary form, per Judicial Council protocol. That protocol is intended to prevent confusion regarding which items on the primary form are referenced by each item on the attachment. In other words, items on attachments should not be numbered consecutively, but rather according to the item on the primary form to which each corresponds.
			o Page 4, item 16(a) we recommend adding more space or instructing user to add an attachment to list additional attorneys when multiple children exist, as there will also be multiple attorneys.	The committee recommends revising item 16 to reflect the limited statutory duty of the clerk of the receiving court to send a filed copy of the order only to the parents and the originating juvenile court. Revised items 16 and 17 apply only to the receiving court. All parties to the juvenile court case and their respective attorneys will receive a copy of the juvenile custody order.

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	Commentator	Position	Comment	Committee Response
			o Page 4, recommend adding a section 16(i) to reflect the originating court. It gets lost without a line item and it may get missed.	The committee recognizes the risk of omitting the originating court in the existing format. In addition to reducing the number of persons whom the receiving court is required to send a filed copy, the committee has also proposed moving the originating court to the beginning of revised item 17 to reduce the chance of its omission.
			o Item #16(d): Should courts list children 12 years of age or over only or all children?	The committee recommends deleting item 16(d).
			o For courts that have juvenile and family law courts in close proximity, it should allow the use of internal mail service (not just certified mail).	The committee agrees that the superior court clerk should not be required to return the filed copy of the form to the originating juvenile court by first-class mail if the receiving court is a division of the originating court and an equally reliable and efficient method of transmitting documents among divisions is available. However, section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents. See also the response to the Los Angeles Superior Court's comment on e-service at page 34, above.
			Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court?	
			The JV-206 will document reasons for custody and visitation orders made by the juvenile court.	No response required.
			However, we recommend this be a required	See response to initial Superior Court of Orange

	Commentator	Position	Comment	Committee Response
			form when there is a *no visitation* or *monitored visitation* order made.	County comment at pages 34–35, above.
			Additionally, there are concerns in having the JV-206 becoming a public records once it's filed in family court because it contains sensitive information pertaining to the child(ren). We recommend the JV-206 be deemed a confidential document. If this change is approved, we also recommend revising JV-205, item 3, to reflect the JV-206 deemed a confidential document.	Please see the response to the comment by the Los Angeles Superior Court regarding confidentiality at pages 33–34, above.
			Should the council explore effective means of serving notice of the filing of the order other than first class mail?	
			First class mail is adequate for serving notice, but possible e-service options would be preferred.	Please see the response to the comment by the Los Angeles Superior Court on e-service at page 34, above.
			Would the proposal provide a cost savings?	
			We do not anticipate a cost savings with the implementation of this change.	No response required.
			What are the implementation requirements for courts? – for example, training staff (identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in the CMS, or modifying the CMS?	

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	Commentator	Position	Comment	Committee Response
			Revisions to juvenile and family law procedures will need to be made to reflect the use of the new/revised forms. Communication with judicial officers and stakeholders will be coordinated to share new forms and to remind them documents filed in family court are public records, if confidentiality recommendation is not adopted. CMS impact will be limited to the creation of a new docket code. **CRC 5.504(c) grants courts 1 year from their effective date to implement production of new/revised mandatory juvenile forms, could two months from JC approval of this proposal until its effective date provide sufficient time for implementation?** Two months is sufficient time to implement new forms.	Committee staff is available to provide technical assistance in the implementation of amended rules and new and revised Judicial Council forms. No response required.
12.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	**Rule 5.475**: The rule should specify in (a)(1)(B) and (b) in which division of the court the proceeding is to be opened and/or brought. **Rule 5.700**: The rule should specify in (d) in which division of the court the proceeding is to be opened.	The committee does not recommend the suggested changes. As circulated for comment, the rule specifies that the receiving court should open a family law file if no related proceeding is pending. The court should open the file in the division that hears proceedings under the Family Code, typically the family law division or family court. The committee agrees and proposes amending rule 5.700(d) to specify that the receiving court open a family law file if no related proceeding is pending.

Item number: SPR15-19

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 08, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: New Form and Revised Forms for Stepparent and Additional-Parent Adoptions

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kyanna Williams, 415-865-7911, kyanna.williams@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Approved December 10, 2014. Items #1 and 11:
Project description from annual agenda: Item #1: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of Assembly Bill 2344 (Ammiano; Stats. 2014, ch. 636) Among other things, creates a statutory form to establish the intent to be a legal parent or not when donating genetic material, and establishes the procedure for stepparent adoptions involving a spouse or partner who gave birth during the marriage or partnership, including exempting such adoptions from home visit and home study requirements.

Item #11: Review impact of Senate Bill 274 (Leno; Stats. 2013, ch. 564) on the branch and, as needed, consider any changes to rules, forms, or other policies that the council may need to consider as being required as a result of the legislation.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Assembly Bill 2344, the Modern Family Act (Stats. 2014, ch. 636), expedites adoptions for nonbiological parents. Senate Bill 274 (Stats. 2013, ch. 564) amended the Family Code to provide that a child may have a parent-child relationship with more than two parents. The Family and Juvenile Law Advisory Committee recommends the Judicial Council approve creation of one new adoption form (ADOPT-205) and revise four existing adoption forms (ADOPT-050, ADOPT-200, ADOPT-210, and ADOPT-215). The revisions and the new form are required to implement these new California laws.

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 27, 2015

Title
Family Law: New Form and Revised Forms for Stepparent and Additional-Parent Adoptions

Rules, Forms, Standards, or Statutes Affected
Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 21, 2015

Contact
Kyanna Williams, 415-865-7911
kyanna.williams@jud.ca.gov

Executive Summary

Assembly Bill 2344, the Modern Family Act (Stats. 2014, ch. 636), expedites adoptions for nonbiological parents. Senate Bill 274 (Stats. 2013, ch. 564) amended the Family Code to provide that a child may have a parent-child relationship with more than two parents. The Family and Juvenile Law Advisory Committee recommends the Judicial Council approve creation of one new adoption form and revise four existing adoption forms. The revisions and the new form are required to implement these new California laws.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Approve *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) as a new optional form; and

2. Revise *How to Adopt a Child in California* (form ADOPT-050-INFO), *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) to help implement Assembly Bill 2344 and Senate Bill 274.

The proposed new and amended forms are attached at pages 12 – 25.

Previous Council Action

The *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) were first adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings. The forms were revised in October 1999 in response to feedback from users to better meet the needs of courts, practitioners, and petitioners.

The council revised the forms in April 2000 to facilitate the provision of information about the Adoption Assistance Program to adoptive parents. ADOPT-200 and ADOPT-215 were revised in April 2001 to provide information on post-adoption contact. In November 2002, the forms were further revised to adopt plain language and to comply with Assembly Bill 25, which included provisions allowing domestic partners to adopt a partner's child using the stepparent adoption process. These plain-language forms were again revised in October 2003 to incorporate feedback from users and improve the effectiveness and ease of use of the forms.

The forms were revised again in April 2010 to implement the provisions of Assembly Bill 1325, tribal-sponsored legislation allowing the adoption of Indian children who are dependents of the court through the custom, traditions, or law of the child's tribe without requiring termination of parental rights. ADOPT-200 and ADOPT-215 were revised in July 2013 to implement legislative changes and numerous suggestions from court personnel and court users.

The council adopted the information sheet, *How to Adopt a Child in California* (form ADOPT-050) in 1999 to provide basic information on the adoption process. ADOPT-050 was revised in April, 2010 to list certain forms necessary to file with the adoption request to let the court know that an inquiry into the child's possible Indian ancestry had been made.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205) is a new, optional form that the committee recommends the Judicial Council approve. Accordingly, there has been no prior council action on this form.

Rationale for Recommendation

The committee recommends the creation of one new adoption form and revisions to four existing adoption forms to implement these new laws. These changes will clarify the process for stepparent and additional-parent adoptions. Minor changes would also be made throughout the forms to improve their overall clarity and usability.

- The changes will benefit families undergoing stepparent and additional-parent adoptions by making Judicial Council adoption forms consistent with the new laws and more applicable to their adoption proceedings while making it easier for those families to provide the information the court requires.
- All families using these adoption forms will benefit from changes that improve the forms' clarity and usability.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205)

New Family Code section 9000.5 requires litigants in stepparent adoptions where one of the spouses or partners gave birth to the child during the marriage or domestic partnership to provide the following information:

1) A copy of the parties' marriage certificate, registered domestic partner certificate, or civil union from another jurisdiction;
2) A copy of the child's birth certificate; and
3) Declarations by the parent who gave birth and the spouse or partner who is adopting explaining the circumstances of the child's conception in detail sufficient to identify whether there may be other persons with a claim to parentage of the child who are required to be provided notice of, or who must consent to, the adoption.

(Fam. Code, § 9000.5(c)(1)–(3).)

The proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) would make it easier for the stepparent seeking adoption to provide all of this required information, which in turn would make it easier for courts to process these cases. This optional form would be attached to the Adoption Request (form ADOPT-200) in stepparent adoption cases involving a spouse or partner who gave birth to the child during the union.

How to Adopt a Child in California (form ADOPT-050-INFO)

ADOPT-050 is an existing Judicial Council instructional form that provides an overview of the adoption process and Judicial Council forms needed for this process. (One of the proposed revisions adds "-INFO" to the form number to readily identify it as an informational form.) Page 1 of this form addresses stepparent/domestic partner adoptions. Under this proposal, form ADOPT-050 would be revised to include the proposed *Declaration Confirming Parentage in Stepparent Adoption* (ADOPT-205) in the list of forms to be completed in stepparent/domestic partner adoptions.

Language would be added near the top of page 1 advising court users that adoption may not be necessary for some families and encouraging families to seek legal advice before beginning any adoption. Court users would also be encouraged to visit the California Courts Online Self-Help Center adoption page (*www.courts.ca.gov/selfhelp-adoption.htm*) to get copies of forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on their own if they cannot afford an attorney.

Family Code section 9000.5 establishes that stepparent adoptions involving a spouse or partner who gave birth to the child during the union are exempt from certain requirements generally applicable to adoptions, including the requirement that a home visit or home study be performed and that the prospective adoptive parent appear before the court, unless otherwise ordered by the court for good cause. Under this proposal, page 1 would include language to help families determine whether they qualify for the streamlined adoption proceedings for stepparent adoptions to confirm parentage established under Family Code section 9000.5 or whether they must go through the longer process for stepparent adoptions that do not fall under that code section.

Page 2 of form ADOPT-050 provides an overview of the process and Judicial Council forms needed for independent, agency, or international adoptions. Language would be added near the top of page 2 to clarify that in accordance with Family Code section 8617(b), enacted by SB 274, if the existing parents and adopting parents agree, in independent adoptions, the rights of existing parent(s) do not have to terminate. This language should alert court users of their ability to add additional parents as provided under Family Code section 8617(b).

Adoption Request **(form ADOPT-200)**

ADOPT-200 is the existing mandatory Judicial Council form used by the adopting parent to provide information, including identifying details about the child, the adopting parent's relationship to the child, and the type of adoption taking place. Under this proposal, item 3 on form ADOPT-200 would be amended to conform to the prospective adoptive parent provisions of Family Code section 8617(b) by allowing the prospective adoptive parent to indicate that they are seeking an independent adoption involving "Additional Parent(s)." Item 3 would also be amended to allow the adopting parents, in stepparent adoptions to confirm parentage, to indicate that they were in a union with the parent who gave birth to the child at the time the child was born.

Item 11 provides details regarding independent adoptions. The committee proposes adding a new item 11(d) that allows users to indicate that they are petitioning for an independent adoption involving additional parent(s), that all persons with existing parental rights agree to the adoption and will retain their existing rights, and that an agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

Item 12 provides details regarding stepparent adoptions. A new item 12(d) would be added that provides litigants the opportunity to indicate that they are seeking a stepparent adoption to confirm their parentage, that at the time the child was born they were married to or in a state-registered domestic partnership with the parent who gave birth, and that they remain in that union. Item 12(d) would also provide litigants the opportunity to indicate that they have attached either form ADOPT-205 or an equivalent declaration describing the circumstances of the child's conception.

Item 13 provides details regarding the manner in which the child was conceived. Item 13 currently states, "There is no presumed or biological father because the child was conceived by artificial insemination using semen provided to a medical doctor or a sperm bank. (Fam. Code, § 7613.)". This proposal would reword item 13 to state that the child was conceived by assisted reproduction in compliance with Family Code section 7613. This revision should improve clarity and make item 13 applicable to additional methods of assisted reproduction.

Each of the changes proposed above should aid in processing stepparent or additional parent adoptions and result in a decreased need for court assistance and case management.

Adoption Agreement **(form ADOPT-210)**

ADOPT-210 is the existing mandatory Judicial Council form used for the adopting and legal parents and the child (if over 12 years old) to indicate their consent to the adoption. Although adoptions typically include a hearing, new Family Code section 9000.5 establishes that in stepparent adoptions involving a spouse or partner who gave birth to the child during the union, no hearing is required unless otherwise ordered by the court for good cause. This proposal adds language to conform form ADOPT-210 to the requirements of section 9000.5. This proposal also adds general signing instructions to page 1 to help clarify some of the differences in how court users may sign this form.

Although the parties may sign form ADOPT-210 outside of a court hearing, section 9003 of the Family Code requires that the signing be performed in front of a witness or notary. This proposal would add witnessing instructions, space to include identifying information about the witness, and space for the witness to date and sign the form in accordance with Family Code section 9003.

Adoption Order **(form ADOPT-215)**

ADOPT-215 is the existing mandatory order form that the judge signs if the adoption is approved. As discussed above, under new Family Code section 9000.5, stepparent adoptions are exempt from hearings unless otherwise ordered by the court for good cause. This proposal creates a revised item 4 on ADOPT-215 by combining the adoption hearing information referenced under items 4 and 5 on the existing form. The proposal adds language to the bottom of revised item 4 indicating that the adopting parent is waiving the hearing pursuant to Family Code section 9000.5.

A new item 12 provides space for the judge to indicate that the matter concerns an independent adoption involving an additional parent(s), that all persons with existing parental rights agreed to the adoption and will retain their existing rights, and that an agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) was filed with the court. The remaining items are renumbered accordingly.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation-to-comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, CASA programs, and other juvenile and family law professionals. The proposal was also sent to the National Center for Lesbian Rights. Seven individuals or organizations provided comment; two agreed with the proposal, and five agreed if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 26 – 44.

How to Adopt a Child in California (form ADOPT-050-INFO)

Four commentators made specific comments about form ADOPT-050. Two commentators suggested minor changes to clarify the instructions on ADOPT-050, most of which the committee agreed with and incorporated. The committee also incorporated several small formatting changes throughout the form that the committee felt improved clarity and readability.

One commentator suggested adding the following statement to the top of page 1"If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child." The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is also outside of the scope of this proposal.

One commentator suggested clarifying, under item 1 on page 1, that families seeking stepparent adoptions may submit either ADOPT-205 or an equivalent declaration. The committee agreed with this change and incorporated it.

In the invitation to comment the committee asked whether adding the word "INFO" would further clarify for court users that this is an informational form. All four commentators agreed that the word "INFO" should be added, so that the form be renamed *How to Adopt a Child in California* (form ADOPT-050-INFO). The committee incorporated this change.

Adoption Request (form ADOPT-200)

Three commentators made specific comments about form ADOPT-200. Referencing additional parent adoptions, one commentator suggested adding language under item 11 indicating that, "…the parents consent to the adoption but will be keeping their parental rights." The committee agreed with this suggestion and incorporated changes similar to those suggested under a new item 11(d).

Paragraph 12(d) provides court users, who are undergoing a stepparent adoption to confirm parentage, with an opportunity to indicate that they have attached a declaration describing the circumstances of the child's conception. All three commentators thought that paragraph 12(d) should be revised to clarify the specific declaration the court user was attaching. The committee agreed and revised paragraph 12(d) in a way that addressed each suggestion.

One commentator noted that Family Code section 7613 is expected to be revised soon and suggested rewording item 13 so that it reads, "The child was conceived by assisted reproduction in compliance with Family Code section 7613." The committee incorporated this change.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205)

Five commentators made specific comments about proposed form ADOPT-205, which is an optional declaration form to assist court users in explaining circumstances related to the child's conception. Three commentators suggested minor changes to improve the readability and clarity of item 2, which addresses the relationship between the birth parent and the adopting parent. One commentator suggested that items 2(a) and 2(b) be revised to indicate that the parents remain in the union. Another commentator suggested that in item 2 the parent seeking to confirm parentage be referred to as the "adopting parent" as opposed to the "stepparent." The committee agreed with and incorporated all of these suggestions.

Item 5 addresses the method of conception that the family used. In the invitation to comment the committee drafted item 5 in a way that the committee anticipated would provide for all potential methods of conception. One commentator suggested expanding item 5(b) to include information about the origin of any donated ova. Another commentator questioned the applicability of item 5(c)(2), which addressed circumstances where the child was not conceived through assisted reproduction and the biological mother consents to the adoption and termination of her parental rights. A third commentator thought that 5(c) would confuse self-represented litigants and suggested extensive revisions to streamline and simplify item 5 as a whole. The committee agreed with the latter suggestion and deleted 5(a)–(c), opting instead for a singular item 5 that prompts the court user to describe, in his or her own words, the manner of the child's conception. By incorporating this change the committee also addressed the former concern about the applicability of item 5(c)(2) and made it easier for the court user to explain the origin of any donated sperm or ova.

ADOPT-205 instructs court users to attach it to the *Adoption Request* (form ADOPT-200). One commentator suggested that, since ADOPT-205 serves as an attachment, it should be formatted

similarly to other Judicial Council attachment forms. After reviewing several Judicial Council attachment forms, the committee incorporated this suggestion by reorganizing the top of the form and removing the file-stamp section.

Adoption Agreement (form ADOPT-210)

Two commentators made specific comments about form ADOPT-210, which provides the court with information about the adopting parent(s), the child to be adopted, and provides space for necessary persons to sign indicating their consent to the adoption.

Family Code section 8603 provides that a person who is married or in a domestic partnership may adopt, so long as the other spouse or domestic partner consents. The consenting spouse or domestic partner can provide consent without establishing any parental rights or responsibilities toward the child. Item 4(a) provides for the signature of the adopting spouse while item 4(b) provides for the signature of the consenting spouse. One commentator suggested adding language to item 4(b) to clarify that the consenting spouse is not a party to the adoption. The committee agreed with this suggestion and incorporated it.

Although adoptions typically include a hearing, new Family Code section 9000.5 establishes that in stepparent adoptions involving a spouse or partner who gave birth to the child during the union, no hearing is required unless otherwise ordered by the court for good cause. Under Family Code section 9000.5, these families are allowed to sign ADOPT-210 outside of a court hearing, but Family Code section 9003 requires that the signing be performed in front of a witness or notary. To comply with both statutes, in the invitation to comment the committee proposed adding witnessing and notary instructions specifically for those stepparent adoptions to confirm parentage where no hearing is required.

Referencing the witnessing and notarization instructions under item 8, one commentator wrote, "Family Code section 8613.5 also allows a personal appearance to be waived. Our court has a person pre-sign the ADOPT-210 in front of a notary in that situation. The new language on the form should allow for that." Also referencing item 8, the other commentator wrote, "[The] language should be modified to clarify that if the form is signed outside of a hearing it needs to be in front of a notary. Also it should clarify that this can be done for Family Code section 9000.5 adoptions to confirm parentage or in cases where authorized by the court under Family Code section 8613. …"

Family Code sections 8613 and 8613.5 are different in that they do not actually provide for waiver of the hearing. Rather, both code sections allow the court, where it has found personal appearance by the prospective adoptive parent to be impossible or impracticable, to waive the prospective adopting parent's in-person appearance and instead allow that party's counsel to appear on his or her behalf. Both code sections explain that a power of attorney giving counsel permission to appear in this manner must be filed with court and then go on to outline various witnessing and notarization options.

The committee agrees that some prospective adoptive parents may benefit from having sections 8613 and 8613.5 power of attorney and witnessing options incorporated into ADOPT-210 but finds that the problems associated with incorporating these changes outweigh the potential benefits. Extensive changes to ADOPT-210 would be necessary in order to effectively incorporate the power of attorney and witnessing options outlined under those statutes. The committee does not recommend accepting either of the above suggestions as doing so would be outside the scope of this proposal, is not required to comply with recent statutory changes, and would complicate ADOPT-210 and make it more confusing for self-represented court users. In addition, prospective adoptive parents seeking appearance by counsel in lieu of personal appearance by definition have an attorney to make that appearance. That attorney can request waiver of the adoptive parent's appearance and draft and attach the required power of attorney.

The committee agreed with and incorporated one commentator's suggestion to slightly reorder items 8(a) and 8(b). Item 8(a) now explains the witnessing and notarization options in stepparent adoptions to confirm parentage while item 8(b) provides space for the judge's signature in cases that involve an adoption hearing.

Adoption Order **(form ADOPT-215)**

Two commentators made specific comments about form ADOPT-215, which provides identifying information about the adopting parent(s), the child, hearing details, and an order signed by the judge to finalize the adoption. One commentator suggested adding language to the order specific to additional parent adoptions. While there is no legal requirement that the adoption order always identify the underlying type of adoption, the committee accepted this recommendation as it may be useful for the court to make specific findings related to requirements unique to additional parent adoptions. The proposal now includes a new paragraph 12 with space for the judge to indicate that it is an independent adoption, that all persons with existing parental rights agree to the adoption and will maintain their existing parental rights, and that an agreement to this effect was filed with the court.

One commentator wrote, "The Adoption Order does not currently state the child's pre-adoption identifying information on the same form as the order to change this information. This makes the process of applying for passports and the like very difficult as there is nowhere that has a judge's signature that appropriately links the child as named before the adoption to the child as named after the adoption. This was present in older versions of the forms and needs to be re-inserted." The committee considered this suggestion but decided not to recommend incorporating it as the Family Code prohibits the inclusion of the child's name before adoption in the adoption order except in some relative adoptions petitioned under Family Code section 8714.5. Item 7 (formerly numbered as item 8), which was included in 2001 to conform to the law, provides space to include the child's name before adoption for those cases petitioned under Family Code section 8714.5.

Alternatives

The committee considered proposing a new set of forms for stepparent adoptions that specifically conformed to the procedures set forth in new Family Code section 9000.5. This would have included new versions of *How to Adopt a Child in California* (form ADOPT-050); *Adoption Request* (form ADOPT-200); *Adoption Agreement* (form ADOPT-210); and *Adoption Order* (form ADOPT-215). The committee determined, however, that creation of a separate set of stepparent adoption forms would be somewhat duplicative and could cause confusion for stepparent litigants whose adoptions are not addressed by Family Code section 9000.5. The committee also determined that courts may benefit from having fewer types of adoption forms to process. The committee opted for maintaining a more unified set of adoption forms and determined that clarification of the processes could be met through modification of existing forms.

With respect to the proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205), the committee determined that no existing declaration forms can be reasonably modified to address parentage as required by Family Code section 9000.5. In addition, adding the proposed declaration language to existing adoption forms would make those forms lengthier and less understandable to litigants. The committee determined that, in order to achieve the goal of clarifying stepparent adoptions under Family Code section 9000.5, it is necessary to develop a new declaration form that specifically addresses cases involving a spouse or partner who gave birth to the child during the union.

The committee also considered alternatives such as education, training, guidelines, or best practices but determined that such alternatives do not address the primary goal of making Judicial Council adoption forms more applicable to stepparent and additional-parent adoption proceedings.

Policy implications

The proposed changes benefit families undergoing stepparent and additional-parent adoptions by making Judicial Council adoption forms consistent with new law and more applicable to their adoption proceedings while making it easier for those families to provide the information the court requires. In addition, all families using these adoption forms will benefit from the minor changes that improve the clarity and usability of the forms.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of creating a new form and revising four existing forms. These costs are outweighed by the efficiency benefits of making it easier for litigants to provide the information that the court needs for these cases in a concise and structured manner. This should aid in processing these adoption cases and result in a decreased need for court assistance and case management.

Attachments and Links

1. Forms ADOPT-050-INFO, ADOPT-200, ADOPT-205, ADOPT-210, and ADOPT-215, at pages 12 – 25
2. Chart of comments, at pages 26 – 44
3. Assembly Bill 2344, available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2344&search_keywords=*
4. Senate Bill 274, available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB274&search_keywords=*

ADOPT-050-INFO How to Adopt a Child in California

General Information on Adopions

Seek legal advice about your family's options before beginning any adoption. Every family is different and adoption may not be necessary for some families.

Visit the California Court's Online Self-Help Center adoption page to get copies of adoption forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on your own if you cannot afford a lawyer: ***www.courts.ca.gov/selfhelp-adoption.htm*.** You can also get copies of adoption forms at your local court clerk's office.

In California there are several kinds of adoption. This form includes instructions for:

- Stepparent/domestic partner adoptions *(page 1)*
- Adoption of an Indian *(Native American)* child *(page 2)*
- Independent, agency, and international adoptions *(page 2)*
- Open adoptions *(page 2)*

Stepparent/Domestic Partner Adoptions

Answer these questions to get started.

- Was the adopting parent in a union with the birth parent at the time the child was born? *Check one* ☐ Yes ☐ No
  A "union" means a:
  - *Marriage;*
  - *California registered domestic partnership; or*
  - *Registered domestic partnership or civil union from out of state that is legally equivalent to a marriage.*
- Is the adopting parent still in a union with the birth parent? *Check one* ☐ Yes ☐ No
  (See the above explanation of a "union")

If you answered "No" to **either** question, complete steps 1-4 below for a *Stepparent/Domestic Partner Adoption.*

If you answered "YES" to **both** question, complete items 1 and 2, only, for a *Stepparent Adoption to Confirm Parentage.*

1 Fill out court forms.

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may have Indian ancestry.
☐ ICWA-020	*Parental Notification of Indian Status*	This proves that the child's parents have been asked about Indian ancestry.
☐ ADOPT-205 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage. See above for more information on this type of adoption. Both the birth parent and the adopting parent must complete a separate declaration.

2 Take your forms to court.

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

3 The social worker writes a report.

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

Your name: _____ **Case Number:**

4 Go to court on the date of your hearing.

Bring:

☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215

☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Independent, Agency, or International Adoptions

If this is an independent, agency, or international adoption, fill out and file the forms listed in steps 1-4 below.
Note: The rights of the existing parents usually terminate with adoptions. In an independent adoption, if the existing and adopting parents agree, the rights of the existing parent(s) do not have to be terminated.

1 Fill out court forms.

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may have Indian ancestry.
☐ ICWA-020	*Parental Notification of Indian Status*	This proves that the child's parents have been asked about Indian ancestry.

2 Take your forms to court.

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

3 The social worker writes a report.

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing.

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215 ☐ Form ADOPT-230

☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

"Open" Adoption

If you want your child to have contact with his or her birth family, request an "open" adoption. Form ADOPT-310 describes the type of contact the birth family will have with your child. In addition to the forms listed in 1 on pages 1 and 2, fill out and bring to court Form ADOPT-310.

Adopting an Indian Child

In addition to the forms listed in (1) on pages 1 and 2, fill out and bring to court:

☐ Form ADOPT-220 *Adoption of Indian Child*

☐ Form ADOPT-225 *Parent of Indian Child Agrees to End Parental Rights*

If you are adopting through a tribal customary adoption:

☐ Attach a copy of the tribal customary adoption order to *Adoption Request,* ADOPT-200

☐ Attach a copy of the tribal customary adoption order to the *Adoption Order,* ADOPT-215

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

If you are adopting more than one child, fill out an adoption request for each child.

1 Your name(s) *(adopting parent(s)):*

a. _____

b. _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any): (Name, address, telephone numbers, e-mail address, and State Bar number):*

_____

_____

_____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 I/We filed this *Adoption Request* in this court because it is in the county *(check all that apply):*

- ☐ Where the adopting parent(s) reside;
- ☐ Where the child was born or resides at the time of filing;
- ☐ Where an office of the agency that placed the child for adoption is located;
- ☐ Where an office of the department or public adoption agency that is investigating the petition is located;
- ☐ Where a placing birth parent or parents resided when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ Where a placing birth parent or parents resided when the petition was filed;
- ☐ Where the child was freed for adoption.

(If the child is a dependent of the court, the Adoption Request *must be filed in the county where the child was freed for adoption or the county where the adopting parent(s) reside(s). See Fam. Code, § 8714.)*

3 Type of adoption *(check one):*

- ☐ Agency *(name):* _____
  - ☐ Relative ☐ Nonrelative
- ☐ Joinder will be filed. ☐ Joinder is being filed at same time as this *Adoption Request*.
- ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent
  - ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):*

  _____
  - ☐ This adoption may be subject to the Hague Adoption Convention *(form ADOPT-216 must be filed with this request).*

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date →

Hearing is set for:

Date: _____

Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

Your name: _____ **Case Number:**

☐ Stepparent

☐ Stepparent adoption to confirm parentage. *(Select this option if you were married to or in a state-registered domestic partnership with the birth parent at the time the child was born **and** you remain in that union.)*

4 Information about the child:

a. The child's new name will be: _____

b. ☐ Boy ☐ Girl

c. Date of birth: _____ Age: _____

d. Child's address *(if different from yours):*
Street: _____
City: _____ State: _____ Zip: _____

e. Place of birth *(if known):*
City: _____
State: _____ Country: _____

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. Date child was placed in your physical care: _____

5 Child's name before adoption *(Fill out ONLY if this is an independent, stepparent, or tribal customary adoption):*

_____

6 Does the child have a legal guardian? ☐ Yes ☐ No
(If yes, attach a copy of the Letters of Guardianship and fill out below):

a. Date guardianship ordered: _____
b. County: _____
c. Case number: _____

7 Is the child a dependent of the court? ☐ Yes ☐ No
(*If yes, fill out below):*

Juvenile case number: _____
County: _____

8 Child may have Indian ancestry: ☐ Yes ☐ No

a. Whether you answered "Yes" or "No," you must fill out and attach *Indian Child Inquiry Attachment* (form ICWA-010(A)) and *Parental Notification of Indian Status* (form ICWA-020) or other proof that ICWA inquiry has been completed in accordance with rule 5.481(a).

b. If you answered "Yes," you must also fill out and attach *Adoption of Indian Child* (form ADOPT-220) if, after notice, it is determined that ICWA does apply to the child.

9 Names of birth parents, if known:

a. Mother: _____ b. Father: _____

10 **If this is an agency adoption:**

a. I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that might be available.
☐ Yes ☐ No

b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived.
☐ Yes ☐ No *(If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived):*

_____

_____

c. This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption. ☐ Yes ☐ No

d. This is an adoption conducted under the requirements of the Hague Adoption Convention and the child will be moving or has already moved with the adopting parent(s) to another Hague Convention member country at the conclusion of this adoption. ☐ Yes ☐ No If yes, child will be moving or has moved to *(name of country):* _____ and adopting parent(s): ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

11 **If this is an independent adoption:**

a. A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.) ☐ Yes ☐ No

b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form. ☐ Yes ☐ No *(If no, list the name and relationship to child of each person who has not signed the agreement form):*

_____

c. I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption. ☐ Yes ☐ No

d. ☐ This is an independent adoption involving additional parent(s): ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights. ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

12 **If this is a stepparent adoption:**

a. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent

b. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent

c. The adopting parents were married on **or** The domestic partnership was registered on *(date):* _____ *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

d. ☐ I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth and we remain in that union.

see attached ☐ Form ADOPT-205 or ☐ Declaration describing the circumstances of the child's conception

13 ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

14 **Contact after adoption**

Contact After Adoption Agreement (form ADOPT-310) ☐ is attached ☐ will not be used

☐ will be filed at least 30 days before the adoption hearing ☐ is undecided at this time.

☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

15 **Consent for adoption is not necessary because *(complete all sections that apply to your adoption):***

a. ☐ The consent of the ☐ birth parent ☐ presumed father is not necessary because *(check the applicable reasons under Fam. Code, § 8606):*

(1) ☐ The parent has been judicially deprived of the custody and control of the child.

(2) ☐ The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.

(3) ☐ The parent has deserted the child without providing information to identify the child.
(4) ☐ The parent has relinquished the child under Family Code section 8700.
(5) ☐ The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. ☐ A court ended the parental rights of:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Enter the date of the court order ending parental rights and attach a copy of the order.)

c. ☐ The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Attach a copy of the order.)

d. ☐ I/We will ask the court to end the parental rights of *(attach copy of* Petition to Terminate Parental Rights *or* Application for Freedom From Parental Custody, *if filed):*

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

e. ☐ Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education for one year or more when able to do so. (Fam. Code, § 8604(b).)

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

f. ☐ The child has been abandoned as follows:

(1) ☐ The child has been left by the child's parent or parents with no way to identify the child.

(2) ☐ The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(3) ☐ One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child's support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes were checked, adopting parent must also check item 15(d) and file an Application for Freedom from Parental Custody. *See Fam. Code, § 7822(a).)*

g. ☐ The consent of the presumed father is not required because he did not become a presumed father before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a).)

h. ☐ Each of the following persons with parental rights has died:
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

16 **Suitability for adoption**
Each adopting parent:
a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as his or her own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

17 ☐ I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

☐ I/We ask the court to date its order approving the adoption as of an earlier date *(date):* _____ for the following reason (Fam. Code, § 8601.5):

_____

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

☐ This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

18 If a lawyer is representing you in this case, he or she must sign here:

Date: _____ _____ ▶ _____
Type or print lawyer's name *Signature of lawyer for adopting parent(s)*

19 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit www.coveredca.com. Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

Your name: _____ Case Number:

Declaration Confirming Parentage in Stepparent Adoption

☐ This form is attached to Form ADOPT-200, *Adoption Request.*

This optional form may be attached to the form ADOPT-200 if the adopting parent was married to or in a state-registered domestic partnership with the parent who gave birth to the child at the time the child was born. You may instead attach a declaration in another format containing substantially the same information. The birth parent and the adopting parent must complete separate declarations.

1 I *(write your name)* _____ declare as follows:

2 Relationship between the birth parent and the adopting parent seeking to confirm parentage *(check one):*

a. ☐ I am the parent who gave birth to the child to be adopted. I married or entered into a state-registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) with the adopting parent who is seeking to confirm parentage *(name of adopting parent seeking to confirm parentage)*

_____ and we remain in that union.

b. ☐ I am the adopting parent seeking to confirm parentage. I married or entered into a state-registered domestic partnership with the parent who gave birth *(name of parent who gave birth to the child to be adopted)* _____ _____ and we remain in that union.

3 We were married/registered as domestic partners on *(date you entered into your earliest union)* _____, before our child was born. A copy of our marriage certificate, registered domestic partner certificate, or certificate of out-of-state domestic partnership or civil union is attached.

4 Our child *(name of child to be adopted)* _____ was born on *(date)* _____. A copy of our child's birth certificate is attached.

5 ☐ Our child was conceived through assisted reproduction in compliance with Family Code section 7613 as described below (*Describe how your child was conceived and whether you used a known or unknown donor. A letter from your sperm bank or a written donor agreement verifying conception by assisted reproduction should be attached. If you used a known donor without a sperm bank or written donor agreement, you should seek legal advice before submitting this form):*

6 ☐ *If there are any other persons who are or may be the child's parents, describe these persons' relationship to the child, including their names, the ways in which these persons act as a parent to the child, and whether these persons consent to the adoption:*

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

Date: _____ _____ ▶ _____

Type or print your name *Sign name*

ADOPT-210 Adoption Agreement

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) Your name(s) *(adopting parent(s)):*

a. _____

b. _____

Relationship to child: _____

Address *(skip this if you have a lawyer):* _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any): (Name, address, telephone numbers, e-mail address, and State Bar number):* _____

(2) Child's name before adoption: _____

Child's name after adoption: _____

Date of birth: _____ Age: _____

Signing this form:

- *Adoptions usually require a hearing where most signatures on this form must be completed in front of a judge.*
- *Item 4(b) maybe signed before the hearing.*
- *If this is a stepparent adoption to confirm parentage involving a spouse or registered domestic partner who gave birth to the child during the union, usually no hearing is required and you may sign this form in front of a proper witness. See paragraph 8(a) for instructions on having your signature properly witnessed. If the court orders a hearing in this case, you must sign this form at the hearing in front of the judge.*
- *All other signatures must be signed at a hearing, in front of a judge, unless waived by the judge for good cause.*

(3) I am the child listed in (2) and I agree to the adoption. *(Not required in the case of a tribal customary adoption under Welf. & Inst. Code, § 366.24.)*

Date: _____ _____ ▶ _____

Type or print your name *Signature of child (child must sign if 12 or older; optional if child is under 12)*

(4) *If there is only **one** adopting parent, read and sign below.*

a. I am the adopting parent listed in (1), and I agree that the child will:

(1) Be adopted and treated as my legal child *(Fam. Code, § 8612(b)) and*

(2) Have the same rights as a natural child born to me, including the right to inherit my estate.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

b. I am married to, or the registered domestic partner of, the adopting parent listed in (1), and I am not a party to this adoption. I agree to his or her adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of spouse or registered domestic partner (may be signed before hearing)*

5 *If there are **two** adopting parents, read and sign below.* We are the adopting parents listed in (1), and we agree that the child will:

a. Be adopted and treated as our legal child *(Fam. Code, § 8612(b)) and*
b. Have the same rights as a natural child born to us, including the right to inherit our estate.

I agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

I agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

6 *If this is a tribal customary adoption, read and sign below.* I/we are the adopting parents listed in (1), and I/we agree that the child will:

a. Be adopted and treated as my/our legal child *(Fam. Code, § 8612(b)) and*
b. Have the same rights and duties stated in the tribal customary adoption order dated _____ *(copy attached).*

If two adopting parents, we agree to the other parent's adoption of the child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

7 *For stepparent adoptions only:*
If you are the legal parent of the child listed in (2), read and sign below.
I am the legal parent of the child and am the spouse or registered domestic partner of the adopting parent listed in (1), and I agree to his or her adoption of my child.

Date: _____ _____ ▶ _____
Type or print your name *Signature of legal parent*

Your name: _____ **Case Number:**

8 **Executed *(check one):***

a. ☐ This form was signed outside of a hearing. *(Select this option only for a stepparent adoption involving a spouse or partner who gave birth to the child during the union, where the court did not order a hearing for good cause.)*

(1) ☐ This form was signed **in** California

This form was signed in front of the following type of witness *(check one):*

- ☐ notary public *(the notary acknowledgment is attached)*
- ☐ court clerk
- ☐ probation officer
- ☐ qualified court investigator
- ☐ authorized representative of a licensed adoption agency
- ☐ county welfare department staff member

(2) ☐ This form was signed **outside** of California

This form was signed in front of the following type of witness *(check one):*

- ☐ notary public *(the notary acknowledgment is attached)*
- ☐ other person authorized to perform notarial acts *(proof of notarization is attached)*
- ☐ authorized representative of an adoption agency that is licensed in the state or country where this form was signed

(3) Witness information

This form was signed in: *(county)* _____ *(state)* _____ *(country)* _____

Name of witness: _____

Agency witness works for *(if applicable):* _____

Witness signature: _____

Date: _____

b. ☐ This form was signed at a hearing in front of a judicial officer. *(The judge will date and sign the form below.)*

Date: _____

_____

Judge (or Judicial Officer)

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Your name *(adopting parent(s)):*

a. _____

b. _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Daytime telephone number: _____

Lawyer *(if any): (Name, address, telephone number, e-mail address, and State Bar number):* _____

Fill in court name and street address:

Superior Court of California, County of

2 Child's name after adoption: _____

First name: _____

Middle name: _____

Last name: _____

Date of birth: _____ Age: _____

Place of birth *(if known):* _____

City: _____ State: _____ Country: _____

Court fills in case number when form is filed.

Case Number:

3 Name of adoption agency *(if any):* _____

4 **Hearing details**

Hearing date: _____ Dept.: _____ Div.: _____ Rm.: _____

Judicial Officer: _____ Clerk's office telephone number: _____

People present at the hearing:

☐ Adopting parent(s) ☐ Lawyer for adopting parent(s)

☐ Child ☐ Child's lawyer

☐ Parent keeping parental rights: _____

☐ Other people present *(list each name and relationship to child):*

a. _____

b. _____

If there are more names, attach a sheet of paper, write "ADOPT-215, Item 4" at the top, and list the additional names and each person's relationship to child.

☐ *The hearing is waived pursuant to Family Code section 9000.5 (Check this box only if this is an adoption confirming parentage of a stepparent who was married or in a state-registered domestic partnership with the parent who gave birth at the time the child was born.)*

Judge will fill out section below.

5 The judge finds that the child *(check all that apply):*

a. ☐ Is 12 or older and agrees to the adoption

b. ☐ Is under 12

c. ☐ Is not required to consent because this is a tribal customary adoption.

Your name: _____ **Case Number:**

6 The judge has reviewed the report and other documents and evidence and finds that each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Fam. Code, § 8601(b);
b. Will treat the child as his or her own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

7 ☐ This case is an adoption by a relative petitioned under Family Code section 8714.5.
☐ The adopting relative ☐ The child, who is 12 or older, has requested that the child's name before adoption be listed on this order. (Fam. Code, § 8714.5(g).)
The child's name before adoption was:
First name: _____ Middle name: _____ Last name: _____

8 ☐ The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act or that there is good cause to give preference to these adopting parents. The clerk will fill out **13** below.

9 ☐ The judge approves the *Contact After Adoption Agreement* (ADOPT-310)
☐ As submitted ☐ As amended on ADOPT-310

10 This is a tribal customary adoption. The tribal customary adoption order of the _____ tribe dated _____ containing ____ pages and attached hereto is fully incorporated into this order of adoption.

11 ☐ This is an adoption under the Hague Adoption Convention. *Verification of Compliance with Hague Adoption Convention Attachment* (form ADOPT-216) is attached and fully incorporated into this order.

12 ☐ This is an independent adoption involving an additional parent(s). ☐ All persons with existing parental rights agreed to this adoption and will maintain their existing parental rights. ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s), was filed with the court.

13 The judge believes the adoption is in the child's best interest and orders this adoption.
The child's name after adoption will be:
First name: _____ Middle name: _____ Last name: _____
The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship or, in the case of a tribal customary adoption, all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code section 366.24.
☐ The judge believes it will serve public policy and the best interest of the child to grant the request of the adopting parent or parents for the court to make this order effective as of *(date):* _____.

Date: _____ _____
(Date of Signature) *Judge (or Judicial Officer)*

Clerk will fill out section below.

14 Clerk's Certificate of Mailing

For the adoption of an Indian child, the Clerk certifies:
I am not a party to this adoption. I placed a filed copy of:
☐ *Adoption Request* (ADOPT-200) ☐ *Adoption of Indian Child* (ADOPT-220)
☐ *Adoption Order* (ADOPT-215) ☐ *Contact After Adoption Agreement* (ADOPT-310)
in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
Bureau of Indian Affairs
1849 C Street, NW
Mail Stop 310-SIB
Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:
Place: _____ on *(date):* _____
Date: _____ Clerk, by: _____, Deputy

SPR15-19

Family Law: New Forms and Revisions to Forms for Stepparent and Additional-Parent Adoptions

(Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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

	Commentator	Position	Comment	Committee Response
1.	National Center for Lesbian Rights (NCLR)	AM	The National Center of Lesbian Rights (NCLR) thanks the Committee for its prompt action to incorporate AB 2344 into the necessary Family Law Judicial Council forms. We are grateful for the thoughtful consideration this Committee has given to the needs of parents seeking to confirm their parentage through an adoption, including same-sex and transgender parents.	No response required.
			NCLR strongly supports these proposed changes. Currently, parents doing confirmatory adoptions under Family Code Section 9000.5 are, for the most part, unable to complete their adoptions if they are pro se. The forms do not currently contain options that would allow a parent to adopt under Section 9000.5 without drafting additional pleadings and making alterations to the forms. The following changes are particularly helpful for pro se litigants: the explanation of this type of adoption on ADOPT-50, additional boxes and explanations on ADOPT-200, changes to ADOPT-210 explaining who may witness the litigants' signatures, and the form declaration provided in proposed ADOPT-205.	No response required.
			We suggest a minor change to the form declaration in ADOPT-205. Section 2 describes the parent who is adopting as a "stepparent" in subsections (a) and (b). Although the stepparent adoption process is being used, a parent doing a confirmatory adoption under Section 9000.5 is not a stepparent, but rather a parent who is	The committee agrees with the recommendation and has incorporated it.

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

	Commentator	Position	Comment	Committee Response
			already legally recognized under California law who is confirming their parentage to ensure that they will be recognized in other states. It would be more respectful and true to the reality of these families to refer to this parent as "the adopting parent" in section 2, as is used elsewhere in the form.	
2.	Orange County Bar Association	A	Agree with proposed changes	No response required.
3.	Orange County Superior Court - Family Law and Juvenile Court Operations Managers	AM	**Does the proposal appropriate address the stated purpose?** Yes, it addresses the stated purpose. **Do the proposed forms and information sheet make it sufficiently clear that, for some families, adoption may not be legally necessary for the recognition of parentage under California Law?** **ADOPT-050:** Page one, 4th paragraph, we recommend striking through last sentence. It is redundant to the information contained in the 2nd paragraph. Page one, right above item #1, we recommend adding, "If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child."	No response required. The committee agrees. The admonitition to seek legal advice will be stated once as prominently as possible. The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms

	Commentator	Position	Comment	Committee Response
				when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is also outside of the scope of this proposal.
			Page one, item #1, recommend adding column to identify required forms. If form is not required, recommending adding "*If applicable*."	The committee does not recommend accepting this suggestion. The first four forms listed under item 1 are required to be completed in all stepparent/domestic partner adoptions. The fifth form listed under item 1, ADOPT-205 (or an equivalent declaration) is required for all stepparent adoptions to confirm parentage. Creating an additional column would require too much additional space, making the form more difficult to read or causing the form to extend to an additional page.
			Page two, item #4, camera should be designated as *optional*. Please note this correction is also needed on item #3 (in following section)	The committee agrees with the recommendation and has incorporated it.
			Page two, paragraph after item #4, we recommend adding, "This process may be used to add additional parents. When you add additional parents, existing parents can either waive or keep their parental rights."	The committee agrees, in part, with this suggestion. The committee has incorporated new language that explains that the rights of existing parents usually terminate with adoptions, but that with an independent adoption, if the existing and adopting parents agree, the rights of the existing

	Commentator	Position	Comment	Committee Response
				parent(s) do not have to be terminated.
			Page two, we recommend renumbering the second section to clearly separate sections – perhaps 1a, b, c and 2 a, b, c.	The committee does not recommend accepting this suggestion as renumbering in this manner may make the form appear more confusing. The committee agrees that improved title formatting could better distinguish between instructions for Stepparent/Domestic Partner Adoptions and instruction for Independent, Agency, or International Adoptions. The committee has incorporated slightly altered title formatting for those sections in a way that better distinguishes them.
			Page two, item #5 – recommend substituting "Indian" with "Native American" or perhaps adding that reference in parenthesis.	The committee add the term "Native American" in parenthesis in the general instructions that are now updated on page one of ADOPT-050. This provides adequate clarity for court users without introducing significant inconsistency with how the term "Indian" is used in other Judicial Council adoption forms, including ICWA-010 and 020.
			ADOPT-200: Page one, top of the form we recommend, "If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child." If recommendation is adopted, recommend adding a selection box to item #4, to reflect "See attachment for additional children."	The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would

	Commentator	Position	Comment	Committee Response
				make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is outside of the scope of this proposal.
			Page one, item #3 (last box), we recommend removing 2nd box under stepparent adoption as this is covered under item 12(D) on page three.	The committee does not recommend accepting this suggestion as the identified items serve different purposes. The selection under item 3 signals to the court, in a clear way, what type of adoption the court user is petitioning for. Item 12(d) notes the requirement that a mandatory declaration explaining the circumstances of conception must be attached in stepparent adoptions involving additional parents.
			Page three, item #12(D) we recommend adding, "You may use the Declaration Confirming Parentage in Stepparent Adoption (AD-205) form for this purpose."	The committee agrees with this suggestion. The committee revised item 12(d) in a way that incorporates this suggestion and other commentator suggestions regarding item 12(d). Item 12(d) now specifies whether the circumstances of conception are described on optional form ADOPT-205 or in another format of the court-user's choosing.
			ADOPT-205: Remove file stamps and change to 'attachment to", similar to the FL311'	The committee agrees with this suggestion and incorporated changes similar to those suggested while maintaining styling and formatting similar to that used in other Judicial Council adoption forms.
			Page two, item 5(b), recommend rewording to, "*Our child was conceived using a known*	The committee agrees, in part, with this recommendation. The committee also agrees with

	Commentator	Position	Comment	Committee Response
			donor(s) but the [] sperm [] ova was not provided to a licensed physician, surgeon, or sperm bank prior to conception. The known donor(s) name(s)…"	another commentator's suggestion of simplifying item 5 by deleting items 5(a)-5(c) and opting instead for a singular item 5 that prompts the court user to describe, in his or her own words, the manner of the child's conception. The committee believes that the revised item 5 addresses this suggestion.
			For FC section 9000.5 purposes, does the proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) adequately cover potential circumstances of conception?	
			Yes, we believe this covers all potential circumstances of conception.	No response required.
			How to Adopt a Child in California is currently numbered form ADOPT-050. The advisory committee would like to know if adding the word "INFO" would further clarify for court users that this is an information form. If the form were renamed it would be titled, *How to Adopt a Child in California (ADOPT-050-INFO).*	
			Recommend adding "INFO" to be consistent with other judicial council informational forms.	The committee agrees and will retitle the form "ADOPT-050 INFO".
			Would this proposal cause any unintended effect to the overall clarify or usability of the existing ADOPT forms and information sheet?	

	Commentator	Position	Comment	Committee Response
			We do not anticipate any unintended consequences. **Would the proposal provide cost savings?** We do not expect a cost savings with this proposal. This proposal may reduce the need to refund investigation fees when they are deemed not needed. **What would the implementation requirements be courts? For example, training staff, revising processes, and procedures, changing docket codes in CMS or modifying a CMS?** We anticipate minimal impact to procedures, training, and our CMS. **Would 2 months from JC approval of this proposal until its effective date provide sufficient time for implementation?** Two months is sufficient time to implement new proposal and forms.	No response required. No response required. No response required. No response required.
4.	State Bar's Standing Committee on the Delivery of Legal Services (SCDLS)	AM	**Specific Comments** **Q: Does the proposal appropriately address the stated purpose?** Response: Yes.	 No response required.

	Commentator	Position	Comment	Committee Response
			Q: Do the proposed forms and information sheet make it sufficiently clear that, for some families, adoption may not be legally necessary for recognition of parentage under California law? Response: Yes.	No response required.
			Q: For Family Code section 9000.5 purposes, does the proposed new Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205) adequately cover potential circumstances of conception? Response: Yes.	No response required.
			Q: How to Adopt a Child in California is currently numbered "form ADOPT-050". The advisory committee would like to know if adding the word "INFO" would further clarify for court users that this is an informational form. If the form were renamed it would be titled, How to Adopt a Child in California (form ADOPT-050-INFO). Response: SCDLS agrees with retitling the form.	The committee agrees and will retitle the form "ADOPT-050 INFO".
			Additional Specific Comments: **Page 2 of form ADOPT-050 provides an overview of the process and Judicial Council**	

	Commentator	Position	Comment	Committee Response
			forms needed for independent, agency, or international adoptions. The following language would be added near the top of page 2 to clarify that in accordance with Family Code section 8617(b), enacted by SB 274, this process may also be used to add additional parents: "You can also use this process to add any additional parent(s) without terminating the rights of the existing parent(s)." This language should clarify the process for litigants and reduce their need for court assistance.	
			SCDLS Comment: Because this process is so new, people will not understand that both of the original two parents are giving up rights to the third parent. It would be helpful to include information about where to get legal help, similar to the information on page of FL-107-INFO under the subheading, "Where can I get help?" or the information on page 1 of FL-110 that reads, "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."	At the top of page 1 of ADOPT 050, there are general instructions which applies to all adoptions, and that includes links to information on accessing legal help. The committee does not recommend repeating those links on page 2 of ADOPT 050 as doing so would make page 2 overly crowded or cause the committee to add an additional page to the form.
			ADOPT-205: From page 2 of the narrative, this form is optional. Will there be any indication to litigants that it is? It appears from the proposed revised	The committee does not recommend making the suggested change. ADOPT-205 includes a description explaining that it is an optional form

	Commentator	Position	Comment	Committee Response
			ADOPT-050 that this form is included after the ICWA-020 and mandatory as forms people will need to fill out as it says in number 1, "Fill out court forms." Reading the description lets the litigant know it's optional and only for step-parent adoptions. SCDLS proposes some indication at the beginning of the description, in italics and underlined (e.g., *For Stepparent Adoptions Only*) **ADOPT-215:** The Adoption Order does not currently state the child's pre-adoption identifying information on the same form as the order to change this information. This makes the process of applying for passports and the like very difficult as there is nowhere that has a judge's signature that appropriately links the child as named before the adoption to the child as named after the adoption. This was present in older versions of the forms and needs to be re-inserted.	to be used for stepparent adoptions to confirm parentage. The bottom left-hand corner of ADOPT-205 also indicates that it is an optional form. The committee will revise the instructions at the top of ADOPT-050 to better clarify that instructions on stepparent/domestic partner adoptions begin on page 1 and that page 2 includes instructions on independent, agency, and international adoptions as well as adoptions of an Indian child. The committee does not recommend making the suggested change. The Family Code prohibits the inclusion of the child's name before adoption in the adoption order except in some relative adoptions petitioned under Family Code section 8714.5. Existing item 8, which was added to ADOPT-2015 during the Spring 2003 comment cycle, provides space to include the child's name before adoption in those relative adoptions in which the adopting relative or the child, if 12 years of age or older, has requested its inclusion under section 8714.5(g).
5.	Superior Court of Los Angeles County	A	Agree with proposed changes	No response required.
6.	Superior Court of San Diego County by Michael Roddy, Executive Officer	AM	**ADOPT-050**: Item 3 (on page 1) should say "In most adoptions" since there is now an exception. The process on page 2 does not include the "Take	The committee agrees with the suggestions and has incorporated them.

	Commentator	Position	Comment	Committee Response
			your forms to court" step. The ADOPT-230 should probably be listed in Item 1 as well. We believe this should be an INFO form.	The committee agrees with this suggestion and, in accordance with Family Code 8617, has included language in a new item 11(d) for parties to an independent adoption to indicate that all persons with existing parental rights agree to this adoption and will maintain their existing parental rights and that an agreement to this effect, signed by both the existing parent(s) and the adopting parent(s) is attached.
			ADOPT-200: We believe more might be required for the new "additional parents" adoptions, like a new line in 11 stating that the parents consent to the adoption but will be keeping their parental rights.	The committee agrees with this suggestion regarding paragraph 12(d) and has incorporated it.
			Include name of form and form number in 12d.	The committee agrees with the suggestions and has incorporated them.
			ADOPT-205: The form should say "Attach to Adoption Request", not Order. The place for the date in 3 does not seem right. It is recommended that it be put into the first sentence: "We were married/registered as domestic partners on (date) _____, before our child was born."	The committee agrees with the suggestions and has incorporated them.
			Would there ever be a circumstance where 5c2 would be used?	Paragraph 5 will be reorganized to eliminate subsections (b) and (c) in order to allow parties to explain, in their own words, the specific circumstances of conception.

	Commentator	Position	Comment	Committee Response
			ADOPT-210: Family Code section 8613.5 also allows a personal appearance to be waived. Our court has a person pre-sign the ADOPT-210 in front of a notary in that situation. The new language on the form should allow for that.	The committee does not recommend incorporating this suggestion. Family Code 8613.5 and 8613.5 allow, in some circumstances when personal appearance is impossible or impracticable, a judicial officer to waive the prospective adoptive parent(s)'s personal appearance and allow counsel to appear on the adoptive parent's behalf provided that the court receive a written power of attorney giving the attorney permission to do so. The power of attorney may be incorporated into the adoption petition. The committee's analysis is that, to properly incorporate Family Code 8613 and 8613.5 waiver provisions, ADOPT 210 would need to include power of attorney provisions. The committee does not recommend adding these waiver provisions, as doing so would make the form longer, more complicated, and potentially confusing for self-represented litigants. Family Code sections 8613 and 8613.5 require that an attorney make an appearance at the hearing. That attorney can request waiver of the adoptive parent's appearance and draft and attach the required power of attorney.
			ADOPT-215: There is nothing addressing the "additional parents" adoptions. This should be added.	The Committee agrees with the recommendation and has incorporated a new paragraph 12 in ADOPT-215 with the following language and check boxes for the court to complete: "___This is an independent adoption involving an additional parent(s). ___ All persons with existing parental rights agreed to this adoption and will

	Commentator	Position	Comment	Committee Response
				maintain their existing parental rights. ___ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s), was filed with the court."
7.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) San Francisco	AM	**ADOPT-050:** FLEXCOM agrees that the addition of Form ADOPT-050 would be helpful – especially for self-represented litigants. FLEXCOM further agrees that adding "INFO" to the form name would assist. However, FLEXCOM advises changing the wording of the second highlighted paragraph to read: "The California Legislature developed special procedures for stepparent adoptions used to confirm parentage. If you and the parent who gave birth were married or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) at the time the child was born, and remain married or registered, you will only complete steps 1-2 listed below, unless the court orders otherwise. Before signing beginning this process, seek legal advice to determine whether adoption would benefit your family." FLEXCOM further recommends adding the following wording in the column immediately below "ADOPT-205" in Paragraph 1 of Form ADOPT-050: "Or an Equivalent Declaration" in	 The committee will retitle the form "ADOPT-050 INFO". The committee revised the instructions at the top of page one of ADOPT-050 to improve readability and clarity for self-represented litigants. Incorporating some of the suggested language, the new instructions help the court user determine whether a stepparent/domestic partner adoption or a stepparent adoption to confirm parentage under Family Code section 9000.5 is applicable to their family. The committee agrees with the recommendation and has incorporated it.

	Commentator	Position	Comment	Committee Response
			light of the fact that Form ADOPT-050 205 is optional, yet a declaration with that information is mandatory. **ADOPT-200:**	
			FLEXCOM agrees with the proposed revisions to Form ADOPT-200 with some modifications: The first highlighted box under "Stepparent" in Paragraph 3 of the form include the added wording: "Confirming parentage of a stepparent who was married to or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) with the parent who gave birth at the time the child was born or was married to or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) with the parent who became a sole legal parent through adoption or surrogacy at the time of the adoption and are still married or in a registered domestic partnership."	Family Code section 9000.5 addresses stepparent adoptions where one of the spouses or partners gave birth to the child during the marriage or domestic partnership. The Committee does not recommend adding language related to adoptions where one of the spouses became the sole legal parent through surrogacy or a prior adoption, as such adoptions are not addressed by Family Code section 9000.5. The committee revised this paragraph to improve overall readability and incorporated some of the remaining language proposed.
			FLEXCOM further recommends modifying Paragraph 12(d) on page 3 of 5 to remove the last sentence [i.e. "A declaration describing the circumstances of the child's conception is attached."] and instead: "□ SEE ADOPT 205 ATTACHED □ SEE DECLARATION ATTACHED"	The committee agrees with the recommendation and has substantially incorporated it.
			In light of the expected revision of Family Code	The committee agrees with the recommendation

	Commentator	Position	Comment	Committee Response
			Section 7613, FLEXCOM also recommends modifying Paragraph 13 on page 3 of 5 to read as follows: "The child was conceived by assisted reproduction in compliance with Family Code Section 7613".	and has incorporated it.
			ADOPT-205:	
			Top of page 1 italicized section – language should be added for clarity and to mirror the suggested language in the info sheet as follows: *This optional form may be attached to the form ADOPT-200 if the adopting parent was married to or in a **state** registered domestic partnership (including a **registered** domestic partnership or civil union from out-of-state **that is legally equivalent to a marriage**) with the parent who gave birth to the child at the time the child was **born, and you remain married to that person.** You may instead attach a declaration in another format containing substantially the same information. The birth parent and the adopting parent must complete separate declarations.*	The committee determined that incorporating the suggested language into the instructions at the top of ADOPT-205 would make those instructions too lengthy and confusing for the court user. The committee, however, substantially incorporated the suggested wording, as appropriate, into the actual declaration.
			Page 1, section 2a - should include language that they remain married or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage)	The committee agrees with the recommendation and has incorporated it.
			Page 1, section 2b should include language that they remain married.	The committee agrees with the recommendation and has incorporated it.
			Page 1, section 5a – language should be	The committee agrees with the recommendation

	Commentator	Position	Comment	Committee Response
			modified as follows: Our child was conceived through assisted reproduction in compliance with Family Code 7613 as described below. *(Describe how your child was conceived and whether you used a known or unknown donor. A sperm bank letter or written donor agreement must be attached. If you used a known donor without a sperm bank or written donor agreement, consult legal counsel before submitting this form):*	and has incorporated it with minor modifications.
			Page 1, sections 5b and 5c - should be deleted as it can be confusing for SRLs and it can all be explained in 5a.	The committee agrees with the recommendation and has incorporated it.
			FLEXCOM proposes revising Paragraph 5 as follows: "Our child was conceived through assisted reproduction in compliance with Family Code Section 7613 as described below:"	The committee agrees with the recommendation and has incorporated it.
			In the parenthetical comment that follows, we advise deleting the sentence "If you used a known donor, list donor's name" and adding a sentence "A letter from your sperm bank or written donor agreement verifying conception by assisted reproduction should be attached." And then delete a., b., and c. By trying to break out the specifics of the conception, the form becomes more complicated and then creates additional issues with the statute – especially in light of expected revisions to Family Code Section 7613. This revision will simplify the form and this item.	The committee agrees with the recommendation and has incorporated it.

	Commentator	Position	Comment	Committee Response
			ADOPT-210: To be consistent, FLEXCOM recommends modifying the highlighted paragraph under Paragraph 2 of page 1 of 3 as follows: "If this is a stepparent adoption involving a spouse or registered partner who gave birth to the child during the marriage or state registered domestic partnership (including a domestic partnership or civil union from out-of-state legally equivalent to a marriage), …."	The committee determined that incorporating the suggested language would make the instructions too lengthy and confusing for the court user.
			In addition, FLEXCOM recommends revising paragraph 4b. to read: "I am married to, or the registered domestic partner of, the adopting parent listed in 1, and I am not a party to this adoption. I agree to his/her adoption of the child."	Family Code section 8603 provides that a person who is married or in a domestic partnership may adopt, so long as the other spouse or domestic partner consents. The committee agrees with this suggestion and has incorporated it.
			Also, at the bottom of page 2 of the draft Adoption Agreement [ADOPT-210], the footer says Adoption Request rather than Adoption Agreement. This should be corrected.	The committee agrees with the recommendation and has incorporated it.
			Page 3, section 8b – language should be modified to clarify that if the form is signed outside of a hearing it needs to be in front of a notary. Also it should clarify that this can be done for Family Code section 9000.5 adoptions to confirm parentage or in cases where authorized by the court under Family Code section 8613. The language should read as follows: "This form was signed outside of a	The committee does not recommend accepting this suggestion. In stepparent adoptions, Family Code 9000.5 allows the adopting parent to waive a court hearing unless a hearing is otherwise ordered for good cause. Family Code 9003 provides for notarization as well as other witnessing options for the adoption agreement in stepparent adoptions.

	Commentator	Position	Comment	Committee Response
			hearing in the presence of a notary public. (Select this option only for a stepparent adoption under Family Code section 9000.5 where the court did not order a hearing for good cause, or when approved by the court under Family Code section 8613)."	Family Code 8613 allows a judicial officer to waive the prospective adoptive parent(s)'s personal appearance and allow counsel to appear on the adoptive parent's behalf in some circumstances when personal appearance is impossible or impracticable. The court must receive a written power of attorney giving the attorney permission to do so. Family Code 8613 allows, in some circumstances, notarization or other witnessing of that power of attorney. This other witnessing can be provided by specific military and other government personnel who are authorized to take acknowledgments under Civil Code Sections 1183 and 1183.5. Currently, item 8 of ADOPT 210 only addresses the notarization and witnessing options for stepparent adoptions where the hearing is waived, which was within the scope of this current comment cycle and required by recent legislative changes. The committee does not recommend expanding item 8 to include witnessing options for other types of adoptions where the hearing is still required, but the prospective adoptive parent's personal appearance can be made by counsel. To do so would make ADOPT 210 lengthier, potentially more confusing for self-represented litigants, and would be outside the scope of this proposal. In addition prospective adoptive parents seeking appearance by counsel in lieu of personal appearance by definition have an attorney to make that appearance. That attorney can request waiver of the adoptive parent's appearance and draft and

	Commentator	Position	Comment	Committee Response
				attach the required power of attorney.
			This section 8b should be moved up before the judge's signature line. The remaining 8b(1), 8b(2) and 8b(3) should be deleted.	The committee agrees with the recommendation and has accepted it.
			Page 3, bottom of page – should read Adoption Agreement not Adoption Request.	The committee agrees with the recommendation and has accepted it.

Item number: 07

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Extended Foster Care
Amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Tracy Kenny, 916-263-2838, tracy.kenny@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Allows a nonminor dependent who received either Kin-GAP aid or adoption assistance aid after turning 18 years old to petition for resumption of dependency jurisdiction.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Law: Extended Foster Care

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 3, 2015

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending four of the California Rules of Court and revising five Judicial Council forms to (1) implement the provisions of Assembly Bill 2454 (Quirk-Silva; Stats. 2014, ch. 769) allowing specified youth to petition the court to assume jurisdiction over them as nonminor dependents, and to (2) provide further guidance on the implementation of prior legislation authorizing extended foster care to age 21. The rules and forms that currently allow youth to petition for reentry would be modified to accommodate these new petitioners. In addition, this proposal would clarify the requirements for other extended foster care processes to address concerns raised by courts as implementation has proceeded.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.555 of the California Rules of Court on termination of jurisdiction to make specific provisions for termination of juvenile court jurisdiction over a nonminor dependent who has attained age 21;

2. Amend rules 5.707 and 5.812 to include disposition hearings in the class of hearings subject to the rule which governs hearings that are the last court hearing before a child in juvenile court attains age 18;

3. Amend rule 5.906, which sets forth the procedures for the court to follow when considering a petition for a nonminor to reenter juvenile court jurisdiction as a nonminor dependent, to include petitioners made eligible by recently enacted legislation;

4. Revise *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to clarify that jurisdiction must be terminated at age 21 and that the attorney for the nonminor is relieved 60 days from the order;

5. Revise *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO) to include information on petitioners made eligible for reentry in recent legislation;

6. Revise *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) to allow newly eligible petitioners to petition the court to enter foster care as nonminors and correct a previous drafting error;

7. Revise *Findings and Orders Regarding Prima Facie Showing on Nonminor's Request to Reenter Foster Care* (form JV-470) to allow the court to document its findings and orders for newly eligible petitioners seeking to reenter foster care as nonminors; and

8. Revise *Findings and Orders After Hearing to Consider Nonminor's Request to Reenter Foster Care* (JV-472) to allow the court to document its findings and orders after a hearing on a petition filed by a newly eligible petitioner for reentry to foster care as a nonminor.

The proposed text of the new and amended rules is attached at pages 7–12. The proposed new and revised forms are attached at pages 13–27.

Previous Council Action

The Judicial Council was a cosponsor of AB 12, the original legislation that authorized extended foster care for young adults ages 18 to 21, which was enacted in 2010, with most of its provisions effective January 1, 2012. The council has supported each of the subsequent cleanup bills to make changes to ensure smooth and effective implementation of AB 12: AB 212 in 2011, AB 1712 in 2012, and AB 787 (Stone; Stats. 2013, ch. 487) in 2013.

The council adopted rules 5.555, 5.707, 5.812, and 5.906, and forms JV-367, JV-464-INFO, and JV-466 effective January 1, 2012, to ensure that the provisions of AB 12 could be implemented

by the courts when the statute took effect. The council subsequently revised rules 5.555, 5.707, 5.812, and 5.906, and forms JV-367, JV-464-INFO, and JV-466, effective July 1, 2012, to implement modifications of AB 12 made by AB 212 as well as changes required in rules and forms that were adopted before circulation for public comment.

The council approved forms JV-470 and JV-472 effective January 1, 2014, to provide agencies and the courts with optional forms to use to make required reentry findings and orders.

Rationale for Recommendation

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub.L. No. 110-351) made extensive policy and program changes to improve the outcomes for children in the foster care system, including the extension of foster care services to nonminors up to age 21 when certain education, training, or work requirements are met or are incapable of being met due to a medical condition. California chose to participate in this voluntary program and AB 12, the California Fostering Connections to Success Act, was enacted in 2010 making extensive changes to California statutes to comply with provisions of the federal act. As implementation of AB 12 has gone forward, numerous subsequent bills have been enacted to improve upon the original statutory scheme.[1]

Assembly Bill 2454 is the most recent revision to provisions that allow reentry into foster care for youth formerly in a foster care placement. It revised a recently enacted code section[2] to allow youth between the ages of 18 and 21 who were placed in guardianships or adopted out of foster care and whose guardians or adoptive parents have died or are no longer providing support to the youth to petition the court to enter foster care as nonminor dependents if they are willing to meet the eligibility criteria. This proposal would aid courts in implementing that expansion of eligibility. In addition, it would clarify some existing rules and forms to address concerns raised by courts as implementation of extended foster care has proceeded. The specific changes proposed by the committee are described below.[3]

Amend rule 5.555 to incorporate termination of jurisdiction at age 21

Rule 5.555, which governs any hearing to terminate jurisdiction over a nonminor dependent, is primarily geared toward hearings involving youth who are still eligible for reentry up to age 21. As the first AB 12 cohorts are reaching age 21, courts have noticed that the rule does not specifically address their responsibility at a hearing for a youth who has attained age 21. To address this deficiency, the proposal adds to the rule's findings and orders section language that

[1] AB 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by AB 212 (Beall; Stats. 2011, ch. 459); AB 1712 (Beall; Stats. 2012, ch. 846); and AB 787 (Stone; Stats. 2013, ch. 487).

[2] Welf. & Inst. Code, § 388.1.

[3] Legislation (SB 12(Beall)) is pending that could further expand the class of nonminors eligible to petition the court to participate in extended foster care. Because the changes in the bill are sufficiently distinct from the issues addressed in this proposal, the committee opted not to hold the proposal for their possible incorporation, but instead to take action on them if the legislation is enacted.

is specific to this circumstance and would ensure that the nonminor has received the information and support that he or she is statutorily entitled to, while also making clear that his or her attorney is relieved from representation at the end of the appeal period. This rule would also be revised to remove an advisory committee comment regarding the age of eligibility for extended foster care; the comment is now obsolete because the Legislature took action to extend care to age 21.

Amend rules 5.707 and 5.812 to include a dispositional hearing for a child approaching age 18

To ensure that youth in foster care who are approaching age 18 are prepared to participate in extended foster care, the original legislation required that the last review hearing taking place before the child attains age 18 address the child's plans to either access extended foster care services or choose to exit foster care. However, the rules that implement these statutes did not include the circumstance in which the last hearing before the child attains age 18 is a dispositional hearing, rather than a status review hearing. This proposal would address that oversight by adding dispositional hearings to rules 5.707 and 5.812, which state the requirements for these hearings for dependents and delinquents, respectively.

Amend rule 5.906 to include new section 388.1 provisions

Assembly Bill 2454 revised recently enacted section 388.1 of the Welfare and Institutions Code to authorize specified nonminors whose juvenile court–established guardianships have failed (or whose guardians or adoptive parents have died) to petition the court to assume jurisdiction over them as nonminor dependents so that they may access extended foster care services. These are youth whose former guardians or adoptive parents were receiving support for their care as nonminors but no longer are. The procedures in section 388.1 closely mirror the procedures to be followed when other nonminors petition the court to reenter jurisdiction. To include this newly eligible population of petitioners, this proposal would amend rule 5.906 to include them as eligible and modify the findings and orders requirements to encompass 388.1 petitioners. This rule would also be revised to remove an advisory committee comment regarding the age of eligibility for extended foster care; the comment is now obsolete because the Legislature took action to extend care to age 21.

Revise form JV-367

This proposal, consistent with the changes to rule 5.555 described above, would also revise item 27 of *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to clarify that jurisdiction must be terminated at age 21 and that the attorney for the nonminor is relieved 60 days from the date of the order.

Revise form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care*

Form JV-464-INFO would be revised to include information in the section with the heading, "Do I qualify to return to juvenile court jurisdiction and foster care?" regarding nonminors who are

eligible under section 388.1 to petition the court to assume jurisdiction over them. The proposed provisions would state the requirements for these youth in plain language.

Revise form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care*

Form JV-466 would also be revised to accommodate petitions from nonminors who are asking the court to assume jurisdiction under section 388.1 of the Welfare and Institutions Code. It would allow these youth to provide the court with the information required to determine whether there is a prima facie case that jurisdiction should be assumed and to make the findings and orders on the request itself. Because this form is intended to be accessible to the youth directly, it would also employ plain language. In addition, a drafting error in item nine of form JV-466 would be corrected so that the item is internally consistent.

Revise form JV-470, *Findings and Orders Regarding Prima Facie Showing on Nonminor's Request to Reenter Foster Care*

Form JV-470 would be revised to allow the court to document its findings and orders under section 388.1 when determining whether the nonminor has made a prima facie showing that he or she is eligible for the court to assume dependency jurisdiction over the nonminor. Without creating a new form, these proposed changes would provide the courts with a form to accomplish their statutory obligations under section 388.1(c)(1).

Revise form JV-472, *Findings and Orders After Hearing to Consider Nonminor's Request to Reenter Foster Care*

Form JV-472 would be revised to allow the court to document its required findings and orders after a hearing on a petition filed under section 388.1 for a nonminor to reenter foster care. The proposed additions can be made to this existing form to provide the courts with a form to accomplish their statutory obligations under paragraph (5) of subdivision (c) of section 388.1.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 16 to June 17, 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 organizations provided comment: three agreed with the proposal, five agreed with the proposal if modified, and one did not indicate a position but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 28–30.

The committee sought specific comment on whether the proposal would allow courts to effectively implement the recently enacted legislation, and all commentators appeared to agree that it would accomplish that objective. The modifications proposed in the comments suggested minor corrections, clarifications, and stylistic changes, most of which the committee adopted.

Alternatives Considered

The committee considered preparing new rules and forms specifically to implement AB 2454 but concluded that, because the newly eligible cases were few in numbers and the procedures were very similar, amending the existing rules and forms for reentry into foster care would be preferable. The committee also considered making only the changes necessary to implement AB 2454 but determined that the additional proposed changes would clarify existing law and enhance the ability of the courts to effectively carry out their obligations with regard to extended foster care cases.

Implementation Requirements, Costs, and Operational Impacts

This proposal will have some positive operational impact in implementing the statutory requirements of AB 2454. The proposed amended rules and revised forms are in response to requests for guidance from courts and agencies. The proposed revisions will ensure that courts can easily make the necessary orders in each of the affected cases.

Because AB 2454 expands the eligible population that may petition the court to reenter foster care as nonminors, it will result in additional hearings in the juvenile courts. This proposal will provide the courts with the tools they need to perform their statutorily required obligations as efficiently as possible. The findings and orders forms to implement AB 2454 are optional forms, so courts that prefer to use their own forms could opt not to use the revised forms proposed here.

In implementing the new and revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal will revise and supplement a set of rules and forms that ensure compliance with state and federal legal requirements, it supports Goal III, Modernization of Management and Administration (Goal III.A).

Attachments and Links

1. Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906, at pages 7–12
2. Judicial Council forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472, at pages 13–27
3. Chart of comments, at pages 28–31
4. Assembly Bill 2454 (Quirk-Silva; Stats. 2014, ch. 769)
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2454&search_keywords=

Rules 5.555, 5.707, 5.812, and 5.906 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 452, 607.3, 16501.1(f)(16))

(a)–(c) * * *

(d) Findings and orders

In addition to complying with all other statutory and rule requirements applicable to the hearing, the following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A)–(M) * * *

(N) For a nonminor who has attained 21 years of age the court is only required to find that:

(i) Notice was given as required by law.

(ii) The nonminor was provided with the information, documents, and services required under section 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with the court.

(iii) The 90-day Transition Plan is a concrete, individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentoring and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

(iv) The nonminor has attained 21 years of age and is no longer subject to the jurisdiction of the court under section 303.

(2) *Orders*

(A)–(E) * * *

(F) For a nonminor who has attained 21 years of age and is no longer subject to the jurisdiction of the juvenile court under section 303, the court must enter an order that juvenile court jurisdiction is dismissed and that the attorney for the nonminor dependent is relieved 60 days from the date of the order.

Rule 5.707. Review or dispositional hearing requirements for child approaching majority (§§ 224.1, 366(a)(1)(F), 366.3, 366.31, 16501.1(f)(16))

(a) Reports

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the report prepared by the social worker for the hearing, the report must include a description of:

(1)–(9) * * *

(b) Transitional Independent Living Case Plan

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, the child's Transitional Independent Living Case Plan:

(1)–(2) * * *

(c) Findings

(1) At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written court documentation of the hearing:

(A)–(I) * * *

(2) * * *

(d) * * *

Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority (§§ 450, 451, 727.2(i)–(j), 778)

(a) Hearings subject to this rule

The following hearings are subject to this rule:

(1) The last review hearing under section 727.2 or 727.3 before the child turns 18 years of age and a dispositional hearing under section 702 for a child under an order of foster care placement who will attain 18 years of age before a subsequent review hearing will be held. If the hearing is the last review hearing under section 727.2 or 737.3, the ~~This~~ hearing must be set at least 90 days before the child attains his or her 18th birthday and within six months of the previous hearing held under section 727.2 or 727.3.

(2)–(4) * * *

(b)–(f) * * *

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

(a) Purpose

This rule provides the procedures that must be followed when a nonminor wants to have juvenile court jurisdiction assumed or resumed over him or her as a nonminor dependent as defined in subdivisions (v) or (aa) of section 11400~~(v)~~.

(b) Contents of the request

(1) The request to have the juvenile court assume or resume jurisdiction must be made on the *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466).

(2)–(3) * * *

(c) Filing the request

(1) * * *

(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) Filed with the juvenile court that maintained general jurisdiction or for cases petitioned under section 388.1, in the court that established the guardianship or had jurisdiction when the adoption was finalized; or

(B)–(C) * * *

(3)–(5) * * *

(d) Determination of prima facie showing

(1) Within three court days of the filing of form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

(A) The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age, or the nonminor is eligible to seek assumption of dependency jurisdiction pursuant to the provisions of subdivision (c) of section 388.1;

(B)–(D) * * *

(2)–(3) * * *

**(e)–(g) * * *

(h) Reports

(1) The social worker, probation officer, or Indian tribal agency case worker (tribal case worker) must submit a report to the court that includes:

(A) Confirmation that the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age and that he or she has not attained 21 years of age, or is eligible to petition the court to assume jurisdiction over the nonminor pursuant to section 388.1;

(B) * * *

(C) The social worker, probation officer, or tribal case worker's opinion as to whether continuing in a foster care placement is in the nonminor's best interests and recommendation about the assumption or resumption of juvenile court jurisdiction over the nonminor as a nonminor dependent;

(D)–(F) * * *

(2)–(3) * * *

(i) Findings and orders

The court must read and consider, and state on the record that it has read and considered, the report; the supporting documentation submitted by the social worker, probation officer, or tribal case worker; the evidence submitted by the nonminor; and any other evidence. The following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A) Whether notice was given as required by law;

(B) Whether the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age, or meets the requirements of subparagraph (5) of subdivision (c) of section 388.1;

(C)–(E) * * *

(F) Whether continuing or reentering and remaining in a foster care placement is in the nonminor's best interests;

(G)–(H) * * *

(2) *Orders*

(A) If the court finds that the nonminor has not attained 21 years of age, that the nonminor intends to satisfy at least one condition under section 11403(b), and that the nonminor and placing agency have entered into a reentry agreement, the court must:

(i) Grant the request and enter an order assuming or resuming juvenile court jurisdiction over the nonminor as a nonminor dependent and vesting responsibility for the nonminor's placement and care with the placing agency;

(ii)–(v) * * *

(B)–(C) * * *

(3) * * *

Advisory Committee Comment

Assembly Bill 12 (Beall; Stats. 2010, ch. 559), known as the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459), implement the federal Fostering Connections to Success and Increasing Adoptions Act, Pub.L. No. 110-351, which provides funding resources to extend the support of the foster care system to children who are still in a foster care placement on their 18th birthday. Every effort was made in the development of the rules and forms to provide an efficient framework for the implementation of this important and complex legislation.

~~The extension of benefits for nonminors up to 19 years of age during the first year and for nonminors up to 20 years of age during the following year is fully provided for in Assembly Bill 12 and does not require further action by the Legislature; however, extension of those benefits to nonminors between 20 and 21 years of age is contingent upon an appropriation by the Legislature. (Welf. & Inst. Code, § 11403(k).)~~

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* E-MAIL ADDRESS: ATTORNEY FOR (*name*):	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME: DEPT:	
FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

	Present	Attorney *(name)*	Present
1. Parties *(name)*			
a. Nonminor:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐
2. Parent			
a. ☐ Father ☐ Mother *(name):*	☐		☐
b. ☐ Father ☐ Mother *(name):*	☐		☐
3. Legal guardian *(name):*	☐		☐
4. Indian custodian *(name):*	☐		☐
5. Tribal representative *(name):*	☐		☐

6. Others present
   a. Other *(name):*
   b. Other *(name):*
   c. Other *(name):*

7. **The court has read and considered and admits into evidence**
   a. ☐ Report of social worker dated:
   b. ☐ Report of probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-367 [Rev. Jan. 1, 2016]

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR

Welfare and Institutions Code, §§ 391, 607.3;
Cal. Rules of Court, rule 5.555
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

8. ☐ Notice of the date, time, and location of the hearing was given as required by law.

9. ☐ Nonminor is not present.
   a. ☐ The nonminor expressed a wish to not appear for hearing and did not appear.
   b. ☐ The nonminor's current location is unknown and reasonable efforts were made to locate the youth.

10. ☐ The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.

11. Remaining under juvenile court jurisdiction ☐ is ☐ is not in the nonminor's best interests. The facts supporting this determination were stated on the record.

12. a. ☐ The nonminor does not meet the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction at this time.
    b. ☐ The nonminor does satisfy the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
       (1) ☐ The nonminor attends high school or a high school equivalency certificate (GED) program.
       (2) ☐ The nonminor attends a college, a community college, or a vocational education program.
       (3) ☐ The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
       (4) ☐ The nonminor is employed at least 80 hours per month.
       (5) ☐ The nonminor is incapable of doing any of the activities in (b)(1)–(4) due to a medical condition.

13. ☐ The nonminor has an in-progress application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process ☐ is ☐ is not in the nonminor's best interest.
    a. ☐ is in the child's best interest.
    b. ☐ is not in the child's best interest as it is not necessary.

14. ☐ The nonminor has an in-progress application pending for Special Immigrant Juvenile Status or other application for legal residency for which an active juvenile court case is required.

15. ☐ The nonminor was informed of the options available to assist with the transition from foster care to independence.

16. ☐ The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.

17. ☐ The nonminor was informed that, if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that the court will maintain general jurisdiction for the purpose of resuming jurisdiction over him or her as a nonminor dependent.

18. ☐ The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition to have the court resume dependency jurisdiction or transition jurisdiction over him or her so long as he or she is within the eligible age range for status as a nonminor dependent.

19. a. ☐ The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
    b. ☐ The nonminor cannot be located, reasonable efforts were made to locate him or her, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.

20. ☐ For a nonminor who is subject to delinquency jurisdiction, the requirements of Welfare and Institutions Code, § 607.5, ☐ were ☐ were not met.

NONMINOR'S NAME:	CASE NUMBER:

21. ☐ For a nonminor who is an Indian child under the Indian Child Welfare Act, he or she ☐ was ☐ was not provided with information regarding the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act as a nonminor dependent.

22. a. ☐ The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.

b. ☐ The Transitional Independent Living Plan (TILP) identified the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare to live independently upon leaving foster care.

c. ☐ The 90-day Transition Plan is a concrete individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

Orders

23. ☐ The nonminor meets at least one of the conditions listed in item 12(b)(1)–(5) and juvenile court

a. ☐ dependency jurisdiction ☐ transition jurisdiction over the nonminor as a nonminor dependent is ordered.

b. The nonminor's permanent plan is:

(1) ☐ Independence after a period of placement in supervised settings specified in Welfare and Institutions Code, § 11402.

(2) ☐ Other *(specify):*

c. ☐ The nonminor is an Indian child and ☐ has ☐ has not elected to have the Indian Child Welfare Act apply.

d. The matter is continued for a hearing set under Welfare and Institutions Code, § 366(g), and California Rules of Court, rule 5.903, on the date set in item 29, which is within six months of the nonminor's most recent status review hearing.

24. ☐ The nonminor does not meet and does not intend to meet the eligibility criteria for status as a nonminor dependent but is otherwise eligible to and will remain under the juvenile court's jurisdiction in a foster care placement, and the matter is set for a status review hearing on the date indicated in item 29, which is within six months of the date of the nonminor's most recent status review hearing.

25. ☐ Reasonable efforts were made to locate the nonminor under the court's jurisdiction as a dependent, ward, or nonminor dependent, and his or her current location remains unknown. The juvenile court's jurisdiction over the nonminor is terminated. The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

26. ☐ The nonminor

a. ☐ does not meet the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction;

b. ☐ does meet the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; or

c. ☐ does meet the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and

the nonminor was given an endorsed, filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365), and the findings required in items 10, 16, 19a, and 22c were made. The juvenile court's jurisdiction over the nonminor is terminated. The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

NONMINOR'S NAME:	CASE NUMBER:

27. ☐ The nonminor is 21 years of age or older and no longer subject to the jurisdiction of the juvenile court under section 303. The findings required by items 19 and 22c were made. Juvenile court jurisdiction over the nonminor is dismissed. The attorney for the nonminor is relieved 60 days from today's date.

28. ☐ **Other findings and orders**

a. See attachment 28a.

b. Other *(specify):*

29. ☐ **Other findings and orders**

Hearing date:	Time:	Dept:	Room:

a. ☐ Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)

b. ☐ Other *(specify):*

30. Number of pages attached: _____

Date:

JUDICIAL OFFICER

JV-464-INFO How to Ask to Return to Juvenile Court Jurisdiction and Foster Care

Some 18-, 19-, and 20-year-olds can reopen their court case and return to foster care. This form explains:

- The benefits of returning to foster care,
- Who qualifies to return to foster care, and
- How to ask to reopen your court case and return to a foster care placement.

What benefits can I get if I return to foster care?

If you ask the court to reopen your court case and return to foster care as a nonminor dependent, you can get money to live in supervised foster care. You may be able to live in a:

- Relative's home;
- Home of a nonrelated extended family member (a person close to your family but not related to you);
- Foster home;
- Group home if you need to because of a medical condition;
- You can also stay in a group home until your 19th birthday or until you finish high school, whichever one happens first; or
- Supervised independent living setting, such as an apartment or college dormitory.

You can also get:

- A clothing allowance,
- Case management services, and
- Independent Living Program services.

Do I qualify to return to juvenile court jurisdiction and foster care?

You qualify if you meet these requirements:

☐ **Court Jurisdiction Requirements**

- You are now 18, 19, or 20 years old;
- You were in foster care on your 18th birthday;* **OR**
- You were placed by the juvenile court in a guardianship or adoption; and
  - Your guardian(s) or adoptive parent(s) were receiving payments for your support on or after your 18th birthday; and
  - Your guardian(s) or adoptive parent(s) died on or after your 18th birthday, or they no longer support you and no longer receive payments for your support.

**Even if you were on the run, you can qualify if there was an order for you to be in foster care at the time.*

☐ **Work/School Requirements**

You must plan to do one of the following:

- Finish high school or get a high school equivalency (GED) certificate.
- Attend college or community college.
- Attend a vocational education program.
- Attend a program or do activities that will help you get a job.
- Get a job.

Exception: If you have a medical problem that makes you unable to do any of these things, you do not have to be in school, a program, or working.

☐ **Sign an Agreement to Return to Foster Care**

You and a social worker (SW) or probation officer (PO) must have signed a Voluntary Reentry Agreement that says:

- You want to return to foster care to be placed in a supervised setting.
- The SW or PO will be responsible for your placement and care.
- Together, you and the SW or PO will make a plan that helps you to learn how to live independently.
- If you ask the SW or PO to file your court papers, you will cooperate with the SW or PO.
- If your situation changes and you no longer qualify to stay in foster care, you will tell the SW or PO.

Important! Even if you are not sure you qualify, you should still apply.

When can I get help to find housing?

As soon as you sign the agreement to return to foster care, your social worker or probation officer can help you find housing and other services you may need.

JV-464-INFO How to Ask to Return to Juvenile Court Jurisdiction and Foster Care

How do I ask the juvenile court to reopen my court case and return to foster care?

You must fill out and file the court form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care.* This form tells the court you want to reopen you court case and return to foster care. A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care can help you fill out the form and file it for you.

If you want to fill out the form yourself, you can find a lot of the information you need on form JV-365, *Termination of Juvenile Court Jurisdiction—Nonminor,* which the court gave you when you left foster care.

Where can I get the form I need to fill out?

The court may have already given you the form when your foster care ended. Or you can get the form at:

- Your county's courthouse or public library, or
- The California Courts website: *www.courts.ca.gov/forms.htm*.

What if I need help with the form?

If you want help to fill out the form, ask:

- A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care,
- The person who was your lawyer when you were in foster care, or
- An adult you trust.

What do I do with my completed form?

After you and the SW or PO have signed the Voluntary Reentry Agreement, you can:

- File the form yourself, or
- Ask the SW or PO to file the form for you.

Note: If you file it yourself, your court hearing will be about three weeks sooner.

Where do I file my completed form?

You can file it by mail or in person at the juvenile court clerk's office at the courthouse in the county where your court case was closed.

You can submit it by mail or in person at the juvenile court clerk's office in the county where you live. The clerk will send it to the juvenile court clerk's office at the courthouse in the county where your court case was closed.

If you file by mail because you live outside of California, you must send it to juvenile court clerk's office at the courthouse in the county where your court case was closed.

Important! Keep a copy of all papers you file at court. If you file in person, the clerk can give you free copies.

Do I have to pay to file the form?

No. It's free.

Do I have to fill out other court forms?

No, unless you want to keep your contact information private. If so, do **not** put your address and other contact information on form JV-466. Instead, put it on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care.*

Who will decide if I can return to juvenile court jurisdiction and foster care?

A judge with the court in the county where your court case was closed will decide if your court case should be reopened.

The judge can decide that:

- **You do not qualify** because of your age. If this happens, you cannot file another request.
- **The information you gave to the court** shows that you do not meet one of the eligibility requirements or the court needs more information to decide your case. If this happens, the court will deny your request and send you a letter explaining why your request was denied. The court will also send you a list of lawyers who can help you with your case. You can file another request that includes the information that was missing.
- **The court has enough information** to decide your case and wants you to come to a court hearing. If this happens, you will get a notice telling you the date, time, and place of your hearing. The court will also assign a lawyer to speak for you at the hearing.

  The court will send a copy of the notice and your papers to:

  – The lawyer assigned to your case, and

  – The office that supervised you when the juvenile court's jurisdiction was dismissed. That office must make a report about your eligibility to return to foster care.

  If you ask for it on the form JV-466, the court can also send a notice to your parents or former legal guardian and the CASA office for your former CASA.

When will the hearing happen?

If you filed your court papers yourself and the court decides there is enough information to decide your case, the hearing will happen about three weeks after you filed your court papers.

If you asked a social worker or probation officer to file your court papers and the court decides there is enough information to decide your case, the hearing will happen about six weeks after you ask the social worker or probation officer to file your court papers.

What happens at the hearing?

At your hearing, the judge will review the evidence and decide your case.

If the court decides you meet the requirements, you will be allowed to return to foster care. You will also have to go back to court within 6 months to tell the court how you are doing. Your lawyer will also go with you to that hearing. If you used to be a dependent, you will be under the juvenile court's dependency jurisdiction.

If you used to be a ward, you will be under the juvenile court's transition jurisdiction.

If the court denies your request, you can file another request later if your situation changes so that you meet the requirements.

JV-466 Request to Return to Juvenile Court Jurisdiction and Foster Care

Clerk stamps date here when form is filed.

DRAFT -

NOT APPROVED BY THE JUDICIAL COUNCIL

This form can be used to ask the court to reopen your case because your situation changed and you decide that you want to return to the court's jurisdiction and a foster care placement.

If you don't want other people (for example, a parent or brother or sister who was part of your case when you were a child) to know your contact information, do not write it in (1). Write that information on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*. Read form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care,* for information about filling out and filing the forms.

If you do not know the information asked for on this form, leave the space blank. Remember to get and keep copies of all court papers and other papers you sign or receive from the child welfare services agency or the probation department.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Name:

Court fills in case number when form is filed.

Case Number:

(1) My information:

a. My address: _____

_____

b. My city, state, zip code: _____

c. My area code and telephone number: _____

d. My date of birth: _____

(2) The location of the juvenile court that had authority over me when I was 18 years old or when my guardianship or adoption was finalized:

a. City: _____

b. County: _____

(3) The name and court file number or case number of my case in juvenile court:

a. Name of my case: _____

b. Court file number or case number: _____

(4) The date the juvenile court closed my case: _____

(5) I need help to keep or find an appropriate place to live.

☐ I need a placement right now.

(6) Voluntary Reentry Agreement with child welfare services or the probation department to return to foster care:

☐ I agree to sign a Voluntary Reentry Agreement for a supervised placement.

☐ I signed a Voluntary Reentry Agreement for a supervised placement on *(date):* _____ with

☐ Child welfare services.

☐ Probation department.

7 You must plan to meet at least one of the five conditions listed below.
Please check all that apply:

a. ☐ I plan to attend a high school or a high school equivalency certificate (GED) program.

b. ☐ I plan to attend a college, a community college, or a vocational education program.

c. ☐ I plan to attend a program or take part in activities that will help train me to be employed or will help me solve problems that prevented me from finding a job.

d. ☐ I plan to work at least 80 hours per month.

e. ☐ I cannot go to a high school, a high school equivalency certificate (GED) program, a college, a community college, or a vocational education program; take part in a program or activities to help me find a job; or work 80 hours per month because of a medical condition.

8 If you were in a guardianship on your 18th birthday or adopted from foster care, please check all that apply below. If not, skip to 9.

a. ☐ I was placed by the juvenile court in a guardianship.

b. ☐ I was adopted from foster care.

c. ☐ My guardian(s) or adoptive parent(s) were receiving payments for my support on or after my 18th birthday.

d. ☐ My guardian(s) or adoptive parent(s) died on or after my 18th birthday.

e. ☐ My guardian(s) or adoptive parent(s) are no longer supporting me.

f. ☐ My guardian(s) or adoptive parent(s) no longer receive payments for my support.

9 The judge will set a hearing about this request if the judge thinks that he or she has enough information to decide whether you have met all the requirements.

Do you want your parents or former legal guardian to be told about the hearing, if the judge sets one?

☐ NO. I do not want my parents or former legal guardian to be told about the hearing.

☐ YES. I do want my parents or former legal guardian to be told about the hearing. Their names and addresses are:

Parent's name and address: _____

_____

Parent's name and address: _____

_____

Former legal guardian's name and address: _____

_____

10 The judge will give you a free lawyer to help before and during the hearing. If you want the lawyer who represented you when you were a dependent, ward, or nonminor dependent, please write the lawyer's name and telephone number on the line below, and if that lawyer is available, the court will appoint him or her to help you before and during the hearing.

Name and telephone number of the lawyer who used to represent me and who I want to represent me again:

_____

_____

Your name: _____ **Case Number:**

11 Did you have a Court Appointed Special Advocate (CASA)?

☐ NO. I did not have a CASA.

☐ YES. I did have a CASA.

Would you like the CASA to be told about the hearing if the judge schedules a hearing?

☐ NO. I do not want the CASA to be told about the hearing.

☐ YES. I want the CASA to be told about the hearing. The name of the person who was my CASA is:

_____

12 Did the Indian Child Welfare Act apply to you when you were under juvenile court jurisdiction as a child?

a. ☐ NO. The Indian Child Welfare Act did not apply to me.

b. ☐ YES. The Indian Child Welfare Act did apply to me.

Would you like to have the Indian Child Welfare Act apply to you as a nonminor dependent?

(1) ☐ NO. I do not want the Indian Child Welfare Act to apply to me.

(2) ☐ YES. I do want the Indian Child Welfare Act to apply to me. The name of my tribe and the name, address, and telephone number of my tribal representative is: _____

_____

_____

c. ☐ I DO NOT KNOW if the Indian Child Welfare Act applied to me.

(1) ☐ I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe(s) *(name each):*
Name of band *(if applicable):*

(2) ☐ I may have Indian ancestry.
Name of tribe(s) *(name each):*
Name of band *(if applicable):*

(3) ☐ I have no Indian ancestry as far as I know.

13 Your verification:

I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

14 Verification by nonminor's representative:
The nonminor is unable to provide verification due to a medical condition. I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____ ▶ _____

Type or print representative's name *Signature of representative*

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* E-MAIL ADDRESS: ATTORNEY FOR (*name*):	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS REGARDING PRIMA FACIE SHOWING ON NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Findings and Orders: Prima Facie Showing Made

1. The court has read and considered
   a. ☐ *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) filed by *(name):* on *(date):*
   b. ☐ Other *(specify):*
   c. ☐ Other *(specify):*
2. ☐ The court finds that a prima facie showing has been made that
   a. ☐ the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age; or
   ☐ the nonminor was a minor under juvenile court jurisdiction at the time of the establishment of a guardianship under section 360, section 366.26, or section 728(d), or he or she was a minor or nonminor dependent when his or her adoption was finalized, and
      ☐ the nonminor's guardian or guardians, or adoptive parent or parents, as applicable, died after the nonminor attained 18 years of age but before he or she attained 21 years of age.
      ☐ the nonminor's guardian or guardians, or adoptive parent or parents, as applicable, no longer provide ongoing support to, and no longer receive payment on behalf of, the nonminor after the nonminor attained 18 years of age but before he or she attained 21 years of age, and it may be in the nonminor's best interest for the court to assume dependency jurisdiction.
   b. the nonminor is under 21 years of age.
   c. the nonminor wants assistance to maintain or secure an appropriate, supervised placement or is in need of immediate placement and agrees to a supervised placement under a voluntary reentry agreement.
   d. the nonminor intends to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b) as follows *(check all that apply):*
      (1) ☐ Attending high school or a high school equivalency certificate (GED) program
      (2) ☐ Attending a college, community college, or vocational education program
      (3) ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment
      (4) ☐ Employed for at least 80 hours per month
      (5) ☐ Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity, or to work 80 hours per month due to a medical condition
3. **The court orders the following:**
   a. The nonminor's request to return to foster care is set for hearing on *(specify date within 15 days of the date form JV-466 was filed):*
   b. An attorney is appointed to represent the nonminor solely for the hearing on the request.

Form Approved for Optional Use
Judicial Council of California
JV-470 [Rev. Jan. 1, 2016]

Welfare and Institutions Codes, § 388(e), 388.1;
Cal. Rules of Court, rule 5.906
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

3. c. ☐ Other orders:

Findings and Orders: Prima Facie Showing Not Made

4. The court has read and considered
   a. ☐ *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) filed by *(name):* on *(date):*
   b. ☐ Other *(specify):*
   c. ☐ Other *(specify):*

5. ☐ The court finds that a prima facie showing has not been made. The nonminor's request to return to foster care is denied because *(check all that apply)*
   a. ☐ the nonminor was not previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age; or
   ☐ the nonminor is not eligible under section 388.1 for the juvenile court to assume dependency jurisdiction because *(check all that apply)*
      ☐ the guardian(s) or parent(s) were not receiving Kin-GAP or adoption assistance payments for the nonminor.
      ☐ the guardian(s) or adoptive parent(s) are providing support to the nonminor and/or are continuing to receive aid payments.
      ☐ the petition is lacking evidence of the death of the guardian(s) or adoptive parent(s).
   b. ☐ the nonminor is over 21 years of age.
   c. ☐ the nonminor does not want assistance to maintain or secure an appropriate, supervised placement or does not agree to a supervised placement under a voluntary reentry agreement.
   d. ☐ the nonminor does not intend to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b), and stated below:
      (1) Attending high school or a high school equivalency certificate (GED) program
      (2) Attending a college, community college, or vocational education program
      (3) Attending a program or participating in an activity that will promote or help remove a barrier to employment
      (4) Being employed for at least 80 hours per month
      (5) Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition
   e. ☐ Other *(specify reason for denial):*

6. The nonminor may file a new request when the issues are resolved.

7. The court clerk must serve on the nonminor the following documents:
   a. A copy of the written order
   b. Blank copies of *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468)
   c. A copy of *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO)
   d. The names and contact information of attorneys approved by the court to represent children in juvenile court proceedings and who have agreed to provide a consultation to nonminors whose requests are denied due to the failure to make a prima facie showing

Date:

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS AFTER HEARING TO CONSIDER NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

1. Parties *(name)*

	Present	Attorney *(name)*	Present
a. Nonminor dependent:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐

2. Others present
   a. Other *(specify):*
   b. Other *(specify):*
   c. Other *(specify):*

3. **The court has read and considered and admits into evidence**
   a. ☐ report of social worker dated:
   b. ☐ report of probation officer dated:
   c. ☐ other *(specify):*
   d. ☐ other *(specify):*
   e. ☐ other *(specify):*

Court Grants Request

4. ☐ The court makes the findings stated below:
   a. Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age, or
      ☐ The nonminor is eligible for the court to assume jurisdiction as provided in section 388.1.
   c. The nonminor is under 21 years of age.
   d. The nonminor intends to satisfy a condition or conditions under Welfare and Institutions Code section 11403(b).
   e. The condition or conditions under Welfare and Institutions Code section 11403(b) that the nonminor intends to satisfy follow *(specify all that apply):*
      (1) ☐ Attending high school or a high school equivalency certificate (GED) program

Form Approved for Optional Use
Judicial Council of California
JV-472 [Rev. Jan. 1, 2016]

NONMINOR'S NAME:	CASE NUMBER:

4. e. (2) ☐ Attending a college, community college, or vocational education program
   (3) ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment
   (4) ☐ Being employed for at least 80 hours per month
   (5) ☐ Unable to do any of the activities in e(1)–(4) due to a medical condition

   f. Continuing in a foster care placement is in the nonminor's best interest.

   g. The nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency.

   h. ☐ The nonminor, who is an Indian child, chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

5. ☐ The court makes the orders stated below:
   a. The court grants the request to assume or resume jurisdiction, and juvenile court jurisdiction shall resume over the nonminor as a nonminor dependent.
   b. Placement and care are vested with the placing agency.
   c. The placing agency must develop with the nonminor a new Transitional Independent Living Case Plan and file it with the court within 60 days.
   d. ☐ The social worker or probation officer must consult with the tribal representative regarding a new Transitional Independent Living Case Plan.
   e. A nonminor dependent review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court is set for *(specify a date that is within six months of the date the voluntary reentry agreement was signed):*
   f. The prior order appointing an attorney for the nonminor is continued, and that attorney is appointed until the jurisdiction of the juvenile court is terminated.

Court Denies Request

6. ☐ a. The court finds that the nonminor is under 21 years of age, but the nonminor does not intend to satisfy at least one of the conditions under Welfare and Institutions Code section 11403(b), or the nonminor and the placing agency have not entered into a reentry agreement.
   (1) The nonminor's request to return to foster care is denied. The request is denied because *(specify the reasons for denial):*
   (2) The nonminor may file a new request when the circumstances change.
   (3) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing):*

   ☐ b. The court finds that the nonminor is over 21 years of age.
   (1) The request to have juvenile court jurisdiction assumed or resumed is denied; and
   (2) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing):*

Findings and Orders: Service

7. The written findings and orders must be served by the juvenile court clerk on all persons who were served with notice of the hearing.
   a. Service must be by personal service or first-class mail within three court days of the issuance of the order.
   b. Proof of service must be filed.

Date:

JUDICIAL OFFICER

SPR15-21

Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber President	A	The California Judges Association supports this amendment. Although this expands the number of nonminor dependents who will come before the court thereby increasing caseloads, it is the best interest of our dependency children to assist them to become successful. It requires a concrete ninety-day transition plan prior to the age of 21 and requires a dispositional hearing before a dependent ward turns 18 will create more focus on their transition. It adds a finding on JV 367 regarding a nonminor reaching the age of 21 and clarifies the Judicial Council forms for entry or reentry into the nonminor dependent system to comply with AB2454.	No response required.
2.	Los Angeles County Counsel's Office Dawyn Harrison Assistant County Counsel	AM	Agree with the suggested changes if amended to change the reference made in form JV-472, section 5(e) to reflect that the review hearing for a nonminor dependent is conducted pursuant to Welfare and Institutions Code section 366.31, not section 391. Rule 5.903 does not reference section 391. Section 391 is used when the juvenile court is considering whether or not to terminate jurisdiction over a nonminor dependent. Additionally the form JV-367, section 23(d) should reference section 366(g) not 366(f).	The committee has adopted these clarifying suggestions on statutory references.
3.	Orange County Bar Association Ashleigh Aitken President	AM	The proposed recommendations regarding extended foster care are a result of the enactment of AB 2454 which primarily provided for youth between the ages of 18 and 21 who were placed in guardianships, or adopted, out of foster care, and whose guardians or adoptive parents have died, or are no longer	No response required.

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

SPR15-21
Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			providing support to the youth, to petition the court to enter foster care as nonminor dependents. The proposal also clarifies the findings to be made at a hearing to terminate jurisdiction over a nonminor dependent who has attained 21 years of age, and clarifies that the last hearing before a child turns 18 may include a dispositional hearing. The proposal entails the amendment of four Rules of Court and the revisions of four JV forms to effectuate the legislative changes. The amendments to the Rules of Court, and the revision of the JV forms appear consistent with the enacted legislation, however the JV-464-INFO form contains information that may be misconstrued by the reader. Instead of saying "you would be able to live in a . . . " the form should say, "you may be able to live in a . . ."	The committee has adopted this change to ensure that the form is not misconstrued as authorizing a particular placement.
4.	San Diego County Leesa Rosenberg	AM	That the language in the JV 464 be changed to read "on or after your 18th birthday" to align with the law and the language in the JV 466 form.	The committee has adopted this clarifying change.
5.	Santa Clara County Julie Fulmer McKellar Lead Deputy County Counsel	NI	The modification to CRC 5.555(1) adds a subdivision (N) for dismissal for nonminors turning 21, but doesn't make it clear whether those are findings needed in addition to findings (A)-(M), or whether those are the only findings needed at that hearing. Tends to make the rule less clear rather than to clarify. The addition of the dispositional hearing as a hearing where the "last review hearing before	The committee has clarified the rule provision to specify that the findings in N are the only required findings for a nonminor who has turned 21. Welfare and Institutions Code section 366.3 provides that these findings are required at any

SPR15-21
Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			turning 18" findings apply in 5.707(a) makes sense (and that was already our practice), but it doesn't resolve the longstanding confusion about whether those findings are needed at a 366.3 for a minor in a PP other than PPLA.	review hearing that is the last prior to a dependent child attaining 18 years of age, and makes no distinction based upon the permanent plan for the child. Thus the committee deems the rule, which includes all such hearings, to be consistent with the statute.
			The modification to 5.906(a) proposes "assumes or resumes" jurisdiction as an NMD under 11400(v) in an attempt to add the LG and AAP kids, but the LG and AAP kids don't meet the 11400(v) definition. They are within WIC 11400(aa).	The committee appreciates this clarification and added the additional subdivision (11400(aa)) to the rule.
			Form JV-466 asks for "The date the juvenile court closed my case or finalized my guardianship or adoption" without consideration of the fact that a guardianship might be finalized long before the case is closed.	The committee agrees that this might cause confusion and has restored that item to read simply: "the date the court closed my case."
			The JV-466 in Item 9 also erroneously says "formal legal guardians" rather than "former legal guardians."	The committee takes note of this correction and has corrected the error.
6.	State Bar of California, Family Law Section Saul Bercovitch Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal.	No response required.
7.	Superior Court of Los Angeles County (no name provided)	AM	In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: · Does the proposal appropriately address the stated purpose? · Do the revisions to forms JV-464-INFO, JV-	No response required.

SPR15-21
Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			466, JV-470, and JV-472 allow for effective implementation of AB 2454? Yes, to both. On JV-464-INFO, under "Do I qualify to return to juvenile court jurisdiction and foster care? 2d bullet reads "You were in foster care on your 18th birthday." It should read as in the findings (JV-470), "You were previously under juvenile court jurisdiction and subject to an order for foster care placement on your 18th birthday." The third bullet, "You were supervised by a social worker or probation officer," is confusing and should be deleted. Also, the and/or bullets are confusing and hard to follow. The spacing is much clearer on the JV-470. Otherwise, the proposed changes are excellent.	Form JV-464-INFO is intended to assist nonminors in understanding the process to reenter foster care and thus is written in plain language. Because the plain language on the current form is more comprehensible to a young person the committee prefers maintaining the current language re being in foster care. The committee has adopted this suggested modification and deleted this sentence. The committee has added space after the or to make this easier to read.
8.	Superior Court of San Diego County Mike Roddy Executive Officer	AM	**JV-470, item 5a**: Should be amended to state: "the guardian(s) or adoptive parent(s) are providing support to the *non*minor…"	The committee has adopted this correction and revised the item to read nonminor.
9.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Working Group	A	No specific comment provided.	No response required.

Item number: SPR15-22

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: October 27, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Delinquency: Documenting Wobbler Determination
Revise form JV-665

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Audrey Fancy, 415-865-7706, audrey.fancy@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for change to form JV-665 suggested by the recent unpublished appellate decision In re S.J. (H040997).

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Delinquency: Documenting Wobbler Determination

Rules, Forms, Standards, or Statutes Affected
Revise form JV-665

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
July 29, 2015

Contact
Audrey Fancy, 415-865-7706
audrey.fancy@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination and to make other nonsubstantive changes to improve the accuracy of the form.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination.

A copy of the proposed revised form is attached at pages 5–6.

Previous Council Action

Form JV-665 was adopted, effective January 1, 2006, as part of a comprehensive packet to provide a standard cover page and attachments for court orders and findings in juvenile

delinquency proceedings.[1] The form was then revised, effective January 1, 2007, to correct grammatical and legal inaccuracies, to delete the option of releasing the child to a parent or guardian pending placement in a group home, and to add a new dispositional option for placement in a ranch or camp.

Most recently, effective January 1, 2012, the form was revised as part of a second comprehensive proposal that resulted in the creation of 8 new Judicial Council forms and the revision of 15 other forms for juvenile delinquency proceedings. Some of those revisions were in response to legal changes; others responded to suggestions to the Family and Juvenile Law Advisory Committee from the courts and their justice partners to make the forms easier to use and more comprehensive, as well as to serve the needs of courts that use electronic versions of the forms. As part of that revision, form JV-665 and all but one of the delinquency court orders forms were revised to be optional rather than mandatory to relieve any financial burdens on local courts. In addition, the length of this form was significantly reduced by moving the findings and orders related to children in placement to the newly created form JV-667; and the form was modified to reduce repetitive entry of allegation information, allow for a disposition under Welfare and Institutions Code section 725(a), and allow for more than one next hearing date to be set.

Rationale for Recommendation

Form JV-665 is an optional disposition form that states required findings and orders in delinquency cases. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.[2] Item 3 currently reads: "The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows."

In the case *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 [60 Cal.Rptr.2d 889, 930 P.2d 1255], the California Supreme Court concluded that section 702 is unambiguous and "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." *Manzy* further noted that "the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler." (*Id.* at p. 1209.) The current language at item 3 was drafted to comply with *Manzy W.* A recent unpublished case, however, noted that the language on the form is unclear with regard to the court's determining

[1] That proposal implemented the recommendations of the Probation Services Task Force Final Report as directed by the Judicial Council at its August 29, 2003, meeting. Specifically, staff was directed to "work with probation departments and the Chief Probation Officers of California to develop statewide standards for enhanced probation services." That proposal was developed by a working group of court and probation representatives including judges (appellate and trial court), court clerks, a chief probation officer, probation managers, and probation line staff.

[2] Welf. & Inst. Code, § 702: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony."

whether an offense is a felony or a misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form.[3] See *In re S.J.* (H040997), footnote 6:

> We take judicial notice of the existence and contents of the Judicial Council's form order entitled JURISDICTION HEARING—JUVENILE DELIQUENCY (JV-644 [Rev. Jan. 1, 2012]). (See Evid. Code, §§ 452, subd. (c), 459.) The form provides space for a court to list allegations that have been admitted and found true after the child's admission or no contest plea. By checking the appropriate box, the court may declare each listed statutory violation to be a misdemeanor or a felony or it may indicate the status of the statutory violation will be specified at disposition. It contains additional preprinted language with respect to those allegations: "The court has considered whether the above offense(s) should be felonies or misdemeanors." A juvenile court adopts this language by checking the adjacent box.
>
> The Judicial Council may wish to consider revising Judicial Council form JV-665 to provide for the identification or separately listing of each statutory violation that "would in the case of an adult be punishable alternatively as a felony or a misdemeanor" (§ 702) and to clearly reflect that the court is exercising its discretion pursuant to section 702 and explicitly declaring the status of each such offense. The rebuttable presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 ["In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]"].)

The committee considered this suggestion and determined that the language on form JV-665 is unclear and should be revised consistent with form JV-664, *Jurisdiction Hearing—Juvenile Delinquency*. The committee recommends changing the order of the columns in item 3 and providing more specificity of enhancements in the final column. In addition, the committee also recommends technical changes to form JV-665 to improve the parallelism of subpoints in item 11 and to update cross-references to other forms listed as attachments after the judicial officer's signature line at the bottom of page 2. The current cross-references list out-of-date form names.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Four organizations provided comment. Two agreed with the

[3] California Rules of Court, rule 8.1115(a), states that an unpublished opinion "must not be cited or relied on by a court or a party in any other action." This case is cited here to provide background information for this form change.

proposal and two agreed if modified; no commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 7–8.

One of the commentators suggested alternative wording for item 3: "We recommend the language from Manzy W.: 'As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor.'" Because the text introduces a list of all sustained counts, some, if not all of which may not be wobblers, and since the term *wobbler* is not a legal term, the committee proposes: "The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows."

Two commentators provided comment on item 11. During the comment period the committee did not solicit comment on item 11. However, the recommended changes appear to improve the clarity of that item and are appropriate to make at this time under rule 10.22 (d)(2) because the change is a "correction or a minor substantive change that is unlikely to create controversy." The committee recommends revising item 11 to more clearly specify the custody and probation status of the youth.

The committee considered whether amending the form as suggested by the court in *In re S.J.* was necessary and concluded that amending the language as suggested would provide helpful clarity.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, as well as reproduction costs. Implementation should also result in greater clarity with regard to wobbler determinations, resulting in fewer remands and associated costs.

Attachments and Links

1. Form JV-665, at pages 5–6
2. Chart of comments, at pages 7–8

CHILD'S NAME:	CASE NUMBER:

DISPOSITION—JUVENILE DELINQUENCY

☐ The court has read and considered the social study prepared by the probation officer and any other relevant evidence.

☐ The child has been detained and is at risk of entering foster care. The probation officer believes that child will be able to return home, and the social study includes a case plan as described in Welfare and Institutions Code section 636.

☐ The probation officer has recommended initial or continuing placement in foster care, and the social study includes a case plan as described in Welfare and Institutions Code section 706.6.

THE COURT FINDS AND ORDERS

1. ☐ Notice has been given as required by law.
2. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
3. ☐ The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:

Count number	Statutory violation	Misdemeanor	Felony	Enhancement *(specify)*
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐

4. ☐ The child resides in *(specify):* County.
5. ☐ *The case is transferred to (specify):* County for disposition. *Juvenile Court Transfer Orders (form JV-550)* will be completed and transmitted.
6. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
7. ☐ The child is placed on probation for up to six months under Welfare and Institutions Code section 725(a) under conditions described in an attachment to this form.
8. ☐ Deferred entry of judgment is ☐ granted ☐ denied.
9. ☐ The child is ☐ declared ☐ continued as a ward of the court.
10. ☐ The recommended findings and orders contained in the probation report dated at pages are adopted ☐ as modified by the court as its own, a copy of which is attached and incorporated herein.
11. ☐ The child is declared a ward and placed on probation
    a. ☐ under the supervision of the probation officer ☐ without probation supervision
    b. in the custody of
       (1) ☐ parent *(name):* ☐ mother ☐ father
       (2) ☐ parent *(name):* ☐ mother ☐ father
       (3) ☐ legal guardian *(name):*
       (4) ☐ probation for out-of-home placement or confined commitment. Form JV-667, *Custodial or Out of Home Placement Disposition Attachment* is completed and attached.
    c. ☐ under terms and conditions described on the attached form.
12. ☐ The child and legal parent are to pay a restitution fine ☐ of $ ☐ as specified on the attached form.
13. ☐ The child, with his or her parent, is to pay restitution
    ☐ as described on the attached restitution order.
    ☐ to each victim *(name each):*
       a. c.
       b. d.
       ☐ in the amount of $ ☐ in the amount and manner determined by the probation office, with the opportunity for review by the court if disputed by the child or the parents.

Form Approved for Optional Use
Judicial Council of California
JV-665 [Rev. January 1, 2016]

Welfare and Institutions Code, §§ 702, 706.6, 725, 727, 727.2;
Cal. Rules of Court, rules 5.785, 5.790, 5.795
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

14. ☐ The child, with his or her parents, is to pay a fine in the amount of $, plus a penalty assessment in the amount of $, for a total of $

15. ☐ Terms regarding vehicles. The child must
    a. ☐ participate in and successfully complete *(specify):*
    b. ☐ only drive to and from school, work, and/or counselling programs.
    c. ☐ surrender license to ☐ court ☐ probation officer.

16. ☐ The child's driver's license is
    ☐ suspended.
    ☐ revoked.
    ☐ delayed
    ☐ for a period of months years.
    ☐ until the child attains 18 years of age.

17. ☐ Court will notify the Department of Motor Vehicles of the judgment. The DMV has independent authority to suspend, revoke, or delay driving privileges.

18. ☐ The child is ordered to register under Penal Code section 290.

19. ☐ The child is ordered to submit to DNA collection under Penal Code section 296.

20. ☐ Other *(specify):*

21. ☐ **The next hearing will be:**

Date:	Time:	Dept:
Date:	Time:	Dept:

22. ☐ The child is ordered to return to court on the above date and time.

23. ☐ The child is advised of his or her right to appeal.

24. ☐ The child is advised that his or her appointed attorney has a continuing obligation to represent the child on this case, until counsel is relieved by the court under California Rules of Court, rule 5.663.

25. ☐ All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

Date:

JUDICIAL OFFICER

The following attachments are incorporated by reference as findings and orders:

- ☐ *Custodial and Out Of Home Placement Disposition Attachment* (JV-667)
- ☐ *Terms and Conditions* (JV-624)
- ☐ *Juvenile Court Transfer Orders* (JV-550)
- ☐ *Notice of Hearing and Temporary Restraining Order—Juvenile* (JV-250)
- ☐ *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (JV-732)
- ☐ *Order for Victim Restitution* (CR-110/JV-790)
- ☐ *Order Regarding Application for Psychotropic Medication* (JV-223)
- ☐ *Order Designating Educational Rights Holder* (JV-535)
- ☐ *Parentage—Findings and Judgment* (JV-501)

Additional attachments:

- ☐ Indian Child Welfare Act
  - ☐ *Order for Repayment of Cost of Legal Services* (JV-135)
  - ☐ Responses from tribes or BIA
- ☐ Victim Identification Form
- ☐ Probation officer's case plan approved by the court
  - ☐ As submitted
  - ☐ As amended and stated on the record
- ☐ Other (specify):

SPR15-22
Juvenile Delinquency: Documenting Wobbler Determination (revise form JV-665)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association By Hon. Joan P. Weber	A	The Family and Juvenile Advisory Committee proposes revising optional form JV 665 to do three things. 1) In response to In re S.J. H040997 footnote 6, where the court raised concerns about the clarity of #3, which addresses the obligation of the court pursuant to W&I 702 to make a determination as to whether each charge is a felony or a misdemeanor, this new form rearranges the sequence of court number, statutory violation, misdemeanor or felony, and enhancements (if any). 2) improves the parallelism of subpoints in item 11, and 3) updates the cross references at the end of the form which are currently outdated. We considered whether amending the form was necessary and concluded that doing so provided helpful clarity. California Judges Association supports these changes.	No response required.
2.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of Los Angeles	AM	In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Does the proposal appropriately address the stated purpose? Yes. With regard to the JV-665 form, page 1,item #3: Instead of: “The court has considered whether	The committee agrees to revise the wording to more closely track the language of Manzy but

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

SPR15-22
Juvenile Delinquency: Documenting Wobbler Determination (revise form JV-665)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			the offenses below should be considered a misdemeanor or a felony…" We recommend the language from Manzy W.: "As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor:" Item #11: We suggest the following: 11. The child is declared a ward and placed on probation □ Under the supervision of the probation officer □ Without probation supervision The child is to reside in the custody of: Choices as proposed [parent, legal guardian.] □ Probation for out-of-home placement.	decided to use alternative wording since the term "wobbler," while commonly used is not a legal term, and to avoid confusion when the charged offenses are not wobblers. The committee proposes the following: "The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:" The committee did not circulate changes to item 11 but this minor substantive change appears to be a prudent change to improve the clarity of this form.
4.	Superior Court of California, County of San Diego By Michael Roddy	AM	**Items 11 d, e, and f**: We recommend that the following words be deleted "in the custody".	The committee did not circulate changes to item 11 but due to the two comments on this item the committee has decided to modify item 11 consistent with the suggestion from Los Angeles below.

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

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Proceedings Before a Referee
Revise Cal. Rules of Court, rule 5.538

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Audrey Fancy, 415-865-7706, audrey.fancy@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Amending rule 5.538 (b)(3) in the Spring 2015 cycle to conform to existing law and to prevent unnecessary appellate delays

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Law: Proceedings Before a Referee

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.538

Effective Date
January 1, 2016

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Date of Report
August 5, 2015

Contact
Audrey Fancy, 415-865-7706
audrey.fancy@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending California Rules of Court, rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248(b)(1).

The text of the proposed amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 5.538, effective January 1990, as rule 1416. This rule was renumbered effective January 1, 2007, as part of a comprehensive reorganization of the rules of court, but no substantive changes were made.

Rationale for Recommendation

Rule 5.538(b)(3) is inconsistent with Welfare and Institutions Code section 248(b)(1) and must be amended to conform to existing law and to prevent unnecessary appellate delays.

Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179, effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee's findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under rule 5.538(b)(3), service must be by mail to the last known or designated address; it states: "Serve the parent and guardian, and counsel for the child, parent, and guardian, a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. Service must be by mail to the last known address and is deemed complete at the time of mailing."

To reconcile this discrepancy, the committee proposes amending rule 5.538(b)(3) by replacing the final sentence with the following:

Serve the parent and guardian—and counsel for the child, parent, and guardian—a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

(A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).

(B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Three organizations provided comment; all three agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at page 5.

No alternatives were considered because the rule is inconsistent with statute.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, but costs should be minimal given that many courts already comply with Welfare and Institutions Code section 248. In addition, once court practices are changed, this amendment should result in savings because the statutory change allows for service in court, a less costly method of service than service by mail. In addition, implementation should prevent delays in appeals from orders terminating parental rights. The legislative history of Senate Bill 179 indicates that the purpose of the amendment allowing for personal courtroom service of a referee's orders was to prevent such delays.[1]

Attachments and Links

[1] Sen. Rules Com., Off. of Sen. Floor Analyses, unfinished business analysis of Sen. Bill No. 179 (2010–2011 Reg. Sess.) as amended May 20, 2010.

Rule 5.538 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary judge

(a) * * *

(b) Furnishing and serving findings and order; explanation of right to review (§ 248)

After each hearing before a referee, the referee must make findings and enter an order as provided elsewhere in these rules. In each case, the referee must cause all of the following to be done promptly:

(1) Furnish a copy of the findings and order to the presiding judge of the juvenile court.

(2) Furnish to the child (if the child is 14 or more years of age or, if younger, as requested) a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

(3) Serve the parent and guardian~~,~~ and counsel for the child, parent, and guardian~~,~~ a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. ~~Service must be by mail to the last known address and is deemed complete at the time of mailing.~~

(A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).

(B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

SPR15-23

Juvenile Law: Proceedings Before a Referee (amend Cal. Rules of Court, rule 5.538)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber	A	The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule. The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1), which went into effect over 4 years ago. The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule. California Judges Association supports the amendment. In addition to bringing the rule in compliance with state law, that law reduces workload placed on court staff.	No response required.
2.	Orange County Bar Association Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of San Diego Mike Roddy	A	No specific comment.	No response required.

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

Item number: 10

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Detention
Amend Cal. Rules of Court, rules 5.502, 5.760 and 5.790; revise forms JV-642 and JV-667

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Nicole Giacinti, 415-865-7598, nicole.giacinti@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of Assembly Bill 388 (Chesbro; Stats 2014, ch. 760) and Assembly Bill 2607 (Skinner; Stats. 2014 ch. 615).

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Law: Detention

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; revise forms JV-642 and JV-667

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 5, 2015

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three California Rules of Court and revising two forms to conform to legislative amendments to sections 635 and 737 of the Welfare and Institutions Code. The legislative amendments clarify that the basis for detaining a child must not be his or her status as a dependent of the court or the child welfare department's inability to provide a placement for the child, and add requirements to the 15-day reviews that occur when a child or nonminor dependent is detained pending execution of a placement order. The amendments and revisions ensure that the rules and forms are consistent with the amended law. They also make technical corrections and clarifications, including clarifying that home supervision does not qualify as a detention for the purposes of federal foster care funding.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2016, amend three of the California Rules of Court and revise two Judicial Council forms, as follows:

1. Amend rule 5.502(11) and 5.760(c) to clarify that children placed on home supervision are not detained for the purposes of federal foster care funding under title IV-e. Amend rule 5.760(l) to delete the word "detention." These amendments will resolve confusion regarding the foster care funding eligibility of a child placed on home supervision.

2. Further amend rule 5.760(c) to conform to the new statutory requirement that the court's decision to detain a dependent child of the court in juvenile hall must not be based on the child's status as a dependent of the court or the inability of the child welfare department to provide a placement for the child.

3. Amend rule 5.760(c) to conform to the new statutory requirement that establishes that when no grounds for detention exist, the court must order dependents of the court released to the child welfare department, and that agency will ensure that the child's current caregiver take custody of the child or it will take custody of the child and place the child in a licensed or approved home.

4. Amend rule 5.760(e) to remove the requirement that the findings and orders document be signed, as California law does not require a signature for a valid court order.

5. Amend rule 5.790 to conform to new statutory requirements regarding the 15-day reviews that the court must conduct when a child is detained pending implementation of a dispositional order. To limit additional changes to the rule necessitated by future modifications to section 737, the committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737.

The committee recommends the following revisions to Judicial Council forms:

1. On *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), insert a new item 26 to allow the court to state that the child is a dependent of the court under section 300, is ordered released from custody, and is ordered into the care of child welfare services to ensure that the either the child's current caregiver takes physical custody of the child or child welfare services takes physical custody and places the child in an approved placement.

2. On *Custodial and Out-of-Home Placement Disposition Attachment* (form JV-667), remove references to detaining children on home supervision. Add to two items the finding, "Continuance in the home is contrary to the child's welfare," which is required at any court hearing where the court is authorizing the removal of the child from the home and is critical to ensure federal foster care funding.[1]

[1] See 42 U.S.C. § 672(a)(1)–(2); 45 C.F.R. § 1356.21(c).

The text of the amended rules is attached at pages 6–8. A copy of the revised forms is attached at pages 9–13.

Previous Council Action

The Judicial Council adopted:

- Rule 5.502 as rule 1401, effective January 1, 1990. The rule has been amended 14 times since then, most recently in 2014 to conform to statutory amendments that required adding or clarifying definitions related to education, Indian children, and nonminors.

- Rule 5.760 as rule 1475, effective January 1, 1998. The rule has been amended four times since then, most recently in 2007.

- Rule 5.790 as rule 1493, effective January 1, 1991. The rule has been amended eight times since then, most recently in 2007.

All juvenile court rules were renumbered and placed in title 5, effective January 1, 2007.

Initial Appearance Hearing—Juvenile Delinquency (form JV-642) was adopted for mandatory use, effective January 1, 2006. It was made optional effective January 1, 2012, and last revised effective July 1, 2013.

Custodial And Out-of-Home Placement Disposition Attachment (form JV-667) was approved for optional use, effective January 1, 2012.

Rationale for Recommendation

Assembly Bill 388 amended section 635 of the Welfare and Institutions Code to clarify that a child who has been declared a dependent of the court is not to be detained because of the child's status as a dependent or because the child welfare services department has failed to locate a placement for the child. Assembly Bill 2607 amended section 737 of the Welfare and Institutions Code to incorporate additional required elements into the 15-day reviews that must be held while a child or nonminor dependent awaits placement under a dispositional order. The committee proposes limited amendments and technical corrections to the affected rules and forms.

Rule 5.502 and 5.760(c)

Although rule 5.502 is not directly affected by AB 388 and AB 2607, the current definition of *detained* in rule 5.502(11) and the phrasing in rule 5.760(c) have caused confusion regarding the eligibility for federal foster care funding of children on home supervision. Section 628.1 of the Welfare and Institutions Code states that if the child meets the criteria for detention but the probation officer does not believe that 24-hour secure detention is necessary, the probation officer must "release such minor to his or her parent, guardian, or responsible relative on home supervision." Eligibility for federal foster care payments is based on, among other things,

placement of the child in a foster family home or child-care institution and a judicial determination that it is contrary to the child's welfare to stay in the home from which he or she was removed. A child who returns to the home from which he was removed is ineligible to receive foster care payments because his return home signals that it is not contrary to his welfare to remain in the care of his parent or guardian and because he has not been ordered into out-of-home placement in a foster family home or child-care institution. Because the child is not detained for the purposes of federal foster care funding under title IV-e, the committee proposes making the recommended amendments to eliminate confusion regarding the title IV-e eligibility of a child placed on home supervision.

Rule 5.760(c)

The amendments to sections 635 and 636 enacted by AB 388 are aimed at ensuring that children who are dependents of the court and detained in juvenile hall, are not detained because of delays in identifying a placement. Rule 5.760(c) states the grounds on which a child may be detained but does not currently contain language clarifying that neither a child's status as a dependent of the court, nor the child welfare services department's inability to find a placement, is grounds for detention. Failure to include the new requirement in rule 5.760(c) would be inconsistent with the statutory change. The committee therefore recommends amending the rule to include the new requirement.

Rule 5.790

The 15-day review requirement is stated in rule 5.790 but the rule neither contains nor references the review requirements delineated in amended section 737. Rather than stating the specific requirements, the committee proposes cross-referencing recently amended section 737 so that any future modifications to section 737 will not necessitate changes to the rule.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program volunteers; and other juvenile and family law professionals.

The committee received six comments. One commentator agreed with the proposal and five agreed if modified. No commentators disagreed with the proposal. Most of the commentators suggested minor or technical changes, such as more closely tracking the statutory language. The committee agreed with all of them without debate. A chart with the full text of the comments received and the committee's responses is attached at pages 14–23.

One suggestion generated the most committee discussion.

Comment considered: Removing home supervision from the definition of detention
One commentator did not agree that home supervision should be removed from the definition of detention in rule 5.502 because it may be a form of detention. The committee recommends leaving the reference to home supervision in the definition of detention in rule 5.502(11) and adding this sentence: "A child released or placed on home supervision is not detained for the purposes of federal foster care funding." The addition of this sentence to rule 5.502(11) clarifies that although home detention may be considered a restriction of liberty, it is not a detention for the purposes of title IV-E foster care funding.

The proposed revision to rule 5.760(*l*) is also slightly modified to draw a distinction between release and home supervision.

Alternatives considered
The committee considered making only the changes necessary to implement AB 388 and AB 2607 but determined that amending rules 5.502(11) and 5.760(c) and revising forms JV-642 and JV-667 would clarify the differences between detention for federal foster care funding purposes and home supervision. For those children placed on home supervision, a judicial decision that it would not be contrary to their welfare for them to return home has been made; thus, they are ineligible for foster care funding under title IV-e. Although they may be detained in the sense that their liberty has been restricted, children placed on home supervision are not detained for the purposes of title IV-e; consequently, detention orders must be made when a child is removed from the home after being placed on home supervision. The revisions to rules 5.502(11) and 5.760)(c) and forms JV-642 and JV-667 are intended to eliminate any confusion about this distinction.

Implementation Requirements, Costs, and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.502, 5.760, and 5.790, at pages 6–8
2. Forms JV-642 and JV-667, at pages 9–13
3. Chart of comments, at pages 14–23
4. Assembly Bill 388
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB388&search_keywords
5. Assembly Bill 2607
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2607&search_keywords

Rules 5.502, 5.760, and 5.790 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.502. Definitions and use of terms

Definitions (§§ 202(e), 303, 319, 361, 361.5(a)(3), 450, 628.1, 636, 726, 727.3(c)(2), 727.4(d), 4512(j), 4701.6(b), 11400(v), 11400(y), 16501(f)(16); 20 U.S.C. § 1415; 25 U.S.C. § 1903(2))

As used in these rules, unless the context or subject matter otherwise requires:

(1)–(10) * * *

(11) "Detained" means any removal of the child from the person or persons legally entitled to the child's physical custody, or any release of the child on home supervision under section 628.1 or 636. A child released or placed on home supervision is not detained for the purposes of federal foster care funding.

(12)–(45) * * *

Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders

(a)–(b) * * *

(c) Grounds for detention (§§ 625.3, 635, 636)

(1) The child must be released unless the court finds that continuance in the home of the parent or legal guardian is contrary to the child's welfare, and one or more of the following grounds for detention exist:

~~(1)~~(A) The child has violated an order of the court;

~~(2)~~(B) The child has escaped from a commitment of the court;

~~(3)~~(C) The child is likely to flee the jurisdiction of the court;

~~(4)~~(D) It is a matter of immediate and urgent necessity for the protection of the child; or

~~(5)~~(E) It is reasonably necessary for the protection of the person or property of another.

(2) If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child.

~~The court may order the child detained in juvenile hall or in a suitable place designated by the court., or on home supervision under the conditions stated in sections 628.1 and 636.~~

(3) The court may order the child placed on home supervision under the conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a suitable place designated by the court.

(4) If the court orders the release of a child who is a dependent of the court under section 300, the court must order the child welfare services department either to ensure that the child's current caregiver takes physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.

(d) Required determinations before detention

Before detaining the child, the court must determine whether continuance in the home of the parent or legal guardian is contrary to the child's welfare and whether there are available services that would prevent the need for further detention. The court must make these determinations on a case-by-case basis and must state the evidence relied on in reaching its decision.

(1) If the court determines that the child can be returned to the home of the parent or legal guardian through the provision of services, the court must release the child to the parent or guardian and order that the probation department provide the required services.

(2) If the child cannot be returned to the home of the parent or legal guardian, the court must state the facts on which the detention is based.

(e) Required findings to support detention (§ 636)

If the court orders the child detained, the court must make the following findings on the record and in the written~~, signed~~ order~~s~~. The court must reference the probation officer's report or other evidence relied on to make its determinations:

(1) Continuance in the home of the parent or guardian is contrary to the child's welfare;

(2) Temporary placement and care is the responsibility of the probation officer pending disposition or further order of the court; and

(3) Reasonable efforts have been made to prevent or eliminate the need for removal of the child, or reasonable efforts were not made.

(f)–(k) * * *

(*l*) Restraining orders

As a condition of release or ~~detention on~~ home supervision, the court may issue restraining orders as stated in rule 5.630 or orders restraining the child from any or all of the following:

(1)–(3) * * *

Rule 5.790. Orders of the court

(a)–(i) * * *

(j) Fifteen-day reviews (§ 737)

If the child or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737. ~~The court must inquire about the action taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay on the child.~~

JV-642

CHILD'S NAME:	CASE NUMBER:

INITIAL APPEARANCE HEARING—JUVENILE DELINQUENCY

☐ Out-of-Custody Appearance ☐ In-Custody Appearance and Detention

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

1. ☐ Notice has been given as required by law.
2. ☐ The child's date of birth is *(specify)*:
3. ☐ The child is to remain out of custody pending the next hearing.
4. ☐ The child was taken into custody at: ☐ a.m. ☐ p.m. on *(specify date):*
5. ☐ The petition or notice of probation violation was filed at: ☐ a.m. ☐ p.m. on *(specify date):*
6. ☐ Counsel is appointed for the child as follows:
   Counsel is to represent the child until relieved by the court in accordance with California Rules of Court, rule 5.663.
7. ☐ The information on the face of the petition was ☐ confirmed ☐ corrected as follows:
8. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

   as to the identities and addresses of all presumed or alleged fathers.

   b. ☐ The court finds *(name):* to be the ☐ legal ☐ biological ☐ presumed ☐ alleged father.
9. The ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*
   were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete the form and submit it to the court before leaving the courthouse today.
10. a. ☐ The child ☐ is ☐ may be an Indian child, and the county agency must provide, as required by law, notice of the proceeding and of the tribe's right to intervene. Proof of such notice must be filed with the court.
    b. ☐ There is reason to believe that the child may be of Indian ancestry, and the county agency must provide notice of the proceedings to the Bureau of Indian Affairs as required by law. Proof of such notice must be filed with this court.
11. ☐ The court advised the child and parent or legal guardian of *(check all that apply)*
    a. ☐ the contents of the petition.
    b. ☐ the nature and possible consequences of juvenile court proceedings.
    c. ☐ the purpose and scope of the initial hearing.
    d. ☐ the hearing rights described in rule:
    e. ☐ the reason the child was taken into custody.
    f. ☐ the parent or legal guardian's financial obligation and right to be represented by counsel.
    g. ☐ other:
12. ☐ Reading of the petition and advice of rights were waived by ☐ the child ☐ the child's counsel.
13. ☐ The prosecutor has requested that a hearing be set to determine whether the child is a fit and proper subject under Welfare and Institutions Code section 707(a) or (c).
14. ☐ The child ☐ through counsel
    a. ☐ denied the allegations of the petition dated:
    b. ☐ asked the court to take no action on the petition at this time.
15. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
16. ☐ After inquiry, the court finds that the child understands the nature of the allegations and the direct consequences of admitting or pleading no contest to the allegations of the petition, and understands and waives the hearing rights, which were explained *(check all that apply):*
    a. ☐ The right to have a hearing.

Form Approved for Optional Use
Judicial Council of California
JV-642 [Rev. January 1, 2016]

Welfare and Institutions Code, §§ 633, 635, 636, 700;
Cal. Rules of Court, rules 5.754, 5.758, 5.760, 5.778
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

16. b. ☐ The right to cross-examine and confront witnesses.
c. ☐ The right to subpoena witnesses and present a defense.
d. ☐ The right to remain silent.

17. ☐ The child ☐ through counsel
a. ☐ admitted the petition ☐ as filed ☐ as amended on *(date):*
b. ☐ pleaded no contest to the petition ☐ as filed ☐ as amended *on (date):*
c. ☐ The child's counsel consents to the admission or plea of no contest.
d. ☐ The admission or plea of no contest is freely and voluntarily made.
e. ☐ There is a factual basis for the admission or plea of no contest.
f. ☐ The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a. ☐ The following allegations are admitted and found to be true:

Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement *(if applicable)*
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	

b. ☐ As to any offense that could be considered a misdemeanor or felony, the court is aware of and exercises its discretion to determine the offense, as stated in 18a.
c. ☐ The following allegations are dismissed:

Count number	Statutory violation

19. ☐ The child is described by section ☐ 601 ☐ 602 of the Welfare and Institutions Code.
20. ☐ The maximum confinement time is:
21. ☐ The child's residence is in: County.
22. ☐ The matter is transferred to: County for disposition and further proceedings.
Juvenile Court Transfer Orders (form JV-550) will be completed and transmitted immediately.
23. ☐ The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

CHILD IN CUSTODY

24. ☐ The court has considered the detention report prepared by probation
☐ and the following documents *(specify):*
☐ and the testimony of *(name):*
☐ and the examination by the court of *(name):*
☐ and takes judicial notice of the entire court file.

25. ☐ The child is released from custody ☐ to the home of *(name, address, and relationship to child):*
☐ on home supervision ☐ on electronic monitoring
☐ the terms of which are stated in the attached *Terms and Conditions* (form JV-624).

26. ☐ The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver take physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

CHILD'S NAME:	CASE NUMBER:

27. ☐ A prima facie showing has been made that the child's disposition is by section 601 or 602.

28. ☐ Based on the facts stated on the record, the child is detained in secure custody on the following grounds *(check all that apply):*

   a. ☐ The child has violated an order of the court.

   b. ☐ The child has escaped from a court commitment.

   c. ☐ The child is likely to flee the jurisdiction of the court.

   d. ☐ It is a matter of immediate and urgent necessity for the protection of the child.

   e. ☐ It is reasonably necessary for the protection of the person or property of another.

29. ☐ Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.

30. ☐ Based on the facts stated on the record, there are no available services that would prevent the need for further detention.

31. ☐ Temporary placement and care is the responsibility of the probation department.

32. ☐ Reasonable efforts to prevent or eliminate the need for detention of the child ☐ have ☐ have not been made.

33. ☐ Probation is ordered to provide services that will assist with reunification of the child and the family.

34. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.

35. ☐ The child and the parent or legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.

36. ☐ The ☐ mother ☐ father ☐ legal guardian are ordered to supply the names and contact information of adult relatives to probation so probation can notify them of the removal and of their options to be included in the child's life.

37. ☐ The probation officer must file a case plan within 60 days.

38. ☐ Probation is authorized to release the minor ☐ at its discretion ☐ under the following circumstances:

39. ☐ The court accepts transfer from the County of:

40. ☐ Other orders:

41. ☐ Child ☐ Counsel waives time for *(check all that apply)*
   ☐ jurisdiction hearing ☐ disposition hearing ☐ other:

42. ☐ **The next hearings will be**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

43. ☐ The child

   a. ☐ is ordered to return to court on the above date and time.

   b. ☐ remains detained.

44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

45. ☐ All appointed counsel are relieved.

Date:

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

Countersignature for detention orders (*if necessary*):

Date:

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

CUSTODIAL AND OUT-OF-HOME PLACEMENT DISPOSITION ATTACHMENT

THE COURT FINDS AND ORDERS

1. ☐ The maximum time the child may be confined
   a. ☐ in secure custody for the offenses sustained in the petition before the court is *(specify):*
   b. ☐ in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (specify):

2. ☐ The child is committed to (*specify):* days months in juvenile hall
   a. ☐ and is remanded forthwith. Continuance in the home is contrary to the child's welfare.
   b. ☐ and is to report to *(name):* by ☐ a.m. ☐ p.m. on *(date):*
   c. ☐ with credit for *(specify):* days served.

3. ☐ The welfare of the child requires that physical custody be removed from the parent or guardian. *(Check only if applicable):*
   a. ☐ The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
   b. ☐ The child has been on probation in the custody of the parent or guardian and has failed to reform.
   c. Continuance in the home is contrary to the child's welfare.

4. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.

5. ☐ Reasonable efforts to prevent or eliminate the need for removal
   a. ☐ have been made.
   b. ☐ have not been made.

6. a. ☐ The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify):*

   b. ☐ Reunification services do not need to be provided to *(name):* because the court finds by clear and convincing evidence that *(check one)*
      (1) ☐ reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
      (2) ☐ that parent has been convicted of ☐ murder of another child of the parent ☐ voluntary manslaughter of another child of the parent ☐ aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent ☐ felony assault resulting in serious bodily injury to the child or another child of the parent.
      (3) ☐ the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.

   c. ☐ The child is ☐ ordered to ☐ continued in the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.

   d. ☐ The following are ordered to meet with the probation officer on a monthly basis:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify):*

   e. ☐ The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

Form Approved for Optional Use
Judicial Council of California
JV-667 [Rev. January 1, 2016]

Welfare and Institutions Code,
§§ 702, 706.6, 725, 727, 727.2;
Cal. Rules of Court, rules 5.785, 5.790, 5.795
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. f. ☐ The child is to be placed out of state at the following *(name and address):*

   (1) ☐ In-state facilities are unavailable or inadequate to meet the needs of the child.

   (2) ☐ The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.

   (3) ☐ The requirements of section 7911.1 of the Family Code are met.

   g. ☐ Pending placement, the child is detained in juvenile hall. If being housed in another county, please specify county:

   h. ☐ The child is placed on home supervision in the home of

   (a) ☐ parent *(name):* ☐ mother ☐ father

   (b) ☐ parent *(name):* ☐ mother ☐ father

   (c) ☐ legal guardian *(name):*

   (d) ☐ other *(name and address):*

   ☐ and is subject to electronic monitoring.

   i. ☐ The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.

   j. ☐ The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.

   k. ☐ The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify date):*

   l. ☐ The right of the parent or guardian to make educational decisions for the child is specifically limited. *Order Designating Educational Rights Holder* (form JV-535) will be completed and transmitted.

7. ☐ The child has been ordered into a placement described by title IV-E of the Social Security Act.

   a. ☐ The date the child entered foster care is: , which is 60 days after the day the child was removed from his or her home.

   b. ☐ An exception applies to the standard calculation of the date the child entered foster care because

   (1) ☐ the child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of: .

   (2) ☐ the child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be: .

   (3) ☐ at the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the date entered foster care is unchanged from the date the child entered foster care in dependency court. That date is: .

8. ☐ The child is committed to the care, custody, and control of the probation office for placement in the county juvenile ranch, camp, forestry camp, or:

   a. ☐ for: months days.

   b. ☐ until the requirements of the program have been satisfactorily completed.

   c. ☐ If being housed in another county, please specify:

9. ☐ The child is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732) will be completed and transmitted.

Date:

JUDICIAL OFFICER

SPR15-24

Juvenile Law: Detention (amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; amend forms JV-642 and JV-667)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber	AM	We support the proposal, however, there is serious disagreement about whether home supervision is a form of detention. Because of that we recommend that the rule not address that issue but leave it to the legislature, or possibly the courts, to resolve.	The committee acknowledges that the initial proposal's discussion of home supervision caused confusion. The committee's intent is to clarify that children placed on home supervision are not detained for the purposes of federal foster funding under title IV-E. To do this, the committee recommends keeping the current definition of "detained" in Rule 5.502 and adding the following sentence: "A child released or placed on home supervision is not detained for the purposes of federal foster care funding." The committee also recommends revising Rule 5.760(l)to remove the word "detention." Rule 5.760(l) would read "As a condition of release or home supervision, the court may issue…." The proposed revisions acknowledge that placing a child on home supervision may represent a form of restricted liberty but not one that qualifies as a detention for the purposes of federal foster care funding under title IV-E. Home supervision is not a title IV-e detention because returning the child to his/her parents establishes it is *not* contrary to the child's welfare to return home.
2.	Los Angeles Superior Court	AM	1. Does the proposal appropriately address the stated purpose? Yes.	1. As the recommendation is to leave home supervision within the definition of "detention" it is not necessary to add the language related to setting hearings.

	Commentator	Position	Comment	Committee Response
			We concur with the removal of home supervision from the definition of "detained," however, it must be emphasized that a minor on home supervision is considered to be detained for purposes of setting hearings. The quoted language below from WIC 628.1 should be added to CRC 5.752(f). See last paragraph of WIC 628.1: "A minor on home supervision shall be entitled to the same legal protections as a minor in secure detention, including a detention hearing." 2. Should rule 5.760 be amended to state that a court's decision to detain a child must not be based on a finding that continuance in the child's current placement is contrary to the child's welfare? This finding is not authorized by statute or rule. No. 3. It is suggest that CRC 5.760(e) not include the proposed language: "The inability of the child welfare services department to provide a placement for the child cannot be the basis for any of the above grounds."	2. The addition of the phrase "of the parent or legal guardian" to Rule 5.760(c)(1) clarifies that the contrary to the welfare finding discussed in title IV-e applies only to removal of a child form his parent or guardian. 3. The revised language will track the statutory language.

	Commentator	Position	Comment	Committee Response
			Instead include only the language of the statute: "If the minor is a dependent of the court subject to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare department's inability to provide a placement for the minor." The presently proposed language (inability may not be the basis for above grounds) may be interpreted to negate the third finding, "The child is likely to flee the jurisdiction of the court." While argument can be made that the child welfare department's inability to contain the minor in a placement is not an appropriate basis for detention, we think the better rule is that it is a proper basis and would not add the language that "inability … may not be the basis for above grounds." 4. In the proposed change to 5.760(l), Restraining Orders, we suggest the following wording: "As a condition of release home or release on home supervision, the court may issue restraining orders…" 5. CRC 5.790(j) should read: If the child or nonminor [deleting the word	4. The committee agrees to the gist of this amendment and recommends that Rule 5.760(l) read: "As a condition of release or home supervision, the court may…." 5. The committee will delete the word "dependent."

	Commentator	Position	Comment	Committee Response
			"dependent"]… The revision to WIC 737 did not address nonminor dependents, but youth who are wards and age 18 or over. 6a. Revisions to JV-642: We suggest the following language for #16: "After inquiry the court finds that the child understands…" It is not always the court who inquires, sometimes the inquiry is done by the DA. 6b. We agree with the additions to #17. 6c. We suggest the following language in 18b: "As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor." We disagree with the proposed changes to JV-667, #6h. This is a dispositional attachment and a minor would not be "released on home supervision" The minor would be "placed on home supervision" as a condition of probation.	6. The committee agrees that it is not always the court that conducts the inquiry and will make the suggested modification. 6b. No response required. 6c. The committee agrees that the comment enhances the clarity of the form and recommends that 18b read: "As to those sustained wobbler offense(s) enumerated above, the court exercises its discretion to determine whether the offense(s) should be misdemeanors or felonies." 7. The committee will use the phrase "placed on" rather than "released on."
3.	Orange County Bar Association Ashleigh Aitken, President	AM	We recommend modifying to address the problem of the proposed revisions directing the Juvenile Delinquency Court to make orders against a party/nonparty ("the child	The committee's proposed revision tracks the Welfare and Institutions Code section 635, which states "the court shall order the child welfare services department…to ensure…the

	Commentator	Position	Comment	Committee Response
			welfare services department") that is not present at delinquency detention hearing, received no notice of the delinquency detention hearing, received no copy of the delinquency petition, received no copy of the Probation report, and is denied an opportunity to be heard at the delinquency detention hearing. We recommend that the child welfare services department be given notice and an opportunity to be heard.	current…caregiver takes physical custody of the minor or take physical custody of the minor…."
4.	San Diego Superior Court Mike Roddy	AM	**1. Rule 5.760(c)**: The new language at the bottom of page 5 should be deleted because it is already in (c)(2). The new (c)(4) should track the language in Welfare and Institutions Code section 635(c)(2). **2. Rule 5.760(d)**: The new language in (d)(2)(B) is already in (c)(4) and does not appear to be appropriate in (d). We recommend that the language remain "court must state the facts on which the detention is based." **3. Rule 5.760(e)**: We recommend to delete the proposed new "and order" because 1, 2, and 3 are findings. We recommend as an alternative: "court must make the following	1. To eliminate redundancy, the language in Rule 5.760(c)(1)(e) that appears at the bottom of page 5 will be deleted. Rule 5.760(c)(4) will be revised to track the statutory language. 2. Subsection (2)(B) of Rule 5.760(d) will be removed. 3. The comment enhances the clarity of the rule and will be incorporated.

	Commentator	Position	Comment	Committee Response
			findings on the record and in the written order."	
5.	Youth Law Center Catherine McCulloch	AM	**Rule 5.760 – Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders – Agree if Modified** The proposed changes amend Rule 5.760 to conform to the new statutory requirement that the court's decision to detain in juvenile hall cannot be based on certain criteria. The amendment is incomplete as it does not include sufficient guidance to the court. For dependent children the court's decision to detain should not be based on the youth's current foster care placement, child welfare's inability to find a placement, or the youth's status as a dependent. There is a presumption that a child in the legal care and custody of a child welfare agency should be returned to the physical custody of the child welfare agency for placement. *In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:* Rule 5.760 (c)(2) should be amended to read –If the child is a dependent of the court under section 300, the court's decision to	This comment is an accurate statement of the law but has limited substantive effect on the rule.

	Commentator	Position	Comment	Committee Response
			detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement. Rule 5.760 (e) should be amended to add –If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement. **Rule 5.790 Orders of the Court – Agree if Modified**	This comment is an accurate statement of the law but has limited substantive effect on the rule. This comment goes beyond the scope of this proposal and raises issues necessitating

	Commentator	Position	Comment	Committee Response
			The committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737. The committee's rationale for this decision is that any future modification to section 737 will not result in the need for change to the rule. However, the rules of court are meant to instruct and aid the court in using the law. The cross-reference provides no aid or clarification for the court. *In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:* Rule 5.790 (j) should be amended to add- If the minor or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737. The court must inquire about the actions taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay on the minor or nonminor. The court shall meaningfully evaluate all the steps that have been taken by the probation department, since the last 15 day court review, to identify and advocate for an appropriate placement for the minor or nonminor, including but not limited to:	circulation for comment.

	Commentator	Position	Comment	Committee Response
			(1) The number of placements contacted; (2) The type of placements contacted, and whether placements with additional supports and services would be appropriate, including but not limited to: (a) Kinship with wraparound services; (b) Therapeutic foster care; (c) Foster home through an FFA; and (d) Group home (3) The appropriateness of placements contacted including whether placements with additional supports and services would be appropriate; (4) Whether or not the probation officer has modified his or her approach to finding placements if the officer has been unsuccessful with past attempts, and how the probation officer modified the approach; (5) What characteristics the probation officer uses to describe the youth to the potential placements; and (6) Whether or not the probation officer has acted on recommendations given by the youth's public defender, and what were those actions. The court will consider whether the delay was reasonable. A court shall not consider any of the following to be a reasonable delay: (1) The probation officer's inability to	

	Commentator	Position	Comment	Committee Response
			identify an appropriate placement when the court finds that the probation officer has not made reasonable efforts to identify one; (2) A delay caused by administrative process; (3) A delay in the convening any meetings between agencies; and (4) The court may find any other delay to be unreasonable If the court finds the delay to be unreasonable the court shall order the probation officer to assess the availability of any suitable temporary placements or other alternatives to secure confinement.	
6.	Dependency Advocacy Center Hilary Kushins	A		No response required.

Item number: 11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September , 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Substance Abuse Treatment Facilities and Placement
Amend Cal. Rules of Court, rules 5.674, 5.676, 5.678 and 5.708

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Provide recommendations for rules and forms required by recent legislative changes as a result of SB 977, which, among other things, authorizes a court to place a child with a parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Law: Substance Abuse Treatment Facilities and Placement

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 7, 2015

Contact
Kerry Doyle, 415-865-8791
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules to conform to recently enacted provisions of Welfare and Institutions Code sections 319, 366.21, 366.22, and 366.25 that change the factors a court must consider when determining whether to release or detain a child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2016, amend:

1. Rule 5.674 to eliminate the requirement that all detention findings and orders be made on the record;

2. Rule 5.676 to require additional information in the social worker's report to the court;

3. Rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child;

4. Rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings.

The text of the amended rules is attached at pages 6–8.

Previous Council Action

Effective January 1, 1998, the Judicial Council adopted rules 5.674, 5.676, and 5.678 as rules 1444, 1445, and 1446, respectively. Rule 5.678 was amended effective January 1, 1999, to expand the definition of "relative" as required by statutory changes. All three rules were amended, effective July 1, 2002, to make technical changes and further amended and renumbered, effective January 1, 2007.

The council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice, effective July 1, 2010, to contain the correct cross-reference to a rule that was renumbered and, to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes; and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent's legal status.

Rationale for Recommendation

Senate Bill 977 (Liu; Stats. 2014, ch. 219) amended section 319 of the Welfare and Institutions Code[1] to specify that the fact that a parent is enrolled in a substance abuse treatment facility that allows a dependent child to reside with his or her parent is not, for that reason alone, prima facie evidence of detriment or substantial danger. Additionally, SB 977 requires the court to consider at detention, dispositional, and status review hearings whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility.

Amend rule 5.674 to eliminate the requirement that all detention findings and orders must be made on the record

Although not required by recent legislation, the committee recommends amending rule 5.674 to eliminate the requirement that *all* detention findings and orders be made on the record and instead narrow those findings and orders that must be made on the record to only those required under section 319 and the two title IV-E findings and one title IV-E order that are reviewed at a federal audit:

- Continuance in the home is contrary to the child's welfare;
- Reasonable efforts were made to prevent removal; and
- Temporary placement and care are vested with the agency.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Eliminating all nonstatutory requirements to make the findings and orders on the record will significantly reduce those findings and orders that must be stated on the record, thereby freeing up much-needed court time and making detention hearings shorter or more thorough and meaningful.

Requiring that the two title IV-E findings and one title IV-E order that are reviewed at a federal audit be made on the record will help ensure that federal funding is available for children placed in foster care. The above findings and order are critical to federal funding.[2] Without including them on the record, clerical errors, which occur often with the court's findings and orders, could result in erroneous or missing information in the case file. Since at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made,[3] it is important that the transcript contain the above findings and orders to ensure that the case will not be in error at a federal audit. The committee therefore recommends that the rule require that the two title IV-E findings and the one title IV-E order reviewed at a federal audit be stated on the record.

Amend rule 5.676 to require additional information in the social worker's report to the court

To ensure that the court has the information needed to make the findings required by the recent statutory change to section 319, the committee recommends amending rule 5.676 to require that the social worker's report to the court include information and a recommendation regarding whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, and to include nonrelative extended family members in the list of possible placement options, as is required under current law.

Amend rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child

To conform to the recent statutory change to section 319, the committee recommends amending rule 5.678 to require that when determining whether to release or detain a child, the court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

[2] If the two findings above (bullets one and two) are not timely made, the child is *never* eligible for title IV-E funding. If the order above (bullet three) is not made, no funding can be claimed until it is made. (See 45 C.F.R. §§ 1356.21(b)–(c), 1356.71(d)(1) (2014).)

[3] See 45 C.F.R. § 1356.21(d)(1) (2014).

Amend rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings

To conform to recent statutory changes to sections 366.21, 366.22, and 366.25, the committee recommends amending rule 5.708 to require the court to consider—at all status review hearings, when determining whether return of a child to the parent or legal guardian would create a substantial risk of detriment to the child—whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, posted to the California Courts website and send to the standard electronic mailing list for family and juvenile law proposals. Included on the list were appellate court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program directors; and other juvenile and family law professionals. Seven individuals or organizations provided comment; four agreed with the proposal, two agreed if modified, and one disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9–15.

The committee sought specific comment on whether rule 5.674 should require that the two title IV-E findings and one title IV-E order reviewed at a federal audit be stated on the record. Three commentators expressed concern that eliminating the requirement that the findings and order reviewed at a federal audit must be made on the record could jeopardize federal foster care funding. The committee determined that the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made.

The one commentator that disagreed with the proposal was a public interest law firm that works on behalf of children in the child welfare and juvenile justice systems in California and across the country. The firm disagreed with the recommended removal from rule 5.674 of the requirement that the court state the findings and orders on the record. It commented that the requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Another commentator, however—the California Judges Association—commented: "We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile." The committee agrees with the latter comment and concluded that the removal of the requirement would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674, which governs dependency

detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

Alternatives Considered

The committee considered not requiring the findings and order reviewed at a federal title IV-E audit to be made on the record; however, the committee determined that the findings and order should be included in the rule as required to be made on the record for the reasons given in the Rationale for Recommendation.

The committee also considered revising *Findings and Orders After Detention Hearing* (form JV-410) to include a conditional release order that the child is released to the parent only while the parent remains at the substance abuse treatment facility. Practices around conditional releases, however, vary throughout the state, and in jurisdictions that use them, there are multiple conditional release situations, none of which are currently included on the form. The committee decided to leave the form as is, allowing courts that order conditions of release to continue to do so by filling in item 19, "Other findings and orders," on form JV-410.

Implementation Requirements, Costs, and Operational Impacts

This proposal is unlikely to impose any costs on the court. The proposal does not recommend changes to existing Judicial Council forms and does not create any new court hearings or processes. Removing the requirement in rule 5.674 to eliminate the requirement that *all* findings and orders be made on the record at detention hearings will likely reduce the length of those hearings and free up time for courts and court staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708, at pages 6–8
2. Chart of comments, at pages 9–15
3. Senate Bill 977, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB977&search_keywords=

Rules 5.674, 5.676, 5.678, and 5.708 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) * * *

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must ~~be made on the record and~~ appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A) Continuance in the home is contrary to the child's welfare;

(B) Temporary placement and care are vested with the social services agency;

(C) Reasonable efforts have been made to prevent removal; and

(D) The findings and orders required to be made on the record under section 319.

(c)–(d) * * *

Rule 5.676. Requirements for detention

(a) * * *

(b) Evidence required at detention hearing

In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents.

The reports relied on must include:

(1) * * *

(2) * * *

(3) If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, information and a

recommendation regarding whether the child can be returned to the custody of that parent.

~~(3)~~ (4) * * *

~~(4)~~ (5)If continued detention is recommended, information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody ~~or~~ and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives

(a) * * *

(b) Factors to consider

In determining whether to release or detain the child under (a), the court must consider the following:

(1) Whether the child can be returned home if the court orders services to be provided, including services under section 306; and

(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

(c)–(e) * * *

Rule 5.708. General review hearing requirements

(a)–(c) * * *

(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)

(1) * * *

(2) The court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

~~(2)~~(3)* * *

~~(3)~~(4)* * *

~~(4)~~(5)* * *

~~(5)~~(6)* * *

(e)–(o) * * *

SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) The Law Offices of David M. Lederman David M. Lederman The State Bar of California Saul Bercovitch	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, so long as the proposal to revise Rule 5.674 limiting findings and orders at the detention hearing to those required under Welfares and Institutions Code section 319 would not jeopardize federal title IV-E funding.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made.
2.	California Judges Association President Joan P. Weber Sacramento, CA	A	The proposal would amend four rules to conform to recent statutory changes to the factors a juvenile dependency court must consider when determining whether to release or detain a child. Amendments to various sections of WIC, effective Jan. 1, 2015, now require that at detention, disposition and review hearings, the agency address and the court consider, whether at each of these hearings a child can be released to a parent who is enrolled in a qualified inpatient program. Juvenile and Family Law Advisory Committee recommends proposed changes to the CRC to appropriately address these amendments and I see no issues or inconsistencies.	No response required. No response required.

SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			The committee also recommended revising rule 5.674 to eliminate the requirement that all detention findings and orders be made on the record, and instead narrow those findings and orders that must be made on the record to only those required under section 319 while retaining the requirement for the three title IV-E findings and orders that are reviewed at a federal audit also be made on the record. According to the Committee, eliminating all non-statutory requirements on findings and orders on the record will free up much needed court time and making detention hearings shorter or more thorough and meaningful. We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. No response required.
3.	Dependency Advocacy Center Hilary Kushins San Jose CA	A	No comment	No response required.
4.	County of San Diego Leesa Rosenberg	AM	That the proposal that not all detention findings and orders be stated on the record be opposed. This proposal is problematic as a failure of the court to make these findings and not have a record of the findings could result in problems with federal audits and impact funding levels.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation

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	Commentator	Position	Comment	Committee Response
				that will be accepted to verify that the required determinations have been made.
5.	Youth Law Center Tyler Whittenberg Staff Attorney San Francisco CA	N	The Youth Law Center appreciates the opportunity to comment on SPR15-25, a series of proposed revisions to California Rules of Court 5.674, 5.676, 5.678, and 5.708. The Youth Law Center is a San Francisco-based, public interest law firm that works on behalf of children in the juvenile justice and child welfare systems in California and throughout the country. For over three decades, our attorneys have worked to improve the juvenile court process and ensure that courts are making decisions in the best interest of children. We submit the following comments in support of the proposed revisions to rules 5.676, 5.678, and 5.708; and in opposition to the proposed revision to rule 5.674. Support for Proposed Revision to Rules 5.676, 5.678 and 5.708 We agree with the proposed changes to rules 5.676, 5.678 and 5.708. They are consistent with the recent statutory changes to Sections 319, 366.21, 366.22, and 366.25 of the Welfare and Institutions Code that establish reporting, recommendation and consideration requirements for determining whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent	No response required. No response required.

SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			child to reside with his or her parent. Opposition to Proposed Revision to Rule 5.674 We oppose the proposed revision to rule 5.674. Rule 5.674 (b) requires the court to read, consider and reference all relevant evidence presented by the parties and reports provided by the social worker and mandates that all detention findings and orders are made on the record and appear in written court orders. The proposed revision to rule 5.674 would limit the findings and orders that must be made on the record to those required under Section 319 of the Welfare and Institutions Code. The Committee suggests that eliminating all nonstatutory requirements will free up court time and make detention hearings "shorter or more thorough and meaningful." In our experience, requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Even if some courts view the existing requirements as a mere formality, our court rules should not support bypassing the legislative intent that underlies the statutory requirements. By relieving the court of the duty to at least state the findings in court, the proposed revision to rule 5.674 would not achieve the stated goal of making detention hearings more thorough and meaningful. Conversely, the revision would encourage detention hearings that are less meaningful by	The committee concluded that the removal of the requirement that all detention findings and orders be made orally on the record would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674 which governs dependency detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

	Commentator	Position	Comment	Committee Response
			insulating arbitrary or inaccurate findings and orders and undermining the intent of the law that certain issues be given specific attention and consideration. The proposed revision will also make detention hearings less meaningful for parents and youth who may not get the benefit of at least hearing the recitation of the findings or having the findings discussed in open court. For example, limiting the educational rights of a parent and the appointment of an Educational Rights Holder (ERH) requires careful consideration as it has significant impact on the child and the child-parent relationship. The Order Designating Educational Rights Holder (form JV-535) merely states "Having considered the evidence and made the findings required by law, THE COURT ORDERS that…" If some courts treat the "unavailable, unable, or unwilling" finding as a mere formality, and we remove the requirements for findings, young people and their parents may not receive the full benefit of laws intended to permit removal of education decision-making authority only when the parent is unable and unwilling to carry out those responsibilities. Moreover, without the requirement that these findings be made on the record, the parent may not be able to meaningfully challenge the court order and its underlying rationale. The proposed revision also potentially risks losing title IV-E foster care funding. During a	The committee has amended the rule to include the required title IV-E findings and orders to the

SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			federal title IV-E audit, only documented court findings and orders are accepted to verify that the required findings and orders have been made. 45 C.F.R. § 1356.21 (d)(1). However, court orders often contain clerical errors and are frequently misplaced. Thus, the revision would eliminate the ability of the State to rely on transcripts of proceedings to verify that the requisite findings were made and avoid fiscal penalties for non-compliance with the requirements of title IV-E. Courts have a responsibility to act in the best interests of youth in their care. The minor convenience afforded courts by the revision is far outweighed by the interest in protecting children from arbitrary findings and orders and ensuring they receive the financial support necessary to thrive. For the reasons stated above, we oppose the proposed revision of rule 5.674 and believe that all detention hearing findings and orders should be made on the record. Thank you for your consideration. We are grateful for the work that has already gone into the proposed revisions, and hope that further consideration will result in rejection of the proposed revision to rule 5.674. Please let us know if we can clarify any of the comments or otherwise be of assistance in the rulemaking process.	list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. See response above. No response required.
6.	Superior Court of California, County of San Diego	A	No comment	No response required.

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Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Mike Roddy Executive Officer			
7.	Orange County Bar Association Ashleigh Aitken President	A	No Comment	No response required.

Item number: 12

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Sibling Visitation
Amend Cal. Rules of Court, rules 5.570, 5.708 and 5.810; revise forms JV-183, JV-185 and JV-403

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda: Provide recommendations for rules and forms required by recent legislative changes as a result of SB 1099, which, among other things, requires a court to review the reasons for any suspension of sibling visitation with a minor or nonminor dependent.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Juvenile Law: Sibling Visitation

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.570, 5.708, and 5.810; revise forms JV-183, JV-185, and JV-403

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 7, 2015

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules and revising three forms to conform them to recent statutory changes giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rules 5.570, 5.708, and 5.810 of the California Rules of Court, and revise forms JV-183, JV-185, and JV-403 to ensure that they conform to the recently enacted provisions of Welfare and Institutions Code sections 361.2, 366, 366.3, 388, 778, and 16002.[1] Also, the committee

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

recommends amending rule 5.708 to specify the burden of proof and standard when requesting that a child be removed from the home.

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling, to add the new grounds for granting a petition for modification of a prior court order, and to specify the burden of proof and standard when requesting that a child be removed from the home;

2. Amend rule 5.708 with new statutorily required findings;

3. Amend rule 5.810 with the new statutorily required finding to suspend sibling interaction, to clarify when a permanency hearing must be held, and to remove subdivision (f) regarding administrative reviews;

4. Further amend rules 5.708 and 5.810 to delete references to "youth;"

6. Amend rules 5.570, 5.708, and 5.810 with new references to code sections and subsections and with further clarifying changes;

7. Revise *Court Order on Form JV-180,* Request to Change Court Order (form JV-183) to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the request is for visitation with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court's jurisdiction;

8. Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether a hearing on a section 388 petition should be granted or denied;

9. Revise *Child's Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court; and

10. Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by Senate Bill 1099 regarding siblings under the court's jurisdiction who are not placed together in the same home.

The proposed text of the amended rules of court is attached at pages 10–19. The proposed revised forms are attached at pages 20–25.

Previous Council Action

The Judicial Council adopted rule 5.570, effective January 1, 1991, as rule 1431. It was amended five times to conform to statute and to ensure proper notice under the Indian Child Welfare Act. It was renumbered and amended effective January 1, 2007. It was amended four more times after it was renumbered to conform to statutory changes and to correct typographical errors.

The Judicial Council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice effective July 1, 2010, to contain the correct cross reference to a rule that was renumbered and to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes, and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent's legal status.

The Judicial Council adopted rule 5.810, effective January 1, 1991, as rule 1496. It has been amended seven times to conform to statutory changes. It was renumbered, effective January 1, 2007.

The Judicial Council approved *Court Order on Form JV-180,* Request to Change Court Order (form JV-183), effective January 1, 2009.

The Judicial Council approved *Child's Information Sheet—Request to Change Court Order* (form JV-185), effective January 1, 2006. It was revised one time to make a technical change, effective July 1, 2006.

The Judicial Council approved for optional use *Sibling Attachment: Contact and Placement* (form JV-403), effective July 1, 2010.

Rationale for Recommendation

In October 2008, Congress passed and President George W. Bush signed the Fostering Connections to Success and Increasing Adoptions Act to promote permanent families for children and youth in foster care by providing greater assistance to relative caregivers and improving incentives for adoption. Among other things, the act requires states to use "reasonable efforts" to place siblings together, unless such placement is contrary to their safety or well-being. If the siblings are not placed together, visitation between them must occur frequently, unless the visitation is contrary to their safety or well-being.[2]

[2] See 42 U.S.C. § 671(a).

Before passage of the act, California was one of the first states to pass legislation promoting sibling visitation for foster children—as early as 1999.[3] Since then, California has enacted several additional statutes to expand legal protections for sibling relationships.

These laws have served to promote sibling relationships when both children are in the dependency system, but at least one recent unpublished case indicates that courts will not grant visitation in a case where one sibling is in the foster system and the other remains in the legal custody of the parent. Senate Bill 1099 (Steinberg; Stats. 2014, ch. 773) sought to address this situation by giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances. Additionally, SB 1099 created new requirements related to sibling visitation, such as requiring more detailed information in social worker reports and probation officer case plans and requiring courts to make a renewed finding that sibling interaction is contrary to the safety or well-being of either child when renewing any suspension of sibling interaction. SB 1099 also made current and new sibling placement and visitation requirements apply to children under the jurisdiction of the delinquency court.

Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling who remains in the custody of a mutual parent. As introduced, the standard in section 388 for granting a request for visitation with a nondependent sibling was: "…a request for sibling visitation shall be granted unless it is shown by clear and convincing evidence that sibling visitation is contrary to the safety and well-being of any of the siblings." Staff of the Senate Judiciary Committee had concerns that, "[i]n practice, the clear and convincing standard is a high evidentiary burden that many parties, especially self-represented parties, may have difficulty proving."[4] That committee worked with the sponsor of the bill, the California Youth Connection, to change the standard to: "a request for sibling visitation *may* be granted unless *it is determined by the court* that sibling visitation is contrary to the safety and well-being of any of the siblings." [Emphasis added.]

Given this legislative history, the committee recommends adding this new standard to rule 5.570 (h)(1)(E) and (i)(2) but not specifying the burden of proof required, as the statute does not include the burden of proof.

Further amend rule 5.570 to add the new grounds for granting a petition for modification. SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

[3] See Assem. Bill 740; Stats. 1999, ch. 805.

[4] Sen. Comm. on Jud. Analysis of SB 1099 (2013–2014 Reg. Sess.) April 22, 2014, p. 6.

Further amend rule 5.570 to specify the burden of proof and standard when requesting that a child be removed from the home.

In spring 2013, the committee recommended amending rule 5.570 to "[r]emove statutorily incorrect uses of a section 388 petition."[5] Because the subparagraphs removed addressed requests to remove a child from the child's home and requests to move a child to a more restrictive placement, the committee decided that section 387, which addresses these requests when made by the child welfare department, governed these requests and they thus did not belong in the rule governing section 388 petitions. It has since, however, been pointed out to Judicial Council staff that children's counsel sometimes make a request to remove the child from his or her home, and if so, that request would be governed by section 388 and rule 5.570. The committee therefore recommends that the language clarifying that a higher evidentiary standard is required to grant a request to remove a child from his or her home which was taken out of the rule effective January 1, 2014, be included in it again.

Amend rule 5.708 to require that the court make the findings required by section 16002(b).

Rule 5.708 governs the findings the court must make regarding siblings at dependency status review hearings. SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends using a cross-reference to recently amended section 16002(b). By referencing the statute, any future modification to section 16002(b) will not result in the need for changes to the rule.

Amend rule 5.810 with the finding required to suspend sibling interaction.

Rule 5.810 governs the findings the court must make at delinquency status review hearings. As stated above, SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends adding this newly required finding to the subdivisions governing each status review type: prepermanency, permanency, and postpermanency hearings.

Further amend rules 5.708 and 5.810 to delete references to "youth."

Frequently, but not consistently, these rules refer to "child or youth" rather than "child." "Youth" is not defined in the California Rules of Court. Rule 5.502 defines "child" as "a person under the age of 18 years." It further defines both "nonminors" and "nonminor dependents." These three definitions include all children and nonminors who are subject to the court's jurisdiction. The committee recommends using the words that are defined in the rule and deleting any references to the undefined "youth."

[5] Judicial Council of Cal., Adv. Comm. Invitation to Comment, *Juvenile Law: Extended Foster Care* (spring 2013), p. 4.

Further amend rule 5.810 to clarify when a permanency hearing under rule 5.810(b) must be held.

Although a permanency hearing is required every 12 months under federal law,[6] California complies with this requirement by holding postpermanency status review hearings every six months.[7] The finding and order required by federal law to identify a permanent plan for a child are required by state law to be made at each postpermanency status review hearing, thus satisfying the federal requirement.[8]

Some courts have alternately held permanency hearings under rule 5.810(b) which governs permanency planning hearings, and rule 5.810(c) which governs postpermanency hearings. However, since the federal requirements for permanency hearings are met by holding postpermanency hearings under rule 5.810(c), the correct procedure—once a permanency hearing has been held under rule 5.810(b)—is to hold all subsequent postpermanency hearings under rule 5.810(c). The recommended amendments to this rule will clarify that this is the correct procedure.

Revise *Court Order on Form JV-180,* Request to Change Court Order (form JV-183) to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or if sibling visitation is contrary to the safety and well-being of any of the siblings.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship. Therefore, when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether a hearing on a section 388 petition should be granted or denied.

In *In re G.B.* (2014) 227 Cal.App.4th 1147, the First Appellate District held, inter alia, that the failure to hold a hearing on modification requests did not amount to reversible error.[9] In discussion, the appellate court stated that in checking a box on form JV-183,[10] the juvenile court

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[6] See 45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).

[7] Welf. & Inst. Code, § 366.3(a), (d).

[8] Welf. & Inst. Code, § 366.3(e)(3).

[9] The published opinion can be found at *www.courts.ca.gov/opinions/archive/A140107.PDF*.

[10] Current form JV-183, item 3, which is to be completed by the trial court, reads, "The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on (*date*): . . .."

was not deciding that a prima facie case had been made but was instead scheduling the matter for the parties to argue the issue. The appellate court further stated that setting a hearing for the parties to argue whether a prima facie case had been made was not an option on the form. In doing so, the appellate court implicitly approved the trial court's practice of setting a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set.

The committee recommends revising the form to give courts the option of setting a hearing to allow argument by the parties before the court decides whether to grant or deny a hearing on the section 388 petition. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional: if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.

Revise *Child's Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by SB 1099 regarding siblings under the court's jurisdiction who are not placed together in the same home.

SB 1099 amended sections 366 and 366.3 to require findings regarding whether the visits are supervised or unsupervised and, if supervised, why and what needs to be accomplished in order for the visits to be unsupervised; a description of the location and length of the visits; and any plan to increase visitation between the siblings. The committee recommends adding these findings to the current item 3; this revision would make the one-page form a two-page form.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Seven individuals or organizations provided comment; three agreed with the proposal, three agreed if modified, and one did not indicate a position. No commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 26–36.

One commentator, that agreed if modified, made suggested clarifications to limit the scope of both a rule and a form. The committee has revised both to clarify that they apply to requests for visitation by nondependent siblings.

Another commentator, that agreed if modified, expressed concern that the way the rules and forms described when the court could deny a request for sibling visitation was overly broad and could foreclose the court's granting other requests for sibling visitation.[11] The committee revised the rules and forms to track the statutory language. The rule reads:

> If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent.

The third commentator, who agreed if modified, made suggested improvements to grammar and consistency which were incorporated into the rules and forms.

Alternatives

The committee considered not revising form JV-183 with the new standards for granting a request for sibling visitation. The committee, in its discussion of this proposal, expressed concern about the court's ability to order sibling visitation for a sibling living with a parent who is not subject to the court's jurisdiction.

While Welfare and Institutions Code sections 388 and 778, which govern the filing of petitions to request a modification of a court order, do not address the requirement that the parent be under the court's jurisdiction, section 16002(a)(2), which states the legislative intent of SB 1099, does address this requirement.

> It is also the intent of the Legislature to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home or he or she has a sibling or siblings *who remain in the custody of a mutual parent subject to the court's jurisdiction*, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling. (Emphasis added.)

[11] As circulated for public comment, the rules specified that the court "may" grant a request for visitation with a nondependent sibling "unless the court determines that the sibling is not in the custody of a mutual parent subject to the court's jurisdiction."

Section 16002 is not in the parts of the Welfare and Institutions Code frequently used by juvenile court practitioners and bench officers, and the frequently used sections 388 and 778 do not contain this requirement. The committee therefore decided to recommend that the rules and forms be amended and revised to include this requirement to prevent confusion and to promote the legislative intent.

The committee also considered not revising form JV-183 to allow a court to set a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. Additionally, the committee concluded that allowing for the setting of this type of hearing would increase judicial discretion over how to hear these petitions. The setting of a hearing to give parties the opportunity to argue whether a hearing on the petition should be set would be optional; if courts prefer to just hold one hearing on the merits of the petition, they would remain free to do so.

Implementation Requirements, Costs, and Operational Impacts

This proposal could result in an increase in section 388 and 778 petitions filed requesting visitation with siblings who are not dependents of the court. This increase, however, is due to recent statutory changes authorizing such requests. In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Proposed Cal. Rules of Court, rules 5.570, 5.708, and 5.810, at pages 10–19
2. Proposed forms JV-183, JV-185, and JV-403, at pages 20–25
3. Chart of comments, at pages 26–36
3. Senate Bill 1099, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1099&search_keywords*=

Rules 5.570, 5.708, and 5.810 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.570. Request to change court order (petition for modification)

(a)–(c) * * *

(d) Denial of hearing

The court may deny the petition ex parte if:

(1) The petition filed under section 388(a) or section 778(a) fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or fails to show that the requested modification would promote the best interest of the child, nonminor, or nonminor dependent.

(2) The petition filed under section 388(b) fails to demonstrate that the requested modification would promote the best interest of the dependent child; ~~or~~

(3) The petition filed under section 388(b) or 778(b) requests visits with a nondependent child and demonstrates that sibling visitation is contrary to the safety and well-being of any of the siblings;

(4) The petition filed under section 388(b) or 778(b) requests visits with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court's jurisdiction; or

~~(3)~~(4) The petition filed under section 388(c) fails to state facts showing that the parent has failed to visit the child or that the parent has failed to participate regularly and make substantive progress in a court-ordered treatment plan or fails to show that the requested termination of services would promote the best interest of the child.

(e) Grounds for grant of petition (§§ 388, 778)

(1) If the petition filed under section 388(a) or section 778(a) states a change of circumstance or new evidence and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed change of order or termination of jurisdiction, the court may grant the petition after following the procedures in (f), (g), and (h), or (i).

(2) If the petition is filed under section 388(b) and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed recognition of a sibling relationship ~~and~~ or other requested orders,

the court may grant the petition after following the procedures in (f), (g), and (h).

(3) If the petition is filed under section 388(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well-being of any of the siblings, the court may grant the request after following the procedures in (f), (g), and (h).

(4) If the petition is filed under section 778(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well being of the ward or any of the siblings, the court may grant the request after following the procedures in (f), (g), and (i).

~~(3)~~ (5) * * *

~~(4)~~ (6) * * *

~~(5)~~ (7) If the petition filed under section 388(a) is filed before an order terminating parental rights and is seeking to modify an order that reunification services ~~were not needed~~ need not be provided under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the court may modify the orders only if the court finds by clear and convincing evidence that the proposed change is in the best interests of the child. The court may grant the petition after following the procedures in (f), (g), and (h).

(f) Hearing on petition

If all parties stipulate to the requested modification, the court may order modification without a hearing. If there is no such stipulation and the petition has not been denied ex parte under section (d), the court must either:

(1) order that a hearing on the petition ~~for modification~~ be held within 30 calendar days after the petition is filed~~.~~; or

(2) order a hearing for the parties to argue whether a hearing on the petition should be granted or denied. If the court then grants a hearing on the petition, that hearing must be held within 30 calendar days after the petition is filed.

(g) * * *

(h) Conduct of hearing (§ 388)

(1) The petitioner requesting the modification under section 388 has the burden of proof.

(A) If the request is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist.

~~(A)~~(B)If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided.

~~(B)~~(C)If the request is to modify an order that reunification services were not ~~needed~~ ordered under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the petitioner must show by clear and convincing evidence that the proposed change is in the best interests of the child.

~~(C)~~ (D)All other requests require a preponderance of the evidence to show that the child's welfare requires such a modification.

(E) If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(2) * * *

(i) Conduct of hearing (§ 778)

(1) The petitioner requesting the modification under section 778(a) has the burden of proving by a preponderance of the evidence that the ward's welfare requires the modification. Proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.

(2) If the request is for sibling visitation under section 778(b), the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(j) Petitions for juvenile court to resume jurisdiction over nonminors (§§ 388(e), 388.1)

A petition filed by or on behalf of a nonminor requesting that the court resume jurisdiction over the nonminor as a nonminor dependent is not subject to this rule. Petitions filed under ~~subdivision (e) of~~ section 388(e) or section 388.1 are subject to rule 5.906.

Rule 5.708. General review hearing requirements

(a)–(b) * * *

(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)

Before the hearing, the social worker must investigate and file a report describing the services offered to the family, progress made, and, if relevant, the prognosis for return of the child to the parent or legal guardian.

(1) The report must include:

(A) Recommendations for court orders and the reasons for those recommendations;

(B) A description of the efforts made to achieve legal permanence for the child if reunification efforts fail; ~~and~~

(C) A factual discussion of each item listed in sections 366.1 and 366.21(c)~~.~~; and

(D) A factual discussion of the information required by section 16002(b).

(2)–(3) * * *

(d)–(e) * * *

(f) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)

The court must consider the educational and developmental-services needs of each child and nonminor or nonminor dependent ~~youth~~, including whether it is necessary to limit the rights of the parent or legal guardian to make educational or developmental-services decisions for the child ~~or youth~~. If the court limits those rights or, in the case of a nonminor or nonminor dependent ~~youth~~ who has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that appointment would be in the best interests of the ~~youth~~ nonminor or nonminor dependent, the court must appoint a responsible adult as the educational rights holder as defined in rule 5.502. Any limitation on the rights of a parent or guardian to make educational or developmental-services decisions for the child ~~or youth~~ must be specified in the court order. The court must follow the procedures in rules 5.649–5.651.

(g) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must determine:

(1) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the agency to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.

(2)–(3) * * *

(4) For a child ~~or youth~~ 12 years of age or older in a permanent placement, whether the child was given the opportunity to review the case plan, sign it, and receive a copy. If the court finds that the child ~~or youth~~ was not given this opportunity, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

(h)–(i) * * *

(j) Sibling findings; additional findings (§§ 366, 16002)

(1) The court must determine whether the child has other siblings under the court's jurisdiction. If so, the court must make the additional determinations required by section 366(a)(1)(D); and

(2) The court must enter any additional findings as required by section 366 and section 16002.

(k)–(m) * * *

(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

The court must make the following orders and determinations when setting a hearing under section 366.26:

(1) The court must terminate reunification services to the parent or legal guardian and:

(A) Order that the social worker provide a copy of the child's birth certificate to the caregiver as consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and

(B) Order that the social worker provide a child ~~or youth~~ 16 years of age or older with a copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.

(2)–(6) * * *

(o) * * *

Rule 5.810. Reviews, hearings, and permanency planning

(a) Six-month status review hearings (§§ 727.2, 11404.1)

For any ward removed from the custody of his or her parent or guardian under section 726 and placed in a home under section 727, the court must conduct a status review hearing no less frequently than once every six months from the date the ward entered foster care. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1)–(2) * * *

(3) *Findings and orders (§ 727.2(e))*

The court must consider the safety of the ward and make findings and orders that determine the following:

(A)–(E) * * *

(F) In the case of a child ~~or youth~~ who is 16 years of age or older, the services needed to assist the child ~~or youth~~ in making the transition from foster care to independent living;

(G) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation department to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate; ~~and~~

(H) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate~~.~~; and

(I) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(4) * * *

(b) Permanency planning hearings (§§ 727.2, 727.3, 11404.1)

A permanency planning hearing for any ward who has been removed from the custody of a parent or guardian and not returned at a previous review hearing must be held within 12 months of the date the ward entered foster care as defined in section 727.4(d)(4). ~~and periodically thereafter, but no less frequently than once every 12 months while the ward remains in placement.~~ However, when no reunification services are offered to the parents or guardians under section 727.2(b), the first permanency planning hearing must occur within 30 days of disposition.

(1) * * *

(2) *Findings and orders (§§ 727.2(e), 727.3(a))*

At each permanency planning hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A)–(C) * * *

(D) The permanent plan for the child ~~or youth~~, as described in (3);

(E) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation officer to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate; and

(F) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate~~.~~; and

(G) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(3) *Selection of a permanent plan (§ 727.3(b))*

At the first permanency planning hearing, the court must select a permanent plan. At subsequent permanency planning hearings that must be held under section 727.2(g) and rule 5.810(c), the court must either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the following permanent plans, which are, in order of priority:

(A) * * *

(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after 6 additional months of reunification services. The court may not order this plan unless the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal or that reasonable services have not been provided to the parent or guardian.

(C)–(F) * * *

(4) * * *

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement ~~annually, 6 months after each permanency planning hearing~~ no less frequently than once every six months.

(1) *Consideration of reports (§ 727.2(d))*

The court must review and consider the social study report and updated case plan submitted for this hearing by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.2(d).

(2) *Findings and orders (§ 727.2(g))*

At each postpermanency status review hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate.; ~~The court must not order the permanent plan of returning home after 6 more months of reunification services, as described in (b)(3)(B), unless it has been 18 months or less since the date the child was removed from home;~~

(B) The continuing necessity for and appropriateness of the placement;

(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan for the child; ~~and~~

(D) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation department to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate.; and

(E) If sibling interaction has been suspended and will continue to be suspended, sibling interaction is contrary to the safety or well-being of either child.

(d) Notice of hearings; service; contents (§ 727.4)

No earlier than 30 nor later than 15 calendar days before each hearing date, the probation officer must serve written notice on all persons entitled to notice under section 727.4, as well as the current caregiver, any CASA volunteer or educational rights holder, and all counsel of record. ~~A~~ *Notice of Hearing—Juvenile Delinquency Proceeding* (form JV-625) must be used.

(e) Report (§§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b), 16002)

Before each hearing described above, the probation officer must investigate and prepare a social study report that must include an updated case plan and all of the information required in sections 706.5, 706.6, 727.2, ~~and~~ 727.3, and 16002.

(1) The report must contain recommendations for court findings and orders and must document the evidentiary basis for those recommendations.

(2) At least 10 calendar days before each hearing, the ~~petitioner~~ probation officer must file the report and provide copies of the report to the ward, the parent or guardian, all attorneys of record, and any CASA volunteer.

~~**(f) Hearing by administrative panel (§§ 727.2(h), 727.4(d)(7))**~~

~~The status review hearings described in (a) and (c) may be conducted by an administrative review panel, provided:~~

~~(1) The ward, parent or guardian, and all those entitled to notice under section 727.4 may attend;~~

~~(2) Proper notice is provided;~~

~~(3) The panel has been appointed by the presiding judge of the juvenile court and includes at least one person who is not responsible for the case management of, or delivery of service to, the ward or the parent or guardian; and~~

~~(4) The panel makes findings as required by (a)(3) or (c)(2) above and submits them to the juvenile court for approval and inclusion in the court record.~~

JV-183 Court Order on Form JV-180, *Request to Change Court Order*

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

The court will complete this form after reviewing the Request to Change Court Order *(form JV-180) and either grant the request, deny the request, or set a hearing on the request.*

After reading and considering the *Request to Change Court Order* (form JV-180) filed by:

Name: _____

on *(date):* _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name.

Name of Child or Nonminor dependent:

Clerk fills in case number when form is filed.

Case Number:

The Court Finds and Orders

1 ☐ All parties and attorneys agree to the request. The request is granted

a. ☐ as requested in item 8 of form JV-180.

b. ☐ as follows *(state specific modifications):*

_____

_____

_____

_____

2 The request is denied because

a. ☐ the request is not signed.

b. ☐ the request does not state new evidence or a change of circumstances.

c. ☐ the proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child.

d. ☐ the request is for sibling visitation with a dependent of the court and the proposed change of order does not promote the best interest of the child.

e. ☐ the request is for sibling visitation with a nondependent of the court and the proposed change of order is contrary to the safety or well-being of one or more of the siblings.

f. ☐ the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court's jurisdiction.

g. ☐ Other *(state the specific reason):* _____

_____

_____

3 The court orders a hearing on whether the court should grant or deny a hearing. The hearing will take place on *(date):* _____ at *(time):* _____ *(circle one)* a.m./p.m. in department _____ of the Superior Court of County located at _____

_____

_____

_____

Name of child or nonminor dependent: _____

Case Number:

4 The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on *(date):* _____
at *(time):* _____ *(circle one)* a.m./p.m. in department _____
of the Superior Court of _____ County located at _____

_____

_____

_____

Date: _____

_____
Judicial officer

CHILD'S NAME:	CASE NUMBER:

CHILD'S INFORMATION SHEET—
REQUEST TO CHANGE COURT ORDER
(Welf. & Inst. Code, §§ 353.1, 388)

TO THE CHILD: This information sheet tells you about your right to ask the court to change a decision the court has made about your life and the rules that must be followed when you want to ask the court to change a decision. It also explains your right to ask the court to make an order about your relationship with a brother or sister. If you are under 12 years of age, your attorney must talk with you about this information. If you are 12 years of age or older and in court at the dispositional hearing, the court must also talk with you about this information. The court must mail this information to you after a dispositional hearing.

A. I have just made a decision about your life. I will be making other decisions about your life. You have a right to ask me to change a decision I have made. You have an attorney who will help you with this.

For me to change a decision I have made, you must talk with your attorney and have your attorney ask me to change my decision.

Your attorney will have to fill out a form called *Request to Change Court Order* (form JV-180).

The form will explain to me the changes that have happened in your life and why the changes you want me to make in the court order will make things better for you.

You may get a copy of the blank form from your attorney or from the court clerk's office at the courthouse to review so you know what information needs to be on the form.

1. You must tell your attorney the following information:
   a. What has changed since I made the decision? If nothing has changed, what new information do you want to tell me?
   b. What changes to my decision do you want me to make?
   c. If I make the changes you want, will you be better off than if I do not make these changes? Tell me how the changes will make you healthier, safer, and happier.
2. After you speak with your attorney, your attorney will fill out the form.
   a. I will read the form.
   b. I may ask the other people involved with your case if they think you have given me the kind of information I must have in order to change my decision. Then I will decide if you told me anything new and if the change you want me to make is good for you.
   c. If I believe you have not told me anything new or if I believe what you want me to change is not good for you, I will not make any changes. The court clerk will send to you and all the people involved with your case a written notice of my decision not to make any changes.
   d. If I believe you did tell me something new and what you are asking me to change may be better for you, I will schedule a court date for you. The court clerk will send to you and all the people involved with your case a written notice of my decision to schedule a hearing and the date of the hearing.
   e. At that court date, everyone involved in your case will be present and allowed to speak.
   f. After everyone has spoken, I will make the final decision. I will make the changes you want only if I believe you have told me something new and what you are asking for is good for you.

B. If you have a brother or sister who lives with the parent you were removed from, you may ask me to make an order allowing visits with him or her.

If you have a brother or sister who is or might become a dependent of the court, you may ask me to make an order allowing visits, to make an order placing you in the same home, to make other orders that may be in the best interest of you and your brother or sister, and to consider your relationship with your brother or sister when making decisions about him or her.

Form Approved for Optional Use
Judicial Council of California
JV-185 [Revised Jan. 1, 2016]

CHILD'S NAME:	CASE NUMBER:

B. 1. For me to make these orders, you must tell your attorney you would like to ask me to make an order about your brother or sister.

2. Your attorney will fill out a form asking me to make the order about your brother or sister.

a. I will read the form.

b. The court clerk will send to you and all the people involved with your brother's or sister's case a written notice of my decision to schedule a hearing and the date of the hearing.

c. At that court date, everyone involved in the case will be present and allowed to speak.

d. After everyone has spoken, I will make the final decision. I will make the order about your brother or sister that you asked me to make only if I believe what you are asking for is good for you and your brother or sister.

If you have any questions, please ask your attorney. Your attorney will be able to answer your questions about court procedures and the laws I will use in making my decisions.

Date:

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

1. **The child has siblings under the court's jurisdiction.**
   a. The nature of the relationship between the child and the child's siblings is
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*
   b. (1) ☐ Developing or maintaining the sibling relationship with the siblings named below is appropriate.
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (2) ☐ Developing or maintaining the sibling relationship with the siblings named below is not appropriate.
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (3) The basis for the finding in item 1b is
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   c. The impact of the sibling relationships on the child's placement and planning for legal permanence is
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*
2. ☐ **The child and all of the child's siblings under the court's jurisdiction are placed together in the same home.**
3. ☐ **The child and all of the child's siblings under the court's jurisdiction are not placed together in the same home.**
   a. ☐ Efforts are being made to place the child and the following siblings together.
      (1) Child's siblings:
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (2) The reasons the child and these siblings are not placed together and the efforts being made to do so are
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   b. ☐ Efforts to place the child with the following siblings are not appropriate.
      (1) Child's siblings:
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (2) The reasons that efforts to place the child with these siblings are not appropriate are
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   c. ☐ The frequency and nature of the visits between the child and the child's siblings who are not placed together are
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-403 [Revised Jan. 1, 2016]

SIBLING ATTACHMENT: CONTACT AND PLACEMENT

Welfare and Institutions Code, §§ 366, 366.3;
Cal. Rules of Court, rules 5.708 and 5.740
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

3. d. ☐ The reasons why the visits between the child and the child's siblings are supervised are
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   e. ☐ What needs to be accomplished in order for the visits to be unsupervised is
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   f. ☐ The location and length of the visits between the child and the child's siblings who are not placed together are
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   g. ☐ The plan to increase visitation between the child and the child's siblings who are not placed together is
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) FLEXCOM: David M. Lederman The Law Offices of David M. Lederman State Bar Legislative Counsel Saul Bercovitch The State Bar of California	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modification. FLEXCOM recommends two modifications. Proposed Rule 5.570(d)(4) calls for the court to deny a petition on its face if the request is for visitation with a sibling who is not in the custody of a mutual parent under the court's jurisdiction. This proposed change should include the word "nondependent" before "sibling" in order to clarify it has limited scope. Without the word "nondependent," this proposal could be interpreted to apply to requests for visitation between two dependent siblings that are both out of the custody of their parents. This broad interpretation would not reflect the intent of Senate Bill 1099. Proposed Item 2(d) on the revised form JV-183 should be stricken. This language would authorize the court to deny a request to order visitation for any individual with a dependent of the court. Similar to our comment concerning proposed 5.570(d)(4), this language has the potential to be interpreted in an overly broad fashion. On its face, this would apply well beyond requests for sibling visitation. The court could check this box on a visitation request concerning the dependent and anyone, family or otherwise. Whereas SPR15-26 is proposed in response to SB 1099, the proposal should be limited to issues concerning sibling visitation. In addition, the ability to deny requests for	 The committee has revised the rule to include the word "nondependent" before "sibling" to clarify it has limited scope. The committee has revised subitems 2(d)-(f) to clarify that the items apply to requests for sibling visitation.

SP15-26
Juvenile Law: Sibling Visitation
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	Commentator	Position	Comment	Committee Response
			visitation is encompassed in existing item 2(c) of the JV-183 form. The existing language allows the court to deny any "change in court order" if it fails to promote the best interests of the child. The language in proposed 2(d) would be duplicative.	
2.	California Judges Association President Joan P. Weber	A	Rule and Form changes to conform to SB1099 and In Re G.B. These amendments pertain to three rules and three forms. Overall these changes would conform to recent case law and statutes that have been passed to make it easier for siblings to see siblings both dependent and nondependent. CA Rule of Court 5.570 would require a new standard for granting the sibling visit. It eliminates the 'clear and convincing' language to show detriment in order prevent the sibling visits and instead says that " A request for sibling visitation may be granted unless it is determined by the court that sibling visitation is contrary to the safety and well being of any of the siblings". This language conforms to the language of SB1099 which was sponsored by the California Youth Connection. CA Rule 5.570 to be amended to clarify that a judge may consider ordering visitation for a dependent child for a nondependent child when they have a mutual parent who is subject to the	No response required.

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			court's jurisdiction. CA Rule 5.708 would be amended to require that if a court has found that sibling visits are suspended that the court must revisit that decision at the 6 month hearing in order for that suspension to remain in place. In CA Rule 5.708 and CA Rule 5.810 the amendments eliminate the reference to youth and only use the reference to "child" because the legal definition of a child is a person under the age of 18. The rule does define nonminor and nonminor dependents. So the term "youth" is deleted. CA Rule 5.810 changes also clarify that post permanency hearings are to be held every 6 months and not every 12 months as the Federal Law mandates. Forms: JV-183 (388) will add a box to check for the court to grant a hearing to argue whether to set a hearing. This is in lieu of checking the box that denies or grants a hearing on the requested action. It was felt that enough jurisdictions are granting a hearing to argue for a hearing so it would conform to practice. JV-185 and JV-403 will be changed to conform to SB1099. We support all of the changes.	
3.	Dependency Advocacy Center Hilary Kushins	A	No comment	No response required.

SP15-26
Juvenile Law: Sibling Visitation
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	Commentator	Position	Comment	Committee Response
4.	Office of the County Counsel County of Santa Clara Julie Fulmer McKellar Lead Deputy County Counsel	NI	The amendments proposed to 5.570, subd.(h)(1)(B) questionably imposes a clear and convincing standard burden of proof for a requested placement changes from foster home to a group home. The preponderance of the evidence standard is the accepted burden of proof for section 388 petitions. (SPR15-26)	The committee has revised the rule to remove subparagraph (h)(1)(B). Requests to remove a child to a more restrictive placement would fall under the general requirement in subparagraph (h)(1)(D) requiring a preponderance of the evidence standard. The clear and convincing standard will remain in the rule for a removal from parental custody.
5.	Superior Court of California, County of San Diego Mike Roddy Executive Officer	AM	• (4) is repeated twice in subdivision (d). • Consistency issues (well being v. well-being; section 388 or section 778 v. section 388 or 778; section v. subdivision; need not be provided v. were not needed; that sibling interaction is contrary v. no "that"). • Subdivision (f): hearing to determine whether there should be a hearing? The way the rule is currently drafted, it is difficult to understand and should be rephrased to specifically reference the two types of hearings being held. • Also, with the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition.	The committee has revised the rule with the correct numbering. The committee has revised the rules and made improvements to consistency and grammar. The committee has revised the rule to improve readability. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.

SP15-26
Juvenile Law: Sibling Visitation
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	Commentator	Position	Comment	Committee Response
			JV-183: Why would the court order a hearing on whether to order a hearing? With the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition. **JV-185**: Maybe set up B more like A, with numbered and lettered paragraphs. It would be better to state: "in the best interest of *you and* your brother or sister"?	The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so. The committee revised the form so that B is set up more like A, with numbered and lettered paragraphs, to improve readability. The committee agrees with this comment and has revised the form to state "in the best interest of you and your brother or sister."
6.	Orange County Bar Association Ashleigh Aitken President	A	No comment	No response required.
7.	Youth Law Center Joy Singleton Staff Attorney	AM	**Rule 5.570(h)(2) and 5.570(i)(2):** This proposed rule would specify that the court "may" grant a petition request for visitation with a nondependent sibling "unless the court determines that the sibling is not in the custody of a mutual parent subject to the court's jurisdiction..." among other criteria. This proposed rule exceeds the scope of SB 1099 by adding a limitation on the court's authority that does not appear in that legislation. As we know from the Judicial Council's *Invitation to Comment* on these proposed rules, SB 1099 intended to address the issue of sibling	The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

	Commentator	Position	Comment	Committee Response
			visitation following an unpublished decision wherein the court found that the juvenile courts could not compel a parent subject to its jurisdiction to provide for visitation between dependent and nondependent siblings. This is a very narrow jurisdictional issue and the legislation addresses it narrowly: by stating that the court does in fact have discretion to order visits between dependent and nondependent siblings when the nondependent sibling is in the custody of a mutual parent subject to the jurisdiction of the court. Under Welfare & Institutions Code §362, "the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child…". This is a broad grant of authority, and the court can order the child welfare agency to implement any visitation plan that is reasonable for the care and maintenance of the dependent child. SB 1099 did not restrict the authority of the court to order visits; it clarified and/or expanded the court's authority to order parents subject to its jurisdiction to allow visits between dependent and nondependent children. We believe that the proposed rule is the product of confusion regarding 1) the jurisdictional authority of the juvenile court and 2) the court's discretion to make certain sibling visitation orders that do not conflict with any sibling's safety and well-being. While the court might not have the authority to order someone outside	

	Commentator	Position	Comment	Committee Response
			of its jurisdiction (e.g., an aunt, grandparent, or a parent not subject to the jurisdiction of the court) to provide visits between dependent and nondependent siblings, the court *does* have the authority to order a visitation plan that would benefit the dependent child. In other words, the court has the power to order that the child welfare agency facilitate visits for a dependent child with his or her nondependent siblings no matter where the nondependent siblings live. Granted, the guardian or caretaker of nondependent siblings who is not subject to the jurisdiction of the court might object to the visits; however, that is a separate issue and is not within the scope of this legislation. We simply do not want the proposed rule to foreclose inadvertently the opportunity for a judge to order a visitation plan for siblings where the nondependent sibling lives with someone other than a mutual parent subject to the court's jurisdiction and the nondependent's guardian is amenable to the visitation plan. If the court was not permitted to order such a plan, then that would be contrary to the intent of the SB 1099, which is to expand and protect foster children's rights to visit with and maintain a bond with their siblings. **Suggested Amendments to Proposed Rule 5.570(h)(2) and 5.570(i)(2)**	The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent subject to the court's jurisdiction. The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			We propose that 5.570(h)(2) read, "If the request is for visitation with a sibling who is not a dependent of the court, the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b)."	The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.
			We propose that 5.570(h)(2) read, "If the request is for visitation is under Section 778(b), the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b)." **Rule 5.570 (d)(3)-(4):** This proposed rule would provide that the court may deny *ex parte* a petition filed under 388(b) or 778(b) if the petition requests either 1) visits "contrary to the safety and well-being" of any of the siblings or 2) "visits with a sibling who is not in the custody of a mutual parent subject to the court's	The committee concluded that this comment is regarding rule 5.507(i)(2). The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

	Commentator	Position	Comment	Committee Response
			jurisdiction." There is no authority in SB 1099 that provides for an *ex parte* denial of a petition for sibling visitation under W&I §388, and these proposed amendments should be deleted. There is no compelling reason to permit an *ex parte* denial for a petition that requests visits with a sibling not in the custody of a parent subject to the court's jurisdiction, and there are many reasons that the court should not be permitted to issue such a denial. Similar to the reasons stated above in detail, these proposed amendments to the rule exceed the scope of the legislation and contradicts the intent of the law. Additionally, permitting a judge to deny the petition *ex parte* if the petition "demonstrates" that the visits would be contrary to the child's safety and well-being is unnecessary and potentially confusing. It is very unlikely that the petition brought by a sibling requesting visits would, on its face, demonstrate that the visits would be contrary to the child's safety or well-being. For reasons similar to those stated above, we	Amending rule 5.570 with the option for the court to deny a petition ex parte is within the Judicial Council's purview. Article 6, section 6 of the California Constitution empowers the council to "adopt rules for court administration, practice and procedure, not inconsistent with statute." Section 265 of the Welfare and Institutions Code requires the council to adopt rules governing practice and procedure in the juvenile court. Further, rule 5.501(b) (authority for and purpose of rules)[1] clarifies that "[t]hese rules implement the purposes of the juvenile court law by promoting uniformity in practice and procedure and by providing guidance to judges, referees, attorneys, probation officers, and others participating in juvenile court." See response above.

[1] Rule 1400 of the California Rules of Court can be found in Attachment B.

	Commentator	Position	Comment	Committee Response
			ask that proposed Rule 5.570(d)(3) and (d)(4) be deleted. **Form JV-183**: Similarly, we believe that Form JV-183 should not be changed to allow the court to deny a request for visitation if the nondependent sibling is not in the custody of a mutual parent subject to the jurisdiction of the court for all of the reasons listed above. We propose that subdivisions (d-f) in Item 2 on Form JV-183 be deleted. **Rule 5.570 (f):** This proposed rule clarifies that the court has the discretion to order a hearing regarding whether the party bringing a petition under 388 has made a prima facie showing that they meet the conditions to merit an evidentiary hearing. The rule specifies that, if the court does find there is a prima facie showing that the requirements of 388 are met sufficient to require an evidentiary hearing, then the court must hold the evidentiary hearing within 30 days of the prima facie hearing. However, the rule does not make it clear that the court similarly must hold the evidentiary hearing within 30 days of finding that the petitioner made the requisite prima facie showing without a hearing but simply on the petition submitted to the court. This appears to be an oversight. Proposed Amendment: If there is no such stipulation and the petition has not been denied *ex parte* under section (d), the court must <u>either:</u> may <u>1)</u> order a hearing for the parties to argue	The committee has revised the form to track the statutory language. Item 2(f) now reads: The request is denied because the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court's jurisdiction. The committee has revised the rule to clarify that the evidentiary hearing must be held within 30 days of filing of the petition in either circumstance delineated in the rule.

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			whether a hearing on the petition should be granted or denied or may 2) order that a hearing on the petition for modification be held within 30 calendar days after the petition is filed.	

Item number: 13

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: October 27, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family and Juvenile Law: Transfers to Tribal Court Under the Indian Child Welfare Act
Amend Cal. Rules of Court, rules 5.483 and 5.590; revise forms ICWA-060 and JV-800

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Tribal Court - State Court Forum

Staff contact (name, phone and e-mail): Ann Gilmour, 415-865-4207, ann.gilmour@jud.ca.gov and Jennifer Walter, 415-865-7687, jennifer.walter@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Family and Juvenile Law - Approved December 10, 2014. Item #1: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of SB 1460 (stats. 2014, ch. 772). Information that must be provided when a case transfers from juvenile court to tribal court.
Tribal Court - State Court Forum - Approved by Executive & Planning Committee at a meeting on April 23, 2014. Item #8 Recommend amendment to Rule 5.483 to ensure that the order for transfer of a juvenile case from state court to tribal court addresses issues such as when and to whom physical transfer of the child shall take place and what necessary information from the court and agency files will be provided to the tribal court and tribal social service agency upon transfer.
Project description from annual agenda: Among other things, requires a juvenile court to transfer a case file to a tribe having jurisdiction over a juvenile court case, and requires both the juvenile court and the tribe to document the finding of facts supporting jurisdiction over the child by the tribal court. Requires that a transfer order shall have precedence in scheduling, "and shall be heard by the court at the earliest possible moment after the order is filed." Further allows a child who has been removed from the custody of his or her parents to be placed with a resource family, as defined.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Family and Juvenile Law: Transfers to Tribal Court Under the Indian Child Welfare Act

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.483 and 5.590; revise forms ICWA-060 and JV-800

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Tribal Court–State Court Forum
Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
July 29, 2015

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court–State Court Forum (forum) propose amendments to the California Rules of Court and revisions to Judicial Council forms concerning the transfer of court proceedings involving an Indian child from the jurisdiction of the state court to a tribal court. These changes are in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460) and the Court of Appeal decision in *In re. M.M.* (2007) 154 Cal.App.4th 897. SB 1460 requires the state juvenile court to give the tribal court specific information and documentation when a case governed by the *Indian Child Welfare Act* is transferred. The *In re M.M.* decision implicates an objecting party's right to appeal a decision granting a transfer to a tribal court.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.483 to make use of the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) mandatory rather than optional, add a requirement that the transfer order include matters required by section 827.15 of the Welfare and Institutions Code, and, to ensure that the parties are aware of the requirements, add a subsection requiring an advisement that any party wishing to appeal an order transferring a case to tribal court must file their appeal before the transfer is finalized and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;

2. Amend rule 5.590 to require an advisement that an appeal of an order granting a transfer of an Indian child custody proceeding involving an Indian child to tribal court must be taken before the transfer finalizes and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;

3. Revise Judicial Council *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) by making it mandatory rather than optional, reorganizing the form in response to comments, adding places to put the information required by Welfare and Institutions Code section 827.15, and adding an advisement concerning appellate rights as follows:

   > A party that intends to seek appellate review of the transfer order is advised that they must take their appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delayed effective date) of the transfer order will result in loss of appellate jurisdiction; and

4. Revise Judicial Council *Notice of Appeal—Juvenile* (form JV-800) to refer to section 305.5 of the Welfare and Institutions Code, and add the following advisement:

   > You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.

The text of the amended rules and copies of the revised forms are attached at pages 7–12.

Previous Council Action

In 2006, the Legislature enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which incorporated various provisions of the federal Indian Child Welfare Act (ICWA; 25 U.S.C.

§ 1901–1963) into the California Family Code, Probate Code, and Welfare and Institutions Code. To implement SB 678, the Judicial Council adopted comprehensive ICWA rules and forms, including rule 5.483 concerning transfers to tribal court, effective January 1, 2008. This rule has been amended only once since 2008, and only for technical changes, specifically to delete statutory references.

Rule 5.590—concerning the advisement of rights to review juvenile cases governed by Welfare and Institutions Code sections 300, 601, and 602—was amended and renumbered, effective July 1, 2010. The rule was first adopted as rule 1435, effective January 1, 1990, and previously amended effective January 1, 1992–1995, and July 1, 1999. In 2007, it was amended and renumbered as rule 5.585, effective January 1, 2007.

Rationale for Recommendation

The existing rule governing transfers of cases to tribal court under the Indian Child Welfare Act, rule 5.483, contains limited information on the procedures to transfer a case to tribal court, what information must be provided to the tribal court, and the parties' appellate rights. The current proposal provides more information in these areas in response to two developments that have occurred since the enactment of rule 5.483: (1) the requirement under SB 1460 to provide a tribal court with specific information and documentation when a case governed by the Indian Child Welfare Act is transferred and (2) the appellate jurisdictional issues addressed in the *In re M.M.* decision.

In 2007, the Court of Appeal, First Appellate District, held that once a transfer from state court to tribal court is finalized, the decision to transfer is not appealable because the California Court of Appeal has no power over the tribal court to which the case has been transferred.[1] To alert parties to this possibility, the committee and forum propose adding advisements to several forms and under several rules indicating that any appeal must be filed before the transfer is finalized and that, if a stay is not sought and received, the Court of Appeal will lose jurisdiction to consider the appeal.

The Legislature recently enacted Senate Bill 1460 (Stats. 2014, ch. 772), which amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian child from the jurisdiction of the local state court to a tribal court. In particular, SB 1460 sets out certain requirements concerning the contents of orders and the information that must be provided when a child's case is transferred from a California juvenile court to a tribal court. This change brings California law into alignment with federal requirements under title IV-E of the Social Security Act designed to ensure continuity of title IV-E eligibility when a case transfers from state court to tribal court. To implement this legislation, the committee and forum propose amending rule 5.483 and revising form ICWA-060 to require the content mandated by the legislation.

[1] *In re M.M.* (2007) 154 Cal.App.4th 897.

Comments, Alternatives Considered, and Policy Implications

External Comments

This proposal was circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court-appointed special advocates, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues. Eight individuals or organizations provided comment: one agreed with the proposal, one agreed if modified, five disagreed with the proposal, and one expressed no position but included comments. A chart with the full text of the comments received and the forum's and committee's responses is attached at pages 13–26.

All of the substantive comments received on the proposal related to appellate issues. None of the commentators raised issues relating to the changes implementing SB 1460.

As originally drafted and circulated for comment, in response to the *In re M.M.* decision, the proposal would have created a reduced timeline for filing an appeal combined with an automatic stay of the finalization of an order transferring a case to tribal court to give an objecting party a defined period of time in which to appeal and request a stay. The procedure suggested in the proposal received a number of negative comments and has been substantially revised in light of those comments. In particular, the proposal no longer includes suggestions to amend rule 8.406 and adopt rule 8.418 as was proposed when the item circulated for public comment.

Two of the commentators who disagreed with the proposal and one who agreed, if modified, suggested that the shortened time frame for appeal and the unique procedure created a trap for the unwary and rather than protecting objecting parties' rights to appeal would, in practice, undermine those rights. Two of the commentators who disagreed with the proposal, the Pechanga Band of Luisenio Indians and California Indian Legal Services, objected that the automatic stay would delay permanency for Indian children, would broaden appellate rights, and was inconsistent with ICWA, California statutes implementing ICWA, and other governing law. They urged the Judicial Council to defer action on this proposal pending the Bureau of Indian Affairs (BIA) adoption of new regulations governing ICWA. While this proposal was pending, on February 25, 2015, the BIA published the new *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*, which replaces and supersedes the guidelines issued in 1979.[2] On March 20, 2015, the BIA proposed new regulations governing ICWA.[3]

[2] The new guidelines are available at *www.bia.gov/cs/groups/public/documents/text/idc1-029447.pdf*.

[3] The proposed regulations are available at *www.bia.gov/cs/groups/public/documents/text/idc1-029629.pdf*.

In response to these comments, the proposal was substantially revised to eliminate both the shortened time for appeal of an order granting a transfer of a case governed by ICWA to tribal court and the automatic stay of the finalization of such an order. Instead, the proposal now requires an advisement to the parties that any appeal of an order granting a transfer to tribal court must be taken before the transfer has been finalized and that if an objecting party fails to request and obtain a stay of the order for transfer, the appellate court will lose jurisdiction should the transfer be finalized.

Alternatives

As discussed above, the committee and forum had originally considered establishing an alternative time-frame for appeals of orders transferring cases governed by ICWA to tribal court. In light of the concerns raised by the various commentators, the committee and forum decided that the better alternative would be to provide the parties with an advisement that any appeal must be taken before finalization of the transfer.

The committee and forum are aware that the new BIA guidelines and proposed regulations contain provisions that appear to conflict with both California case law and the Welfare and Institutions Code. These provisions might require additional rule and form changes, including to sections governing transfers to tribal court (Cal. Rules of Court, rule 5.483; form ICWA-060), as well as to sections regarding content of notice, the nature and timing of inquiry and of active efforts, considerations in applying placement preferences, and a number of other areas. The committee and forum considered whether to defer action on this current proposal in light of the new guidelines and proposed regulations. However, given that several years may pass before any such changes in California statutes are finalized, the committee and forum decided that the following benefits outweighed waiting: (1) parties are entitled to information to understand how to object to a transfer and preserve their appellate rights; (2) state courts will have a clear procedure to follow when issues of transfer arise; and (3) tribal courts will receive all of the information and documentation that they are entitled to under SB 1460 as mandated by state and federal law.

Implementation Requirements, Costs, and Operational Impacts

The requirements, costs, and impacts of implementing this proposal should be minimal because, even without these changes, state courts are required to notify the parties of their appellate rights and transfer these cases to tribal courts absent good cause. Existing council rules and notice forms can be used; however, they do not give the parties the information needed to comply with statutory and case law. There are no associated costs, but rather there are potential savings, which will result when cases are promptly and properly transferred from state court to tribal court.

Attachments and Links

1. Cal. Rules of Court, rules 5.483 and 5.590, at pages 7–8
2. Judicial Council forms ICWA-060 and JV-800, at pages 9–12
3. Chart of comments, at pages 13–26

4. Attachment A: *In re M.M.* (2007) 154 Cal.App.4th 897
   Senate Bill 1460 (Stats. 2014, ch. 772), *www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1451-1500/sb_1460_bill_20140929_chaptered.html*

Rules 5.483 and 5.590 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.483. Transfer of case

(a)–(f) * * *

(g) Order on request to transfer

(1) The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:

(A) All of the findings, orders, or modifications of orders that have been made in the case;

(B) The name and address of the tribe to which jurisdiction is being transferred;

(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;

(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and

(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.

(h) Advisement when transfer order granted

When the court grants a petition transferring a case to a tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), and rule 5.483, the court must advise the parties orally and in writing that any appeal to the order for transfer to a tribal court must be made before the transfer to tribal jurisdiction is finalized and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

~~(h)~~ (i) Proceeding after transfer

* * *

Advisory Committee Comment

Once a transfer to tribal court is finalized as provided in rule 5.483(i), the appellate court lacks jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child "pending review on appeal or for any other period or periods that it may deem appropriate" (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See Nuckolls v. Bank of California, Nat. Assn. (1936) 7 Cal.2d 574, 577 [61 P.2d 927] ["Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court."].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112).

Subsection (h) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a)–(b) * * *

(c) Advisement requirements for appeal of order to transfer to tribal court

When the court grants a petition transferring a case to a tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), and rule 5.483, the court must advise the parties orally and in writing, that an appeal of the order must be filed before the transfer to tribal jurisdiction is finalized, and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
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:	
CHILD'S NAME:	CASE NUMBER:
ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	RELATED CASES *(if any):*

1. Child's name: Date of birth:

2. a. Date of hearing: Time: Dept.: Room:

   b. Persons present:

   - ☐ Child
   - ☐ Child's attorney
   - ☐ Probation officer/social worker
   - ☐ Deputy county counsel
   - ☐ Tribal representative *(name)*:
   - ☐ Parent *(name):*
   - ☐ Parent *(name):*
   - ☐ Guardian
   - ☐ Deputy district attorney
   - ☐ Parent's attorney
   - ☐ Parent's attorney
   - ☐ CASA
   - ☐ Other:

3. The court has read and considered the
   - ☐ ICWA-50, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
   - ☐ Other *relevant evidence (specify):*

4. ☐ The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.

5. **THE COURT FINDS AND ORDERS** under ☐ Family Code, § 177(a); ☐ Probate Code, § 1459.5(b); ☐ Welfare and Institutions Code, § 305.5; ☐ 25 U.S.C. § 1911(a) (Exclusive Jurisdiction)

   a. ☐ The request for transfer is granted and the following ordered:

   (1) The child's case is ordered transferred to the jurisdiction of the tribe listed below:
   Name of tribe:
   Address:
   City, state, zip code:
   Telephone number:

   (2) Physical custody of the child is transferred to a designated representative of the tribal court listed below:
   Name:
   Title:
   Address:
   City, state, zip code:
   Telephone number:

   (3) The case is being transferred from a juvenile court, and all of the findings and orders or modifications of orders that have been made in the case are attached.

   (4) The case is being transferred from a juvenile court, and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.

   (5) The case is being transferred from a juvenile court, and all originals contained in the court file must be transferred to the tribal court, a copy of the transfer order and findings of fact must be maintained by the transferring court.

Form Adopted for Mandatory Use
Judicial Council of California
ICWA-060 [Rev. January 1, 2016]

Family Code, § 177(a);
Probate Code, § 1459.5(b);
Welfare and Institutions Code, § 305.5;
Cal. Rules of Court, rule 5.483
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

(6) A party that intends to seek appellate review of the transfer order is advised that the party must take an appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delay the effective date) of the transfer order will result in loss of appellate jurisdiction.

b. ☐ The petition to transfer is denied because one of the following circumstances exist:

(1) ☐ One or both of the child's parents opposes the transfer.
Name of opposing parent:

(2) ☐ The child's tribe has informed this court that it does not have a tribal court or other administrative body as defined in 25 U.S.C. § 1903.

(3) ☐ The tribal court or other administrative body of the child's tribe declines the transfer.

c. ☐ The petition to transfer is denied because good cause exists not to transfer the case.

(1) ☐ Name of opposing party: has submitted information or evidence in writing to the court and all parties.

(2) ☐ Petitioner has had the opportunity to provide information or evidence in rebuttal.

(3) ☐ The party opposing the transfer has established that good cause not to transfer the proceeding exists as follows:

(a) ☐ The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

(b) ☐ The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding. The notice complied with:

☐ Family Code section 180 or
☐ Probate Code section 1460.2 or
☐ Welfare and Institutions Code section 224.2.

(Note: The fact that a party waited until after reunification efforts failed and reunification services were terminated is not good cause to deny transfer.)

(c) ☐ The Indian child is over 12 years of age and objects to the transfer.

(d) ☐ The parents of the child, over five years of age, are unavailable, and the child has had little or no contact with the child's tribe or members of the child's tribe.

(e) ☐ *Other (specify):*

(4) ☐ The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.

6. ☐ Proof that tribe has accepted transfer is attached and jurisdiction is terminated.

7. ☐ Hearing is set for *(date):* *(time):* *(dept.):*
to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date:

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
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:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

Date:

TYPE OR PRINT NAME

SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

4. Items 5 through 7 on the reverse are ☐ completed ☐ not completed.

Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. Jan 1, 2016]

Cal. Rules of Court, rule 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ child's tribe
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
      ☐ Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
1.	California Indian Legal Services, Delia Parr, Directing Attorney , Eureka Office (Statewide Tribal organization with offices in Bishop, Escondido, Eureka and Sacramento)	N	These comments are submitted in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and, revisions to the associated court forms. This proposal would create a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions to transfer a case, it *must* be transferred absent good cause. Of great importance, recently-published federal ICWA guidelines and pending federal regulations clearly define the good cause exception and give greater deference to tribal jurisdiction. The current proposal is inconsistent with the intent and spirit of the ICWA in delaying such transfers.	In response to this and other comments, the proposal has been revised so that it no longer creates a 12 court day delay in finalizing a transfer to tribal court. Instead objecting parties will be advised that they must file an appeal before the transfer has finalized and that they may request a stay of the order if they intend to appeal. Instead the proposal addresses the issue by means of advisement.

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

SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical custody from state court to tribal court. For example, in one recent CILS case, a newborn was detained at birth by a county child welfare agency. The child's Indian tribe had been following the mother and planned to detain at birth, but since the hospital called the county at birth and not the tribe, the county detained before the tribe had a chance. The tribe had determined that placement with the maternal grandparents, who had been with the baby in the hospital since birth, was appropriate. However, one of the grandparents had a criminal conviction that would not allow county placement without an exemption. The tribe therefore sought a transfer to tribal court, which fortunately was granted. If the proposed amended Rules of Court were in place, however, this could have meant an unnecessary delay of as much three weeks during which the baby would either remain in the hospital or be placed in stranger care. This situation is likely to occur time and again under the proposed rule, since hospital staff as mandated reporters contact counties at birth, not tribes. This avoidable situation of putting Indian children in stranger care will not be limited to newborns, though. It could potentially occur anytime a	

SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			child is detained by a state agency and a tribe is seeking jurisdiction, since counties and tribes are often at odds over appropriate placements. The proposal would broaden appellate rights against transfers to tribal court beyond what is allowed by statute. When a statute contemplates a particular appeal process for a certain proceeding, it usually directs the creation of a Rule of Court on point. The current statutes regarding transfers to tribal court do no such thing. And although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. At present, parties opposing a transfer to tribal court must request a stay of the proceedings and/or immediately file a writ of supersedeas. (See *In re M.M.* (2007) 154 Cal.App.4th 897.) Even if there were statutory authority to alter the current process, the clarified federal guidelines regarding transfers to tribal court make any additional time to decide whether to oppose a transfer unnecessary. The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties – an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted	

SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. When the federal regulations are finalized, state legislation will likely be needed. That legislative update may look much like SB 678 in 2006, which codified the ICWA into state law. This is an issue that would properly be addressed at that time, in order to avoid piecemeal fixes that confuse both parties and courts. In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than	The proposal was circulated for comment to a Listserve of tribal leaders, tribal court judges and tribal advocates. All comments received have been considered and in response to those comments, revisions have been made to address

SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra*; *In re Jack C., III* (2011) 192 Cal.App.4th 967, 982.)	the concerns raised.
2.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM)	N	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) does not agree with this proposal. FLEXCOM believes that the proposed Rule 8.448 would impair appellate rights, particularly those of indigent litigants. The proposed rule requires litigants who oppose a transfer order to the tribal court to file a request to stay and a writ of supersedeas within seven court days after the order becomes final. This is an unrealistic timeline. Trial counsel in dependency proceedings are usually appointed, and trial counsel almost never represents the same litigants in the appeals process. Drafting a writ of supersedeas, however, requires the expertise of an appellate counsel. Most litigants are unable to obtain appellate counsel within seven court days, let alone file a notice of appeal and a writ of supersedaes. Even assuming that a litigant is able to obtain	In response to this and other similar comments, the proposal has been revised to remove the unique time frame for appeal, and the other unique features such as request for a stay and writ of supersedeas. Instead, the proposal now requires the court granting an order for transfer to provide the parties with an advisement regarding the potential loss of appellate jurisdiction if a transfer to tribal court is finalized before an appeal is taken.

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			counsel, the requirement for a request to stay and a writ of supersedeas to be simultaneously filed with seven court days of the transfer order is onerous on litigants. To begin with, a writ of supersedeas is a complex legal document that often requires time to prepare. California Rules of Court, rule 8.824 governs the requirements for the filing of a writ of supersedeas. Under Rule 8.824 (a)(3), the petition for a writ of supersedeas must explain the necessity for the writ and include a memorandum. In addition, a complete trial record, which is usually filed with a writ, is typically not obtainable within seven court days, as proposed by Rule 8.406. Although Rule 8.824 does allow the filing of a writ of supersedeas even if the record has not been filed with the reviewing court, the petition must then include a number of documents as required by Rule 8.824 (a)(4). Thus, it would be a near impossibility for a litigant to have sufficient time within seven court days to be able to file a writ of supersedeas along with a request for stay. Finally, the Bureau of Indian Affairs published Guidelines for State courts and Agencies in Child Custody Proceedings in February of this year, which may require further changes on the state level. There is also pending federal	

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

	Commentator	Position	Comment	Committee Response
			litigation challenging the constitutionality of these guidelines. Given the uncertainly regarding the federal rules, this proposal should be deferred with the possibility that further changes may be required. In light of the foregoing, FLEXCOM does not support these proposed rules.	
3.	Hon. Raymond J. Ikola Associate Justice California Court of Appeal, Fourth Appellate District, Division Three	N	I am concerned that this proposal attempts to accomplish much too much in an effort to avoid the result of *In re M.M.*, a case now some eight years old, and involving a relatively rare event. In particular, the seven day time limit for filing the notice of appeal is a trap for the unwary, despite the new requirement that the court advise the parties of the shortened time. Despite best intentions, the advisement may be missed, or the parties may not remember it. For decades, California lawyers have been accustomed to a 60-day appeal period for both civil and criminal appeals. The proposed shortened appeal period will be an aberration. Under this proposal, a lawyer is just as likely to miss the shortened appeal period, resulting in a loss of appellate jurisdiction, as to miss the opportunity to request a stay from the trial court. This proposal attempts too much and will replace one problem with another. We should not attempt to lawyer a case by rule.	In response to this comment, the proposal has been revised to delete the seven day time limit for filing a notice of appeal and instead to require an advisement to the parties that any appeal of an order granting transfer must be filed before the transfer is finalized and that the parties may request a stay of the transfer order if they intend to file an appeal. The advisement also refers the parties to rule 5.483 and the advisory committee comment for more information. Also, the rule has been revised to clarify that failure to request and obtain a stay of the order will result in a loss of appellate jurisdiction.

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
4.	Orange County Bar Association, Ashleigh Aitken, President	A	No substantive comments.	No response required.
5.	Pechanga Band of Luisenio Indians, Hon. Mark Macarro, Chairman (Riverside County)	N	These comments are submitted on behalf of the Pechanga Band of Luisenio Indians, a federally-recognized and sovereign Indian nation, in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and revisions to the associated court forms. This proposal creates a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions to transfer a case, it must be transferred absent good cause. The current proposal is inconsistent with the intent and spirit of the ICWA in	In response to this comment and others, the proposal has been revised to eliminate the 12 court day stay on completing a transfer to tribal court. See response to comments of California Indian Legal Services above

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			delaying such transfers. The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical custody from state court to tribal court. The proposal would broaden appellate rights around transfers to tribal court beyond what is allowed by statute. Although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. The proposal creates appellate rights that do not currently exist. At present, a party must simply request a stay of the proceedings and/or immediately file a writ of supersedeas. (See *In re M.M.* (2007) 154 Cal.App.4th 897.) The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties -- an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take	

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

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. *(Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra; In re jack C., III* (2011) 192 Cal.App.4th 967, 982.)	See response to the comments of California Indian Legal Services above.
6.	Santa Clara County Office of the County Counsel Julie Fulmer McKellar, Lead Deputy County Counsel	A	We would agree with those proposing to defer SPR15-27 in light of the BIA's recently published "Guidelines for State Courts and Agencies in Indian Child Custody Proceedings" to prevent multiple modifications to forms and rules of court in successive years.	The forum and committee considered this option but concluded that because finalization of the regulations and a California legislative response may take several years, the immediate need to ensure compliance with federal law and protect parties appellate rights justifies moving forward

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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	Commentator	Position	Comment	Committee Response
				with the proposal at this time.
7.	Superior Court of Orange County Blanca Escobedo Principal Administrative Analyst Family Law & Juvenile Court	NI	**Does the proposal appropriately address the stated purpose?** The proposal's stated purpose is clear for juvenile court. However, we request clarification/impact of *In re M.M.* to family court. **Is it necessary to address the appellate issues discussed in the *In re M.M.* decision through an amendment to the rules and forms?** We recommend expanding on the impact of *In re M.M.* as it applies to appellate rules and forms. **Is the time for filing an appeal of an order for transfer to tribal court appropriate?** We are concerned about the appeal time being too short. It may not allow counsel/party enough time to file an appeal. We also need clarification on the appeal time period. CRC reflects *7 court days **after service** of the copy of order* and the JV-800 notice reflects *within 7 court days or before the transfer to tribal court is finalized*. To minimize confusion, we recommend using similar language on the rule of court and notice. Also, should courts add the	Rule 5.483 applies to family court cases governed by the Indian Child Welfare Act. No reply necessary in light of the revisions being made to the proposal. In response to this and other comments, the proposal has been revised. The proposal no longer shortens the time for appeal. Instead an advisement has been added in several places, including the JV-800 to alert the parties to the requirement to file an appeal before the transfer to tribal court is finalized, and the need to request a stay to ensure the appellate court does not lose jurisdiction.

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	Commentator	Position	Comment	Committee Response
			standard five days to allow for mailing in addition to the seven court days, for a total of twelve days? **Should this proposal proceed at this time or should it be deferred in light of the new *Bureau of Indian Affairs Indian child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* and the possibility that further changes may be required?** We recommend deferring this proposal to align with other changes introduced by the Bureau of Indian Affairs Indian Child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. We recommend the following changes to the proposed forms: • **Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (ICWA-060)** o We recommend making this a mandatory form. o Item 5(e) should also reflect or electronic copies for courts that maintain electronic records. o Item 6 is related to item 5(a), so we recommend moving it right	Consideration was given to deferring the proposal, however, the proposal implements legislation and is not inconsistent with the new BIA Guidelines nor proposed regulations. The proposal makes this form mandatory. Not all tribal courts may have the capacity to accept electronically transferred documents. The form has been reorganized in line with this comment.

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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	Commentator	Position	Comment	Committee Response
			after item 5(a). This will avoid the advisement from being missed. o Recommend adding verbiage to clarify item #8 applies to juvenile court. • **Notice of Appeal – Juvenile (JV-800)** Last bullet in the Notice box should reflect, "….appeal within 7 court days *from the date the order is made* or before…"	Item 8 applies to any court in which the case governed by the Indian Child Welfare Act arises – juvenile, family or probate. This proposal has now been revised so that there is no longer a 7 day appeal time.
8.	Superior Court of San Diego County Mike Roddy, Executive Officer	AM	This proposal would delay the effective date of an order transferring jurisdiction to a tribal court and would significantly shorten the time to appeal from such an order. Juvenile appeals and writs are governed by CRC 8.400 - 8.474. The time to file an appeal is set by a rule of court, not by a statute. Therefore, a new rule of court shortening the time to file an appeal would be appropriate. The proposed new rule (8.418) says 7 court days after service of a copy of the order being appealed, the ICWA-060 says 7 court days after the date of this order, and the JV-800 just says within 7 court days. They need to be consistent. The two forms also introduce ambiguity by citing the 60-day	The proposal had been revised to no longer shorten the time for appeal of an order granting transfer to tribal court. The proposal has been revised and no longer includes these provisions

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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	Commentator	Position	Comment	Committee Response
			rule, which must be clarified and/or corrected as well.	

Item number: SPR15-17

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/8/2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Domestic Violence: Preparing for Restraining Order Court Hearing

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Julia F. Weber, 415-865-7693, julia.weber@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: April 16, 2015
Project description from annual agenda: Family Law/Domestic Violence: Amendments to Domestic Violence Form, —Get Ready for the Court Hearing‖ (DV-520-INFO) Propose amendments to correct information on the form and improve the availability of information for litigants, including self-represented litigants, on preparing for court hearings so as to reduce confusion and delay at court hearings.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
N/A

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 27, 2015

Title
Domestic Violence: Preparing for Restraining Order Court Hearing

Rules, Forms, Standards, or Statutes Affected
Revise form DV-520-INFO

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 26, 2015

Contact
Julia F. Weber, 415-865-7693
julia.weber@jud.ca.gov

Executive Summary

Form DV-520-INFO, *Get Ready for the Court Hearing*, has been available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing. While courts report finding the form helpful, they have also identified problems—for both courts and litigants—with the form. Accordingly, the Family and Juvenile Law Advisory Committee recommends revising the form so that it is clearer, is legally accurate, and as a result, accomplishes the original goal in approving this optional form: to inform litigants and assist in making these complex and important hearings run more smoothly.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise form DV-520-INFO as follows:

1. Reformat the entire form so that it reflects best practices for providing legal information in plain language, demonstrates improved readability with more white space and graphics, and eliminates unnecessary or confusing language;

2. Change the name of the form to clarify that it provides information about restraining order hearings (*Get Ready for the Restraining Order Court Hearing* instead of *Get Ready for the Court Hearing*);

3. Provide examples of documents that can assist the court in making decisions about support and at the same time explain that the judge will make decisions about what documents may be considered so that litigants are less likely to assume that everything brought to court will be admissible;

4. Provide information about form DV-570, *Which Financial Form—FL-155 or FL-150?*, which can assist parties in determining whether they need to complete an Income and Expense Declaration or a Simplified Financial Statement;

5. Clarify that witnesses may come to court and write statements but may be required to testify if objections to the written declarations arise;

6. Inform parties that a local form may be available with which to request an interpreter;

7. Clarify that a restrained party might be served in the courtroom after a hearing;

8. Clarify that litigants may need to arrange for childcare if a children's waiting room isn't available and children are not permitted in the courtroom during the hearing;

9. Provide more information about what happens at and after the hearing; and

10. Make some technical changes to remove commas and correct a typo.

The proposed revised form is attached at pages 5–7.

Previous Council Action

The Judicial Council last revised DV-520-INFO effective January 1, 2012.

Rationale for Recommendation

Form DV-520-INFO, *Get Ready for the Court Hearing*, has been available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing, hundreds of which are held each day in courts throughout the state. Although courts report finding the form helpful, the current version includes information that can be confusing and, as a result, may cause unnecessary difficulties and delays at hearings. Rather than

continuing to provide legally inaccurate information, some courts have chosen not to use the form and do not have a substitute readily available. Additionally, this form remains on the California Courts public website, so litigants may be relying on it to their detriment. The form revisions proposed by the Family and Juvenile Law Advisory Committee in this report will make the form clearer and more legally accurate. As a result, the revised form will better accomplish the original goal in approving the form: to inform litigants and assist in making these complex and important hearings run more smoothly.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for comment during the spring 2015 comment period. In addition to being posted on the judicial branch website, the invitation to comment was circulated to trial courts and lists of professionals and members of the public who have provided their contact information to review and provide comment on Judicial Council forms. Specific input from professionals who work in the domestic violence field was also solicited.

Eleven commentators provided comments on the proposal. Four agreed with the proposal if modified and one agreed; six did not indicate a position but otherwise provided suggestions for additional edits. In response to specific questions about the value of the form, commentators indicated that the form will be helpful to litigants and suggested outreach efforts to make it more accessible to the public. Others noted that the changes "will improve the ability of all litigants, especially those who are self-represented, to understand the forms and prepare for their restraining order hearing."

Several commentators suggested formatting changes to make the form easier to use. Additionally, because the form seeks to cover information for petitioners as well as respondents, the form contains a lot of information. As a result, the committee decided it would be helpful if the form could be reformatted to include more white space and graphics and eliminate unnecessary words, as well as be edited to include more plain language where possible. Although the new format was developed after the form was circulated for comment, the content of the form still reflects what was circulated with changes made as a result of input from commentators. The committee believes the formatting changes fit in with other plain-language forms in the DV series and will be helpful to the public and the trial courts.

Alternatives

The committee considered retaining the format that has been in place for this form and only changing the content as originally proposed. However, the suggestions commentators made created a form with more information, which decreased the readability of the form when kept in its original format. The committee also considered adding numbers and letters to provide reference points instead of bullets, however, with the proposed reformatting of the form, that suggestion appeared to be unnecessary.

Implementation Requirements, Costs, and Operational Impacts

Courts may be required to produce paper copies of the information form to replace the existing form.

Attachments and Links

1. Judicial Council form DV-520-INFO, at pages 5–7
2. Chart of comments, at pages 8–31

DV-520-INFO Get Ready for the Restraining Order Court Hearing

This form explains what to do *before*, *during*, and *after* the restraining order hearing. You can go to www.courts.ca.gov/dvforms for more information and to find the court forms listed in this information form

Before the hearing

Take these papers to court (you can use the check boxes on this page to keep track of what you need or have):

- ☐ 3 copies of **all** papers you filed for your case.
- ☐ 3 copies of documents that support your case (police or medical reports, rental agreements or receipts, photos, bills). Be ready to give the other party copies of what you give to the judge. Sometimes the judge cannot look at or consider certain documents. The judge will decide which documents can be included in your case.
- ☐ 3 copies of pay stubs or other proof of income (only if orders about money, such as child or spousal support were requested). If the judge accepts your proof, s/he will also give a copy to the other person.
- ☐ **The signed *Proof of Service* form.** For more information, see DV-200-INFO, *What Is "Proof of Personal Service?"*
- ☐ Make a list of the orders you want (or don't want), and practice saying it. You only have a few minutes to talk to the judge. If you get nervous at the hearing, just read from your list. You may also write a statement and read it to the judge. You may also say other things after you read the statement.

If needed, make arrangements for:

- ☐ **A support person.** But that person cannot speak for you in court.
- ☐ **Witness(es)** to testify in court. Or you may bring a witness's signed statement of what they saw or heard. The witness's statement can be on a sheet of paper that says *Declaration* at the top, and *Signed under penalty of perjury* at the bottom, just above the witness's signature. Or the witness may use Form MC-030, *Declaration* instead.

Exception: If the other person objects to your witness, that witness must be in court if you want the judge to hear from him or her.

- ☐ **Childcare.** Most of the time, children will not be allowed in the courtroom during the hearing. Call the court and ask if they have a children's waiting room. If not, arrange for childcare.
- ☐ If you do not speak English well, ask the clerk for an **interpreter**. The clerk may ask you to fill out a request form if you want the court to have an interpreter at the hearing. If the court cannot give you an interpreter, bring an adult to interpret for you. Do not ask a witness or a child involved in your case to interpret for you.

If the hearing is about getting a restraining order ***against*** you:

- **Go to the hearing!** If you miss it, the judge can make orders without hearing your side.
- Read DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*
- You can fill out and file a court form to tell the judge your side (Form DV-120, *Response to Request for Domestic Violence Restraining Order*). Take 3 copies of this form to the court hearing.
- *Note:* If the other person asks for orders about money (child or spousal support or other financial orders), read Form DV-570 to see if you should fill out an Income and Expense Declaration or a Simplified Financial Statement.

DV-520-INFO Get Ready for the Restraining Order Court Hearing

At the hearing

Get to court at least **30 minutes early**. Find your courtroom. When it opens, go in and tell the courtroom clerk or law enforcement officer you are present, and the names of any witnesses, and if the witness needs an interpreter.

- Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer.
- Watch the other cases so you will know what to do.
- Go to the front of the courtroom when they call your name.
- You may be at court several hours. It depends on how many cases there are. Your hearing may last just a few minutes or over an hour.

Warning! If you asked for the restraining order but do not go to the hearing, your temporary restraining order will end and there may not be a hearing. The court could make other orders if the other side asks, even if the restraining order is not granted. To get another restraining order, you must fill out and file a new set of forms.

In the courtroom

The judge may ask you questions. The other people in the case and their lawyers may ask questions, too.

- Tell the truth. Speak slowly. Give complete answers. You can read from your list.
- Try to answer exactly what the judge asks.
- If you don't understand, say "I don't understand the question."
- Speak only to the judge unless it's your turn to ask questions or the judge tells you to answer a question from the other person or his/her lawyer.
- Do not interrupt anyone! If the other person tells a lie, wait until s/he finishes talking, then tell the judge.

Family Court Sevices

If you ask for parenting time (custody and visitation) orders, the court may send both parents to Family Court Services for *court-connected mediation* or *child custody recommending counseling*. For more information, see Forms: FL-313-INFO, *Child Custody Information Sheet—Recommending Counseling*, or FL- 314-INFO, *Child Custody Information Sheet—Child Custody Mediation*. If you are sent to Family Court Services, the judge may extend the date of the orders (or make new temporary orders) to last until your next court date.

The court may postpone (continue) your case if:

- The person to be restrained has not been served or needs time to get a lawyer or prepare an answer.
- The judge wants more information or your hearing is taking longer than planned.

If this happens, you will have to come back another day. The person who asked for the order may ask the judge to make the temporary orders last until the new hearing date. The court might use *Order to Continue Hearing Date and Extend Temporary Restraining Order* for the new hearing (DV-116).

At the end of the hearing

For most cases, the judge will make decisions about your case at the end of the hearing. To decide if the requested orders should be approved or not, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order. The judge will consider the evidence and the safety risks of the adults and children involved in the case. If the judge makes orders at the hearing, the orders will be on Form DV-130, *Restraining Order After Hearing*.

If you asked for the order(s):

- The court clerk might fill out Form DV-130. If so, s/he will take it to the judge. If not, ask who should fill it out, and where to file it. After the form is filed, the court clerk will give you up to 3 copies.
- Read the signed Form DV-130 carefully. If anything is different from what the judge said in court, ask the clerk for help right away. Or talk to your lawyer, if you have one.
- Your temporary orders expire at midnight of the date of your hearing. File your new order the same day so you will be protected.
- If the court makes the restraining order, the clerk will send Form DV-130, *Restraining Order After Hearing* to law enforcement. Doing this puts your orders in a database called CLETS. This lets police everywhere in the state know about the orders.
- ***Important!*** Always keep a copy of the restraining order with you.

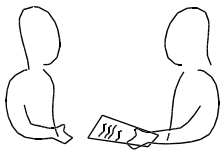
After the hearing

If you **asked** for the restraining order, and the court made the order…

You must have the other person served with a copy of Form DV-130. You may have him or her served with a copy of Form DV-130 in the courtroom after the hearing or by mail.

If the restrained person was *not* at the hearing and the new orders are

- the ***same*** as the temporary order, you may have the other person served with a copy of Form DV-130 by mail.



- ***different*** from the temporary order, you must have someone serve Form DV-130 in person, not by mail. Ask the server to complete Form DV-200, *Proof of Personal Service*, and give it back to you.

Important! You must file a completed Form DV-200, *Proof of Personal Service*, or Form DV-250, *Proof of Service by Mail*. Keep a copy for your records. Keep a copy of the orders with you at all times.

Other orders

If you asked for support or child custody/visitation orders, you may also get one of these forms:

- Form DV-140, *Child Custody and Visitation Order*, if the judge ordered child custody or visitation.
- Form FL-342, *Child Support Information and Order Attachment*, or Form FL-343, *Spousal, Partner, or Family Support Order Attachment*, if the judge orders child support and/or spousal support.

What if you are deaf or hard of hearing?
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Order* (Form MC-410). (Civil Code, § 54.8)

If the court made a restraining order **against** you…

- You must obey orders the judge makes at the hearing. Orders are written on Form DV-130. If you do not obey them, you could be arrested.
- You will be served the *Restraining Order After Hearing* (Form DV-130) at the hearing or within a few days, by mail or in person.
- Read the signed Form DV-130 carefully when you receive it. If anything is different from what the judge said, ask the court clerk for help right away. Or talk to your lawyer, if you have one.

If you do not receive a copy of the orders within a few days, ask the clerk for a copy.

Review *How Do I Turn In, Sell, or Store My Firearms* (DV-800-INFO/JV-252-INFO).

Need more help?

Ask the court clerk about free or low-cost legal help. Ask for information at the court about the Self-Help Center or Family Law Facilitator Office.

For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline: **1-800-799-7233**
TDD: 1-800-787-3224
It's free and private. They can help you in more than 100 languages.

SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Partnership to End Domestic Violence by Krista Niemczyk Public Policy Manager Sacramento	NI	**Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants?** We appreciate the Court's attention to the needs of self-represented litigants, and the barriers they often face when the court process is confusing or unclear. Research has indicated that almost 70% of victims of domestic violence and sexual assault must appear in court by themselves (1), making a focus on this group of litigants especially crucial. To improve clarity, we offer the following suggestions. 1. <u>Remove current language from the form which states "Provide the other party with all of your documents"</u> This language currently appears as the second bullet point under **"Be Prepared"**, on page 1 of the proposed DV-520-INFO. A self-represented client should not feel that they must hand over copies of all of their evidence, especially if some of that evidence may be inadmissible. Furthermore, a person seeking protection should not feel forced to approach the other party for any reason, despite the relative safety of a court room. This is something the judge should effectuate, and currently does. 2. <u>Modify the current language "At the hearing, the judge will decide if the</u>	1. The committee proposes changing the form to say, "Be ready to give the other party copies of what you give the judge. Sometimes the judge cannot look at or consider certain documents. The judge will decide which documents can be included in your case."

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

	Commentator	Position	Comment	Committee Response
			evidence shows you are entitled to a restraining order." On page 2 of the proposed DV-520-INFO, under **"The judge will decide"**, the proposed form states, "At the hearing, the judge will decide if the evidence shows you are entitled to a restraining order." Use of the word "you" in this context is vague and confusing because the document provides guidance to both the protected party and the restrained party. This language could mislead the restrained party into believing that they can get a restraining order against the protected party even though they haven't filed their own DVRO application. To remedy this, we recommend changing the language to read, "At the hearing, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order." We believe that these modifications will improve the ability of all litigants, and especially those who are self- represented, to understand the forms and prepare for their restraining order hearing. Thank you for the opportunity to provide these comments… [1] Carter, T. (2004). Pour It On: Activists Cite Rising Need for Lawyers to Respond to Domestic Violence, A.B.A. Journal, pg. 73.	2. The committee agrees and proposes to change the language as suggested ("At the hearing, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order.")

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

	Commentator	Position	Comment	Committee Response
2.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco <u>DISCLAIMER:</u> This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either 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. Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.	NI	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) submits the following comments as to proposed revisions to form DV-520-INFO: -As to the request for specific comments, FLEXCOM believes that this form will be helpful to those litigants who read it. Perhaps some outreach efforts to make litigants aware of helpful forms like this one would result in increased use. -FLEXCOM recommends inserting item numbers on this form to make it easier to read, less overwhelming to look at and to bring it into alignment with other information sheets. In addition, it is difficult to address comments to unnumbered sections. -Item "Be prepared": -Bullet Point #5: Remove "if you haven't already" from end of first sentence as it is unnecessary. Add the requirement to file an I&E or Financial Statement to the last sentence, clarify that support means child or spousal, and add restitution, debt payments and attorney fees and costs to the list. -Bullet Point #6: For clarity, add to the end of the first sentence "to be present at the hearing" or "inside the courtroom."	The committee agrees and is supportive of ongoing efforts to make this and other forms accessible to litigants. The committee proposes a complete reformatting of the form to make it more accessible. Formatting changes have been made to make the document easier to read and follow. Agree. Removed "if you haven't already." Added "Read Form DV-570 to see whether you should complete an Income and Expense Declaration or a Simplified Financial Statement." Agree. Committee proposes adding "Most of the time, children will not be allowed in the courtroom during the hearing."

	Commentator	Position	Comment	Committee Response
			-Bullet Point #7: Add the following sentence (or something similar): "Remember that you have a limited time in front of the Judge. If you have a lot to say, you may want to remind the Judge that you already filed a written statement, and then say anything else you have thought of since then."	Added: "You only have a few minutes to talk to the judge…"
			-Item subtitled "Don't miss the hearing":	Added information about what can happen if you miss the hearing.
			-Bullet Point #1: FLEXCOM proposes revising to state: "If you are the person asking for protection and you miss your court date, your restraining order may end and there may be no hearing. The court could make other orders requested by the other side even if the restraining order is not granted. To get another restraining order, you would have to complete a new set of application forms and re-file."	Added, "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the judge can still make the orders."
			-Bullet Point #2: FLEXCOM proposes revising to state: "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the Judge can make orders."	
			-Item subtitled "Get there 30 minutes early":	
			-FLEXCOM proposes adding "You have the right to bring a support person to court. If you bring a support person, try to ensure	Form changed to say: "If needed, make arrangements for a support person."

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

	Commentator	Position	Comment	Committee Response
			he/she is not someone who might add to the conflict." The form should clarify the role of a support person under the law. -Furthermore, this form should clarify to the restrained person that the temporary restraining order is good (valid and enforceable) until the end of the hearing, and that any violation may result in an arrest even inside the courthouse. The form should indicate it is recommended that the restrained person not sit anywhere near the other party and not look at him/her, not talk or gesture to him/her, and that neither the restrained nor protected party can have anyone else, including his/her support person, interact with the opposing side during the hearing. Also clarify that if the restrained person is represented, his/her attorney can talk to the protected party or his/her attorney if he/she is represented. -Item subtitled "The judge may ask questions": Bullet Point#4: FLEXCOM proposes adding at the end of the sentence "from the other party or witnesses". Bullet Point#8: FLEXCOM proposes starting this sentence with "Only_____", and ending it with "not witnesses or support persons".	Information about when temporary orders included. Added, "Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer." Because bullet point #4 originally addressed to whom the parties might direct questions, the committee did not make a change as there may be times it would be appropriate for parties to ask questions of others including clerks, for example. Bullet point #8 was not changed as suggested because there may be times that others will have appropriate questions.

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

	Commentator	Position	Comment	Committee Response
			-Item subtitled "The judge will decide": Bullet Point #1: FLEXCOM proposes starting the first sentence with "After both sides have finished talking to the judge, the judge will make orders or determinations."	
			-Item subtitled "What if the judge makes orders . . . ":	No change. Sometimes both parties aren't present.
			FLEXCOM proposes that the following sub-points are included such that the points are communicated to the protected party: -It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight.	
			-If the Protected party is represented, the attorney will be ordered to prepare and file and give him/her copies.	Agree. Added: "It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight."
			-If self-represented, the court may have staff assigned to prepare and file the order right after the hearing and provide her/him copies.	No change. This varies by court.
			-The Protected party is entitled to at least three certified copies.	Already noted that the clerk will provide up to three copies.
			-The Protected party must ensure that a copy is served on the restrained party as ordered by the court in DV-130 (service by mail or in person).	Added.

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Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Bullet Point #1 under the item subtitled "For person to be restrained" should clarify that if the judge grants the restraining orders, violation of the orders could result in arrest of the restrained party.	Added: "If the court made a restraining order against you, you must obey orders the judge makes at the hearing. If you do not obey them, you could be arrested."
			-Item subtitled "The judge may "continue" your case":	
			FLEXCOM proposes this item include failure to serve as one of the possible reasons to continue the hearing/reissue the TRO.	Agree. Added, "The person to be restrained has not been served or needs time to get a lawyer or prepare an answer."
			FLEXCOM proposes this form should also clarify that the order to continue the case has to be filed the same day to extend the temporary restraining order to the next hearing date.	Disagree. Extension is automatic.
			-Item subtitled "What happens after the hearing?":	
			Bullet Point #7: FLEXCOM proposes replacing the existing proposed text with "If you do not receive a copy of the orders within a few days after the hearing, you may obtain your own copies from the Business Office in the courthouse."	Disagree. Stated as, "If you do not receive a copy of the orders within a few days after the hearing, ask the clerk for a copy."
			-Item subtitled "Need more help?": FLEXCOM proposes including information about the Self Help Center and Family Law Facilitator's Office.	Agree. Added.

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Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
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	Commentator	Position	Comment	Committee Response
3.	Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	NI	**A. Comment:** page 1-Heading- Be Prepared- the third bullet states that "Either party can bring a support person…" This statement should be removed as it is NOT in accordance with the DVPA. Only the protected person is be allowed to bring a support person with her to the hearing. See FC §6303. Recommended: "The protected person can bring a support person…"	A. Family Code section 6303(b) states as follows: "A support person shall be permitted to accompany either party to any proceeding to obtain a protective order, as defined in Section 6218. Where the party is not represented by an attorney, the support person may sit with the party at the table that is generally reserved for the party and the party's attorney." The words "to feel safer" have been removed.
			B. Comment: page 1-Heading- Don't miss the hearing - first bullet states: "If you are the person asking for protection ....you will have to complete the paperwork all over again." For clarity, we would like to add that the protected person will only need to complete the paperwork again IF they decide they still need protection. Recommended: "If you are the person asking for protection....you will have to complete the paperwork all over again if you still want protection."	B. The committee agrees. Language changed to "To get another restraining order, …"
			C. Comment: page 1-Heading- Don't miss the hearing – second bullet states: "If you are the person to be restrained and you miss the hearing, the judge can still make the orders." For clarification, we would like to add that the judge can still make the orders requested by the protected person.	Agreed. Changed.

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	Commentator	Position	Comment	Committee Response
			Recommended: "If you are the person to be restrained and you miss the hearing, the judge can still make the orders requested by the protected person."	
			D. Comment: page 1-Heading- What if you don't speak English – second sentence states: "If a court interpreter is not available, bring someone to interpret for you." This is not in accordance with Evidence Code §756, which states that an interpreter will be provided free of charge. We think this entire sentence needs to be deleted in order to comply with the code section. Recommended: DELETE the sentence to comply with EC §756.	D. The committee recognizes that in some instances, an interpreter may not be available and believes the parties should be informed that they may bring someone to interpret for them.
			E. Comment: page 3- Heading- What happens after the hearing/For person to be protected- fourth bullet states: "Ask the server to complete DV-200, Proof of Personal Service, and give it back to you." We would like to add that the protected person must file the form with the court and keep a copy for their records. Recommended: "Ask the server to complete DV-200, Proof of Personal Service, and give it back to you. You	E. The committee agrees to change the language as indicated.

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	Commentator	Position	Comment	Committee Response
			will need to file this form with the court and keep a copy for your records."	
4.	Hon. Maren Nelson Supervising Judge Family Law Division Superior Court of Los Angeles County	NI	I agree with Staff's comments and add: (1) Clarify that the person to be restrained must be served. If there is no service the judge may permit a continuance but service must occur. (2) Clarify that the Proof of Service form re: service of the temporary order must be completed in full. If there is no Proof of Service or the Proof of Service is defective and the person to be restrained is not at the hearing the judge can continue the hearing for a proper form but the reissuance must also be served.	Agree. Added (see DV-200-INFO, What Is "Proof of Personal Service"?) under Be Prepared.
5.	Orange County Bar Association by Ashleigh Aitken President	A	Yes, the form will assist self-represented parties. No, the form is not unduly confusing.	Agree.
6.	Fariba Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	NI	**DV-520-INFO** -Request for comments: I believe that this form, and other information sheet like this, will continue to be helpful to those litigants who read it. Perhaps some outreach efforts to make litigants aware of helpful forms like this one would result in increased use. -Please insert item numbers on this form to make it easier to read, less overwhelming to	The committee agrees and is supportive of ongoing efforts to make this and other forms accessible to litigants. The committee proposes a complete reformatting of the form to make it more accessible.

	Commentator	Position	Comment	Committee Response
			look at and bring it into alignment with other information sheets. Not to mention that it is hard to address comments to unnumbered sections! -Item "Be prepared": -Bullet Point #5: Remove "if you haven't already" from end of first sentence as it is unnecessary. Add the requirement to file an I&E or Financial Statement to the last sentence, clarify that support means child or spousal, and add restitution, debt payments and attorney fees and costs to the list. -BP #6: For clarity, add to the end of the first sentence "to be present at the hearing" or "inside the courtroom". -Add the following sentence to BP #7 (or something similar): I see many SRL's run out of time during the hearing. So the following reminder may be helpful. "Remember that you have a limited time in front of the Judge. Also the Judge has already read your court file. So if you have a lot to say, you may just want to remind the Judge that you already filed a written statement and say anything else you have thought of since then." -Item "Don't miss the hearing": -BP #1: How about "If you are the	Formatting changes have been made to make the document easier to read and follow. Agree. Removed "if you haven't already." Added "Read Form DV-570 to see whether you should complete an Income and Expense Declaration or a Simplified Financial Statement." Agree. Committee proposes adding "Most of the time, children will not be allowed in the courtroom during the hearing." Added: "You only have a few minutes to talk to the judge. If you get nervous at the hearing, just read from your list. You may also write a statement and read it to the judge. You may also say other things after you read the statement." Added information about what can happen if you

	Commentator	Position	Comment	Committee Response
			person asking for protection and you miss your court date, there will be no hearing and your restraining order will end at that time. To get another restraining order, you must complete a new set of application forms all over again." ?	miss the hearing.
			BP #2: How about "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the Judge can make orders."?	Added, "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the judge can still make the orders."
			-Item "Get there 30 minutes early": -Add information about the right of both parties to bring a support person to court and that It is probably advisable not to bring a new intimate partner or another person that has problems with the other party. Clarify the role of a support person under the law.	Form changed to say: "If needed, make arrangements for a support person."
			-Clarify to the restrained person that the restraining order is good until the end of the hearing (by local rule is some counties and state law if AB1081 is chaptered), and that any violation will result in an arrest even inside the courthouse. Recommend that the restrained person not sit anywhere near the other party and not look at them, not talk or gesture to them, and that	Information about when temporary orders included. Added, "Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer."

	Commentator	Position	Comment	Committee Response
			they cannot have their support person say do any of that either.	
			-Item "The judge may ask questions": BP#4: Add at the end of the sentence "from the other party or witnesses".	Because bullet point #4 originally addressed to whom the parties might direct questions, the committee did not make a change as there may be times it would be appropriate for parties to ask questions of others including clerks, for example.
			BP#8: Start this sentence with "Only . . . . ", and end it with ", not witnesses or support persons".	Bullet point #8 was not changed as suggested because there may be times that others will have appropriate questions.
			-Item "The judge will decide": BP #1: Start first sentence with "After both sides have finished talking to the judge, the judge will . . . ."	No change. Sometimes both parties aren't present.
			-Item "What if the judge makes orders . . . ": It is important to ensure that the following points are communicated to the protected party here: -It is important to have the orders prepared and filed the same day because the temporary order are set to expire at midnight. -If the protected party is represented, the attorney will prepare and file and give him/her copies.	Agree. Added: "It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight."
			-If self represented, the court may have staff assigned to prepare and file the order	No change. This varies by court.

	Commentator	Position	Comment	Committee Response
			right after the hearing and give her/him copies. -Protected party is entitle to at least three certified copy. -Protected party has to ensure that a copy is served on restrained party as ordered by the court in DV-130 (by mail or in person). This information is also mentioned on the next page but also makes sense to put it here. BP#1 under "For person to be restrained" should clarify that if the judge grants the restraining orders, violation of the orders could result in arrest. -Item "The judge may "continue" your case": Include failure to serve as one of the reasons to continue the hearing. Also clarify that the order to continue the case has to be filed the same day to extend the temporary restraining order to the next hearing date. -Item "What happens after the hearing?": BP#7: Replace with "If you do not receive a copy of the orders within a few days after the hearing, you may get your own copies at the Clerk's Office	Already noted that the clerk will provide up to three copies. Added. Added: "If the court made a restraining order against you, you must obey orders the judge makes at the hearing. If you do not obey them, you could be arrested." Agree. Added, "The person to be restrained has not been served or needs time to get a lawyer or prepare an answer." Disagree. Extension is automatic. Disagree. Stated as, "If you do not receive a copy of the orders within a few days after the hearing, ask the clerk for a copy

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	Commentator	Position	Comment	Committee Response
			in the courthouse." -Item "Need more help?": Consider including information about the Self Help Center and Family Law Facilitator's Office.	Agree. Added.
7.	The State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS)	AM	SCDLS recommends consistent use of the first person in the headings and minor edits to clarify points. **Specific Comments** <u>Do the proposed changes more clearly provide litigants with information that will assist them at restraining order hearings?</u> Yes, the form provides clear explanations regarding the proceeding. <u>Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants?</u> Please see additional specific comments. **Additional specific comments (including suggested edits):** (1) Underserved and communities in need would benefit from the proposal because it provides a plain language explanation of what to expect from court. DV-520 would need to be	This form in its past incarnation has been translated and made available in multiple languages; once the updated form is approved, the committee agrees that it should also be translated.

	Commentator	Position	Comment	Committee Response
			translated into multiple languages to be more effective with non-English Speakers. (2) Suggested edits for improvement. *Keep consistent use of the first person in the headings.* ~~Be Prepared.~~ How do I prepare for my hearing? ~~Don't miss the hearing.~~What do I do on my hearing day? • Don't miss the hearing. What if ~~you~~ I don't speak English? ~~The judge may ask questions.~~ What happens during the hearing? • The judge may ask questions. ~~The judge may "continue" your case.~~ What if the judge "continues" my case? *Suggested wording:* **Heading: Be Prepared.** Bullet 1 Bring two copies of all documents and filed forms, including the <u>signed</u> *Proof of Service*. Bullet 4 Witnesses can use form MC-030, *Declaration*, or a sheet of paper entitled "Declaration<u>,</u>" <u>and signed under penalty of perjury,</u> to provide statements in writing.	Formatting has been changed to improve access and readability "Signed" added. Added.

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	Commentator	Position	Comment	Committee Response
			Heading: Get there 30 minutes early. Bullet 2 When the courtroom opens, go in and tell the court clerk or officer that you are present. Tell the court clerk the names of your witnesses that will testify and if they will need an interpreter. **Heading: The judge may ask questions.** Bullet 2 ~~Give complete answers.~~ Try to answer the specific question that the judge is asking. The judge cannot accept a nodding or shaking of your head as an answer. **Heading: Which forms will I receive after the hearing?** Bullet 4 ~~Sometimes there may be forms in addition to these.~~ The court may use additional forms, as needed. *Formatting Suggestion* Eliminate white space.	Added information about interpreter. Added: "Try to answer exactly what the judge asks." Committee did not think it was necessary to add this information.
8.	Superior Court of Los Angeles County	AM	**DVPA Instructions:** (1) Clarify that the person to be restrained must be served. If there is no service the judge may permit a continuance but service must occur.	(1) Agree. Information added about where to find more information about service and that the hearing may be continued if there is no service.

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

	Commentator	Position	Comment	Committee Response
			(2) Clarify that the Proof of Service form re: service of the temporary order must be completed in full. If there is no Proof of Service or the Proof of Service is defective and the person to be restrained is not at the hearing the judge can continue the hearing for a proper form but the reissuance must also be served. The proposed new version of DV-520-INFO would be further improved by adding a bullet and language to make it clear that the person to be protected needs to file a Proof of Service form if the restrained person served either by mail or in person with a copy of Form DV-130 after the hearing. On page, 3, after the fourth bullet under **"What happens after the hearing? For person to be protected:"** we suggest adding: • If you have the restrained person served either by mail or in person with the Form DV-130 after the hearing, you must file with the court a completed Form DV-200, Proof of Personal Service, or Form DV-250, Proof of Service by Mail." **Request for Specific Comments** In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Do the proposed changes more clearly provide litigants with information that will	(2) Information added about needing to come back another day and that a request may then need to be made for temporary orders to continue until the new hearing date. Agreed. Added in box "Important! You must filed a completed Form DV-200, Proof of Personal Service, or Form DV-250, Proof of Service By Mail," in After the hearing section. The committee appreciates the comment that this will assist litigants.

	Commentator	Position	Comment	Committee Response
			assist them at restraining order hearings? **Yes.**	
			• Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants? **Please see above.**	The committee appreciates the comments providing clarification.
			The advisory committee also seeks comments from courts on the following cost and implementation matters: • Would the proposal provide cost savings? If so, please quantify. **There might be savings resulting from efficiency at the hearing if self-represented litigants read and follow the instructions and so appear better prepared, but it is too difficult to quantify such savings.**	The committee appreciates the difficulty of measuring the impact and the possibility that the form may assist in providing helpful guidance.
			• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **None.**	
			• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	The committee appreciates these comments favoring the proposal.

	Commentator	Position	Comment	Committee Response
			Yes. • How well would this proposal work in courts of different sizes? **The benefit of better prepared self-represented litigants should be relatively the same.**	
9.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers in Orange County	NI	Page 1, in the section regarding not speaking English, we recommend adding, "The court may provide an interpreter the day of the hearing." Page 2, in the section regarding the judge making orders at the hearing, we recommend inserting "*certified*" copies will be provided to the party.	Information added on first page about requesting interpreters. Added, "certified".
10.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	On page 1 of the DV-520-INFO form, under the first section titled, **"Be prepared."** 1. The first sentence of the second bullet should be made into two separate sentences and should specify that pay stubs or other proof of income should be provided if financial issues (e.g. child support, spousal support, attorney fees, costs and services, or out-of-pocket expenses) have been raised by either party. 2. The fifth bullet implies that the restrained person must file the DV-120. This is incorrect. Often, if the restrained person has criminal charges pending they will not respond in writing by filing a DV-120, once they have been advised of their rights. This	Changes made to include the list but kept to one sentence. Agreed. Changed to "can" file DV-120 and added reference to DV-120-INFO.

	Commentator	Position	Comment	Committee Response
			bullet should at least be modified to clarify that if the restrained person wants to respond in writing they can do so by completing, serving and filing the DV-120 form. Also, it would be helpful to cross reference the DV-120-INFO form, where the restrained person is notified that what they write or say can be used against them. This form should also include a notice to the restrained person on what to do if they have a firearm in their possession, including cross referencing the DV-120-INFO and/or the DV-800-INFO forms.	Reference to DV 120-INFO added.
11.	Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	AM	1. 2nd bullet point under "Be Prepared" - The second sentence implies that exhibits should be exchanged before the hearing. I have concerns that that puts too much of a burden on the parties if they read it that way, and am concerned that a restrained person on a TRO is here being invited to violate the TRO by getting the protected person copies of that party's exhibits. Maybe the 2nd bullet can be combined with the first, so that parties are told to have enough copies of exhibits so that protected person, restrained person and the judge can each have one set of copies at the court hearing. 2. 4th bullet under "Be Prepared"- I don't like setting expectations that any judicial officer	1. Changed to "Be ready to give the other party copies of what you give to the judge. Sometimes the judge cannot look at or consider certain documents." 2. The particulars of the case, objections, and judicial discretion determine whether witness statements will be provided. The committee

	Commentator	Position	Comment	Committee Response
			can or will hear from witnesses by any means other than live testimony. I'm not sure why we encourage them to bring written statements from third parties.	believes the language is accurate and helpful to litigants.
			3. 5th bullet down under "Be Prepared" - Restrained parties should be clear that filing a Response is not mandatory; the court can take their response "out loud" at the court hearing. The way this is written now, it appears to make the filing of a Response mandatory. Particularly for respondents who have a related criminal case pending, they wouldn't want to file a substantive response if they wish to exercise their 5th amendment right. We should just be more clear on this DV-520 INFO that a response is optional.	3. Added information on DV-120-INFO for those filing a response and changed to "You can fill out and file."
			4. 7th bullet down under "Be Prepared"- Many judicial officers, including yours truly, absent some extreme circumstance, do not let either party read a prepared statement. I'll let people refer to notes, but usually the expectations for hearings involve testimony, and not so much reading canned statements. I am concerned that telling litigants here to write out a statement to read to the judge may promise too much.	4. The committee believes that in many instances, it can be useful for litigants to be prepared with notes or a statement in these matters and that this form can be helpful in giving litigants an opportunity to be prepared prior to the hearing. At the same time, officers may determine in a given situation whether a particular presentation in a hearing is appropriate.

	Commentator	Position	Comment	Committee Response
			5. 1st bullet under "Don't miss the hearing" - we tell a protected party that missing the hearing means the RO will end- that implies there was a TRO in place pending the hearing, which may not be the case. It might be better to say that failure to attend the hearing means that your request for a restraining order will not be considered, and if you had any TRO pending the court date, your failure to appear at the court date will mean that that TRO expires.	5. Changed to "If you are the person asking for protection and you miss the hearing, if you had a temporary restraining order, it will end and there may be no hearing."
			6. 2nd and 4th bullets under "Get there 30 minutes early"- what do we mean by "officer"? Law enforcement officer or courtroom clerk? I am not clear, so I'm not sure litigants will be.	6. Changed to law enforcement officer.
			7. 1st bullet under "The Judge will decide"- I don't understand the last sentence: are we saying that lack of finances is a type of safety concern? I just don't understand the sentence, and it could just be me!	7. Last sentence deleted to improve clarity.
			8. In section "The judge may continue your case"- maybe add a bullet to say it might be continued if you have no proof that restrained person was served with notice for the hearing.	8. Added.
			9. In section "The judge may continue your	9. No change.

	Commentator	Position	Comment	Committee Response
			case"- 1st bullet says "answer" and we might want to say "response" instead. 10. 2nd bullet under "What happens after the hearing"- I wasn't aware that restrained person is entitled to any service if they attended the hearing	10. Sentence rewritten to clarify what to do depending on whether the person was in court on the day of hearing. Additional comments unrelated to this proposal will be considered by the advisory committee going forward when reviewing domestic violence rules, forms, and legislative proposals.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/8/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Record on Appeal in Civil Cases (revise forms APP-003, APP-010, APP-103, and form APP-110)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: Item 5 - Designation of the record: Consider whether to recommend revisions to the forms for designating the record in civil appeals (Forms APP-003, APP-010, APP-103, and APP-110) to change the requirement that a fee waiver application or order be "attached" to a requirement that it be submitted with the designation; and Item 12 - Respondent's notice designating the record: Consider whether to recommend revising the forms for respondents in civil cases (APP-010 and APP-110) to designate additional items to be included in the record on appeal to clarify when the respondent must deposit a fee.

If requesting July 1 or out of cycle, explain:

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

In December 2013, RUPRO approved including consideration of item 5 (the suggestion relating to attachment of fee waiver applications) on the committee's annual agenda as a priority 1 project with a January 1, 2015 completion date. RUPRO also approved including item 12 (consideration of the suggestion regarding clarifying when a respondent must deposit a fee) on the committee's annual agenda as a priority 2 project with a January 1, 2015 completion date.

In early 2014, the committee developed a proposal that combined form revisions designed to implement both of these suggestions and sought approval to circulate this proposal for public comment. In April 2014, RUPRO declined to approve the circulation of this proposal. RUPRO's action appears to have been based on some members' view that having the fee waiver application attached to the designation forms did not represent a significant enough problem to warrant revising the forms.

Committee member Sheran Morton, Court Executive Officer of the Superior Court of Fresno County, has subsequently informed the committee that that court has also experienced difficulties with scanning record designation forms when fee waiver applications are attached and indicated that it would provide some savings to the court in terms of both staff time and avoidance of repetitive motion injuries if the forms were modified. She also reported that the Superior Court of Orange County similarly indicated that modifying these forms would result in saving court staff time. Based on this information, the committee again requested to circulate this proposal for public comment. At its April 2015 meeting, RUPRO approved the circulation. The commentators generally supported the proposal and the committee now recommends that the council revise the forms as proposed, effective January 1, 2016.

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 27, 2015

Title
Appellate Procedure: Record on Appeal in Civil Cases

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-003, APP-010, APP-103, and APP-110

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising the forms for designating the record on appeal in unlimited and limited civil cases to (1) state that the fee waiver application is *submitted with* rather than *attached to* the record designation form; and (2) clarify that the respondent must pay for additional proceedings that he or she designates to be included in the record. The first change, which is based on suggestions from a superior court, is intended to avoid the unintentional release of confidential information and reduce court costs associated with identifying and detaching fee waiver applications from record designation forms. The second change is intended to eliminate confusion for litigants and reduce court costs associated with litigant errors caused by that confusion.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003); *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010); *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103); and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to state that the fee waiver application is *submitted with* rather than *attached to* the record designation form; and

2. Further revise *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to move the section of the form regarding the cost of transcribing additional proceedings that the respondent has designated for inclusion in a reporter's transcript so that it follows immediately after the section regarding designation of those proceedings.

The text of the revised forms is attached at pages 5–21.

Previous Council Action

The Judicial Council approved *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) for optional use effective July 1, 2004, to assist litigants, particularly self-represented litigants, by providing them with a standardized mechanism for requesting the clerk's and court reporter's transcripts in the appeal of an unlimited civil case. The Judicial Council similarly approved *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) for optional use effective January 1, 2010, as part of a set of new forms intended to assist litigants, particularly self-represented litigants, seeking appellate review in the superior court appellate division. The council has revised these forms on several occasions, including effective July 1, 2010, to include spaces for additional information required or permitted by statute or rule.

The Judicial Council approved both *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) for optional use effective January 1, 2010, to assist respondents in appellate proceedings in filing notices relating to the record on appeal.

The Judicial Council revised the forms for unlimited civil appeals effective January 1, 2014, and for limited civil appeals effective March 1, 2014, to reflect changes in the rules relating to reporters' transcripts in civil appeals.

Rationale for Recommendation

In a civil appeal, the appellant is generally responsible for choosing the form of the record on appeal and identifying (designating) items to be included in that record. Depending on the type of record chosen, the respondent then has an opportunity to designate additional items to include in the record. Courts charge fees to prepare or make copies of some forms of the record on appeal, such as a clerk's transcript. If a party who is indigent files an application for an initial fee waiver and the court grants that application, these fees will be waived.

Four Judicial Council optional forms are available for parties to use to designate the record on appeal in unlimited and limited civil cases: *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003); *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010); *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103); and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110). In one or more places on each of these forms, the designating party may indicate that, in lieu of submitting the required court fee for a particular form of the record, the party is attaching a fee waiver application.

Attaching a fee waiver application to these designation forms may cause problems and create additional work for those courts that are scanning and storing records electronically. While designation forms are public court records, fee waiver applications are confidential (see Cal. Rules of Court, rule 3.54) and must not be disclosed to the public. To prevent inadvertent inclusion of a fee waiver application in scanned records that will be publically available, clerks must check each designation form to ensure that such an application is not attached. Several courts have indicated that it takes additional time and scarce staff resources to identify and detach fee waiver applications from record designation forms before the forms can be scanned. To eliminate these potential problems and thereby reduce court costs, this proposal would modify the designation forms to instead provide that a fee waiver application may be *submitted with*, rather than *attached to*, the designation form.

The committee is also recommending an additional change to *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010). Under rule 8.130, when a respondent designates additional proceedings to be included in a reporter's transcript on appeal, the respondent is responsible for the cost of transcribing those additional proceedings. Currently, however, on form APP-010 the section regarding these costs does not immediately follow the section regarding designation of these proceedings; an intervening section asks whether and in what form the respondent would like a copy of the reporter's transcript. This placement may create confusion. The committee therefore proposes moving the section of the form regarding these costs so that it immediately follows the section regarding designation of additional proceedings to be included in a reporter's transcript. This move should clarify the responsibility for these costs for litigants and thereby reduce court costs associated with correcting litigant errors in connection with deposits for these costs.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed revisions to these record designation forms were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Five individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, and one agreed with the proposal if amended. A chart with the full text of the comments received and the committee's responses is attached at pages 22–26. Based on these comments, the committee recommends adopting this proposal as circulated.

The Superior Court of San Diego County, which approved the proposal if amended, suggested that the forms be modified to specify that the copy of the fee waiver application or order being submitted to the court with the record designation is a "true and correct copy." The committee respectfully declined to make this change to the forms. The committee's view is that the obligation to submit true and correct copies of documents is implicit. The additional language suggested by the court does not appear at other places on this form where attachments are referenced or on other forms that refer to attachments. The committee was concerned that adding this language here when it does not appear in connection with other documents attached to or submitted with forms could create the impression that the obligation to submit true and correct copies does not apply in those other situations.

Alternatives

The committee considered not proposing these form revisions. However, the committee concluded that revising these forms is likely to reduce the risk of inadvertent disclosure of confidential information and result in cost savings to the courts and therefore that it would be beneficial to pursue this proposal.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs should be associated with these form revisions; instead, these revisions should result in cost *savings* for the courts.

Attachments and Links

1. Forms APP-003, APP-010, APP-103, and APP-110, at pages 5–21
2. Chart of comments, at pages 22–26

ATTORNEY *(Name, State Bar number, and address):* STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available):* E-MAIL ADDRESS *(if available):* ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	**SUPERIOR COURT CASE NUMBER:**
RE: Appeal filed on *(date):*	**COURT OF APPEAL CASE NUMBER *(if known)*:**

Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court *(check a, b, c, d, or e and fill in any required information):*

a. ☐ A clerk's transcript under rule 8.122. *(You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)*

(1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.

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

(a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

(b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

b. ☐ An appendix under rule 8.124.

c. ☐ The original superior court file under rule 8.128. (NOTE: *Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)

d. ☐ An agreed statement under rule 8.134. *(You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)*

e. ☐ A settled statement under rule 8.137. *(You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

Form Approved for Optional Use
Judicial Council of California
APP-003 [Rev. January 1, 2016]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ WITH the following record of the oral proceedings in the superior court:

(1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply):*

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

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

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ all of the designated proceedings.

(ii) ☐ part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

(2) ☐ An agreed statement. *(Check and complete either (a) or (b) below.)*

(a) ☐ I have attached an agreed statement to this notice.

(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

(3) ☐ A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding):*

Title of Administrative Proceeding	Date or Dates

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal *(this document)*	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment *(if any)*	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket *(if any)*	

CASE NAME:	SUPERIOR COURT CASE NUMBER:

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

☐ See additional pages.

c. **Exhibits to be included in clerk's transcript**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

☐ See additional pages.

5. **NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide *(check one):*

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

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:

5. b. **Proceedings**

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

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No
(5)						☐ Yes ☐ No
(6)						☐ Yes ☐ No
(7)						☐ Yes ☐ No

c. The proceedings designated in 5b ☐ include ☐ do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise)*.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY *(name, State Bar number, and address):* STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available)*: E-MAIL ADDRESS *(if available)*: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*	COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has elected to use a clerk's transcript under rule 8.122.

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

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

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		

☐ See additional pages.

b. ☐ **Additional exhibits.** *(If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)*

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)*

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

☐ See additional pages.

Form Approved for Optional Use
Judicial Council of California
APP-010 [Rev. January 1, 2016]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

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

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

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

   (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

   (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

2. **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

   The appellant has elected to use a reporter's transcript under rule 8.130.

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

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

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

☐ See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:

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

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

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(b)(3)(B).

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ All of the designated proceedings.

(ii) ☐ Part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

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

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

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

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

(b) ☐ My copy of the reporter's transcript in computer-readable format.

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

(*Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).*)

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF APPELLANT OR ATTORNEY)

APP-103 Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

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

Phone: _____ E-mail *(if available):* _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available):* _____

Information About Your Appeal

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

Record of the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court *(check a or b and fill in any required information):*

a. ☐ **Clerk's Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.*

(1) **Required documents.** *The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** *If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.*

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

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

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."*

3 a. (continued)

(3) **Exhibits.**

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

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

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."*

(4) **Payment for clerk's transcript.** *(Check a or b.)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

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

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

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

OR

b. ☐ **Agreed statement.** *(You must complete item 5 d, below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item 5; sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

4 (continued)

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item 5 below)*. I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one** of the following below—a, b, c, d, or e):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

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

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

☐ *Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 5a."*

(2) The proceedings designated in (1) ☐ include ☐ do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. *(Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.)*

_____

_____

_____

_____

☐ *Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 5a(2)."*

5 a. (continued)

(3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.
(Write initials here): _____

☐ I request that the reporters provide *(check one):*
- (i) ☐ My copy of the reporter's transcript in paper format.
- (ii) ☐ My copy of the reporter's transcript in computer-readable format.
- (iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

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

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

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

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

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

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

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

5 (continued)

OR

d. ☐ **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*

(1) ☐ I have attached an agreed statement to this notice.

(2) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

e. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. (Check (1) or (2).):*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Limited Civil Case) *(form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

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

APP-110

Respondent's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

Name: _____

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

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

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

Phone: _____ E-mail *(if available):* _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available):* _____

Information About the Appeal

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

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

Record of the Documents Filed in the Trial Court

4 The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

a. ☐ **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those documents here.*

(1) **Documents**

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

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

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 4a(1)."*

(2) **Exhibits**

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

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

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 4a(2)."*

4 (continued)

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

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

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

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

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

Record of Oral Proceedings in the Trial Court

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

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

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

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

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

5 a. (continued)

(2) **Copy of reporter's transcript.**

(a) ☐ I request a copy of the reporter's transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.

(b) ☐ I request that the court reporter provide *(check one):*

(i) ☐ My copy of the reporter's transcript in paper format.
(ii) ☐ My copy of the reporter's transcript in computer-readable format.
(iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. *(Check and complete (1) or (2).):*

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

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

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

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

OR

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

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

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

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

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

Date: _____

_____ ▶ _____

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

SPR15-01

Appellate Procedure: Record on Appeal-Civil Cases (revise forms App-003, app-010, App-103, and form App-110)

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

	Commentator	Position	Comment	*Suggested* Committee Response
1.	Law Offices of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
2.	Orange County Bar Association By Ashleigh Aitken, President	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
3.	San Diego County Bar Association Appellate Practice Section By Victoria E. Fuller	A	The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a few issues for further consideration. Our section supports the proposed revisions to forms APP-003, APP-010, APP-103, and APP-110. We believe the proposed changes adequately address the dual purposes stated in the proposal: (1) to avoid clerical problems arising from the submission of confidential fee waiver applications that are physically attached to public court records; and (2) to clarify that under Rule 8.130, a respondent designating additional proceedings is responsible for the costs of preparing the additional transcripts. We suggest one modest change to the proposed	The committee notes the commentator's support for the proposal. The committee respectfully declines to make this

	Commentator	Position	Comment	*Suggested* Committee Response
			language to further address the first purpose stated above. We propose the revised forms state that the applicant has submitted a "separate" document with the notice designating the record, to further guide the applicant that his or her fee waiver application or order should not be attached to the form being submitted. For example, on page 1 of Form APP-003, the proposed language in bold, with our modest change in brackets, would state: (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following [separate] document with this notice designating the record (check (a) or (b)): We believe this slight modification would further the stated purpose of reducing submissions that contain confidential fee applications attached to the public judicial counsel form documents.	change to the forms. The committee's view is that it will be clear from the proposed language of the form regarding submitting the fee waiver application with the notice designating the record that the fee waiver application is a separate document.
4.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	A	The Committee supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	AM	• Would the proposal provide cost savings? There will be a time savings for the imaging unit who will not need to detach the fee waiver (FW-001) form from the designation. Also, the appeals clerks will not need to review the designation to ensure that the confidential fee waiver is not attached and may spend less time	The committee appreciates these responses to the specific questions in the invitation to comment

	Commentator	Position	Comment	*Suggested* Committee Response
			explaining the forms. • What would the implementation requirements be for courts? For example, training staff. Minimal time to train staff. No need to change codes or procedures. • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? The size of the court would not impact implementation. **Comments regarding Forms APP-003 and APP-010:** See separately attached PDF of annotations of suggested revisions to forms. **Additional comments relative to forms -- Form APP-103 Appellant's Notice Designating Record on Appeal and Form APP-110 Respondent's Notice Designating Record on Appeal:** Since the proposed revision contemplates that, going forward, the appellant will be *submitting* the relevant document, revise all relevant checkboxes, which currently state "☐ An order granting a waiver of the cost under 3.50-3.58" to read:	The committee appreciates these suggestions for additional changes to these forms. However, these changes are beyond the scope of the current proposal. The committee will consider these suggestions during a later rules cycle. The committee respectfully declines to make this change to the forms. The committee's view is that that the obligation to submit true and correct copies is implicit. The suggested additional language does not appear at other places on this form where attachments are referenced or on other forms that refer to attachments (see, for example,

	Commentator	Position	Comment	*Suggested* Committee Response
			"☐ A true and correct copy of the order granting waiver of the cost under 3.50-3.58." Same revision in multiple locations of relevant text box in APP-103, including 3(a)(4)(b)(i), 5(b)(2)(a), 5(c)(2)(a) and in APP-110, including 4(b)(2)(a), 5(b)(2)(a) and 5(c)(2)(a).	forms CM-110, DE-111, and GC-210). Adding this language here when it does not appear in connection with other documents submitted with or attached to forms could create the impression that the obligation to submit true and correct copies does not apply in these other situations.
			Additional Comment relative to Form APP-103 Appellant's Notice Designating Record on Appeal: Introductory section entitled "Record of Oral Proceedings in the Trial Court" and/or the election to proceed WITHOUT a record of the oral proceedings should be revised to more specifically inform appellant of the limited scope of the appeal if he or she elects to proceed without an oral record. Currently, section 4(a) states in part: "I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether legal error was made." The following possible revision is suggested: "I understand that if I elect to proceed without a record of the oral proceedings, the appeal will be strictly limited to legal error, and I will not be able to claim that the evidence was insufficient to support the judgment or to raise any other evidentiary issues."	The committee appreciates this suggestion for additional changes to this form. However, these changes are beyond the scope of the current proposal. The committee will consider this suggestion during a later rules cycle.

	Commentator	Position	Comment	*Suggested* Committee Response
			As explained by *Rutter, Civil Appeals and Writs,* §4:45 Absence of a record of the oral proceedings (a) bars appellant from claiming the evidence was insufficient to support the judgment or raising any other evidentiary issues and (b) also precludes a determination that the trial court abused its discretion. [*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 C4th 121, 132, 87 CR2d 132, 140; *Nielsen v. Gibson* (2009) 178 CA4th 318, 324, 100 CR3d 335, 339–340; *Barak v. Quisenberry Law Firm* (2006) 135 CA4th 654, 660, 37 CR3d 688, 692; *see also* ¶ *4:3*] Many self-represented appellants, who elect to proceed without an oral record, do not understand this limitation on appellate review and only learn of it at the end of the appellate process during oral argument or when they receive a written decision affirming the trial court on that basis.	

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts (amend rules 2.251 and 8.71) (Action Required – Recommend JC approval)

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Court Technology Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691; Tara Lundstrom, tara.lundstrom@jud.ca.gov, 415-865-7650

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15 (Appellate Advisory Committee)
Approved by JCTC: 2/9/2015 (Court Technology Advisory Committee)

Project description from annual agenda:
APPELLATE ADVISORY COMMITTEE
Item 9 - Electronic service: Consider whether to recommend rule amendments to clarify that a court may be served electronically if the court consents to receive this form of service. This project also appears on the CTAC annual agenda.

COURT TECHNOLOGY ADVISORY COMMITTEE
Item 12 - Evaluate Amendment to Rules of Court to Allow Electronic Service Upon Courts if the Court Consents

Major Tasks: (a) Consider whether to recommend rule amendments to clarify that a court may be served electronically if the court consents to receive this form of service.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Electronic Service: Authorization of Electronic Service on Trial and Appellate Courts

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251 and 8.71

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 24, 2015

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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the current rules regarding whether electronic service is authorized not only by, but also on, a court. This rule proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016, amend rules 2.251 and 8.71 of the California Rules of Court to:

1. Add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. Make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

Amended rules 2.251 and 8.71 are attached at pages 7–8.

Previous Council Action

The Judicial Council sponsored Senate Bill 367 in 1999 (Stats. 1999, ch. 514). This legislation enacted Code of Civil Procedure section 1010.6, which authorizes the electronic filing and service of documents in the trial courts. It also directed the council to adopt uniform rules, consistent with the statute, for electronic filing and service. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for electronic filing and service. Relevant to this proposal, the rules provided that a trial court may electronically serve any notice, order, judgment, or other document prepared by the court in the same manner that parties may serve documents by electronic service.

The Judicial Council later cosponsored SB 1274 (Stats. 2010, ch. 156), which amended Code of Civil Procedure section 1010.6 to recognize electronic service by a court of any notice, order, judgment, or other document. Although the bill introduced other substantive changes to the statute, this specific amendment placed the existing language of the rules into the statute for clarity.

The Judicial Council adopted rules, effective July 1, 2010, authorizing the Second Appellate District of the Court of Appeal to conduct a pilot project to test the use of electronic filing and service. Mirroring the provisions in the statute and trial court rules, these rules recognize electronic service by a court of any notice, order, opinion, or other document issued by the court. The scope of these appellate rules was extended, effective January 1, 2012, to all Courts of Appeal and to the California Supreme Court.

Rationale for Recommendation

Several California Rules of Court require that certain documents in appellate proceedings be served on the superior court. For example, rule 8.212(c)(1) requires that one copy of each brief in a civil appeal be served on the superior court clerk for delivery to the trial judge. Similar language also appears in rule 8.360 (briefs in felony appeals), rule 8.412 (briefs in juvenile appeals), and rule 8.630 (briefs in capital appeals). Rules 8.500 and 8.508, governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the Court of Appeal.

There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents "by any method permitted by the Code of Civil Procedure." Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define "electronic service" as service of a document "*on a party or other person*" (italics added); they do not expressly provide for service on a court.

Arguably, the term "other person" in these provisions could be interpreted to encompass courts. Rule 1.6(14) offers some support for this interpretation because it defines the term "person" as including "a corporation *or other legal entity* as well as a natural person." (Italics added.)

Nevertheless, Code of Civil Procedure section 1010.6 and rules 2.251 and 8.71 specifically address electronic service *by* a court without mentioning service *on* a court. This absence could be interpreted as indicating that the rules now only contemplate service by a court and do not contemplate service on a court.

This proposal would eliminate the ambiguity in the rules by expressly authorizing electronic service on a trial and appellate court with that court's consent. Electronic service may benefit the courts by improving efficiency because the clerk could forward the electronic copies to the trial judge by e-mail. It would also be more efficient and less costly for the parties in many cases.

Electronic service authorized on consenting courts

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order.[1] The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court's consent unless such service is provided for by law or court order.

Subparagraphs (A) and (B) of rules 2.251(j)(2) and 8.71(g)(2) would specify how a court indicates its agreement to accept electronic service. Subparagraph (A) is modeled on 2.251(b)(1)(A) and 8.71(a)(2)(A), which provide that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. New 2.251(j)(2)(A) and 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all the parties. Subparagraph (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating so.

[1] This rules proposal would relocate subdivision (c)(2) to new subdivision (a)(4), but would not amend its content.

Nonsubstantive amendments to rule 8.71

Additional amendments to rule 8.71(a) and (c) are proposed. These nonsubstantive amendments make this rule more consistent with the language of trial court rule 2.251 and consolidate provisions relating to the authorization for electronic service in the appellate courts. The amendments would clarify that a document may be electronically served on a party or other person if electronic service is provided for by law or court order or if the party or person consents to this service. The amendments would also move the provision regarding service on a nonparty from subdivision (c) to subdivision (a).

Comments, Alternatives Considered, and Policy Implications

Comments

This rules proposal was circulated for public comment from April 17 to June 17, 2015. Nine comments were received in response. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts. Each of four specific modifications proposed by the commentators is discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended adding a new subpart (C) to rule 2.25(g)(3) that would provide as follows:

> The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.

The Information Technology Advisory Committee (ITAC) declined to pursue the Civil Unit Managers' recommendation to amend subdivision (g) of rule 2.251. Rule 2.251(g) applies to all documents served by electronic notification and places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. Under rule 2.251(g)(3), the party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would effect a substantive rule change that is beyond the scope of this proposal and would require additional public comment.

In addition, ITAC declines to pursue this recommendation because the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is

beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

Second, Ms. Debbie Mochizuki, Supervising Attorney at the Court of Appeal, Fifth Appellate District, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. The Appellate Advisory Committee (AAC) is sensitive to Ms. Mochizuki's concern about disrupting the oral agreement described in her comment. Fortunately, the amendment to rule 8.71 would not appear to affect the validity of that oral agreement. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. AAC is sympathetic to the burden imposed on the appellate courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on appellate courts in adopting local rules of court, the AAC determined that it was outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption of such rules. Nevertheless, the committee may consider a proposal to lessen the burden on appellate courts in future rules cycles.

Third, the San Diego Bar Association recommended using the term "consent" in lieu of "accept" and "agrees to accept" in proposed new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71. The language in proposed new subdivisions mirrors subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71. Rules 2.251(b)(1) and 8.71(a)(2), which govern the consent by parties to electronic service, use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to make uniform the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the

superior courts within their district that accept electronic service and the e-mail addresses where those courts accept electronic service. This recommendation was not pursued as it is outside the scope of this rules proposal.

Alternatives

The committees considered not recommending any amendments to the rules. The rules may be interpreted to allow for electronic service on a court. The committees did not elect this alternative, however, because the rules are ambiguous and it may not be clear to all parties that courts can accept electronic service. The amendments to the rule would also clarify how a party may consent to electronic service.

Implementation Requirements, Costs, and Operational Impacts

Under this proposed rule, implementation of electronic service on a court would generally be voluntary; each court would determine whether to consent to electronic service. For those courts that chose to implement such service, the rule would require the court either to adopt a local rule or to provide notice in individual cases. These courts would also have to establish and monitor an e-mail account to receive documents served by the parties on the court. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh these implementation costs. Potential efficiencies for the courts include being able to forward copies of briefs by e-mail to judges. The proposed amendment might also provide cost-savings for the parties because they would not have to pay the costs incurred by physical filing, including any copying, transportation, and mailing expenses.

Attachments

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 7–8
2. Comment chart, at pages 9–14

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 2.251. Electronic service

(a)–(i) * * *

(j) Electronic service by or on court

(1) The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rule 8.71. Electronic service

(a) ~~Consent to~~ Authorization for electronic service

(1) A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

~~(1)~~ (B) ~~When a~~ If the recipient agrees to accept electronic services as provided by these rules and the document ~~may be~~ is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission~~, electronic service of the document is permitted when authorized by these rules~~.

(2)–(3) * * *

(4) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(b) * * *

(c) Service by the parties

~~(1)~~ Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

~~(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

(d)–(f) * * *

(g) Electronic service by <u>or on</u> court

(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts
Amend Cal. Rules of Court, rules 2.251 and 8.71
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	The California Department of Child Support Services (DCSS) appreciates the opportunity to provide input, express our ideas, and experiences with respect to the proposal identified above. DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.	DCSS's support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2. 2. Recommendation: Amend California Rules of Court 2.251(g) The Court agrees with the proposal. However, the Court respectfully requests that the Judicial Council consider amending California Rules of Court 2.251(g) in the following ways: a. Add letter (C) after 2.251(g)(3)(B): "(C) The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions."	The Civil Unit Managers' support is noted. ITAC declines to pursue the recommendation to amend subdivision (g) of rule 2.251. This subdivision applies to all documents served by electronic notification. It places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. The party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink is a substantive change to the rule that is beyond the scope of this proposal and would require

	Commentator	Position	Comment	Committee Response
				additional public comment. It may be considered by ITAC in the future. In addition, the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records, but the recommendation may be considered by ITAC in the future.
			3. Request for Specific Comments a. Does the proposal appropriately address the stated purpose? The Court believes that this proposal addresses the intended purpose. Amending the Rules of Court will clarify when and how the Court may be served in the specific examples mentioned in the proposal. b. Would the proposal provide cost savings? If the Court elects to allow electronic service, an email inbox will need to be established to enable review of incoming service to the court. While the process functionality will be established, this won't necessarily be a cost savings for some courts.	The Civil Managers Unit's comments are noted. The proposed rule amendment leaves it in the court's discretion whether to accept electronic service of documents on the court. In making this decision, each court may consider whether the costs outweigh the benefits.

	Commentator	Position	Comment	Committee Response
3.	Debbie Mochizuki, Supervising Attorney, Fifth Appellate District Court of Appeal	AM	The proposed language of rule 8.71(g)(2) appears too restrictive in terms of how a court may indicate that it agrees to accept electronic service. For example, our appellate court has implemented mandatory e-filing. To maximize efficiencies to be gained with e-filing in the appellate court, our court reached out to the CEOs of the superior courts in our district and secured their oral agreement to accept electronic service of our orders and opinions. Neither of the options in rule 8.71(g)(2) as proposed take our approach into account. As the court of appeal is not a party, serving the notice described in rule 8.71(g)(2)(A) would not work for us. Also, the adoption of a local rule of court appears an unnecessary and time consuming requirement given that the superior court is simply giving its consent to receiving electronic service and it is NOT mandating electronic service. A local rule of court is ordinarily used to notice an additional requirement that a local court will impose over and above the state rules of court. It seems a court should be able to announce its willingness to accept electronic service in whatever manner it deems fit provided it includes the electronic service address at which it agrees to accept service.	AAC notes Ms. Mochizuki's concerns, but concludes that this rules proposal would not impact the type of agreement identified in her comment. The scope of the proposed rule amendment is narrow in that it only applies to service on a court. Because rule 8.267(a) only requires that the Court of Appeal clerk *send* the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g) would not apply. The oral agreement described in the comment would remain valid regardless of whether the council adopts this rules proposal. AAC is sympathetic to the burden imposed on courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on courts in adopting local rules of court, the committees conclude that it is outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption

	Commentator	Position	Comment	Committee Response
				of such rules.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comments provided.	The Orange County Bar Association's support is noted.
5.	San Diego Bar Association Appellate Practice Session by Victoria E. Fuller, Chair	AM	We agree with the Appellate Advisory Committee's conclusion that there is some ambiguity as to whether the current rules authorize electronic service on a court. We also agree that the proposed revisions attempt to remove that ambiguity by expressly stating that electronic service on consenting courts is allowed under Rules 2.251 and 8.71. Express codification reduces doubt, removes uncertainty, and is a good thing. But we suggest a slight linguistic revision to maintain consistency within the proposed change. If the intention of the proposed change is to make it clear that electronic service on "consenting" courts is permitted, then the proposed changes should incorporate that expressly throughout. The current proposal uses language that varies between "consent," "indicates that it agrees" and "accept," which may lead to confusion among some practitioners. We therefore suggest the following revisions to proposed Rules 2.251(j)(2) and 8.71(g)(2), which address the manner in which a court consents to electronic service:	The San Diego Bar Association's comments are noted. The language proposed for new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71 mirrors the language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71, which govern consent by parties to electronic service. Rules 2.251(b)(1) and 8.71(a)(2) use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to make uniform the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

	Commentator	Position	Comment	Committee Response
			(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court ~~indicates that it agrees~~ [consents] ~~to accept~~ service by: (A) Serving notice on all parties that the court ~~accepts~~ [consents to] electronic service. The notice must include the electronic service address at which the court ~~agrees to~~ [will] accept service; or (B) Adopting a local rule stating that the court ~~accepts~~ [consents to] electronic service. The rule must indicate where to obtain the electronic service address at which the court ~~agrees to~~ [will] accept service.	
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	The Committee supports this proposal, with a recommendation for implementation. In response to the specific requests for comments, the Committee believes that electronic service on the courts would unquestionably save time and costs for litigants in terms of printing and mailing service copies of briefs and other filings. The cost savings could be especially meaningful for the State, in aggregate, in criminal appeals handled by appointed attorneys, in which the State currently reimburses the attorneys for printing and mailing costs for service copies.	The Committee on Appellate Court's (CAC) support is noted.

	Commentator	Position	Comment	Committee Response
			In terms of implementation, the Committee recommends encouraging both superior courts and the Courts of Appeal to include information about electronic service on their websites. It would be particularly helpful for litigants to have the Court of Appeal websites in each District keep a current list of the superior courts in that District that accept electronic service, along with the individual email address for those courts, to indicate where documents should be served.	ITAC and AAC decline to pursue the CAC's recommendation because it is beyond the scope of this rules proposal. However, the committees may consider this recommendation in the future.
7.	Superior Court of Los Angeles County	A	No specific comments provided.	The superior court's support is noted.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost savings? Cost savings to the court of appeal on paper costs and minimal time savings for trial court appeals staff who would email the trial judge versus the current process of forwarding a hard copy.	The superior court's comments are noted.
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS agrees that implementation of electronic service on a court needs to remain voluntary. The proposed language concerning a court's consent to electronic service provides additional clarity for the court. The proposed process for implementation of electronic service appears to be a very simple approach. The JRS concluded that this proposal will not lead to any significant implementation costs.	The subcommittee's support is noted.

Item number: 18

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 09/08/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Access to Electronic Appellate Court Records (adopt Cal. Rules of Court, rules 8.80–8.85)

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Court Technology Advisory Committee

Staff contact (name, phone and e-mail): Katherine Sher, katherine.sher@jud.ca.gov, 415-865-8031

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/14
Project description from annual agenda: Item 8 on AAC annual agenda - Court records: Consider whether to recommend adoption of new rules to address public access to electronic court records.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Access to Electronic Appellate Court Records

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 8.80–8.85

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 25, 2015

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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend the adoption of new rules of court to address public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records. The new rules are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form while protecting privacy interests.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 8.80 of the California Rules of Court to:

- State the purpose of the rules in the article as providing the public with reasonable access to appellate court records maintained in electronic form while protecting privacy interests; and

- State the benefits of public access to appellate court records maintained in electronic form; and

- State that the rules of the article do not create new rights of access to records.

2. Adopt rule 8.81 to state the application and scope of the new rules, applying only to records of the Supreme Court and Courts of Appeal, and only to access by the public.

3. Adopt rule 8.82 to define terms used in the new rules, including a definition of "court records" to reflect the types of records maintained by the Courts of Appeal.

4. Adopt rule 8.83 to:

    - Provide that all electronic records must be made reasonably available to the public in some form; and

    - Provide that electronic access, both remote and at the courthouse, will be provided to certain records including dockets or registers of actions, calendars, opinions, certain Supreme Court records, and records in civil actions if maintained in electronic form; and

    - Provide that access to certain documents in electronic form will be at the courthouse only, including any reporter's transcript for which the reporter is entitled to a fee and records in 10 specified types of proceedings; and

    - In extraordinary cases, give appellate courts discretion to allow remote access to records that would not be otherwise be available remotely, with requirements for notice to be given to the parties and the public in advance and for certain information to be redacted from the records to be made available remotely; and

    - Limit electronic access to most electronic case records to availability only on a case-by-case basis, with bulk distribution allowed only of certain specified types of records.

5. Adopt rule 8.84 to set certain limitations and conditions on electronic access to appellate court records, including requirements for the means of providing access and requirements for notice to persons accessing records.

6. Adopt rule 8.85 to state that a court may impose fees for the costs of providing copies of electronic records.

The text of the proposed rules is attached at pages 9–15.

Previous Council Action

The Judicial Council has not previously adopted rules relating to access to electronic appellate court records. However, the council adopted the predecessors to rules 2.500 to 2.506, the rules governing access to electronic trial court records, which served as the model for the proposed rules, effective July 1, 2002. The predecessor to rule 2.507, relating to electronic access to trial court calendars, indexes, and registers of actions, was added effective July 1, 2003. These trial court rules were amended and renumbered effective January 1, 2007. Some provisions have been added to these rules since that time, and other provisions have been amended.

Rationale for Recommendation

California Rules of Court, rules 2.500 to 2.507 address public access to electronic trial court records. These rules are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests. The rules address, among other things, what electronic trial court records can be made available remotely, what records may be made available only at the courthouse, what records can be made available in bulk, and what records can only be accessed on a case-by-case basis.

As more documents are electronically filed in the Courts of Appeal and Supreme Court and stored in electronic form, it is anticipated that questions will arise about public access to these electronic records. The committees are therefore recommending adoption of a set of rules to address public access to the electronic records of the Courts of Appeal and the Supreme Court. The proposed appellate rules are based on the trial court rules, but have some substantive differences based primarily on differences in the nature of the records maintained by trial and appellate courts and in existing public access to these records.

Criteria for remote access and bulk distribution

The proposed rules keep in place the basic scheme used in the trial court rules to determine which records must be made available remotely, where feasible, and which must be made available only at the courthouse; which records are to be made available only on a case-by-case basis; and which can be subject to bulk distribution.

As in the trial courts, electronic access to registers of actions, calendars, and indexes would be required to be provided both remotely and at the courthouse where feasible. In recognition of the current practices of the appellate courts, the proposed appellate court rule would also require remote and courthouse access to dockets, opinions, and specified Supreme Court records, as listed in proposed rule 8.83(b)(1). Bulk distribution of these records would be permitted under proposed rule 8.83(f).

The dividing line as to whether other types of electronic records would be made available remotely is drawn, as it is in the trial court rules, according to case type. In most civil cases, the appellate courts would be required, where feasible, to provide public access to electronic court records both remotely and at the courthouse under rule 8.83(b)(2). These records would only be available on a case-by-case basis, where the person requesting the record is able to identify the case by information such as the case number or a party's name.

In criminal cases, juvenile court cases, family law cases, and other proceedings specified in proposed rule 8.83(c)(2), remote access to case records (other than those listed in rule 8.83(b)(1) such as calendars, dockets and indexes) would not be allowed. As with trial court electronic records, public access to these electronic appellate court records would be available at the courthouse only.

Under rule 8.83(d), however, a presiding justice or a justice assigned by a presiding justice would be given discretion to allow remote public access to records in a proceeding type listed under 8.83(c)(2) in a case of extraordinary public interest. In the trial court rule, the discretion to allow such access is limited to extraordinary criminal cases. The proposed appellate rule would give broader discretion to allow remote access in any of the types of proceedings listed in 8.83(c)(2).

Requirements for vendor contracts

In the trial court rules, rule 2.505 establishes requirements for any contract between a trial court and a vendor to provide public access to electronic records, including that the contract must provide that the court is the owner of the records and has the right to control their use. The proposed appellate rules do not contain a parallel provision. In developing the proposed appellate rules, the Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) determined that it was not necessary to address issues relating to vendor contracts in the rules at this time. The current practice of the appellate courts is to provide access to electronic court records directly, through the *www.courts.ca.gov* website, rather than using vendors to create and maintain systems for access. Although it is possible that the appellate courts will begin to use vendors to provide public access when the use of electronic records becomes more common in those courts, it is likely that all of the appellate courts will use the same vendor and have the same contract. Thus it will be easier for the appellate courts to put in place appropriate controls on a vendor—as determined by the particular needs of the appellate courts—in the course of negotiating the single contract for those services.

Requirements for information to be included in and excluded from records made available remotely

The trial courts, under rule 2.507, are required to include certain information in calendars, indexes, and registers of actions that are made electronically accessible to the public. Other information is required to be excluded from those records, including social security numbers, financial information, and victim and witness information. The proposed appellate rules do not

contain a parallel provision. In developing the proposed appellate rules, ITAC and the AAC found that the appellate courts are already including the information required under rule 2.507 when dockets, registers of actions, and calendars are made available electronically. Some of the information required to be excluded from records under rule 2.507—such as social security numbers—is excluded from the electronic records made available by the appellate courts. However, because the appellate courts make opinions available electronically, which by their nature may include certain kinds of information excluded under rule 2.507 (such as information regarding the age or gender of parties), the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate both to provide information to the public and to protect privacy, ITAC and the AAC did not include in the proposed appellate court rules a rule similar to 2.507.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated from April 17, 2015 to June 17, 2015 in the regular spring 2015 comment cycle. Comments from seven organizations were received, many of them lengthy and detailed with suggestions for specific changes. One commentator agreed with the proposal, three agreed if modified, two disagreed, and one suggested modifications but did not indicate a position on the proposal. The comment chart, showing the full text of all comments received (with one lengthy comment attached separately) and the committees' responses is attached at pages 16–36.

Definition of "court record." The Second Appellate District of the Court of Appeal objected to the second sentence of the definition of "court record" in proposed rule 8.82(1), which states that "The term does not include the personal notes or preliminary memoranda of justices, judges or other judicial branch personnel." The court commented that the sentence is unnecessary and could create confusion as to whether some notes and memoranda might be considered court records. This proposed language is taken verbatim from trial court rule 2.502, and the committees have not heard of any difficulties in applying that rule in the trial courts. The committees therefore declined to revise the proposed rule as suggested, choosing to keep the appellate court rule consistent with the trial court rule.

Criteria for remote access. The State Bar of California's Committee on Appellate Courts (CAC) and the State Bar's Standing Committee on the Delivery of Legal Services (SCDLS) questioned whether the distinctions made in the proposed rules as to which records will be available remotely and which records only at the courthouse make sense in terms of either privacy protection or supporting the public's right to access public court records. The CAC noted that the distinction between civil cases, in which records will generally be available remotely, and other types of cases, including criminal, juvenile, and family law cases, is not an adequate way to distinguish when records are likely to contain sensitive information. Moreover, the line drawn

between remote access and courthouse access may place unfair burdens on residents of rural areas or others for whom getting to a courthouse is difficult, while potentially allowing determined seekers to gain access to sensitive information. The SCDLS similarly asked for a more nuanced consideration of how to protect private information while maintaining public access to public records.

The committees declined to revise the proposed rules in response to these comments. The committees in their discussion of these comments noted that the proposed rules are based closely on the trial court rules regarding access to court records that have been in effect for many years. These initial proposed rules are intended to build on the experience of the trial courts. If changes are considered in the future as to what records should be available remotely, or what information should be restricted to availability at the courthouse only, the committees' view was that those changes should be simultaneously considered for the trial and appellate rules.

Remote access in extraordinary cases. Both the Orange County Bar Association (OCBA) and the Appellate Practice Section of the San Diego County Bar Association (SDCBA) commented on the scope of discretion given to appellate courts under proposed rule 8.83(d) to allow remote access to court records in extraordinary cases of case types where remote access would not generally be allowed. The intent of the committees in drafting the proposed rule was to give the appellate courts discretion to allow remote access in an extraordinary case of any type, where trial courts can do so only in extraordinary criminal cases. However, the word "criminal" was inadvertently left in the first sentence of proposed rule 8.83 (d) as circulated—although the invitation to comment was clear that the discretion was intended to extend to all case types.

OCBA accordingly commented that the title of proposed rule 8.83(d) should be "Remote electronic access allowed in extraordinary criminal cases" to reflect more accurately the language of the proposed rule. SDCBA commented that the rule should be revised to give discretion to allow remote access in certain other types of cases.

In response to these comments, the committees revised the rule to read as originally intended, and as summarized in the invitation to comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83(d) and correcting the reference in that sentence from "Notwithstanding (c)(2)(E)" to "Notwithstanding (c)(2)."

Inclusion or exclusion of specific information from electronic records. OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.507, which lists specific types of information that must be included in and excluded from those electronic records which are made available remotely and in bulk. In a similar vein, SCDLS suggested that the redactions required by rule 8.83(d)(2) when records are made available remotely under the discretion granted in rule 8.83(d) should be applied whenever electronic court records are made available remotely.

The committees declined to make these changes to the rules, agreeing that the proposed rule as circulated is adequate given the current practices of the appellate courts in making information available remotely and that the proposed change is not needed. As discussed above, in developing the proposed appellate rules, the committees recognized, first, that the appellate courts currently include in those records made available remotely the types of information required to be included under rule 2.507. The committees further recognized that because of the types of case records made available remotely by appellate courts, the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate to provide information to the public and to protect privacy, the committees declined to make these suggested changes.

SDCBA suggested that the e-mail addresses of parties, victims, witnesses, and court personnel be included in the information required to be redacted from records to be made available online in extraordinary cases. Based on this comment, the committees have revised proposed rule 8.83(d)(2) to change "addresses and phone numbers of parties, victims, witnesses, and court personnel" to "addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel."

Contracts with vendors. OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.505, which sets certain requirements for contracts with vendors for the provision of public access to electronic services. As discussed above, in developing the proposed appellate rules, the committees recognized that the needs of the appellate courts with regard to vendor contracts differ from those of the trial courts. The committees expressly decided not to include provisions similar to rule 2.505 in the proposed appellate court rules as they believed such provisions were not needed. The committees therefore declined to make this suggested change.

Several commentators also suggested additions to rule 8.85 to address concerns regarding the use of vendors to provide public access to electronic court records, the control such vendors might exercise over those records, and the fees that might be charged for access. Courthouse News Service (CNS), in particular, submitted extensive comments regarding issues of vendor control over access to records and the fees that might be charged for such access. CNS suggested several provisions to be added to rule 8.85 to put in place limits on vendor control of records, requirements for free public access to newly filed records, and a requirement for a fee option to allow frequent users of court records to get information without incurring excessive fees. SCDLS similarly suggested adding language to 8.85(b) requiring that any vendor fees promote equitable public access.

In response to these comments, rather than adding any of the suggested provisions, the committees revised proposed rule 8.85 to delete subdivision (b) entirely. As noted above, at the present time, appellate courts provide public access to any electronic court records directly, not

using vendors. The committees concluded that the promulgation of rules regarding requirements for vendor agreements for the appellate courts is not necessary at this time.

Alternatives considered

In addition to the alternatives considered as a result of the public comments, discussed above, in developing these rules the committees considered a variety of alternatives with respect to the scope and proposed language of the proposed rules. The committees considered where the rules for the appellate courts should differ from those of the trial courts, and the rules as proposed reflect the decisions made with regard to those alternatives. For example, the committees considered whether the rules should provide for remote access only to those types of electronic records that are remotely accessible under the trial court rules, but decided that the proposed rules should reflect and maintain the current remote access to additional court records.

The committees also considered not proposing these rules at all. However, the committees concluded that it would be helpful to the public and the courts to clarify the scope of public access to electronic appellate court records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because it mandates access to those electronic appellate court records that are already currently being made available electronically and, like the trial court rules, provides for further access only to the extent feasible. The proposed rules should provide guidance with respect to electronic access to appellate court records, which may reduce questions about such access for litigants and thus costs associated with inquiries about this access for both litigants and the courts.

Attachments and Links

1. Cal. Rules of Court, rules 8.80–8.85, at pages 9–15
2. Chart of comments, at pages 16–36, including as an attachment the full comment of the Courthouse News Service

Rules 8.80–8.85 of the California Rules of Court are adopted, effective January 1, 2016, to read:

Article 6. Public Access to Electronic Appellate Court Records

Rule 8.80. Statement of purpose

(a) Intent

The rules in this article are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests.

(b) Benefits of electronic access

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to appellate court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to appellate court records may also foster in the public a more comprehensive understanding of the appellate court system.

(c) No creation of rights

The rules in this article are not intended to give the public a right of access to any record that they are not otherwise entitled to access. The rules do not create any right of access to sealed or confidential records.

Advisory Committee Comment

The rules in this article acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the appellate courts. It is contemplated that the rules may be modified to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

Subdivision (c). Rules 8.45–8.47 govern sealed and confidential records in the appellate courts.

Rule 8.81. Application and scope

(a) Application

The rules in this article apply only to records of the Supreme Court and Courts of Appeal.

(b) Access by parties and attorneys

The rules in this article apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.

Rule 8.82. Definitions

As used in this article, the following definitions apply:

(1) "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.

(2) "Electronic record" is a court record that requires the use of an electronic device to access. The term includes both a record that has been filed electronically and an electronic copy or version of a record that was filed in paper form.

(3) "The public" means an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.

(4) "Electronic access" means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise specified in the rules in this article.

(5) Providing electronic access to electronic records "to the extent it is feasible to do so" means that electronic access must be provided to the extent the court determines it has the resources and technical capacity to do so.

(6) "Bulk distribution" means distribution of multiple electronic records that is not done on a case-by-case basis.

Rule 8.83. Public access

(a) General right of access

All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except sealed or confidential records.

(b) Electronic access required to extent feasible

(1) Electronic access, both remote and at the courthouse, will be provided to the following court records, except sealed or confidential records, to the extent it is feasible to do so:

(A) Dockets or registers of actions;

(B) Calendars;

(C) Opinions; and

(D) The following Supreme Court records:

i. Results from the most recent Supreme Court weekly conference;

ii. Party briefs in cases argued in the Supreme Court for at least the preceding three years;

iii. Supreme Court minutes from at least the preceding three years.

(2) If a court maintains records in civil cases in addition to those listed in (1) in electronic form, electronic access to these records, except those listed in (c), must be provided both remotely and at the courthouse, to the extent it is feasible to do so.

(c) Courthouse electronic access only

If a court maintains the following records in electronic form, electronic access to these records must be provided at the courthouse, to the extent it is feasible to do so, but remote electronic access may not be provided to these records:

(1) Any reporter's transcript for which the reporter is entitled to receive a fee; and

(2) Records other than those listed in (b)(1) in the following proceedings:

(A) Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;

(B) Juvenile court proceedings;

(C) Guardianship or conservatorship proceedings;

(D) Mental health proceedings;

(E) Criminal proceedings;

(F) Civil harassment proceedings under Code of Civil Procedure section 527.6;

(G) Workplace violence prevention proceedings under Code of Civil Procedure section 527.8;

(H) Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;

(I) Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and

(J) Proceedings to compromise the claims of a minor or a person with a disability.

(d) Remote electronic access allowed in extraordinary cases

Notwithstanding (c)(2), the presiding justice of the court, or a justice assigned by the presiding justice, may exercise discretion, subject to (d)(1), to permit remote electronic access by the public to all or a portion of the public court records in an individual case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.

(1) In exercising discretion under (d), the justice should consider the relevant factors, such as:

(A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;

(B) The benefits to and burdens on the parties in allowing remote electronic access; and

(C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.

(2) The following information must be redacted from records to which the court allows remote access under (d): driver's license numbers; dates of birth; social security

numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. Subdivision (d)(2) does not apply to any document in the original court file; it applies only to documents that are made available by remote electronic access.

(3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's website. Any person may file comments with the court for consideration, but no hearing is required.

(4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's website and a copy sent to the Judicial Council.

(e) Access only on a case-by-case basis

With the exception of the records covered by (b)(1), electronic access to an electronic record may be granted only when the record is identified by the number of the case, the caption of the case, the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis.

(f) Bulk distribution

Bulk distribution may be provided only of the records covered by (b)(1).

(g) Records that become inaccessible

If an electronic record to which electronic access has been provided is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by a member of the public before the record became inaccessible.

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (b). Courts should encourage availability of electronic access to court records at public off-site locations.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committees recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committees also recognized that the use of the Internet may be appropriate in certain individual cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (d), if the presiding justice makes individualized determinations in a specific case, certain records in individual cases may be made available over the Internet.

Subdivision (d). Courts must send a copy of the order permitting remote electronic access in extraordinary cases to: Legal Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.

Subdivisions (e) and (f). These subdivisions limit electronic access to records (other than the register, calendars, opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Rule 8.84. Limitations and conditions

(a) Means of access

Electronic access to records required under this article must be provided by means of a network or software that is based on industry standards or is in the public domain.

(b) Official record

Unless electronically certified by the court, a court record available by electronic access is not the official record of the court.

(c) Conditions of use by persons accessing records

Electronic access to court records may be conditioned on:

(1) The user's consent to access the records only as instructed; and

(2) The user's consent to monitoring of access to its records.

The court must give notice of these conditions, in any manner it deems appropriate. Access may be denied to a member of the public for failure to comply with either of these conditions of use.

(d) Notices to persons accessing records

The court must give notice of the following information to members of the public accessing its records electronically, in any manner it deems appropriate:

(1) The identity of the court staff member to be contacted about the requirements for accessing the court's records electronically.

(2) That copyright and other proprietary rights may apply to information in a case file, absent an express grant of additional rights by the holder of the copyright or other proprietary right. This notice must advise the public that:

(A) Use of such information in a case file is permissible only to the extent permitted by law or court order; and

(B) Any use inconsistent with proprietary rights is prohibited.

(3) Whether electronic records are the official records of the court. The notice must describe the procedure and any fee required for obtaining a certified copy of an official record of the court.

(4) That any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

(e) Access policy

A privacy policy must be posted on the California Courts public-access website to inform members of the public accessing its electronic records of the information collected regarding access transactions and the uses that may be made of the collected information.

Rule 8.85. Fees for copies of electronic records

The court may impose fees for the costs of providing copies of its electronic records, under Government Code section 68928.

SPR15-03

Appellate Procedure: Access to Electronic Appellate Court Records (adopt rules 8.80 to 8.85)

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

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	NI	The Second Appellate District of the Court of Appeal has reviewed the materials, including the Invitations to Comment, forwarded to us by your message of April 20, 2015. The Second Appellate District has one comment on subdivision (1) of proposed rule 8.82. Subdivision (1) of proposed rule 8.82 provides: "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. *The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.* It is the view of the Second Appellate District that the second sentence of subdivision (1) of proposed rule 8.82, shown by italics, should be eliminated. The references to "personal notes" and "preliminary memoranda" in the second sentence suggest that some notes and some memoranda would be accessible. This would be undesirable in that draft opinions and comments on draft opinions obviously need to be protected from disclosure. Apart from this consideration, the second sentence should be eliminated since it serves no purpose. The first sentence of subdivision (1) of proposed rule 8.82 satisfactorily lists documents that should be and	The language of the sentence in question in proposed rule 8.82, subdivision (1), is taken directly from existing Rule 2.502, subdivision (1), pertaining to electronic access to trial court records, except that a references to "justices" has been added. This sentence is meant to clarify that these materials are not court records and therefore will not be subject to the rules regarding electronic access to court records. The language of rule 2.502 has not, to the committees' knowledge, posed difficulties for the trial courts with regard to determining what materials are available for public access, nor have private notes or memoranda been made publicly accessible. Moreover, differences in wording between the rule applicable to the trial courts and the rule applicable to the appellate courts might inadvertently create difficulties for the trial courts by calling into question the interpretation of what materials are meant to be included in "court records." The committees therefore recommend against making the language of the proposed rule for the appellate courts different from that of the existing rule for the trial courts.

	Commentator	Position	Comment	Committee Response
			in fact are now accessible to the public. The second sentence is surplusage.	
2.	Courthouse News Service by Rachel E. Matteo-Boehm	AM	See full comment, attached. The central points of the comment are summarized below in numbered paragraphs for reference in reading the responses given. 1. Courthouse News Service (CNS) begins its comment by noting that that its experience is that electronic access is "best performed by the court itself" and that in its view, ideally, the rule would not allow for vendor controlled access. CNS asks that the proposed rules address the two main concerns raised by use of vendors: vendor control over the public court record and both the amount of, and the circumstance under which a fee may be charged.	1. As a preliminary matter, the committees note, in response to CNS's general concerns regarding the use of vendor services for access to electronic records, that the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to provide access to electronic records directly, as they do for paper records. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time. In addition, the committees' view is that it is important to move forward now with adopting the proposed rules. Adoption of the proposed rules is critically important to provide standards for allowing appropriate access to electronic appellate court records. Courthouse News Service (CNS) raises issues which should be considered and addressed as the appellate courts move forward in implementing procedures for electronic access. However, under rule 10.22, substantive changes to the Rules of Court need to circulated for public comment before they may be recommended for adoption by the Judicial Council. Since these

	Commentator	Position	Comment	Committee Response
				subjects were not addressed in the proposal that was circulated for comment, rules addressing these subjects cannot be recommended for adoption at this time. The committee's view is that, consideration of the suggested changes should not hold up the adoption of the rules that were circulated. As the appellate courts, the public, CNS and other news services gain experience with the new rules and with new procedures for access to electronic appellate court records, the concerns raised by CNS can be considered in light of that experience, and the rules amended as needed. Indeed, the Information Technology Advisory Committee is leading a two-phase Rules Modernization Project, which in its second phase of substantive revision will offer an opportunity for comprehensive review of the rules governing access to electronic court records in both the trial courts and the appellate courts. The committees can consider CNS's suggestions as part of that comprehensive review.
			2. With regard to the issue of vendor control over access to public records, CNS notes the issues that arise when a vendor providing e-filing and e-access services to a court is also a part of a larger organization that engages in news reporting – for example, LexisNexis. These organizations may be able to use their access to and control over court records to gain a competitive advantage over other news organizations, because they have earlier access to information and can get it at no cost. CNS gives examples of standards and contracts used	2. The committees' view is that because the appellate courts are not currently using vendors to provide public access to records, the proposed addition is not necessary at this time. For the same reason, the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule. As noted above, the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to continue to provide access to electronic records directly, rather than

	Commentator	Position	Comment	Committee Response
			by trial courts in California and by courts in other states to prevent e-filing and e-access vendors from using their position to gain such a competitive advantage, and proposes language that would prohibit a vendor from "reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records" except as called for by the agreement. 3. With regard to the fee related issues, CNS asks for two specific additions to the proposed rule: First, a new rule 8.85 (b)(1) would require that courthouse access be available, upon filing,through public access terminals at the courthouse at no charge. 4. Second, CNS proposes that rule 8.85(b)(2) be added to require that there be an option to allow frequent users of court records to access them without excessive cost.	through a vendor. 3. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule. 4. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule.
3.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	AM	1) The proposed rules do not appear to cover electronic records for small claims appeals & appeals of limited jurisdiction cases which are heard in the superior court [see Rule 8.81(a)]; those appeals are also not covered by the trial court rules found at Rules 2.500 - 2.507; those records must be addressed somewhere or a new set of rules adopted for them. (2) Rule 8.83 "Title" should be changed to "Remote electronic access allowed in extraordinary criminal cases" to match Rule	1) The committees appreciate this suggestion and intend to undertake consideration of rules to govern access to electronic records (as well as electronic filing) in the appellate divisions of superior courts. 2) As noted in the Invitation to Comment, proposed rule 8.83(d) is intended to allow an appellate court discretion to provide remote access

	Commentator	Position	Comment	Committee Response
			2.503(e) and to more accurately describe that subsection.	to additional court records not only in extraordinary criminal cases but in other extraordinary cases as well. However, the proposed rule was inadvertently circulated without striking the reference to "criminal" in the language borrowed from rule 2.503(e) to achieve this broader application. The committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d).
			(3) Language should be added under a new Rule 8.83(h) that matches existing Rule 2.503(i) concerning a requirement that the Courts should encourage the availability of electronic access "at public off-site locations"; no reason exists for downplaying this encouragement for appellate courts while keeping it for trial courts.	3) The language of rule 2.503(i) encouraging public off-site access is incorporated into the Advisory Committee Comment on proposed rule 8.83.
			(4) The language from existing Rule 2.505 concerning "Contracts with Vendors" should be included somewhere in these appellate court rules as no valid reason can exist for excluding these requirements for appellate court vendors.	4) Please see the response to the comments of Court News Service above. The committees recommend that the proposed rules be adopted without adding a rule parallel to Rule 2.505. The committee note that public access to electronic appellate court records is currently provided through the courts and contracting with a vendor to provide this service in not contemplated at this time. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time. In addition, the committees recognized that the situation for the appellate courts contracting with vendors for records access services will differ from that of the trial courts.

	Commentator	Position	Comment	Committee Response
				While the fifty-eight trial courts might have many forms of contract and use many different vendors, all of the appellate courts will likely have the same contract with the same vendor, if a vendor is used, for access to records. Committee members noted that, in the event that a contract with a vendor is contemplated, the issues addressed in rule 2.505 for trial court contracts with vendors can be addressed in the appellate courts' negotiations with vendors. 5) The committees recommend against adding a rule parallel to rule 2.507 to this proposal. The current practices of the appellate courts with regard to the electronic information now made available to the public are in line with the requirements of the proposed addition. The committees therefore did not find it necessary to add an appellate rule similar to rule 2.507.
			(5) Similar language from existing Rule 2.507 for trial courts must be added as may be modified for appellate court actions since as proposed there is no language about the "intent" of these rules, the "minimum contents" for certain court records, and the "excludable information" not allowed to be accessible through those electronic records (protections for both the courts and the parties/participants are required).	
4.	San Diego County Bar Association, Appellate Practice Section by Victoria E. Fuller, Chair	AM	The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a	

	Commentator	Position	Comment	Committee Response
			few issues for further consideration. Our section approves of the new rules specifically addressing public access to electronic appellate court records. We understand that these proposed new rules are based on the existing rules addressing public access to electronic trial court records. We offer two minor revisions and suggest two substantive changes to the proposed rules:	
			• The first and second sentences of proposed Rule 8.8l (b), should be revised to include the word "electronic" before the term "court records":	The committees recommend against the suggested change to proposed rule 8.81(b). The language of the proposed rule as circulated is taken directly from rule 2.501(b). Moreover, in some places the proposed rules make reference to non-electronic court records.
			• Under Rule 8.81(d)(2), the information to be redacted from records to which the court allows remote public access should include the Email addresses of parties, victims, witnesses, and court personnel. This appears to be just an oversight in the proposed rule.	This appears to be a reference to proposed rule 8.83(d) (2). Again, the language of the proposed rule is taken directly from the parallel trial court rule, rule 2.503(e). Here, however, the committees agree that adding e-mail addresses to the list of information to be redacted is a sensible change. To address this concern, the committees have revised their proposal, in proposed rule 8.83(d) (2), to change "addresses and phone numbers of parties, victims, witnesses and court personnel" to "addresses, <u>e-mail addresses</u> and phone numbers of parties, victims, witnesses and court personnel".
			• Substantively, it appears Rule 8.83(d) does not provide a procedure for the court to exercise	As noted above in the response to the comment by the Orange County Bar Association, the proposed

	Commentator	Position	Comment	Committee Response
			its discretion. We suggest that the proposed rule include language stating that a motion may be presented. For example, the first sentence of Rule 8.83(d) could be revised to read (underscored language added): "Notwithstanding (c)(2)(E), by written motion or on the court's own motion, the presiding justice of the court ..." • Finally, Rule 8.83(d) should be revised to allow the presiding justice of the court, or a justice assigned by the presiding justice, to exercise discretion, subject to (e)(l), to permit remote electronic access by the public to all or a portion of the public court records in not only an individual criminal case under subdivision (c)(2)(E), but also in civil harassment proceedings, workplace violence prevention proceedings, and postsecondary school violence prevention proceedings addressed under (c)(2)(F), (G), and (H). The rationale for permitting remote access to criminal proceedings in high publicity cases applies with equal force to these quasi-criminal proceedings. In such an instance, the judicial officer should have the discretion, in a particular individual proceeding, to allow online public access.	rule was intended to give the appellate court discretion to allow remote access in any of the case types listed, but the limitation to criminal cases was inadvertently left in the language of the rule as circulated from the parallel trial court rule used as a model for this rule. As noted above in response to the comments of the Orange County Bar Association, committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word “criminal” from the first sentence of rule 8.83 (d)
5.	State Bar of California Committee on Appellate Courts by John Derrick, Chair	N	The Committee supports generally the principle of providing the public with “reasonable access” to appellate court records that are maintained in electronic form, but opposes the Rule’s proposal to institute a bifurcated system wherein most	The committees appreciate the concerns raised by the Committee on Appellate Courts and are sensitive to the need to find an appropriate balance between the privacy rights of litigants and the public interest in making court records.

	Commentator	Position	Comment	Committee Response
			civil records are made available remotely whereas records in other types of cases (notably criminal, juvenile, and family court matters) are limited to in-court access. The Committee believes that if the Court of Appeal or Supreme Court intends to make a judicial record publicly available, the California Rules of Court should not make certain types of records more difficult to access than others. Requiring the public to travel to a courthouse to access certain types of records threatens to impose a disproportionate burden on individuals in rural areas and those with the fewest financial resources. It also is a dubious strategy for protecting the privacy rights of litigants. While the rule makes it more tedious for the public to access a document in certain types of cases, it does nothing to actually prevent a motivated member of the public from accessing the underlying information. The Committee also notes that the rule's distinction between civil cases on the one hand, and criminal, juvenile, and family court matters on the other hand appears extremely overbroad. Certain criminal, juvenile, and family court matters include the filing of documents with sensitive information, but others do not. Likewise, civil matters also may involve the filing of sensitive personal information. Despite imposing greater access restrictions on certain types of matters, the rule does not appear narrowly tailored to the public interest in	accessible. As the appellate courts move towards modernization of their systems to allow more widespread e-filing of documents it is critical that guidelines be in place regarding access to electronic appellate court records. In creating the proposed rules on this subject, the committees looked to the rules already in place for the trial courts regarding access to electronic court records. These rules have proved over many years to provide a workable framework for the courts. The proposed rules for the appellate courts seek to build on the success of the rules for access to electronic court records in the trial courts, allowing for possible later amendment based on the experience of the public and the appellate courts with the implementation of these proposed rules. Although a general dividing line between access to electronic records in civil cases and access to electronic records in the other types of proceedings listed in proposed rule 8.83(c)(2) may be an imperfect means of balancing these interests, the proposed adoption of these rules is based on a record of workability in the trial courts. The committees' view is that if an alternate approach to establishing a dividing line is to be considered, it should be considered for both the trial and appellate rules at the same time. In the meantime, as noted in the responses above, the committees urge adoption of these rules to facilitate access to electronic access as the appellate courts modernize their records systems. Further changes can be made later, perhaps as part

	Commentator	Position	Comment	Committee Response
			protecting individual privacy. It bears noting that although a 2002 report drafted for the Conference of Chief Justices on public access to judicial records contemplated that certain records might be made electronically available at the courthouse but not online, it cautioned that such a restriction should be limited to discrete categories of information such as identifying information for victims in criminal or domestic abuse cases, photographs of involuntary nudity, and medical records. *See* Nat'l Ctr. for State Courts, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts* 39-44 (2002). The Committee encourages the drafters of the rule to consider a more tailored approach like that contemplated by the CCJ report and/or to explore further alternative methods identified in the CCJ report for protecting private information, such as remote access by subscription. *See id*. at 41-42.	of the ongoing Rules Modernization Project, to refine the distinctions made as to which records can be accessed remotely and which not.
6.	State Bar of California Standing Committee on the Delivery of Legal Services by Maria C. Livingston, Chair	N	<u>Does the proposal appropriately address the stated purpose?</u> No. The proposal adds new rules on public access to appellate court records of the Supreme Court and Courts of Appeal. The rules attempt to balance providing the public with reasonable access to records, while also protecting privacy interests that may be compromised with unlimited remote access. Therefore, the rules distinguish between records that would be available remotely and at the courthouse, and	

	Commentator	Position	Comment	Committee Response
			records that would only be available at the courthouse. SCDLS recommends that the rules be redrafted with additional consideration and explanation of issues outlined in the additional specific comments below. Major issues include whether the rules adequately balance interests in publicly available court records and interests in the protection of personal and private information. In addition, some "line drawing" in the proposed rules, regarding the treatment of different categories of information, would benefit from additional clarification and explanation. **Additional Specific Comments** In general, SCDLS believes additional development may be needed to ensure that the rules more effectively attain the twin goals of providing for public access to court records and protecting individual privacy. In proposed rule 8.83(c) (courthouse access only), a large number of terms are not defined by reference to statute or otherwise, including "mental health proceedings." The rule is thereby unclear. The lack of clarity may make it difficult for a court to follow, as well as for a litigant to predict how the records would be treated. For example, is a mental health disability discrimination case a "mental health proceeding"? The committee's rationale for	With regard to the general concern as to whether the distinction made in the proposed rules as to which records will be made available remotely strikes the correct balance between privacy concerns and access concerns, please see response to comment by the State Bar Committee on Appellate Courts. With regard to the use of the term "mental health proceedings" in proposed rule 8.83(c)(1)(D), the committees note that this language is taken verbatim from the trial courts (in rule 2.503 (c)(4)) The committees are not aware that any difficulties have arisen in the trial courts with respect to the use of this term. The committees' view is that if a definition is to be considered, it should be considered for both the trial and appellate rules at the same time.

	Commentator	Position	Comment	Committee Response
			selecting the particular proceedings that are exempt from remote access also appears unclear. Without such a rationale, the list contains some items that seem somewhat arbitrary. As to proposed rule 8.83 generally, the Judicial Council may want to consider whether the protections of private information in subdivision (d) (extraordinary disclosure of criminal records) – requiring redaction of personal, financial and health information – should apply more broadly to <u>all</u> publicly available information in electronic case records. Consideration should also be given to whether such privacy protections should apply equally to information obtained remotely and at a courthouse. There is a risk that the court may underestimate the extent to which case-by-case access and courthouse-only access may nevertheless be subject to data mining, invasion of privacy, and bulk distribution. The court's rule against bulk distribution, alone, may be readily circumvented by simply transmitting one case at a time, and in any event if the rule is broken there may be no effective remedy for the person whose personal data was mined. To ensure equitable access by members of the public and to prevent unreasonable charges to the public by private contractors, the Judicial Council is encouraged to consider modifying Rule 8.85(b) as follows: To the extent that public access to a court's electronic records is	As discussed above in response to the comment of the Orange County Bar Association suggesting that the proposed rules include a rule parallel to rule 2.507, the committees found that the current practices of the appellate courts are in line with the requirements placed on the trial courts, as to the information included in and excluded from electronic records made available remotely, and that a rule on the subject is not needed. Specifically as to Standing Committee's suggestion that the requirements for redaction under proposed rule 8.83(d)(2) apply to all publicly available information in electronic records, the committees note that the structure of the proposed new rules as to when the requirement for redaction applies is taken directly from the trial court rules. Based on the experience of the trial courts, the committees did not find it necessary to extend the protections of rule 8.83(d)((2). If the rules are adopted as proposed, and issues arise, the appellate courts can later consider whether changes are needed based on their experience in implementing the rules and providing public access to electronic records. Please see the response to the comments of the Courthouse News Service regarding proposed rule 8.85 (b), above. The committees' view is that because the appellate courts are not currently

	Commentator	Position	Comment	Committee Response
			provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable and promote equitable public access while covering the cost of providing access.	using vendors to provide public access to records, the addition suggested by the Standing Committee on the Delivery of Legal Services is not necessary at this time. For the same reason,the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule.
7.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	Our court would like to emphasize the need to make sure that confidential documents, such as juvenile cases, remain confidential. We recognize the proposal does address this, but wanted to make sure this requirement was at the forefront of the drafters' consideration when making any additional changes to this rule.	The committees appreciate the commentator's reminder with regard to the importance of maintaining the confidentiality of confidential documents.

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VIA HAND DELIVERY

Judicial Council of California
455 Golden Gate Avenue
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Re: Comments of Courthouse News Service on Proposed Rules on Access to Electronic Appellate Court Records

Dear Sir/Madam:

On behalf of Courthouse News Service, we respectfully submit these comments and suggestions in response to the invitation to comment by the Judicial Council of California on the proposed rules related to Access to Electronic Appellate Court Records (SPR 15-03) ("Proposed Rules").

I. Introduction

Courthouse News Service is a nationwide news service that focuses on the court record, from the initial pleading through judgment and appeal. Its more than 3,000 subscribers include law firms in California and throughout the nation, as well as other media outlets, such as the Los Angeles Times and San Jose Mercury News, putting Courthouse News in the position of a pool reporter. On a national level, Courthouse News has a greater number of reporters covering courthouses than any other media outlet. Its web site, www.courthousenews.com, is updated daily with staff-written articles and columns and averages about 1 million readers per month. In recent months, Courthouse News has been credited as the source for stories by media outlets such as The Wall Street Journal, the Washington Post, and many others.

As a news service that focuses on the court record, Courthouse News is keenly interested in any proposed rules related to access to electronic court records, including appellate records. In reviewing the Proposed Rules, Courthouse News found much to like. However, it did identify one area of concern, namely, Proposed Rule of Court 8.85, which provides, in subsection (b), that "[t]o the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."

As a preliminary matter, it has been Courthouse News' experience that public access to court records is best performed by the court itself, rather than by a vendor. There are several reasons for this, but the most important are the practical control over the court record that a court loses when a vendor controls that record, coupled with the higher user fees for access that tend to be charged by vendors (who by their very nature are seeking to maximize their profits). To this end, ideally, the proposed rules would not allow for vendor-controlled access systems at all.

However, to the extent a decision is made to allow courts to make their electronic records available exclusively through a vendor, at the very least the rules should address the two main issues that make in-house public access the preferred option: (1) vendor control over the public court record; and (2) the amount of, and circumstances under which, a fee may be charged.

Courthouse News is aware that the Proposed Rules are in many respects similar to the Rules of Court already in place for access to electronic trial court records. *See* Rules of Court 2.500-2.507. The concerns noted below are not unique to appellate records, but rather are informed, in large part, by Courthouse News' experience over the years in accessing electronic trial court records, including in California under Rules 2.500-2.507.

II. Vendors As Electronic Public Access Providers

The scope of a vendor's permitted use of court records is a serious issue, and becomes even more important when a court's chosen vendor – or its affiliates – are also engaged in news reporting activities. For example, the vendors currently active in the court records space include Thomson Reuters Court Management Solutions, formerly LT Court Tech, which is part of one of the world's leading publishers of legal information through Thomson Reuters' Westlaw division; Journal Technologies, Inc., which represents the merger of three smaller case management vendors – Sustain Technologies, ISD Corporation and New Dawn – and is owned by the Daily Journal Corporation, publisher of legal newspapers in California and Arizona; and LexisNexis, also one of the world's leading publishers of legal information, including offerings such as alerts and trackers through its CourtLink division.

It is important to keep in mind that the nature of the media and news reporting has changed dramatically in recent years. Whereas reporting about the courts used to be the exclusive domain of traditional print and broadcast media outlets, media entities reporting news and information about the courts now include a variety of electronic publishers that can instantly transmit information to targeted audiences.[1] Accordingly, news reporting about the courts now includes not only more

[1] As recently noted in The Guardian, "News nuggets are back and new gatekeepers emerging as we hark back to the days of the SMS text alert." Emily Bell, *Apple Watch Highlights the Need for Shorter News As Screen Sizes Shrink*, The Guardian, April 26, 2015, *available at* http://www.theguardian.com/media/media-blog/2015/apr/26/apple-watch-shrinking-news-apps. Indeed, many traditional news organizations are keenly aware of the importance of finding ways to push news alerts and other breaking news products to

traditional in-depth reports about high-profile cases, but also summaries or alerts of what was filed in a given court on a given day or the latest developments in a case. These are often referred to euphemistically as "value-added services."

In those instances where a single private vendor acts as the electronic gatekeeper for the public court record – where copies of court records pass through or reside on the vendor's computer servers as part of a case management or e-filing system, or where the same vendor provides remote public access – that vendor also has priority access to the public court record. This control is valuable, especially for those vendors that also act as electronic publishers, because it gives them a virtually insurmountable advantage over their competitors in the news media in two ways: (1) timing and (2) cost.

With respect to timing, the chosen vendor will always be the first to receive the court records (including both the documents themselves and docket information about filings and case events), simply by virtue of its position with the court. Moreover, it receives those records in an electronically readable form that can be instantly analyzed and used to prepare and disseminate news reports to subscribers in a matter of minutes. Conversely, competing news entities must manually review these records (whether on paper or on a public access computer terminal), take notes, and create a news report, all of which takes time and means that the competing news entity is always "scooped" by the vendor. [2]

Similarly, with respect to cost, the vendor gets not only instantaneous access to court records, but access without charge, with those records delivered directly to the vendor's electronic doorstep. In contrast, competing media entities must either pay a fee to the very vendor they're competing with

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their audiences. For example, The New York Times, NBC News, Fox News, BBC News and The Guardian now all offer various alert products and options to their readers so they can stay abreast of breaking news – from emailed alerts to SMS messages to Twitter updates. As The Guardian explained, "It's an incredibly exciting time for news organisations to explore new and better ways to reach their audiences. And breaking news is the key editorial area where this is most important." Mario Andrade, *Extra! Extra! Rethinking the Guardian Breaking News Experience*, The Guardian, April 28, 2015, *available at* http://www.theguardian.com/info/developer-blog/2015/apr/28/extra-extra-rethinking-the-guardian-breaking-news-experience.

[2] More than ever, with the explosion of the Internet, "real-time reporting [has become] more prevalent." Peter Funt, *The Newswatch Never Stops – Nor Should It*, The Wall Street Journal, Jan. 21, 2011, at A13. "News outlets and individual reporters risk losing their relevance and their readerships if they fail to get stories up and out there in real-time." Elana Kirsh, *Untangling the Web: the 24-Minute News Cycle*, The Jerusalem Post, March 10, 2012, available at http://www.jpost.com/OnTheWeb/Article.aspx?id=286473. To "stand apart" in the competitive business of specialized news, one must "start[] earlier, writ[e] more and publish[] faster." Binyamin Appelbaum, *Joe Weisenthal vs. the 24-Hour News Cycle*, The New York Times, May 10, 2012, *available at* http://www.nytimes.com/2012/05/13/magazine/joe-weisenthal-vs-the-24-hour-news-cycle.html?pagewanted=all.

for remote access, or send a reporter to the courthouse on a continual basis to review newly e-filed records, a significant cost that the vendor does not have to bear.

In short, giving a vendor that also engages in news reporting a preferential position with respect to access to the court record, whether as part of a case management, public access or e-filing system, is no different than telling the local newspaper that it can control the door to the courthouse and will always have a head start – at a lower cost – in reporting newsworthy new civil cases than all other media outlets.[3]

These concerns have come to fruition in other courts where publishers have control of one or more components of the court's computer system. A prime example is the Delaware Court of Chancery, which has an e-filing system built around what was formerly LexisNexis' File & Serve arm (which was acquired in 2012 by a third-party group and re-named File & ServeXpress). In a 2009 email blast advertising its "Reduced Pricing for Delaware Superior Court Documents" and its alert service – which, for a fee, provided instant notification when a lawsuit against a particular defendant had been filed – Lexis boasted, "Remember, File & Serve has these documents first because we are the Court's official e-filing provider." This notice was a clear exploitation of the vendor's unfair advantage, and in any instance where an e-filing or case management system vendor is also given control over public access, this inequality will always be a serious risk.

To address this risk, many state and local judicial entities are taking affirmative steps to ensure there are safety mechanisms in place, i.e., through court rules and/or contractual provisions, that limit what vendors who have access to electronic court records can do with court information and records that pass through their systems. As experience has shown, it is not enough for the contract to simply state that the court is the owner of its records and has the right to control their use, as existing Rules of Court currently require for contracts with vendors for trial court records. *See* Rule 2.505(b). Rather, the contract must make clear that the vendor may not use the court records for any purpose other than the service it is providing to the court. For example:

- Georgia's Statewide Minimum Standards for Electronic Filing, effective September 25, 2014 ("Georgia Minimum Standards"), provide that a vendor may be authorized to conduct e-

[3] It is fundamental that the government may not grant one media entity preferential access to the court record. *See Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d 1095 (C.D. Cal. 2003) (city violated First Amendment by giving television station exclusive access to an official city event while requiring other broadcasters to rely on a video feed); *accord, e.g., Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986) (trial court "erred in granting access [to discovery materials] to one media entity and not the other"); *American Broadcasting Cos., Inc. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) ("once there is ... participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable"); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976) ("All representatives of news organizations must not only be given equal access, but within reasonable limits, access with equal convenience to official news sources.").

filing only if the vendor "disclaims any ownership right in any electronic case or document or portion thereof, including any commercial right to resell, recombine, reconfigure or retain any database, document or portion thereof transmitted to or from the court." (§ 4(b))

- Tennessee Supreme Court Rule 46 prohibits e-filing vendors from "providing any fee-based services related to the e-filed documents." (Subsection B.4)

- A contract between the California Superior Court for the County of San Francisco and LexisNexis specifies that "Contractor shall not permit access to, release or distribute copies of case filings and document submissions retained in its system," except to the parties and Court users, and that "Contractor shall not provide access to or release Court records, official or unofficial, directly or indirectly, except as expressly authorized by the Court." (¶ 18)

- A contract between the California Superior Court for the County of Los Angeles and Journal Technologies, Inc., for case management services provides, "LASC Data shall be and remain the property of LASC and LASC shall retain exclusive rights and ownership thereto. The data of LASC shall not be used by Contractor for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents." (§ 20.10)

Copies of these standards, rules and contracts are enclosed for your reference.

As the foregoing demonstrates, more and more courts recognize the importance of ensuring that vendors may not use their preferential position with respect to the electronic court record to gain an unfair advantage in disseminating information about courts. With this in mind, Courthouse News respectfully suggests that Proposed Rule 8.85 be amended to add language similar to that used in the Georgia Minimum Standards, as follows:

Rule 8.85. Fees for electronic access

* * *

(c) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that the vendor is prohibited from reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records or any portion thereof, other than in connection with providing the public access services pursuant to the agreement.

III. Fees for Access

Whether access is provided by a vendor or the court itself, Courthouse News does not necessarily oppose charging a reasonable fee for the convenience of remote access over the Internet, so long as three concerns are addressed. *First*, to the extent a fee is charged for remote access over the Internet, there must also be some way for interested members of the press and public to access court records at the courthouse itself free of charge. *Second*, to the extent a fee is charged for remote access to newly filed court records, there should be some way for the press and public to review those records on the day they are filed without paying a fee. And *third*, any fee for remote access over the Internet should be structured in a way that makes it affordable to members of the press who have a legitimate and frequent need to access court records.

As currently drafted, the Proposed Rules fail to address these three concerns, and Courthouse News respectfully submits that the Proposed Rules should be amended accordingly.

First, as currently drafted, the rules allow a vendor to impose a fee for access to electronic records under all circumstances, even if that access is provided via a public access terminal at the courthouse itself, and even if those records are not available for review in paper form, such as an e-filed record. *See, e.g.*, Proposed Rules 8.85(b) ("To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."); 8.82(2) (defining "electronic record" as "a court record that requires the use of an electronic device to access," including, inter alia, e-filed records). While it is one thing to impose a fee to review records remotely over the Internet, respectfully, imposing a fee to simply look at a public court record, without any alternative for a free review, is presumptively unconstitutional.

Second, to the extent public access to electronic court records is provided free of charge via computer terminals at the courthouse, but for a fee over the Internet, care must be taken to avoid a situation in which records are available online for a fee before they may be reviewed free of charge at the courthouse itself, in effect imposing a fee for timely access to newly filed court records while only providing free-of-charge access on a delayed basis. This issue can arise if, for example, a court uploads newly filed electronic records after the courthouse has closed for the day, so that the only way to review newly filed court records on the same day they are filed is remotely over the Internet, with fees that can quickly add up. Indeed, this exact problem has arisen in at least two of California's trial courts. There are several ways to address this issue, including waiving any remote access fees for newly filed court records, such as those filed within the past 24 hours.

Third, to the extent that records can be viewed free of charge at the courthouse but a fee is assessed to review those same records remotely over the Internet, Courthouse News respectfully submits that the fee should be structured in a way that it does not become cost-prohibitive for journalists to perform their traditional role of reviewing newsworthy case records on a daily basis as they flow into the court. This problem arises when even seemingly modest fees are assessed to review

records on a per-document or per-page basis. While such fees may not impose an undue burden on members of the public who only need to see a few documents on an occasional basis, they quickly add up for news organizations such as Courthouse News that have a frequent and legitimate need to review court records, with the effect that paid online access can become cost-prohibitive. Such a result would seem to be contrary to public policy, which should ***encourage*** press review of court records. *See, e.g., Cox Broad. Co. v. Cohn*, 420 U.S. 469, 492 (1975) ("in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations").

There are a couple of different ways to address this concern. One way is to provide remote access to newly filed appellate court records free of charge. A second way is to offer a subscription-based fee for remote access, such as a reasonable monthly fee for unlimited remote access. Either set-up ensures that traditional free access at the courthouse continues, while giving journalists the ability to easily and conveniently access court records over the Internet so that they may provide information about new cases and case developments to the public.

With these three concerns in mind, Courthouse News urges the judiciary to amend the Proposed Rules as follows:

> Rule 8.85. Fees for electronic access
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> * * *
>
> (b) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure any fees the vendor imposes for the costs of providing access are reasonable. In addition:
>
> > (1) To the extent access to a court's electronic record is the exclusive means for the public to review that record, such access must be provided at no charge upon filing on public access terminals available at the courthouse.[4]

[4] *See, e.g.*, Georgia Minimum Standards, No. 3(d), which provides, "The clerk ensures that electronic documents are publicly accessible upon filing for viewing at no charge on a public access terminal available at the courthouse during regular business hours." In addition, the Advisory Committee note to Proposed Rule 8.85(b) could clarify that in situations where the court is unable to provide electronic public access at the courthouse itself to court records filed late in the day because the court has closed its doors to the public for the day, but those records are available via remote access after hours, fees for remote access to those records will be waived for a period of time – for example, for 24 hours after filing, or until the court opens for business the following day.

(2) To the extent the vendor is permitted to impose a fee for the cost of providing access remotely over the Internet, there must be an option available to members of the public who have a frequent need to access records to do so without incurring excessive costs, such as through subscription-based fees.[5]

IV. Conclusion

Courthouse News greatly appreciates the consideration of its views on these matters. To the extent you have any questions, or would like to discuss these comments further, please do not hesitate to contact us.

Respectfully submitted,

Rachel E. Matteo-Boehm
On behalf of Courthouse News Service

cc: Courthouse News Service

[5] Alternatively, the instruction in suggested Proposed Rule 8.85(b)(2) could be provided as part of an Advisory Committee note to Proposed Rule 8.85.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 8/6/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Prehearing Conferences (amend Cal. Rules of Court, rule 8.248)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: Item 7 - Case management conferences: Consider whether to recommend amendments to rule 8.248 that would permit a justice who participated in a case management conference in an appeal to participate in the determination of that appeal.

If requesting July 1 or out of cycle, explain:

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

In 2014, RUPRO approved including consideration of this item on the committee's annual agenda as a priority 1 project with a January 1, 2015 completion date. In April 2014, the committee sought approval to circulate this proposal for public comment. RUPRO did not approve circulation, but instead referred the proposal back to the committee to consider whether it should include a procedure whereby litigants could waive the disqualification of a justice who had participated in settlement discussions concerning the case.

Committee staff sought input from the proponent of the proposal on the issue of the potential waiver of a justice's disqualification where the justice had been involved in settlement discussions. The proponent indicated that he did not consider it problematic that the rule prohibits justices who participated in settlement discussions from subsequently being involved in determination of the appeal and that he had not been seeking a change in this aspect of the rule. His interest was only in eliminating the disqualification where the pre-hearing conference was in the nature of a case management conference. He also noted that several districts have specifically structured their settlement programs so that justices involved in settlement discussions will not be on the panel deciding the case. Based on this input, and the fact that, unlike in the trial court, there is not an existing procedure for parties to waive grounds for disqualification of a justice, the committee requested RUPRO's approval to circulate this proposal without adding a provision relating to waiver of disqualification. In April 2015, RUPRO approved the circulation of the proposal. All four commentators agreed with the proposal as circulated. The advisory committee therefore recommends that the Judicial Council amend rule 8.248 as proposed, effective January 1, 2016.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Prehearing Conferences

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.248

Effective Date
January 1, 2016

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends that rule 8.248, which governs prehearing conferences in the Court of Appeal, be amended to limit the circumstances under which a justice who participates in such a conference is barred from subsequently participating in or influencing the determination of the appeal to when settlement of the case was addressed at the conference. This proposal, which is based on a suggestion from the presiding justice of a Court of Appeal, is intended to facilitate the use of prehearing conferences in appellate proceedings for case management, which can save the parties and the appellate courts time and resources.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend California Rules of Court, rule 8.248, to limit the circumstances under which a justice who participates in a prehearing conference is barred from subsequently participating in or influencing the determination of the appeal to when the settlement of the case was addressed at the conference. The text of the amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 8.248, which authorizes prehearing conferences in the Court of Appeal, effective July 1, 1977. The purpose of the rule, as discussed in the October 1976 report to the Judicial Council recommending adoption of the rule, was to provide for settlement conferences in appeals. As adopted, this rule included a provision prohibiting a justice from participating in the determination of an appeal when he or she had participated in a prehearing conference related to that appeal. The Judicial Council has renumbered and amended this rule, but this provision has remained substantively unchanged since 1977.

Rationale for Recommendation

California Rules of Court, rule 8.248, currently allows the presiding justice of a Court of Appeal to order the parties/counsel on appeal to attend a conference to consider narrowing the issues on appeal, settlement, and other relevant matters. Subdivision (c) of this rule currently provides that "[n]either the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal." This statement effectively forbids any justice who participates in such a conference to be on the panel that decides the matter.

Holding a prehearing conference for case management purposes can be helpful, particularly in large, complex appeals. A prehearing conference can provide an opportunity to discuss such procedural matters as consolidating or severing cases or issues, coordinating briefing schedules, and augmenting the record. This discussion can save the parties and the appellate courts time and resources. However, the current prohibition on subsequent participation in the determination of the appeal appears to discourage the use of these conferences for these case management purposes.

This proposal would make two changes to rule 8.248 intended to facilitate the use of prehearing conferences in appellate proceedings for case management. First, to clarify the potential use of these conferences for case management, it would replace the reference to using prehearing conferences "to consider a narrowing of the issues" with a broader reference to using such conferences "to consider case management issues." Second, it would limit the prohibition on subsequent participation in the determination of the appeal to situations in which settlement was addressed at the prehearing conference. The committee notes that the California Code of Judicial Ethics canon 3B(12) cautions judges to keep in mind the effect that the judge's participation in dispute resolution efforts, such as settlement conferences, may have on the judge's impartiality or the appearance of impartiality. At least two appellate districts have also adopted local settlement conference procedures that are designed to ensure that a justice who facilitates settlement discussions is not involved in any subsequent adjudication of a case.[1] In light of the

[1] The First Appellate District's local rule 3(c)(1) relating to settlement conferences provides that "[a] justice selected by the court from outside the division to which the appeal is assigned shall preside over the settlement conference." The Fourth Appellate District's local rule 4(g)(1) provides that "[a] justice or assigned justice who participates in a settlement conference that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits."

caution in the Code of Judicial Ethics and these existing local procedures, the committee is not proposing a change in the current prohibition on a justice participating in or influencing the determination of the appeal if the justice participated in prehearing conference at which settlement was addressed.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.248 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Four individuals or organizations submitted comments on this proposal. All four commentators agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at page 5. Based on these comments, the committee recommends adopting this proposal as circulated.

Alternatives

The committee considered proposing amendments that would have permitted parties to waive the prohibition on a justice who participated in a prehearing conference involving settlement discussions from subsequent participation in the determination of an appeal. Ultimately, both because of the caution in the Code of Judicial Ethics discussed above and because, unlike in the trial court, waivers of potential disqualifications are not typically used in the appellate courts, the committee decided not to pursue such amendments.

The committee also considered not proposing these rule amendments at all. However, the committee concluded that narrowing the current prohibition could facilitate the use of prehearing conferences on appeal for case management purposes, which may reduce costs for litigants and the courts. 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 will not impose any implementation requirements on the courts because holding these conferences is optional. This amendment should facilitate the use of prehearing conferences on appeal for case management, which may reduce costs for litigants and the courts.

Attachments and Links

1. California Rules of Court, rule 8.248, at page 4
2. Chart of comments, at page 5

Rule 8.248 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 8.248. Prehearing conference

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

(1) Order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and

(2) Order all necessary persons to attend a conference to consider ~~a narrowing of the~~ case management issues, settlement, and other relevant matters.

(b) Agreement

* * *

(c) Proceedings after conference

(1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.

(2) If settlement is addressed at the conference, other than an inquiry solely about the parties' interest in settlement, neither the presiding officer nor any court personnel present Eat ~~a~~ the conference may participate in or influence the determination of the appeal.

(d) Time to file brief

* * *

Item number: 21

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/8/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Appendixes (amend Cal. Rules of Court, rule 8.124)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: Item 11 - Appendixes: Consider whether to recommend amendments to rule 8.124 to eliminate the preference for preparation of a joint appendix

If requesting July 1 or out of cycle, explain:

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

In 2013, RUPRO approved include consideration this proposal on the committee's annual agenda as a priority 2 project with a January 1, 2015 completion date. In 2014, this project was again approved by RUPRO for inclusion on the committee's annual agenda, as was consideration of another potential amendment to rule 8.124 – adding criteria for courts to consider in ruling on a motion to overturn a defendant's election to proceed by appendix. The committee therefore developed proposal that combined amendments to rule 8.124 designed to implement both of these suggestions and sought approval to circulate this proposal for public comment. In April 2014, RUPRO declined to approve the circulation of this proposal.

Committee members and staff subsequently sought input from various bar organizations about the frequency with which practitioners encountered difficulties with both the preference for joint appendixes and seeking to overturn a respondent's election to proceed by appendix. The input collected suggested that many practitioners believed that the preference for joint appendixes is unnecessary and creates difficulties. While many practitioners expressed views about the wisdom of allowing respondents to elect to proceed by appendix, few reported actually opposing such an election. Based on this, the committee decided to again purse the suggestion to eliminate the preference for a joint appendix, but not to further pursue the other suggested change to rule 8.124. The annual agenda with this project included, was approved by RUPRO in December 2014. RUPRO approved the circulation of the proposal in April 2015. Based on the comments, the committee recommends that the proposal be adopted as circulated.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Appendixes

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.124

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee proposes to amend the rule governing the use of appendixes in lieu of clerk's transcripts in unlimited civil appeals to eliminate the provision encouraging parties to prepare a joint appendix. This change is intended to reduce difficulties, and thus costs, for litigants associated with the efforts to reach a stipulation to use a joint appendix in cases in which litigants do not think this option is feasible.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 8.124 of the California Rules of Court to eliminate the provision encouraging parties to prepare a joint appendix. The text of the amended rule is attached at page 5.

Previous Council Action

The Judicial Council adopted rule 8.124, which authorizes the use of an appendix in lieu of clerk's transcripts in civil appeals in the Court of Appeal, effective July 1, 1981. As adopted, this rule included a provision stating that "[c]ounsel have a duty to confer and attempt to reach an

agreement concerning a possible joint appendix." In explanation of this provision, the report to the Judicial Council recommending adoption of the appendix procedure stated that "[a] joint appendix would be more convenient for the court and counsel. While agreement on its contents cannot be mandated, it would seem desirable to require a minimum effort to try to agree." The council amended the language of this provision in 2001 as part of the overall rewrite of the appellate rules. Subdivision (a)(3) of this rule now provides that "[t]he parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix."

Rationale for Recommendation

Under rule 8.124, appellants and respondents may prepare either individual appendixes, which are filed with their respective briefs, or a joint appendix, which must be filed with the appellant's opening brief. Currently, subdivision (a)(3) of this rule provides that the parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix. Attorneys have reported that the provision encouraging stipulation to the use of a joint appendix is not necessary and sometimes causes problems for and disputes among litigants.

The view that that this provision is unnecessary stems from the fact that both a joint appendix and an appellant's appendix are actually required to contain the same items. Under rule 8.124(b)(1), both types of appendixes must contain (1) all the items required to be included in a clerk's transcript under rule 8.122 and (2) any other item that could be included in a clerk's transcript that is necessary for proper consideration of the issues on appeal, including "any item that the appellant should reasonably assume the respondent will rely on." Thus, if the appellant is able to fully anticipate all the items the respondent will need in the appendix, then no respondent's appendix will be needed—all the items necessary for the appeal will be in the appellant's appendix, and it will provide a single, unified record in the same way as would a joint appendix.

The practical problem for litigants is that it is generally not possible to be sure at the time the appellant's or joint appendix must be filed that it actually does include all the items a respondent will need to rely on. As noted above, both an appellant's and a joint appendix must be filed with the appellant's opening brief so the Court of Appeal can access the material from the record cited in that brief. In most cases, however, the respondent cannot be sure that an appendix includes all the items the respondent will need to rely on until after the appellant's brief is filed. The appellant's brief identifies what issues the appellant is raising on appeal which, in turn, allows the respondent to determine what items from the trial court record are relevant in responding to these issues. By allowing the respondent to file a supplemental respondent's appendix with his or her brief, the separate appendix procedure anticipates the possibility that some necessary materials may have been left out when an appendix is filed with the appellant's opening brief. Because the joint appendix procedure does not account for this possibility, respondents are unlikely to want to take the risk of using this procedure and then having to subsequently expend additional time and resources to file a motion to augment the record. As a result, attorneys, Court of Appeal justices, and appellate court staff all report that, despite the encouragement in the current rule, joint appendixes are rarely used. Given this, experienced appellate attorneys have

expressed the view that it is not a good use of their time to try to come to an agreement to use a joint appendix. Based on the provision encouraging the use of joint appendixes, however, some litigants may insist on trying to do this, resulting in disputes between litigants and inefficiencies.

This proposal would delete the provision in current rule 8.124 that encourages parties to file a joint appendix. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule. Thus, this proposed amendment would not prevent litigants from preparing a joint appendix where it is worthwhile to do so. It would, however, eliminate the pressure to spend time on trying to reach a stipulation to use a joint appendix where using this procedure does not make sense.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.124 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Seven individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal and two 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 6–8. Based on these comments, the committee recommends adopting this proposal as circulated.

One of the commentators who did not agree with the proposal, an executive judicial assistant from a Court of Appeal, expressed concern that this rule change could result in an increase in the use of separate appellant's and respondent's appendixes, which could impact the workload of court employees. Under both the current rule and the proposed amendments to this rule, parties are free to choose whether or not to use joint appendixes. As discussed above, it is the committee's understanding that, under the current rule, joint appendixes are rarely used. Based on this, it is the committee's view that the recommended amendment should not appreciably impact the types of records that the parties are preparing and thus should not impact the workload for court employees. For this reason, the committee declined to modify the proposal based on this comment.

The other commentator that did not agree with the proposal saw no harm in encouraging the use of joint appendixes, even if they were infrequently used. It is also the committee's understanding, based on the experiences of committee members and other appellate practitioners, that some attorneys have faced difficulties associated with fruitless efforts to stipulate using a joint appendix. Therefore, the committee's view is that eliminating the language urging litigants to stipulate to joint appendixes should reduce attorney time, and thus litigant costs, without negatively impacting the courts. For this reason, the committee declined to modify the proposal based on this comment.

Alternatives

The committee considered not proposing this rule amendment. However, the committee concluded that eliminating the encouragement to use joint appendixes would reduce costs for

litigants without likely impacting the appellate courts, and thus would improve the administration of justice in appellate proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposed change would not impose any implementation requirements on courts, and no operational impacts on courts are anticipated.

Attachments and Links

1. Cal. Rules of Court, rule 8.124, at page 5
2. Chart of comments, at pages 6–8

Rule 8.124 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 8.124. Appendixes

(a) Notice of election

(1)–(2) * * *

(3) The parties may prepare separate appendixes~~, but are encouraged to~~ or they may stipulate to a joint appendix.

(b)–(g) * * *

SPR15-06
Appellate Procedure Appendixes (Amend Cal. Rules of Court, rule 8.124)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Jason J. Jarvis Levinson Arshonsky & Kurtz, LLP Sherman Oaks	N	I don't understand the reasoning behind eliminating the suggestion to prepare joint appendices. Just because it doesn't happen all the time doesn't mean the suggestion is a bad one. I like it. It encourages appellant and respondent to work together, hopefully gives the court less to read and certainly gives the court less to read in two different places; FRAP 30 basically says the same thing, and I think it is better to have more not less consistency with FRAP. Just my two cents.	Based on the weight of the public comments and the experience of committee members, the committee is recommending adoption of the proposal as circulated. It is the committee's understanding that under the current rule, joint appendixes are rarely used and that some litigants have experienced difficulties and increased costs associated with fruitless efforts to stipulate to using a joint appendix where the parties do not believe this is workable. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule that litigants could chose to use this option where it was workable. However, attorney time, and thus litigant costs, associated with trying to reach a stipulation to use a joint appendix in cases where it is not a workable option would be reduced.
2.	Orange County Bar Association by Ashleigh Aitken, President	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
3.	San Diego Bar Association by Appellate Practice Section Victoria E. Fuller, Chair	A	Our section supports the revision to Rule 8.124, which removes the language encouraging the use of a joint appendix. We concur that the language is not necessary and sometimes can lead to problems and increased fees for litigants.	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.

SPR15-06
Appellate Procedure Appendixes (Amend Cal. Rules of Court, rule 8.124)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	Ben Shatz Manatt, Phelps & Phillips, LLP Los Angeles	A	Strongly agree. The proposal correctly analyzes a very real problem and correctly solves it. Thanks!	The committee notes the commentator's support for the proposal; no response required.
5.	State Bar of California by John Derrick, Chair Committee on Appellate Courts	A	The Committee supports this proposal. We believe the rules should remain neutral as to whether litigants employ a joint appendix or separate appendixes. There are certain circumstances in which a joint appendix is useful, and the proposal leaves that option available for such situations. But in our experience, it is inefficient to use a joint appendix in many, if not most, cases. Therefore, we agree with the Appellate Advisory Committee that rule 8.124(a)(3) should not encourage the use of joint appendices.	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	• Would the proposal provide cost savings? No costs savings to the court, but we support this proposal to clear any confusion between the parties. • What would the implementation requirements be for courts? Minimal training and minimal procedure change. • Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, but it is noted that	The committee notes the commentator's support for the proposal and appreciates the responses to the specific questions on the invitation to comment.

	Commentator	Position	Comment	Committee Response
			self-help resources on the Judicial Council website would ideally also have to be amended accordingly, including but not limited to Chapter 3 of The California Court of Appeal Step by Step, Civil Appellate Practices and Procedures for the Self-Represented in the Fourth Appellate District Division One	
7.	Kristina Zaldana, Executive Judicial Assistant First District Court of Appeal	N	I do not agree with the proposed change to omit the language encouraging the use of joint appendices due to the extra expenses incurred by the court to accommodate the consequences of such a proposal. If granted, court employees would spend more time reviewing the various records submitted by both parties, instead of having the ability to review a consolidated, joint record which enhances overall court efficiency and timeliness. Thank you for your consideration.	Based on the weight of the public comments and the experience of committee members, the committee is recommending adoption of the proposal as circulated. It is the committee's understanding that under the current rule, joint appendixes are rarely used so the recommended amendment should not impact the types of records that the parties are choosing to prepare or that court is currently receiving. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule. The parties would thus remain free to use joint appendixes where that was workable in the particular appeal.

Item number: 22

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 8/6/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Costs on Appeal (amend Cal. Rules of Court, rule 8.278; revise form MC-013)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: Item 13 - Costs on appeal: Consider whether to recommend (1) amendments to rule 8.278 to change the deadline for filing a memorandum of costs from 40 days after the clerk sends notice of issuance of the remittitur to 40 days after issuance of the remittitur; and (2) revisions to the memorandum of costs form (form MC-013), to better reflect costs that are typically claimed.

If requesting July 1 or out of cycle, explain:

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Costs on Appeal

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.278; revise form MC-013

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 13, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule governing costs on appeal to modify when a request for costs must be filed. It also recommends revising the form for specifying these costs so that it is more consistent with the rule and better reflects appellate practice. These changes, which are based on a suggestion received from the State Bar of California's Committee on Appellate Courts, are intended to improve the administration of appellate proceedings by making the time frame for filing a memorandum of costs clearer and by making the form easier for practitioners to complete and for courts to review.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 8.278 of the California Rules of Court to require the memorandum of costs to be filed within 40 days of the date of issuance of the remittitur, rather than within 40 days after the clerk sends notice of issuance of the remittitur.

2. Revise *Memorandum of Costs on Appeal* (form MC-013) to:

   - Specifically include the cost of an appendix among the recoverable costs listed on the form and clarify that recoverable costs for the clerk's transcript or appendix include costs for an original, a copy, or both;

   - Specifically include the cost not only of printing, but of copying briefs among the recoverable costs listed on the form;

   - Eliminate notary fees from among the recoverable costs specifically listed on the form;

   - Merge "expenses of service" and "transmission and filing of record, briefs, and other papers" into a single line on the list of recoverable costs on the form;

   - Delete the proof of service on page 2 of the form and add a notice to the top of the form indicating that Judicial Council forms are available to provide proof of service; and

   - Rename this form as APP-013.

The text of the amended rule and revised form are attached at pages 6–8.

Previous Council Action

The Judicial Council adopted the predecessor to rule 8.278, which addresses costs on appeal, effective September 1, 1928, as part of the original Rules for the Supreme Court and District Courts of Appeal. Effective July 1, 1943, the council adopted a new set of Rules on Appeal which superseded the 1928 rules. The 1943 rule on costs included a list of the specific types of costs that were recoverable. Since 1943, the council has amended this provision on a number of occasions, generally to add or clarify recoverable costs. Most recently, effective January 1, 2013, the council amended this provision to clarify the recoverable costs associated with obtaining a bond on appeal or a substitute for such a bond.

Effective January 1, 1987, the council amended the rule on costs to add a subdivision establishing the procedure for claiming costs, including the time frame within which a memorandum of costs must be filed. As originally enacted, this provision required the memorandum to be filed within 30 days from the filing of the remittitur in the trial court. However, no notice was provided of filing of the remittitur, so it was difficult for attorneys to determine when to file the memorandum of costs. Effective July 1, 1989, the council therefore amended this provision to require that the memorandum be filed within 40 days after the clerk of the reviewing court mails the notice of issuance of the remittitur.

Rationale for Recommendation

Rule 8.278

Rule 8.278 of the California Rules of Court addresses costs on appeal. Subdivision (c)(1) establishes the timeframe within which a memorandum of costs must be filed. Currently, this provision requires that the memorandum be filed within 40 days after the clerk sends notice of issuance of the remittitur. However, because reviewing courts do not use a proof of service when sending the notice of issuance of the remittitur, parties do not have an easy way to determine when this notice was sent. The committee recommends that rule 8.278 be amended to instead require the memorandum of costs to be filed within 40 days of the date of issuance of the remittitur. This date can easily be determined by the parties because it will be reflected in the notice of issuance of the remittitur, on the remittitur document itself, and on the docket, which is available online.

Memorandum of Costs on Appeal (*form MC-013*)

Memorandum of Costs on Appeal (form MC-013) is the mandatory Judicial Council form that must be used in requesting costs on appeal. This form includes a list of recoverable costs with spaces where users can indicate the amount sought to be recovered. Subdivision (d) of rule 8.278 also identifies those costs that may be recovered on appeal. There are, however, some differences between the list of recoverable costs in the rule and the list on the form.

Rule 8.278(d) includes among the recoverable costs the amount the party paid for any portion of the record. The accompanying advisory committee comment clarifies that this provision is intended to encompass the costs for an appendix prepared by a party under rule 8.124 in lieu of a clerk's transcript. Such appendixes are used quite frequently. However, while form MC-013 includes the cost of a clerk's transcript on its list of recoverable costs, it does not specifically include the cost of an appendix on this list. The committee recommends revising form MC-013 to specifically include the cost of an appendix among the recoverable costs listed on the form. Consistent with rule 8.278(d), the revision would also clarify that costs within this category include those for an original, a copy, or both.

Rule 8.278(d) also includes among the recoverable costs the cost to reproduce any brief. Form MC-013 lists the cost of "printing" briefs as a recoverable cost. However, briefs are commonly reproduced now through photocopying rather than printing. This proposal would revise form MC-013 to include the cost of copying briefs among the recoverable costs listed on the form.

Both rule 8.278(d) and form MC-013 currently include notary fees on their lists of recoverable costs. However, these are relatively uncommon costs in appellate proceedings and thus, it does not seem necessary for them to be separately listed on form MC-013. Instead, if these costs occur, they can be identified in the space on form MC-013 for "other" costs. This proposal would revise form MC-013 to eliminate notary fees from among the recoverable costs specifically listed.

Currently, form MC-013 separately lists “Expenses of service” and “Transmission and filing of record, briefs, and other papers” as recoverable costs. In rule 8.278(d), these costs are listed together. It is also the committee’s understanding that these costs are often paid as part of a single transaction, particularly when items are served and filed electronically. To better reflect both the rule and appellate practice, this proposal would merge these two provisions into a single line on form MC-013.

Form MC-013 currently includes, as a second page, an optional proof of service form. The Judicial Council has also adopted several separate proof of service forms, including *Proof of Service - Civil* (form POS-040). Consistent with recent recommendations it has made relating to other forms, to reduce the need to maintain multiple proof of service provisions on separate forms, the committee is proposing that the proof of service on page 2 of MC-013 be deleted and a notice box added to the top of the form indicating that Judicial Council forms may be used to provide proof of service.

Form MC-013 is currently grouped among the miscellaneous Judicial Council forms (hence the MC designation in the form name). Because of this miscellaneous designation, this form may be difficult for some parties to locate. The committee is therefore proposing that this form be grouped among the appellate forms and renamed as APP-013. This would put the form in a more logical sequence with other forms used in appellate proceedings.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.278 and revisions to form MC-013 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Four individuals or organizations submitted comments on this proposal. All four commentators agreed with the proposal. A chart with the full text of the comments received and the committee’s responses is attached at pages 9–10. Based on these comments, the committee recommends adopting this proposal as circulated.

Alternatives

The committee considered not proposing the rule amendments or form revisions. However, the committee concluded that these proposed changes would improve appellate proceedings by making the time frame for filing a memorandum of costs clearer and by making the form better reflect both the rule and practice, which will make the form easier for practitioners to complete and courts to review.

Implementation Requirements, Costs, and Operational Impacts

These proposed changes would not impose any implementation requirements on courts, and no operational impacts on courts are anticipated from these proposed changes.

Attachments and Links

1. Cal. Rules of Court, rule 8.248, at pages 6–7
2. Revised *Memorandum of Costs on Appeal* (form APP-013), at page 8
3. Chart of comments, at pages 9–10

Rule 8.278 of the California Rules of Court is amended, effective January 1, 2016, to read:

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.278. Costs on appeal

(a)–(b) * * *

(c) Procedure for claiming or opposing costs

(1) Within 40 days after ~~the clerk sends notice of~~ issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700.

(2)–(3) * * *

(d) Recoverable costs

(1) A party may recover only the following costs, if reasonable:

(A) Filing fees;

(B) The amount the party paid for any portion of the record, whether an original or a copy or both. The cost to copy parts of a prior record under rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the copying;

(C) The cost to produce additional evidence on appeal;

(D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

(E) The cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply;

(F) The cost to procure a surety bond, including the premium, the cost to obtain a letter of credit as collateral, and the fees and net interest expenses incurred to borrow funds to provide security for the bond or to obtain a letter of credit, unless the trial court determines the bond was unnecessary; and

(G) The fees and net interest expenses incurred to borrow funds to deposit with the superior court in lieu of a bond or undertaking, unless the trial court determines the deposit was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702.

Advisory Committee Comment

This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493 for provisions addressing costs in writ proceedings.

Subdivision (c). * * *

Subdivision (d). Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

"Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* DRAFT Not Approved byt the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
MEMORANDUM OF COSTS ON APPEAL	CASE NUMBER:

NOTE: You must file a proof of service of this document. For this purpose, Judicial Council proof of service forms are available. (See *www.courts.ca.gov/forms.htm?filter=POS*.) An appropriate form may be completed and filed to show proof of service.

Prevailing party *(name):*

claims from *(name):*

the following costs on appeal:

	TOTALS
1. Filing fees	1. $
2. Preparation of the original and copies of clerk's transcript or appendix	2. $
3. Preparation of reporter's transcript	3. $
4. Printing and copying of briefs	4. $
5. Production of additional evidence	5. $
6. Transmitting, filing, and serving of record, briefs, and other papers	6. $
7. Premium on any surety bond on appeal	7. $
8. Other expenses reasonably necessary to secure surety bond	8. $
9. Other: *(specify authority):*	9. $
TOTAL COSTS:	$ _____

I am ☐ the party ☐ counsel for the party ☐ agent for the party who claims the costs listed above.
To the best of my knowledge, the items of cost are correct and were necessarily incurred in this case on appeal.

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)

Form Adopted for Mandatory Use
Judicial Council of California
APP-013 [Rev. January 1, 2016]

MEMORANDUM OF COSTS ON APPEAL

Code of Civil Procedure, § 1034(b);
Cal. Rules of Court, rule 8.272
www.courts.ca.gov

SPR15-07
Appellate Procedure: Costs on Appeal (amend rule 8.278, and revise form MC-013)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	*Suggested* Committee Response
1.	Orange County Bar Association By Ashleigh Aitken, President	A	The proposal appropriately addresses the stated purpose. There is no need to separate costs of filing from costs of service.	The committee notes the commentator's support for the proposal and appreciates the response to the specific question in the invitation to comment.
2.	San Diego Bar Association Appellate Practice Session By Victoria E. Fuller, Chair	A	Our section supports the revision to Rule 8.278, to clarify that a memorandum of costs on appeal must be filed within 40 days of the date of issuance of the remittitur.	The committee notes the commentator's support for the proposal; no response required.
3.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	A	The Committee supports this proposal, which is based on the Committee's suggestion. The Committee appreciates the Appellate Advisory Committee's pursuit of this proposal.	The committee notes the commentator's support for the proposal; no response required
4.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. Specifically, the proposed changes to the Memorandum of Costs form provide clarification. • Should the cost of service continue to be identified separately on the memorandum of costs to facilitate identifying and determining the reasonableness of this cost? Yes - judicial officers and court staff are familiar with the memorandum of costs form and the process. *[Note – in a subsequent communication, the commentator clarified that the court*	The committee notes the commentator's support for the proposal and appreciates the responses to the specific questions in the invitation to comment

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

SPR15-07
Appellate Procedure: Costs on Appeal (amend rule 8.278, and revise form MC-013)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	*Suggested* Committee Response
			approves of modifying the form so that the cost of service is no longer separately identified on the form] • Would the proposal provide cost savings? No change in costs. • What are the implementation requirements for courts? None. • Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

Item number: 23

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798 (Amend Cal. Rules of Court, rule 8.930 and 8.950; adopt rules 8.970–8.977; revise forms APP-150-INFO and APP-151, and adopt forms SC-300 and 300 INFO)

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee
Hon. Patricial Lucas, Chair

Staff contact (name, phone and e-mail): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 2014
Project description from annual agenda: Writs on Small Claims Matters: Develop procedural rules for writ proceedings relating to actions by small claims division other than post-judgment enforcement orders.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.930 and 8.950; adopt rules 8.970–8.977; revise forms APP-150-INFO and APP-151; approve forms SC-300 and SC-300-INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
September 1, 2015

Contact
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heather.anderson@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend new rules and forms to comply with a statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings. The recommendation also provides clarifying amendments to current rules and forms that apply to writ proceedings in the appellate division, generally to the extent that those apply to small claims proceedings relating to postjudgment enforcement actions.

Recommendation

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) together recommend that the Judicial Council amend or adopt a set of proposed changes to the California Rules of Court designed to fulfill the statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings, and revise or approve forms to help litigants participating in these proceedings. This recommendation has three main parts:

1. Adopt a new set of rules for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders (Cal. Rules of Court, rules 8.970–8.977).

2. Approve two new forms for these writ proceedings:
   - A form for the petition—*Petition for Writ (Small Claims)* (form SC-300); and
   - An information sheet explaining these writ proceedings—*Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

3. Adopt changes to the existing rules and forms relating to writ proceedings in the superior court appellate division to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings (Cal. Rules of Court, rules 8.930 and 8.950; *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); and *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151)).

The text of the new and amended rules is attached at pages 17–24. The new and revised forms are attached at pages 25–62.

Previous Council Action

The council has not previously taken action relating to procedures for extraordinary writs in small claims actions.

Rationale for Recommendation

Background

Legislation was enacted in 2013 to clarify the proper jurisdiction for writs in small claims actions given trial court unification (Code Civ. Proc., § 116.798). This legislation makes the jurisdiction dependant on the stage of the small claims case at which the act being challenged took place (1) in any small claims court action other than a postjudgment enforcement proceeding, (2) in a postjudgment enforcement proceeding, or (3) in a small claims appeal (which is essentially a trial de novo). This new statute provides that writs proceedings in the first set of matters—those challenging an action of the small claims court other than a postjudgment enforcement action—must be heard by a single judge who is assigned to the superior court appellate division. The

statute also requires the Judicial Council to promulgate new rules for writ proceedings relating to these rulings.

The new statute was recommended by the California Law Revision Commission (CLRC), as part of its work in recommending statutory amendments to address provisions of the law that were obsolete as a result of trial court unification. As part of this work, the CLRC, with input from the CSCAC, developed recommended legislation to clarify small claims writ jurisdiction after unification, which was eventually enacted as Code of Civil Procedure section 116.798.[1]

The CLRC comments that accompanied its recommendation noted that the new law is solely to clarify which court has jurisdiction of a writ petition, not to in any way change the circumstances under which a party may seek a writ or a court grant one.[2] Relief through writs—particularly the common law writs of review, mandate, and prohibition encompassed by the new statute—is deemed extraordinary and is at the discretion of the reviewing court, not available as a matter of course. The finality of small claims judgments makes courts reluctant to consider writs as an alternative means of review, but does not preclude such writs. See *Bricker v. Superior Court*, (2005) 133 Cal.App.4th 634.

Proposed new rules

In developing the new rules and forms for writ proceedings in initial small claims actions, the advisory committees looked to the current rules applicable to writ proceedings in limited civil cases (Cal. Rules of Court, rules 8.930 et seq.) and used those as a model for the new rules. The new rules regarding small claims writ proceedings would be added to the division of the rules for the superior court appellate division that currently contains the rules regarding trial of small claims cases on appeal. The primary provisions of the proposed new rules are summarized below.

- **Rule 8.970. Application.** This rule describes which proceedings are governed by the rules, and which are not.

- **Rule 8.971. Definitions.** This rule provides definitions of the terms writ, petition, petitioner, respondent small claims court, and real party in interest. This parallels a rule setting out definitions in the rules regarding small claims appeals.

- **Rule 8.972. Petitions filed by persons not represented by an attorney.** This rule states the rules for petitions filed by self-represented parties, mandating at the start that the parties use a specific Judicial Council petition form unless a court finds good cause. The petitioner is to attach the court ruling objected to and any documents submitted to the small claims court that

[1] All further statutory references are to the Code of Civil Procedure unless otherwise noted.

[2] See California Law Revision Commission's *Recommendations on Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (Aug. 2011) (CLRC 2011 Report) at p. 340. The report may be found at: *http://www.clrc.ca.gov/J1452.html*.

support or oppose the petitioner's position, or are otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter's transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.[3]

The service requirements provided here are similar to those for other writ proceedings in the appellate division, except for the addition of a requirement that the petitioner serve a copy of the form information sheet along with the petition and supporting documents (Cal. Rules of Court, rule 8.972(d)).

- **Rule 8.973. Petitions filed by an attorney for a party.** This rule addresses petitions filed by attorneys. The advisory committees, recognizing the complexity of extraordinary writ proceedings, followed the example in the rules on writs to the appellate division generally (cf. Cal. Rules of Court, rule 8.932) and acknowledge that attorneys will be involved for at least some writ petitions.[4] Although the petition form must be used by self-represented parties, this rule permits counsel to file individualized pleadings should they choose to do so, so long as all the information required in the form petition is included.

- **Rule 8.974(a). Preliminary opposition.** Because parties are permitted by statute to file a preliminary opposition to a petition for writ (see § 1107), this rule provides a procedure for doing so, including a 10-day deadline for filing the opposition, parallel to the rules for appellate division writs generally. In an effort to simplify the procedures, this new rule includes a provision stating that the preliminary opposition is not required unless requested by the court. There is no provision in this rule for a reply brief, which is intended to keep the procedure as simple as possible.

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[3] The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition (see proposed *Petition for Writ (Small Claims)* (form SC-300) at items 10.a(4), 10.b(4), and 10.c(4)). The committees had some concerns over whether this item should be required by rule, possibly setting up a trap for unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

[4] Section 116.530(a) states that "Except as permitted by this section, no attorneys may take part *in the conduct or defense of a small claims action*." A writ proceeding is not itself a small claims action, but a new proceeding filed in the appellate division. A writ petition is similar to a complaint starting a new civil proceeding, formally against the lower court, which will be decided outside the small claims division. Hence the ban on attorneys in section 116.530(a) does not apply in writ proceedings challenging small claims actions, and some petitioners may well be represented by counsel.

- **Rule 8.974(b). Return or opposition; reply.** This subpart sets out the procedure for filing a return if the court issues an alternative writ or order to show cause, or an opposition if the court provides notice that it is considering a peremptory writ without issuing anything further. The respondent has 30 days to respond if no other date is ordered by the court, and the petitioner then has 15 days to reply. This rule is almost identical to the corresponding rule for appellate division writs generally (cf. Cal. Rules of Court, rule 8.933(b)), with the exception that "return" is defined within the rule as a response. The committees concluded that since the provisions essentially echo the statute (see § 1089) there was no way to make it simpler for small claims parties**.**

- **Rule 8.976. Filing, finality, and modification of decisions; remittitur.** These provisions parallel the similar rule for appellate division writs but have been modified to reflect that the small claims writs will not be issued by the appellate division, but by a single judge in that division. They also differ in that there are no provisions or cross-references in this new rule regarding rehearings or requests to transfer a proceeding to the Court of Appeal. The committees decided that these were unnecessary for small claims cases, as the extraordinary writ proceeding is already providing a chance for a review not generally permitted in small claims, where speedy finality is the norm and a goal of the small claims procedures.

Proposed new forms

Two new forms are being proposed for small claims writ proceedings: *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO). These forms parallel the petition and information sheet forms developed by the Appellate Advisory Committee (AAC) several years ago for writs in the appellate division generally.

***Petition for Writ (Small Claims)* (form SC-300)**

This form is based on current form APP-151, the petition for use for writs in limited civil cases, misdemeanors, and infractions. Like that form, it is geared to self-represented litigants and is essentially in the style of plain-language forms. It begins with a list of general instructions about when the form is applicable, when[5] and where it should be filed, and how it should be served.[6] The party is instructed to read the information sheet before completing the petition.

[5] This form and the information sheet both note that while there is not a hard deadline for common law writs, the parties should file within 30 days. This is based on the recommended timeline the council approved being included on the general appellate division writ forms.

[6] Parties are referred to the appellate forms for information about service, form APP-109 and form APP-109-INFO. These are set up for self-represented litigants, so they seem reasonable for use in small claims cases going to be heard in the appellate division. There are somewhat similar small claims forms for proof of service (forms SC-104 and SC-104B), but they are set up for service of process, and for the service of the claims form and cross-claims form, so they are not as directly applicable.

The first several items request information about the parties and about the court action being challenged. (See items 1–7.) The next items ask whether any other writ petition or an appeal has been filed. (See items 8–9.)

The most important item is item 10, which seeks the reasons for the petition. This item, like the others, parallels a similar item in form APP-151. It is divided into four subparts, based on the type of action challenged and writ sought, described in simple language, and each of those subparts is divided into four further subparts.

- The party is first asked to describe what it believes the law requires the court to do that it did not do, or what the court did or said that the party is challenging. (See items 10a(1), 10b(1), and 10c(1).)

- Then the form asks the party to identify the legal basis for the claim. (See items 10a(2), 10b(2), and 10c(2).)

- Third (and this is where it differs from the APP-151 form), it asks the parties to identify any supporting documents that show the objected to action of the court, and to describe what the small claims court did that is being challenged. (See items 10a(3), 10b(3), and 10c(1) and (3).)

- Finally, because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, the party is asked to write a summary of what was said at the court, by the parties and the judge, that is relevant to the request for a writ.[7] This item implements the provisions in rule 8.972(a)(1), which requires a summary of the proceedings in certain circumstances. (See footnote 3 above.)

Information on Writ Proceedings in Small Claims Cases **(form SC-300-INFO)**
This proposed form is based on *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); however, there have been changes made to the content of the form to reflect its application to writ proceedings in small claims cases. The committees considered how the limitations on review available in small claims cases should be reflected in information provided to the parties,[8] as well as making changes to reflect proposed

[7] In the petition used for writs to the appellate division generally, the last subpart in this item asks the parties to identify sections in the transcript or record of the oral proceeding. The supporting documents for those petitions are required to include a reporter's transcript of the oral proceedings or record of some kind. (See rules 8.486(b)(1)(D) and 8.931(b)(1)(D).) Because no record exists in small claims proceedings, on form SC-300 this item is used for the parties to provide a fair summary of the proceedings if needed.

[8] Under the small claims statutory scheme, a plaintiff does not have the right to appeal the small claims court judgment (§ 116.710). In selecting to proceed in small claims court, the plaintiff essentially trades off the right to an appeal for a quicker, less expensive dispute resolution process. Within the writ context, this means that the usual alternative of an appeal as an adequate remedy is not available. This does not mean, however, that courts readily grant writ petitions in these cases. The Courts of Appeal have historically been reluctant to review rulings in small

rules 8.970 et seq. and proposed new form SC-300. The differences in the proposed small claims information form are summarized below:

- Item 1 reflects the limitations on appellate review of small claims judgments and the different jurisdiction and procedures applicable to writs challenging postjudgment actions and actions related to a trial de novo;

- Items 4, 6, and 12 also reflect the limitations on appellate review of small claims judgments, the goal of small claims court in terms of providing a quicker, lower cost resolution, and how that relates to whether a court is likely to grant a petition for a writ;

- Item 7 reflects the provisions of section 116.798 with respect to jurisdiction over writ proceedings relating to small claims cases;

- Item 13 reflects proposed rule 8.972 in that there is no reference to providing a reporter's transcript of the oral proceedings;

- References to trial court were changed to refer to small claims court and references to small claims advisors have been added; and

- References to action by the appellate division have been changed to refer to action by the appellate division judge.

Changes to current rules and forms

Minor changes to the current rules and forms for writ proceedings in the appellate division are also being proposed to reflect the clarification provided in section 116.798 as to where writs challenging small claims actions are to be heard.

- Rule 8.930 would be amended to clarify that writs relating to postjudgment enforcement orders by the small claims division are governed by the rules pertaining to writ proceedings in the appellate division generally. A provision would also be added to clarify that other acts by the small claims division are not governed by those rules, and an advisory committee comment added as to what rules govern such proceedings.

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claims matters because doing so would undermine the goal of providing a speedy and inexpensive resolution of cases falling within the jurisdiction of small claims court. (Code Civ. Proc., § 116.510.) But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is "statewide importance of the general issues presented" (*Green v. Superior Court* (1974) 10 Cal.3d 616, 621 [111 Cal.Rptr. 704, 517 P.2d 1168]) and "in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them" (*Davis v. Superior Court* (1980) 102 Cal.App.3d 164, 168 [162 Cal.Rptr.2d 167]). The committees tried to reflect this case law in the description of writ proceedings in the proposed information sheet for writ actions in small claims cases.

- *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) would be revised to note that the procedures described in the information sheet DO apply to writs challenging acts by the small claims division relating to postjudgment enforcement orders, but DO NOT apply to other acts by the small claims division or acts relating to small claims appeals in the superior court. (See new material in items 1 and 7).[9]

- The instructions on the *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151) would be revised to refer to those small claims writ proceedings covered by the petition, and a full paragraph about small claims writ proceedings would be added at the end. In addition, the current first paragraph would be divided in two, with a separate bullet point now including a stronger instruction not to use the form for appeals and other writs.

Comments, Alternatives Considered, and Policy Implications

Comments received

The proposed rules and forms were circulated for public comment in spring 2015. Six commentators responded, a few with detailed comments. The commentators are the California Judges Association (CJA), which supported the proposal as circulated, retired Commissioner Douglas G. Carnahan, the Orange County Bar Association, the Litigations Section of the State Bar, and the Superior Courts of Los Angeles and San Diego Counties, all of whom agreed with the proposal generally but sought some modification. The more significant modifications requested and the working group's actions on each are summarized here. The text of all the comments, and the committees' responses to them, may be viewed in the comment chart attached at pages 63–84.

Comments on rule 8.972—petitions for persons not represented by an attorney

Written Summary of Proceedings—Rule 8.972(a)(2)

This rule states the rules for petitions filed by self-represented parties, mandating at the start that they use a specific Judicial Council petition form unless a court finds good cause otherwise. The petitioner is to attach the ruling objected to, along with any document submitted to the small claims court that supports or opposes the petitioner's position or is otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter's transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings,

[9] The form would also be revised to correct an error in item 14, changing the statement that petitions for writ should be filed within 60 days after the court makes the ruling that is being challenged, to within 30 days, as noted in the instructions to the petition on form APP-151.

including the parties' arguments and any statement by the small claims court supporting its ruling.

The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition. The committees had some concerns over whether this item should be required, because it placed a burden that might have to be met by some petitioners for a writ even to be considered. Some committee members were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

Four comments were received on this point. The CJA and Commissioner Carnahan (now retired but with extensive small claims experience) both opined that the rule should be left as proposed, because a written summary of the relevant statements below would be helpful to the reviewing court, and because the inclusion of an item for the summary in the petition form would provide a trigger for the party to provide it when appropriate. The State Bar Litigation Section suggested that the requirement for a written summary of what was said below should be made mandatory in *all* cases, leaving it up to the appellate division to determine if relevant rather than to the self-represented litigant. The Superior Court of San Diego County, on the other hand, proposed making the summary optional in all cases, both to avoid any trap for the unwary and to possibly lessen any expectation that the court must credit the party's summary.

The advisory committees concluded that the rule as proposed—requiring a summary of the statements below if such statements are pertinent to the issues on the petition for writ—is the most effective way of providing needed information to the appellate division judge without overburdening parties. The groups also concluded that including an item for the summary of what was said in the form petition (see form SC-300 at item 10(a)(3), 10(b)(3), and 10(c)(3)) provides a reminder for the parties to provide the summary, and so eliminates, or at least minimizes, any potential trap for the unwary. The groups also reworked the language about this summary on the information sheet, providing an express pointer to the item on the form in which it can be provided. See form SC-300-INFO at item 12.b, at the last two bullet points.

On a related point, the Orange County Bar Association did not respond to the question directly, but raised a different concern: how the appellate division will evaluate the "record" that consists of the parties' (sometimes) competing versions of what was said in the small claims court proceeding. The commenter notes that the proposal does not address the issue, which it considered unfair to the appellate division. The advisory committees decided against providing anything further on this point. The groups concluded that, with nothing in the rule, the appellate division judge will evaluate the verified petition, including the summary, just as it would evaluate any other verified statements.

Sanction for inadequate proof of service—rule 8.972(d)(3)

Commissioner Carnahan had two issues with this section, particularly with subpart (3) which requires a clerk to file the petition if the proof of service is defective, but also provides that if the

parties fails to provide a corrected proof within five days after the clerk gives notice of the defect, the court may strike the petition or impose a lesser sanction.

First, he suggested that some reference should be included in the rules (to apply here and elsewhere) that when time frames are provided, it should be expressly stated that the extensions of time set out in Code of Civil Procedure, sections 1005 and 1013 apply. Commissioner Carnahan stated that this needed to be made clear because such provisions expressly do not apply in small claims actions. The committees disagreed with this proposal, noting that these provisions would not apply under the proposed rules in any event. Section 1005 addresses time frames for filings relating to notice of certain specified motions and other types of proceedings, but there are no such proceedings in the proposed rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that, it will be the court. Section 1013 provides an extension of time for action or duty following service by mail or other method. However, in the proposed rules, none of the time frames run from "service" of any documents but rather from provision of notice by the clerk, which could be in person or by phone as well as by serving a document of some kind (see , e.g., rule 8.972(c)(2) and (d)(3)), or from the time a paper is filed (see, e.g., rule 8.974(a)(2) and (b)(3)). These time frames track what the AAC developed in the rules for writs in limited civil cases and misdemeanors, which intentionally did not use service as a trigger for any time frames.

Second, the commenter questions the use of the phrase "impose a lesser sanction" as being ambiguous to court and parties. Would such sanctions include monetary sanctions, for example? The committees agreed with this comment and amended the proposed rule to provide that if a party fails to file a corrected proof of service within five days after notice of the defect, the court may strike the petition or allow additional time to file a corrected proof of service.

Need for verification

The Superior Court of Los Angeles County raised concerns regarding the required verification of the petition for writ, first as to what form it is to be in and second as to what to do if not included—asking whether the filing should be rejected on that ground. The committees decided no modification of the rule was required as to the format of the verification: it should be in the format required in the new Judicial Council petition for writ form or, if that form is not used, in any format that complies with statute. As to the fate of a nonverified petition, the committees concluded that it should not be rejected by the clerk on that ground, and added a new provision to the rule to that effect, while also providing that if the party fails to file a verification within five days after notice of the defect, the court may strike the petition. See rule 8.972(a)(3), and see also(c)(2) (failure to provided attachments in correct form), and (d)(3) (failure to provide proof of service).

Comments on rule 8.974—preliminary opposition

The State Bar's Litigation Section commented that rule 8.974(a) regarding what is to be in a preliminary opposition should be expanded, to more closely parallel what is in the rules relating to preliminary oppositions on petitions for writs in civil limited cases. The proposed

modifications would also change "must' to "should" to avoid suggesting that arguments not stated in the preliminary opposition are not forfeited. The advisory committees agreed with this comment and modified the language of the rule to reflect that. See rule 8.974(a)(3).

Comment on rule 8.975(b)—notice to court by telephone

This rule requires the appellate division clerk to notify the clerk in the small claims court by telephone if the writ or order stays proceedings set to occur within seven days or requires action within seven days. Commissioner Carnahan proposed that there be a further requirement that the small claims court clerk make a written record of having received such a call, in the small claims file for the case. The advisory committees concluded that, while this may be a best practice, to include the provision as a rule of court would be micromanaging court operations to an extent that is not necessary.

Comment on *Petition for Writ (Small Claims)* (form SC-300)

The State Bar's Litigation Section raised the point raised that the verification on the proposed petition form, as circulated, was inappropriate because it covered *all* attachments, which could include copies of evidence submitted by either party and court orders. The goal of the committees is to ensure that the verification covers the information provided in attachments that contain responses to the questions in the petition; those responses that are too long to fit in the form and so are completed on attached sheets. The committees modified the verification language on the form so that it covered only such responsive information. See form SC-300 at page 7 of 7.

Comments on *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO)

Item 6. "Can a writ be used to address any errors made by a small claims court?"

Commissioner Carnahan expressed concerns that the language in the first set of bullet points in this item, describing when a writ might be granted, was not sufficiently restrictive and would be used by plaintiffs in particular to make an "end run" around the rules prohibiting appeals in small claims actions. He commented that he feared that the attempt to "formalize what the law was (anyway) before CCP 116.798" will open cans of worms that will change the nature of the small claims courts and the "no appeal" rules. He proposed that the language describing when writs might be appropriate be strengthened,[10] and to tell the parties that the judge considering the writ petition must become convinced that "the error is so dramatic and unjust that it cannot be allowed to stand."

The advisory committees understand the commissioner's concerns but concluded that the inclusion of the proposed language could be viewed as an attempt to set legal standards that do not currently exist, and so is not an appropriate action for the Judicial Council. The committees

[10] He suggested, for example, that the form should provide that writs could only address "gross and unusual legal errors" where a court had a "clear" duty to act but "clearly and manifestly unjustly" refused to do so.

did, however, modify the item in light of the comments. As circulated, the item sets forth the bases for seeking a writ before stating the reasons why a writ will generally not be granted in small claims actions. As modified, this order is reversed, placing the section titled "Writs are not generally granted" first, followed by the section titled "Writs can only address certain legal errors."

Item 18. "What happens after I file my petition?"

The State Bar's Litigation Section suggested that it would be helpful to inform the parties in this item that the small claims court must provide parties with notice and an opportunity to be heard before that court changes its order in response to an alternative writ from the appellate division, citing to *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, at page 1250 and footnote 10.[11] While this comment may be based on a correct statement of the law—that the court cannot change its order in response to an alternative writ without first providing notice and opportunity to be heard—the advisory committees concluded that it would not be helpful to the parties to add the proposed language to the information sheet. [12] It is not directly relevant to what a *party* (rather than the small claims court) needs to do, and might only serve to make an already confusing process even more confusing for self-represented parties.

Items 18(d) and 19. Peremptory writs in the first instance

The State Bar's Litigation Section also commented on the information provided regarding peremptory writs in the first instance. It noted that, as circulated, item 18(d) states that an appellate division judge will not issue a peremptory writ in the first instance "without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition," even though, the commenter noted, the appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition expressly sought such relief. Seeking such relief in the petition is considered sufficient notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180), although "an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected." (*Ibid*.) The commenter proposed that the language in the form should be modified to avoid any suggestion to the contrary.

The committees agreed with the commenter on this point. While there is no specific place in the petition form to include a request for a peremptory writ in the first instance, such relief could be

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[11] The commenter proposed the committees modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows:

> "If the appellate division issues an alternative writ and the small claims court, after notifying the parties that it is considering changing its order and providing an opportunity to be heard, does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition."

[12] At least one member of the committees does not believe that this is a correct statement of the law in all instances, and so opposed adding the statement on that ground also.

requested in the "other" section, in item 12(d) on form SC-300. Because of this possibility, or the possibility that an attorney may seek such relief on behalf of a client in an individually drafted petition, the proposed information sheet was modified to reflect this possibility. The lists at the beginning of items 18 and 19 have been expanded to reflect that a peremptory writ in the first instance could be issued either after the court provides notice of that possibility *or* if such relief were expressly requested in the petition. The language the commenter pointed to in item 18(d) has also been modified, along with similar language in item 19. The latter item was also further modified to include the information that a party may want to consider whether to file a preliminary opposition in such circumstances, along with a description of what would be in such an opposition.

Similar changes are recommended to *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). See items 18 and 20 in that form.

Other Comments

The Superior Court of San Diego County has provided some other comments, not directly tied to items in the rules or forms.

Instructions for vexatious litigant

The commenter suggests that either the information sheet or the petition (in the instructions) should state that a vexatious litigant must obtain a prefiling order before he or she can file a petition for writ. The committees concluded that such information was not needed. Other forms do not include such an instruction (e.g., *Plaintiff's Claim and Order to Go to Small Claims Court* (form SC-100)) and the committees concluded that there was no reason why this form should differ from others in this respect. Parties who are not vexatious litigants do not need the information, and those that are have already received orders telling them what is needed if they wish to file an action.

Informal action by court

The commenter noted that there was no discussion of an informal response as a possible order from the court on a petition for writ, even though such a process was sometimes used to help resolve a writ without having to issue the more formal alternative writ or order to show cause. The commenter suggested that it might be beneficial to include reference to this type of order from the court in the rules or the information sheet.

The committees disagreed. They had considered the issue of providing for less formal procedures for small claims writs at the beginning of their work on this proposal, but concluded that such procedures were not authorized by statute. The group concluded that the statutory provisions for extraordinary writs in Code of Civil Procedure section 1067 et seq. were applicable to all writ proceedings and therefore decided that the new rules should reflect those provisions. Those mandated procedures do not provide for informal action by the parties or the court.

Need for forms
The commenter from the Superior Court of San Diego County raised the point that the forms are problematic because they may result in the increase of petitions filed with the court, including frivolous ones, and they are not expressly required by the statute (only rules are required). The commenter also asserted that the proposal will impact larger courts disproportionately, because of the higher volume of small claims filings, and questioned the need for the adoption of the new forms because they will increase the need for court time and costs without the need for them having been established.[13]

When first working on this proposal, the advisory committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. Almost every member of the two committees, however, concluded that without such forms the petitions that are filed would be more difficult for the court to handle as well as being extremely difficult for parties to prepare properly. The petitions would have to either be individually drafted—which, in light of the complex statutory requirements, would be very difficult for self-represented parties—or somehow shoehorned into the current *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), which would also be difficult because it assumes the lodging of some version of a record of the proceedings; this record does not exist in small claims actions and is not required under the new rules. In light of the requirement that rules be developed in any event, the committees concluded that it would be less burdensome for both courts and the parties to have a specific form for initiating these proceedings.

Alternatives considered

Whether the general statutes relating to writs of mandate, prohibition, and review should apply to these small claims writ proceedings
Code of Civil Procedure sections 1068, 1085, and 1102 et seq. address extraordinary writs generally. The committees considered whether the proposed new rules, which the California Law Review Commission report indicates could be for "relatively quick, inexpensive, and informal" procedures, had to reflect the procedural requirements for writs established by these code sections, or whether they could provide for simpler procedures. Proceedings seeking extraordinary writs under the statutory provisions are complex and somewhat arcane. This will be especially problematic for small claims parties.

The committees concluded, however, that the existing statutory procedures for extraordinary writs were most likely applicable to these small claims writ proceedings. Although the mandate to develop new "procedural rules" was placed within the portion of the Code of Civil Procedure expressly dealing with small claims actions, rather than in the portion dealing with extraordinary writs generally, section 116.798(a) contains a cross-reference to the extraordinary writs section,

[13] Commenter CJA also queried why the development of the new rules was needed, since petitions for writs are so infrequent in small claims cases.

providing that the small claims division is an inferior tribunal for purposes of Title 1 (commencing with section 1067) of Part 3. The committees therefore concluded that the new rules should comply with the statutory procedures for writs set out in that title of the Code of Civil Procedure.

Whether the new rules should apply only to the writ proceedings for which the statute mandated new rules or should also apply to those relating to postjudgment actions

As noted above, Code of Civil Procedure section 116.798 draws a distinction between writs on small claims division actions relating to postjudgment enforcement, and other actions by the small claims divisions (i.e., judgment at initial hearing and any motions relating to that). The statute only directs the Judicial Council to adopt rules for the latter type of proceeding. The committees considered, however, whether it might also be helpful to apply any new rules to writ proceedings relating to small claims postjudgment proceedings so that there would be a single set of procedures applicable to all writ proceedings challenging actions by the small claims court.

CSCAC had previously considered this issue in a related context. At the request of the California Law Revision Commission, it considered whether the new law should provide that writ petitions relating to postjudgment enforcement orders of the small claims division should be considered by a single superior court judge who is assigned to the appellate division rather than by the appellate division, so that all writ petitions relating to acts of the small claims division would be handled in the same way. At the time CSCAC recommended that the distinction be included in the statute, as provided by common law. See *General Electric Capital Auto Financial Service, Inc. v. Appellate Division of the Superior Court* (2001) 88 Cal.App.4th 136 (appellate division has writ jurisdiction regarding postjudgment enforcement orders in small claims cases). The Law Revision Commission noted that a "significant advantage to this approach [having postjudgment writs go to the appellate division] is that it treats all judgments in limited civil cases the same way for enforcement purposes." (CLRC Report (2011), p. 337.)

The committees concluded that, in light of this history, it would be preferable that postjudgment writ proceedings continue to be governed by the existing rules for writ proceedings in limited civil cases. The committees are recommending minor amendments to those rules and forms to clarify this situation.

How to provide a record of the oral proceedings for the reviewing court

The committees considered whether, in light of the lack of any official record of small claims proceedings and the fact that many parties will be self-represented even on these writ proceedings, the rules should not include any provision requiring a record of what was said at the small claims proceedings. Ultimately, the committees decided that, if the petitioner is raising an issue that can only be understood if there is a record of the oral proceeding, then the petitioner should provide a statement that fairly summarizes the proceedings, including the parties' arguments. Also, any statement by the small claims court supporting its ruling must be provided. As noted above, the committees sought specific comments on whether this provision was needed and has concluded that it is.

Whether to recommend any forms

Although the statute requires the council to develop new *rules* regarding writs in small claims cases, it does not mandate the development of *forms*. The committees considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. As noted above, the committees[14] concluded, however, that without such standardized forms, petitions in small claims actions would be difficult for the court to handle and would be extremely difficult for parties to properly prepare. The committees concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require training of judicial officers and court staff as to the new rules and forms for certain writs in small claims cases. The number of petitions for writs in small claims cases may be increased due to the existence of the new forms. The rules will clarify what is required of the parties in such cases, which should make it easier in the long run for courts to adjudicate the petitions. Because the new rules are mandated by statute, the council must adopt rules in this area whether or not they place a further burden on the courts.

Attachments

1. Cal. Rules of Court, rules 8.930, 8.950, and 8.970—8.977, at pages 17–24
2. Revised Judicial Council forms APP-150-INFO and APP-151, at pages 25–44
3. New Judicial Council forms SC-300 and SC-300-INFO, at pages 45–62
4. Chart of comments, at pages 63–84

[14] One member of the Civil and Small Claims Advisory Committee disagreed with this conclusion, preferring that only rules be developed at this point, with no forms.

Rules 8.930 and 8.950 of the California Rules of Court are amended and rules 8.970–8.977 are adopted, effective January 1, 2016, to read:

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 6. Writ Proceedings

Rule 8.930. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings in the appellate division for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of the appellate division, including writs relating to a postjudgment enforcement order of the small claims division. In all respects not provided for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to:

(1) Petitions for writs of supersedeas under rule 8.824;

(2) Petitions for writs relating to acts of the small claims division other than a postjudgment enforcement order; or

(3) Petitions for writs not within the original jurisdiction of the appellate division.

Advisory Committee Comment

Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases (form APP-150-INFO) provides additional information about proceedings for writs in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Subdivision (b)(1). The superior courts, not the appellate divisions, have original jurisdiction in habeas corpus proceedings (see Cal. Const., art. VI, § 10). Habeas corpus proceedings in the superior courts are governed by rules 4.550 et seq.

Subdivision (b)(2). A petition that seeks a writ relating to an act of the small claims division other than a postjudgment enforcement order is heard by a single judge of the appellate division (see Code Civ. Proc. § 116.798(a)) and is governed by rules 8.970 et seq.

Rules 8.931–8.936 * * *

Division 3. ~~Trial of Small Claims Cases on Appeal~~ Rules Relating to Appeals and Writs in Small Claims Cases

Chapter 1. Trial of Small Claims Cases on Appeal

Rule 8.950. Application

The rules in this ~~division~~ chapter supplement article 7 of the Small Claims Act, Code of Civil Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and must be read in conjunction with those statutes.

Rule 8.952–8.966 * * *

Chapter 2. Writ Petitions

Rule 8.970. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings under Code of Civil Procedure section 116.798(a) for writs of mandate, certiorari, or prohibition, relating to an act of the small claims division, other that a postjudgment enforcement order. In all respects not provided for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to:

(1) Proceedings under Code of Civil Procedure section 116.798(c) for writs relating to a postjudgment enforcement order of the small claims division, which are governed by rules 8.930–8.936.

(2) Proceedings under Code of Civil Procedure section 116.798(b) for writs relating to an act of a superior court in a small claims appeal, which are governed by rules 8.485–8.493.

Advisory Committee Comment

Code of Civil Procedure section 116.798 provides where writs in small claims actions may be heard.

The Judicial Council form *Information on Writ Proceedings in Small Claims Actions* (form SC-300-INFO) provides additional information about proceedings for writs in small claims actions in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Rule 8.971. Definitions

The definitions in rule 1.6 apply to these rules unless the context or subject matter requires otherwise. In addition, the following definitions apply to these rules:

(1) "Writ" means an order telling the small claims court to do something that the law says it must do, or not do something the law says it must not do. The various types of writs covered by this chapter are described in statutes beginning at section 1067 of the Code of Civil Procedure.

(2) "Petition" means a request for a writ.

(3) "Petitioner" means the person asking for the writ.

(4) "Respondent" and "small claims court" mean the court against which the writ is sought.

(5) "Real party in interest" means any other party in the small claims court case who would be affected by a ruling regarding the request for a writ.

Rule 8.972. Petitions filed by persons not represented by an attorney

(a) Petitions

(1) A person who is not represented by an attorney and who requests a writ under this chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300). For good cause the court may permit an unrepresented party to file a petition that is not on that form.

(2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.

(3) The clerk must file the petition even if it is not verified but if the party asking for the writ fails to file a verification within five days after the clerk gives notice of the defect, the court may strike the petition.

(b) Contents of supporting documents

(1) The petition must be accompanied by copies of the following:

(A) The small claims court ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the small claims court supporting and opposing the petitioner's position; and

(C) Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and the ruling under review.

(2) If the petition does not include the required documents or does not present facts sufficient to excuse the failure to submit them, the appellate division judge may summarily deny a stay request, the petition, or both.

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) They must be attached to the petition. The pages must be consecutively numbered.

(B) They must each be given a number or letter.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than five days.

(d) Service

(1) The petition and all its attachments, and a copy of *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) must be served personally or by mail on all the parties in the case, and the petition must be served on the small claims court.

(2) The petitioner must file a proof of service at the same time the petition is filed.

(3) The clerk must file the petition even if its proof of service is defective but if the party asking for the writ fails to file a corrected proof of service within five days after the clerk gives notice of the defect, the court may strike the petition or allow additional time to file a corrected proof of service.

(4) The court may allow the petition to be filed without proof of service.

Advisory Committee Comment

Subdivision (a). *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) are available at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Rule 8.973. Petitions filed by an attorney for a party

(a) General application of rule 8.972

Except as provided in this rule, rule 8.972 applies to any petition for an extraordinary writ filed by an attorney under this chapter.

(b) Form and content of petition

(1) A petition for an extraordinary writ filed by an attorney may, but is not required to be, filed on *Petition for Writ (Small Claims)* (form SC-300). It must contain all the information requested in that form.

(2) The petition must disclose the name of any real party in interest.

(3) If the petition seeks review of small claims court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition, and the first paragraph of the petition must state the appeal's title and any appellate division docket number.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.883(b) governs the length of the petition and memorandum, but the verification and any supporting documents are excluded from the limits stated in rule 8.883(b)(1) and (2).

(7) If the petition requests a temporary stay, it must explain the urgency.

Rule 8.974. Opposition

(a) Preliminary opposition

(1) The respondent and real party in interest are not required to file any opposition to the petition unless asked to do so by the appellate division judge.

(2) Within 10 days after the petition is filed, the respondent or any real party in interest may serve and file a preliminary opposition.

(3) A preliminary opposition should contain any legal arguments the party wants to make as to why the appellate division judge should not issue a writ and a statement of any material facts not included in the petition.

(4) Without requesting opposition, the appellate division judge may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that the judge is considering issuing a peremptory writ in the first instance.

(b) Return or opposition; reply

(1) If the appellate division judge issues an alternative writ or order to show cause, the respondent or any real party in interest, individually or jointly, may serve and file a return (which is a response to the petition) by demurrer, verified answer, or both. If the appellate division judge notifies the parties that he or she is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the appellate division judge orders otherwise, the return or opposition must be served and filed within 30 days after the appellate division judge issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the appellate division judge orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the appellate division judge may issue the peremptory writ without granting leave to answer.

(c) Form of preliminary opposition, return, or opposition

Any preliminary opposition, return, or opposition must comply with rule 8.931(c). If it is filed by an attorney, it must also comply with rule 8.932(b)(3)–(7).

Rule 8. 975. Notice to small claims court

(a) Notice if writ issues

If a writ or order issues directed to any judge, court, or other officer, the appellate division clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is directed.

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the appellate division clerk must make a reasonable effort to notify the clerk of the respondent small claims court by telephone. The clerk of the respondent small claims court must then notify the judge or officer most directly concerned.

(2) The appellate division clerk need not give notice by telephone of the summary denial of a writ, whether or not a stay was previously issued.

Rule 8.976. Filing, finality, and modification of decisions; remittitur

(a) Filing of decision

The appellate division clerk must promptly file all opinions and orders in proceedings under this chapter and promptly send copies showing the filing date to the parties and, when relevant, to the small claims court.

(b) Finality of decision

(1) Except as otherwise ordered by the appellate division judge, the following decisions regarding petitions for writs under this chapter are final in the issuing court when filed:

(A) An order denying or dismissing such a petition without issuance of an alternative writ, order to show cause, or writ of review; and

(B) An order denying or dismissing such a petition as moot after issuance of an alternative writ, order to show cause, or writ of review.

(2) Except as otherwise provided in (3), all other decisions in a writ proceeding under this chapter are final 30 days after the decision is filed.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, a judge in the appellate division may order early finality of a decision granting a petition for a writ under this chapter or denying such a petition after issuing an alternative writ, order to show cause, or writ of review. The decision may provide for finality on filing or within a stated period of less than 30 days.

(c) Modification of decisions

Rule 8.888(b) governs the modification of decisions in writ proceedings under this chapter.

(d) Remittitur

The appellate division must issue a remittitur after the judge issues a decision in a writ proceeding under this chapter except when the judge issues one of the orders listed in (b)(1). The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

Advisory Committee Comment

Subdivision (b)(1). Examples of situations in which the appellate division judge may issue an order dismissing a writ petition include when the petitioner fails to comply with an order, when the judge recalls the alternative writ, order to show cause, or writ of review as improvidently granted, or when the petition becomes moot.

Rule 8.977. Costs

(a) Entitlement to costs

The prevailing party in an original proceeding is entitled to costs if the appellate division judge resolves the proceeding after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(b) Award of costs

(1) In the interests of justice, the appellate division judge may award or deny costs as the court deems proper.

(2) The opinion or order resolving the proceeding must specify the award or denial of costs.

(3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.

APP-150-INFO Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.
- This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

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

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

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

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

In this information sheet, we call the lower court the "trial court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called "certiorari"), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of

these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

4 Is a writ proceeding the same as an appeal?

No. In an **appeal,** the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding,** the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a trial court?

No.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy. The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))

- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))

- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)

- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called "common law" writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 10.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the trial court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court's ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the trial court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.

- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed. There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)

- Granting a motion to quash service of summons

- Granting a motion to stay or dismiss the action on the ground of inconvenient forum

- Granting a new trial

- Denying a motion for judgment notwithstanding the verdict

- Granting or dissolving an injunction or refusing to grant or dissolve an injunction

- Appointing a receiver

- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* You should also check to see if there are published court decisions that indicate whether you can

or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

What needs to be in the supporting documents. The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings. There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this

recording to be used as the record of the oral proceedings, and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.

- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or
  - Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court. Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court's error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court's error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that

delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

(15) How do I "serve" my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

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

(16) How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition. You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

a. Issue a stay

b. Summarily deny the petition

c. Issue an alternative writ or order to show cause

d. Notify the parties that it is considering issuing a preemptory writ in the first instance

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

19 What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-lowcosthelp.htm.*

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(20) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You

should make a copy of the preliminary opposition for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order, called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ. Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the return to the other parties in the way required by law.

- Make a record that the return has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.

- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good

- idea to bring or mail an extra copy of the return to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

(22) I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18), a "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.

- Make a record that the opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the opposition, who was served, how the opposition was served (by mail or in person), and the date the opposition was served.

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

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

(23) What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

APP-151 Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

_____

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

_____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

_____

Real Party in Interest
(fill in the name of any other parties in the trial court case)

Clerk stamps date here when form is filed.

DRAFT
08.28.15
NOT APPROVED BY
THE JUDICIAL COUNCIL

Clerk will fill in the number below:

Appellate Division Case Number:

☐ **Stay requested**
(see item (12) c. on page 6)

Instructions

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below*).
- Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
- Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.
- Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.

* Small Claims cases. If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.

(1) Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

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

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

Phone: _____ E-mail *(if available):* _____

b. Petitioner's lawyer *(skip this if the petitioner does not have a lawyer for this petition):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available)*: _____

The Trial Court Action or Ruling You Are Challenging

(2) I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name *(fill in the trial court case name):* _____

b. Case number *(fill in the trial court case number):* _____

(3) The trial court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the trial court):* _____

(4) The trial court took this action or made this ruling on the following date *(fill in the date):* _____

(5) *If you are filing this petition more than 30 days after the date that you listed in (4), explain the extraordinary circumstances that caused the delay in filing this petition:* _____

The Parties in the Trial Court Case

(6) I/My client *(check and fill in a or b):*

a. ☐ was a party in the case identified in (2).

b. ☐ was not a party in the case identified in (2) but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court *(describe how you/your client will be directly and negatively affected by the trial court's action or ruling):*

_____

_____

_____

_____

(7) The other party or parties in the case identified in (2) was/were *(fill in the names of the parties):*

_____

_____

Appeals or Other Petitions for Writs in This Case

(8) Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(fill in the appellate division case number of the appeal):* _____

(9) Have you filed a previous petition for a writ challenging this trial court action or ruling? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition).*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9.")

Reasons for This Petition

(10) The trial court made the following legal error or errors when it took the action or made the ruling described in (3) *(check and fill in at least one):*

a. ☐ The trial court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the trial court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this:* _____

_____

_____

_____

10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

_____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b. ☐ The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

_____

_____

_____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c. ☐ The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*

_____

_____

_____

_____

10 (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

_____

_____

_____

_____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."*

☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

_____

_____

_____

_____

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

_____

_____

_____

_____

_____

Order You Are Asking the Appellate Division to Make

12 I request that this court *(check and fill in all that apply):*

a. ☐ order the trial court to do the following *(describe what, if anything, you want the trial court to be ordered to do):* _____

_____

_____

_____

_____

b. ☐ order the trial court not to do the following *(describe what, if anything, you want the trial court to be ordered NOT to do)*: _____

_____

_____

_____

_____

12 (continued)

c. ☐ issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form):*

_____
_____
_____
_____

I/My client:

(1) ☐ asked the trial court to stay these proceedings, but the trial court denied this request *(include in your supporting documents a copy of the trial court's order denying your request for a stay).*

(2) ☐ did not ask the trial court to stay these proceedings for the following reasons *(describe below why you did not ask the trial court to stay these proceedings):*

_____
_____
_____
_____

d. ☐ take other action *(describe):* _____
_____
_____
_____
_____
_____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

a. ☐ Yes, a transcript or an official electronic recording of what was said in the trial court is attached.

b. ☐ No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) *(Check (1) or (2):*

(1) ☐ stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

(2) ☐ explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.

14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged? *(Check a or b):*

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Verification

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

Date: _____

_____
Type or print your name

▶ _____
Signature of petitioner or attorney

SC-300 Petition for Writ (Small Claims)

Clerk stamps date here when form is filed.

DRAFT
08/28/15
Not approved
by the Judicial Council

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

Real Party in Interest
(fill in the name of any other parties in the trial court case)

Clerk will fill in the number below:

Appellate Division Case Number:

☐ **Stay requested**
(see item 12 c. on page 6)

Instructions

- This form is only for requesting a **writ** in a small claims case which does *not* relate to an action enforcing the small claims judgment.
- Do not use this form for the appeal or trial de novo of a small claims matter or for writs on the appeal of a small claims matter. Other forms or pleadings should be used for those those kinds of actions.
- For requesting a writ relating to a court action regarding *enforcement* of a small claims judgment, you should use form APP-151, *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*. You can get that form and other forms for other writs and for appeals at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) to know your rights and responsibilities. You can get form SC-300-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Generally, you should file this form no later than **30 days** after the date the small claims court took the action or issued the ruling you are challenging in this petition (see form SC-300-INFO for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the small claims court whose action or ruling you are challenging (called the respondent) and each of the other party or parties in the small claims case (called real party in interest).
- Serve a copy of the completed form on the small claims court and serve a copy of the form and a copy of form SC-300-INFO on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the completed form and your proof of service to the clerk's office for the appellate division of the court that took the action or issued the ruling you are challenging.

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

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

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

Phone: _____ E-mail *(if available):* _____

b. Petitioner's lawyer *(skip this if the petitioner does not have a lawyer for this petition):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available)*: _____

The Small Claims Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the small claims court in the following case:

a. Case name *(fill in the small claims court case name):* _____

b. Case number *(fill in the small claims court case number):* _____

3 The small claims court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the small claims court):* _____

4 The small claims court took this action or made this ruling on the following date *(fill in the date):* _____

5 *If you are filing this petition more than 30 days after the date that you listed in* **4** *, explain the extraordinary circumstances that caused the delay in filing this petition:* _____

The Parties in the Small Claims Court Case

6 I/My client *(check and fill in a or b):*

a. ☐ was a party in the case identified in 2.

b. ☐ was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the small claims court *(describe how you/your client will be directly and negatively affected by the small claims court's action or ruling):*

_____

_____

_____

_____

7 The other party or parties in the case identified in 2 was/were *(fill in the names of the parties):*

_____

_____

Appeals or Other Petitions for Writs in This Case

8 Did you or anyone else file an appeal about the same small claims court action or ruling you are challenging in this petition? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(fill in the date the appeal/new trial is set for):* _____

9 Have you filed a previous petition for a writ challenging this action or ruling? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition).*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "SC-300, item 9.")

Reasons for This Petition

10 The small claims court made the following legal error or errors when it took the action or made the ruling described in 3 *(check and fill in at least one):*

a. ☐ The small claims court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the small claims court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court must do this:* _____

_____

_____

_____

10 (continued)

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did not do or refused to do this:*

_____

_____

_____

_____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10a."*

b. ☐ The small claims court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the small claims court did:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court cannot or must not do this:* _____

_____

_____

_____

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did this:* _____

_____

_____

_____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10b."*

10 (continued)

c. ☐ The small claims court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the small claims court did or said it is going to do:* _____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court does not have the power to do this:*

(3) *Identify the supporting documents (the documents from the small claims case) that shows that the court did or said it was going to do this:* _____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10c."*

d. ☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "SC-300, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the small claims court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

Order You Are Asking the Appellate Division to Make

12 I request that this court *(check and fill in all that apply):*

a. ☐ order the small claims court to do the following *(describe what, if anything, you want the court to be ordered to do):* _____

b. ☐ order the small claims court not to do the following *(describe what, if anything, you want the court to be ordered NOT to do)*: _____

c. ☐ issue a stay ordering the small claims court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the small claims court not take any further action and check the Stay requested box on page 1 of this form):*

I/My client:

(1) ☐ asked the small claims court to stay these proceedings, but the small claims court denied this request *(include in your supporting documents a copy of the small claims court's order denying your request for a stay).*

(2) ☐ did not ask the small claims court to stay these proceedings for the following reasons *(describe below why you did not ask the small claims court to stay these proceedings):*

d. ☐ take other action *(describe):* _____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Are the following documents attached as required by rule 8.972(b)(1) *(Check a or b):*

- The small claims court ruling being challenged in this petition
- All documents and exhibits submitted to the small claims court supporting and opposing you/your client's position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and the ruling being challenged?

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of what is in these documents. Note that rule 8.972 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on any attached pages providing further responses to the questions above is true and correct.

Date: _____

_____ ▶ _____
Type or print petitioner's name *Petitioner's signature*

SC-300-INFO Information on Writ Proceedings in Small Claims Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in small claims cases. Please read this information sheet before you fill out *Petition for Writ (Small Claims)* (form SC-300). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read the California Rules of Court identified below, which set out the procedures for writ proceedings in the different courts that consider request for writs in small claims cases.

This information sheet does NOT provide information about motions to vacate a judgment or appeals in small claims cases, or about requests for writs on all types of rulings in a small claims case.

- For information about making a motion to cancel or correct a judgment in small claims court, please see Code of Civil Procedure sections 116.720–116.745 and *Notice of Motion to Vacate Judgment and Declaration* (form SC-135).

- For information about appealing a small claims judgment, which you can only do if you disagree with a judgment ordering you to pay money, please see Code of Civil Procedure sections 116.710, 116.750–116.795, rules 8.950–8.966 of the California Rules of Court and *What to Do After the Court Decides Your Small Claims Case* (form SC-200-INFO).

While this information sheet provides general information about writs and writ procedures, the procedures it describes do NOT apply to writs in all small claims cases. These procedures only apply to requests for writs relating to actions of the small claims court *other* than postjudgment enforcement actions. These requests will be considered by a single judge from the appellate division of the superior court. The procedures are set out in more detail in rules 8.970–8.977 of the California Rules of Court.

- For information about requests for writs relating to postjudgment enforcement actions, see rules 8.930–8.936 of the California Rules of Court and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). Matters relating to enforcement of small claims judgments are treated in the same manner as enforcement of judgments in limited (smaller) civil cases.

- For information about requests for writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court. Those requests should be made to the Court of Appeal.

You can get these rules and forms at any courthouse or county law library or online at *www.courts.ca.gov/rules* for the rules or *www.courts.ca.gov/forms* for the forms. You can get copies of statutes at any county law library or online *leginfo.legislature.ca.gov/faces/codes.xhtml*.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do, or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the small claims court that took the action or issued the order being challenged.

In this information sheet, we call the lower court the "small claims court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the small claims court to do something.

- Writs of prohibition, which are orders telling the small claims court *not* to do something.

- Writs of review (sometimes called "certiorari"), which are orders telling the small claims court that a judge in the appellate division will review certain

kinds of actions already taken by the small claims court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review.

4 Is a writ proceeding the same as an appeal?

No. Generally, in an **appeal,** the higher court *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In choosing to go to small claims court, the party filing a claim agreed to give up the right to an appeal in exchange for a less formal and less expensive way of proceeding. The defendant in a small claim case does have the right to an appeal, in the form of a new trial, and if the defendant asks for one, the higher court *must* allow a new trial on all the claims in the case, with each side presenting evidence.

In a **writ proceeding,** the appellate division judge is *not* required to make a decision on the merits or hold a new trial. Even if the small claims court made a legal error, the appellate division judge can decide not to consider that error, and usually will not. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, a writ proceeding is often called a proceeding for "*extraordinary*" relief, while a judgment by the small claims court, or possibly a new trial at superior court for the defendant, is the *ordinary* way that small claims court cases end.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial.** The appellate division judge will not consider new evidence, such as the testimony of new witnesses. Instead, if he or she does not summarily deny the request for a writ, the appellate division judge reviews what happened in the small claims court and the small claims court's ruling to see if the small claims court made the legal error claimed by the person asking for the writ. In conducting this review, the appellate division judge presumes that the small claims court's ruling is correct; the person who requests the writ must show the appellate division judge that the small claims court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a small claims court?

No.

Writs are not generally granted regarding small claims cases. The small claims courts exists to provide a speedy and inexpensive way for a party to obtain a judgment. This works in part by limiting what a party can do after the small claims court makes its rulings.

When a person or business chooses to make a claim in small claims court, rather than filing in a different level of the superior court, that party—the plaintiff—gives up the right to ask for an appeal of the small claims court's rulings. This is a trade-off for the faster, less formal, and less expensive court proceedings. As a result, appellate courts have been reluctant to consider requests for writs in small claims cases.

A defendant in a small claims case does have the right to appeal the initial small claims court decisions and get a new trial in the superior court. Because the defendant already has this right to have the case heard again, including putting on the evidence and being represented by an attorney if defendant wants to hire one, appellate courts are unlikely to see any need for a writ instead.

However, the appellate division judge does have the discretion to consider a request for an extraordinary writ challenging a ruling in a small claims case. For example, the judge may do so if he or she considers the issue raised to be of statewide importance, or in order to make sure that the small claims division is generally being consistent in how it is acting under the law. Not every legal or factual error made by a small claims judge will form a ground for the granting of a writ.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a small claims court:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do

- Has acted in a way the law says it does not have the power to act

- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

7 Can the appellate division consider a request for a writ in *any* small claims case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. Requests for writs in small claims cases may be considered in one of three different ways, depending on the stage of the case:

- Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. This covers requests for writs on any rulings relating to the initial small claims trial, including the judgment.

- Requests for writs relating to superior court actions in small claims cases on appeal are not considered by the appellate division, but by the Court of Appeal.

- Requests for writs relating to the enforcement of a judgment in a small claims case, whether the judgment was issued at the small claims hearing or at a new trial in the superior court, are considered by the appellate division.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on the right side of this page.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In writ proceedings challenging rulings in small claims cases, the small claims court is the respondent.
Any other party in the small claims court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 8.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov /selfhelp-advisors.htm.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 8 of this information sheet.

10 Who can ask for a writ?

Parties—the plaintiff or defendant— are usually the only ones that ask for writs challenging small claims court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the small claims court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the

appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the small claims court, what legal error you (the petitioner) believe the small claims court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

(12) How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Small Claims)* (form SC-300) to prepare your petition. You can get it at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the small claims court's ruling

Your petition needs to tell the appellate division judge why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the small claims court case asks for a writ challenging a ruling in that case. If you were a party in the small claims court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the small claims court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division judge that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the small claims court made

Your petition will need to tell the appellate division judge what legal error you believe the small claims court made. Not every mistake a small claims court might make can be addressed by a writ. You must show that the small claims court made one of the following types of legal errors:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division judge that the small claims court made one of these legal errors, you will need to:

- Show that the small claims court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division judge what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the small claims court's legal duty or power to act or not act in that way.
- Show the appellate division judge that the small claims court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division judge what happened in the small claims court that shows that the small claims court did not act in the way it was required to. If the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ.
- You can provide this information and the summary of what was said at item 10 of the petition and, as instructed there, you can add additional pages if more room is needed. Note that you will be providing this information, and everything in the petition, under penalty of perjury.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division judge does not have to grant your petition just because the small claims court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the small claims court's error. To convince the court you need the writ, you will need to show the appellate division judge that you have no way to fix the small claims court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard to show if the small claims court's ruling can be appealed and a new trial held. If you are a defendant and the ruling you are challenging can be appealed, the appellate division will generally consider this new trial to be a good enough way to fix the small claims court's ruling (an "adequate remedy"). You will need to show the appellate division judge how you will be harmed by the small claims court's error in a way that cannot be fixed by the new trial if the appellate division judge does not issue the writ (this is called "irreparable" injury or harm). For example, the harm you want to prevent may happen before the new trial can be held.

Even if you cannot appeal the ruling you are objecting to, the appellate division judge still does not have to grant the petition. As described above, small claims decisions are meant to be speedy and inexpensive, so appellate review is generally not granted in these cases. You will need to explain why your case should be treated differently.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division judge to order the small claims court to do or not do. Writ petitions usually ask that the small claims court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division judge to order the small claims court not to do anything more until the appellate division judge decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the small claims court for a stay. You should tell the appellate division judge whether you asked the small claims court for a stay. If you did not ask the small claims court for a stay, you should tell the appellate division judge why you did not do this. This information is requested in the petition form.

If you ask the appellate division judge for a stay, make sure you also check the "Stay requested" box on the first page of the *Petition for Writ (Small Claims)* (form SC-300) and complete item 12c on that form.

e. Verifying the petition

Petitions for writs must be "verified." This means that the petitioner (or in certain circumstances the petitioner's attorney) must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Small Claims)* (form SC-300), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file documents showing what happened in the small claims court (see below for an explanation of how to serve and file the petition and other documents). Because the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division judge. These are called "supporting documents." You must also serve any other party in this case, the real party in interest, with a copy of this form *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

Copies of documents from the small claims court. Copies of the following documents from the small claims court must also be included in the supporting documents:

- The small claims court ruling or judgment being challenged in the petition
- All documents and exhibits submitted to the small claims court supporting and opposing your position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the small claims court because of an emergency? Rule 8.972 of the California Rules of Court provides that in

extraordinary circumstances the petition may be filed without copies of the documents from the small claims court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.972 of the California Rules of Court. You should carefully read rule 8.972. You can get a copy of rule 8.972 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. There are laws (statutes) that require that certain kind of rulings may only be challenged using a writ proceeding. These are called "statutory writs" and the statute usually sets the deadline for serving and filing the petition. For example, a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)) must be filed within 10 days after notice to the parties of the decision. You will need to check whether there is a statute providing a deadline for filing a challenge to the specific ruling you are challenging. (You can find copies of statutes at any county law library or online at *leginfo.legislature.ca.gov /faces/codes.xhtml*).

If there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, or if the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the small claims court's error be fixed. Remember, the appellate division judge is not required to grant your petition even if the small claims court made an error. If you delay in filing your petition, it may make the appellate division judge think that it is not really urgent that the small claims court's error be fixed and the appellate division judge may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division judge in your petition.

(15) How do I "serve" my petition?

Rule 8.972(d) requires that the petition with the attached supporting documents, along with a copy of this form, be served on any named real party in interest and that the petition be served on the respondent small claims court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

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

(16) How do I file my petition?

To file a petition for a writ, you must bring or mail the original petition, including the supporting documents and the proof of service, to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

Yes. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request*

to Waive Court Fees (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file a preliminary opposition to the petition.

The appellate division judge does not have to wait for an opposition before acting on a petition for a writ, however. Without waiting, the appellate division judge can:

a. Issue a stay.

b. Summarily deny the petition.

c. Issue an alternative writ or order to show cause.

d. Notify the parties that he or she is considering issuing a peremptory writ in the first instance.

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of small claims court proceedings

A stay is an order from the appellate division judge telling the small claims court not to do anything more until the appellate division judge decides whether to grant your petition. A stay puts the small claims court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division judge denies the petition without deciding whether the small claims court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division judge will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed.

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division may dismiss the petition.

If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division judge's order (called a "return") that explains why the small claims court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division judge may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner

has requested (or some modified form of what the petitioner requested) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. It is very rare for the appellate division judge to issue a peremptory writ in the first instance, and this will not be done unless the respondent and real parties in interest have received notice that the judge might do so, either through the petitioner expressly asking for such relief in the petition or by the judge giving the respondent court and any real party in interest notice and a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division judge's notice (called an "opposition") that explains why the small claims court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division judge may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the small claims court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(19) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The Code of Civil Procedure and California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division judge can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that the judge is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response in section (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division judge saying what action the judge is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. You must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-lowcosthelp.htm.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov/selfhelp-advisors.htm*.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. The appellate division judge will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that the judge is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that

the appellate division judge may issue a peremptory writ without notice if the petitioner expressly asked the court to do so in the petition, that is, asked the court to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.

- Make a record that the preliminary opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.

- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the preliminary opposition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

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

(20) I have received a copy of an alternative writ or an order to show cause issued by the appellate division judge. Do I need to do anything?

Yes. Unless the small claims court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division judge will issue an alternative writ or an order to show cause only if the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed. An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division judge may dismiss the petition. If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the small claims court or the real party in interest may serve and file a response to the appellate division judge's order, called a "return."

A return is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is a legal response, either your argument about why the writ is legally inadequate or an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and

to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–431.30 for more information about responses and answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division judge issues an alternative writ or order to show cause, it does not mean that the appellate division judge is required to issue the writ requested by the petitioner. However, the appellate division judge will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division judge will issue the requested writ.

Unless the appellate division judge sets a different filing deadline in the alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division judge issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

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

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

(21) I have received a copy of a notice from the appellate division judge indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18) , a "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division judge) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. The appellate division judge will seldom issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division judge issues such a notice, it means that the appellate division judge is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. An opposition is a response to the legal arguments made by the petitioner. Unless the appellate division judge sets a different deadline in the notice that the judge is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be

used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.

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

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

22 What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division judge may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

SPR15-08

Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Civil Law & Procedures Committee by Joan P. Weber, President	A	This proposal for rule changes is set forth by both the Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAD) to clarify which court has jurisdiction of writs and to propose form changes to help litigants participating in these proceedings. This proposal has three parts: 1. A set of proposed new rules for writ proceedings in small claims divisions other than post judgment enforcement orders. 2. A set of two new forms for these writ proceedings. 3. A set of proposed changes to the existing rules and forms relating to writ proceedings in the superior court appellate divisions to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than post judgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings. *COMMENTS/ANALYSIS* I spoke at length with our Appellate Department Supervising Judge, Deborah Chuang about these proposed changes. At the outset, she commented that writs in both the small claims	The committees appreciate the comment and note that the commentator concludes the comment by supporting the proposal. The committee addresses the specific points raised below.

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	Commentator	Position	Comment	Committee Response
			and limited civil arena are extremely rare. She has seen only two in Orange County in the last two years. In my tenure as a limited civil judge and an open trial court hearing small claims matters (consisting of about 3-4 years before my current assignment as a general civil judge), I do not recall seeing a writ in either the small claims court or in my prior limited civil assignment. The most significant proposed change is to require self-represented litigants seeking a writ in small claims court must, unless there is a finding of good cause, use a specific Judicial Council petition. (Rule 8.972.) Subpart (a)(2) of the form requires the self-represented litigant to include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling. Footnote 3 of the Invitation to Comment states specifically: "The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition (parens omitted.) the committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form	

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SPR15-08
Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary." Judge Chuang believes that the requirement should not be implemented by rule because of the "trap" argument. I differ, and believe that the requirement of setting forth in detail the arguments, a summary of the proceedings and the court's statement would be of great benefit to a reviewing court and should be required by a self-represented litigant. If it is clearly stated on the form (which it is) I do not see how a self-represented litigant could reasonably miss this requirement. The only possible problem is whether the litigant will be properly directed to the form by court personnel. This is where proper training of staff is important. This proposal will require staff training, otherwise, it will not work and indeed the proposal will become a "trap." The self-represented litigant will not know of the requirement to use a judicial form and submit a defective writ application at the outset. Staff training will require time and outlay of some funds. It may be argued that clear rules regarding what is required for self-represented litigants to obtain a small claims writ may	The committees agree with the commentator that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees also agree that including an item for the summary in the form petition provides a reminder for the parties to include the summary, and so avoids any potential trap for a party. The committees agree that there will need to be some training for court clerks regarding the required use of the new form The committees agree that petitions for writs occur infrequently in small claims cases. However, the council was mandated to develop new procedural rules for such writs by the

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	Commentator	Position	Comment	Committee Response
			provide some efficiencies in the long run. However, the infrequency of these petitions renders these arguments weak. *FINAL THOUGHTS* My final thought on this proposal is whether we are addressing a problem that does not exist. Is there generally a thought that litigants (particularly self-represented litigants) are not obtaining writ relief when there was an abuse of discretion in the small claims court (or limited civil court?) Perhaps clarifying the lines of jurisdiction between small claims writs and limited civil writs in a good thing, but beyond that, the proposal will require staff training to ensure that it works. In these times of financial stress, I believe that such scarce and valuable resources could be used more effectively elsewhere. Based on this thorough analysis and research, California Judges Association supports the proposal.	Legislature. See Code Civ. Proc. § 116.798(a)(5). The committees recognize that there will be some implementation costs in the courts. However, as noted above, the council was mandated by statute to develop procedures for small claims writ petitions. The committees note the commenter's support for the proposal.
2.	Douglas G. Carnahan, Attorney at Law Retired Commissioner of Superior Court of Los Angeles County (former Chairperson, Small Claims Subcommittee, Civil and Small Claims Advisory Committee)	AM	I am pleased to offer a couple of observations in response to the captioned Invitation to Comment. **1. Re proposed Rule 8.972(a)(2): "If the petition raises any issue that would require the appellate division judge considering it to**	The committees note the commenter's general agreement with the proposal, and appreciate the detailed comments, which are responded to below.

	Commentator	Position	Comment	Committee Response
			understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling." The Invitation to Comment makes the specific request, "The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition....The committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary." The committees' concerns are well taken, but on balance I think the decision should be to go ahead and include the requirement in the rule and form, as written. My reasons are: a. If we assume that the majority of writ petitions under 116.798 are from dissatisfied plaintiffs, emphasizing a requirement that the plaintiff provide as much detail as possible about what legal errors caused him or her not to prevail is a good thing.	The committees agree with this conclusion and will leave the rule and form as proposed. The committees determined that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.

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			b. In more general terms, the appellate division judge reviewing the paper petition will be presented, if you will, with a "gestalt," or overall view of what happened in the small claims division, and the more detail the petitioner can provide about this the better informed the writ judge will be. c. Since we can assume that the majority of these petitions will be denied, a more detailed "record" facing the writ judge and then supporting the denial, will be more informative and more protective of the processes of the appellate division. **2. Proposed Rule 8.972(d)(3): "The clerk [of the appellate division] must file the petition even if its proof of service is defective, but if the party asking for the writ fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction."** I have two comments about this, one general and one specific. a. Generally, I have picked this section as an example of the use in the proposed rules of a time deadline, here "five" days. I think it should be made clear, in these rules, when time deadlines are given, that CCP 1013 and 1005 were intended to apply to the giving of notice.	The committees disagree with this proposal, noting that the provisions would not apply under the proposed rules in any event. • Section 1005 provides the time for notice of certain specified motions and for notice of other types of proceedings for which

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			This is related to the fact that in the Small Claims Act itself, at CCP 116.140, the legislative statement is made that, "The following do not apply in small claims actions: (a) Subdivision (a) of section 1013 and subdivision (b) of Section 1005, on the extension of time for taking action when notice is given by mail." In other words, it should be made clear that the extensions of time provided by 1013 and 1005, which do not normally apply to notices in the underlying small claims cases, do apply to these writ petitions. Perhaps a statement in proposed Rules 8.970 or 8.971 to this effect would be a good idea.	express time limits are provided, and also extends the time for such notice based on type of service. But there are not such proceedings in these rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that it will be the court. • Section 1013 provides an extension of time for action or duty following service by mail or other method—but there is no such provision in these rules. None of the time frames run from "service" of any documents (See , e.g., rule 8.972(c)(2) and (d)(3), or rule 8.974(a)(2) and (b)(3)).
			b. More specifically, I am concerned about the use of the phrase "impose a lesser sanction" in the quoted proposed rule. The language as drafted opens questions both of definition and process. It strikes me that the intent was to allow the court to give the petitioner additional time to file a corrected proof of service, on pain of dismissal, but if that was the idea, then that should be spelled out in the rule. Use of "sanction language," standing alone, as here, leaves both litigants and the court uncertain as to what might be done (for instance, does the language allow the court to impose a monetary sanction for filing a late proof of service?). I would simply strike the words "or impose a lesser sanction" and add the words "**or allow**	The committees have modified the proposed rule to reflect the concerns raised in this comment.

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			additional time to file a corrected proof of service, upon pain of dismissal of the petition." Or perhaps strike the language regarding a "lesser sanction" totally. **3. Proposed Rule 8.975(b)(1): "If the writ or order stays or prohibits proceedings set to occur within seven days or requires action with seven days - or in any other urgent situation - the appellate division clerk must make a reasonable effort to notify the clerk of the respondent small claims court by telephone. The clerk of the respondent small claims court must then notify the judge or other officer most directly concerned."** This requirement is reasonable on its face, but I would append to it additional language stating, "A record of the telephone call from the appellate division to the respondent small claims court shall be made by the clerk of the respondent small claims court and placed in the small claims court file." In addition to this being good file management, it is quite possible that the small claims clerk's notifying "the judge or other officer most directly concerned" might not eliminate the possibility that a different clerk or bench officer would later have to deal with the results of the writ petition, so a record in the file of the telephonic transmission from the appellate division would be a good idea. Best practice would be for the receiving clerk to do this without being told, but incorporating the	The committees appreciate the concern that best practices be applied, but have concluded that this proposal goes too far in micromanaging court clerk procedures.

	Commentator	Position	Comment	Committee Response
			idea in the rule would establish the policy. **4. SC-300-INFO: Information on Writ Proceedings in Small Claims Cases, Item #6: "Can a writ be used to address any errors made by a small claims court?"** I am concerned about the textual discussion of this question, for the following reasons: a. The basic answer, of course, is NO, and that answer is given. However, the discussion then veers into the immediate comment, "Writs can only address the following types of legal errors made by a small claims court: The small claims court has a legal duty to act but:...Has not done what the law says it must do...." This comment will open a huge door - especially to losing plaintiffs - to drive through their "truck of belief" that they were done wrong, and that the writ petition is the way to gain justice. b. An attempt is made, in the paragraph beginning, "When a person or business chooses to make a claim in small claims court..." to explain why extraordinary writs in small claims do not have a good chance of success. The info sheet explains the historical trade-off between deciding to sue in small claims and the relinquishment by the plaintiff of the right to appeal. This explanation will be completely ignored by most potential writ petitioners - instead they will focus on the introductory	The committees appreciate the concerns raised, that rules for petitions for writ in small claims actions may change expectations regarding the review of small claims decisions, but note that a statutory mandate led to the adoption of the new rules. As to the additional language proposed in the comment, the committees concluded that the suggested additions might be viewed as setting a new standard for review, which the committees do not believe is within the purview of the council. However, in light of this comment, the committees have reordered the provisions in this item, to emphasize that the petitions will seldom be granted.

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			language in the bullet points at the top of Item 6. c. I propose that the language in the bullet points be elaborated on. It seems to me that the bullet points, as written, provide an end run around the historical "no appeal to the losing plaintiff" aspect of small claims. I would propose new language in the bullet points along the following lines: "*Writs can only address certain legal errors:* Writs can only address the following types of gross and unusual legal errors made by a small claims court. - The small claims court has a clear legal duty to act but: • Clearly and manifestly unjustly refuses to act. • Has explicitly not done what the law clearly says it must do. • Has acted in a way the law says it clearly does not have the power to act. - The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under the law in a particular case) in a way that the court clearly does not have the legal power to do. In other words, every legal or factual error made by a small claims judge will not form a ground	

	Commentator	Position	Comment	Committee Response
			for the granting of a writ. The judge considering the writ petition must become convinced that the error is so dramatic and unjust that it cannot be allowed to stand." Then I would go on with the language as is continued in the rule, explaining the basis for the unlikelihood of writ petitions being granted. The larding of the information sheet with adverbial qualifications, as I have just proposed, is normally not good legal writing, but in this case it would serve the purpose of trying to "explain the inexplicable" - that the whole concept of an extraordinary writ focuses on the extraordinary nature of the relief granted, and that this concept conflicts with the "no appeal" rule in small claims. My fear is that in an attempt to formalize what the law was (anyway) before CCP 116.798, various cans of worms have been opened that will dramatically change the nature of small claims courts. Anything that the rule drafters can do to minimize this effect would be a good thing.	
3.	Orange County Bar Association by Ashleigh Aitken, President	AM	The proposed effective date should be changed to January 1, 2016 as we are beyond the stated effective date of January 1, 2015. The proposal appropriately addresses the stated purpose. As to the provision that in the absence of court reports in Small Claims Court proceedings, the	The committees are recommending that the forms and rules be effective January 1, 2016 and will assure that all dates in the recommendation reflect that. The statements will be made under penalty of perjury and will be evaluated by the appellate

	Commentator	Position	Comment	Committee Response
			parties must provide a written summary of the court proceedings including the arguments of the parties and the statements made by the court, one concern is how the Appellate Division will evaluate the "record" that consists of the parties' (sometimes) competing versions of what was said in the Small Claims Court proceeding. The proposal does not address the issue, which seems unfair to the Appellate Division.	division in the same way it evaluates other verified statements.
4.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	AM	The Committee believes that rule 8.972(a)(2) should not rely on a self-represented petitioner to determine whether a fair summary of the proceedings is needed. Instead, the rule should provide that the petition must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling. This would allow the appellate division judge, rather than the petitioner, to determine whether such information is relevant. We would modify the language in rule 8.974(a)(3) to state more clearly that a preliminary opposition should include both legal arguments and any material facts not included in the petition, as in rule 8.933(a)(2), governing writs in the appellate division in misdemeanor, infraction, and limited civil cases, and rule 8.487(a)(2), governing writs in the Court of Appeal and the Supreme Court. The latter rules both state, "A preliminary opposition must	The committees have considered this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.

	Commentator	Position	Comment	Committee Response
			contain a memorandum and a statement of any material fact not included in the petition." We would also change "must" to "should" so as to avoid suggesting that arguments not stated in the preliminary opposition are forfeited. Accordingly, we would modify the proposal as follows: "A preliminary opposition ~~must~~ should contain any legal arguments the party wants to make as to why the appellate division judge should not issue a writ and a statement of any material fact not included in the petition." The verification language on page 7 of form SC-300 ("I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct") differs from the standard verification language (see Code Civ. Proc., § 2015.5). The attachments may include the ruling by the small claims court, exhibits submitted to the small claims court by both sides, and other documents, as stated in item 13 of the form. The petitioner should not verify the contents of those documents. We would modify this language as follows: "I declare under penalty of perjury under the laws of the State of California that the ~~information above and on all attachments~~ foregoing is true and correct."	The committees agree with the concerns raised and have modified the text recommended for this rule. The committees note that there may be attached pages that include additional information in response to questions on the petition form, which could not all fit on the form itself. For that reason, the verification must include some information beyond that on the form. The verification has been modified to clarify this point.

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	Commentator	Position	Comment	Committee Response
			We believe that it would be helpful to inform the parties that the small claims court must provide notice and an opportunity to be heard before changing its order in response to an alternative writ. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, fn. 10.) Accordingly, we would modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows: "If the appellate division issues an alternative writ and the small claims court, after notifying the parties that it is considering changing its order and providing an opportunity to be heard, does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition."	The committees considered this comment but concluded that the proposed modification is unnecessary. While it may be a correct statement of the law, it provides information that is important to the court, but not the party. The committees concluded the suggested addition could be confusing to a party, and so have not added it, believing the item is more appropriately addressed by education of judicial officers.
			Form SC-300-INFO states on page 7, item 18(d), first paragraph that an appellate division judge will not issue a peremptory writ in the first instance "without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition." Similar language appears on page 8, item 19, fifth paragraph, and issuing a peremptory writ in the first instance without prior notice by the appellate division judge is not listed as an option in the bullet points following the first paragraph in item 19 on page 8. But the	The committees agree with the comment and have modified items 18 and 19 to reflect the possibility of a court issuing a peremptory writ in the first instance without further notification to the party. While the committees think such action would be extremely rare in small claims cases, it is legally possible and will be included in the information sheet.

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	Commentator	Position	Comment	Committee Response
			appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition sought a peremptory writ in the first instance. Seeking such relief in the petition is considered sufficient notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180), although "an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected." (*Ibid.*) We believe that the cited language should be modified to avoid any suggestion to the contrary. We note that there is no language in form SC-300-INFO stating what a preliminary opposition should state. APP-150-INFO, in contrast, states on page 28, item 20, fifth paragraph that a preliminary opposition is "typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause." We believe that it would be helpful to clearly state that a preliminary opposition should both state why writ relief is not appropriate and address the merits. We therefore would add the following to form SC-300-INFO, item 19, at the end of the first paragraph: "A preliminary opposition should explain why you believe the small claims court made no legal error and why the petitioner is not entitled	The committees have modified item 19 in light of this comment to include more information regarding a preliminary opposition.

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SPR15-08
Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			to a writ."	
5.	Superior Court of Los Angeles County (no name indicated)	AM	The date at the bottom of the Form APP-150-INFO needs to be corrected. Clarification is needed regarding the form (sworn statement, affidavit, witnessed, etc.) of verification required. Additionally, clarification is need as to whether a petition must be rejected if it is not verified.	The form will be amended to have the correct 2016 effective date. The committees determined that further clarification on this point need not be added to the rule. Self represented parties are required to use the verification included in the new Judicial Council form. Others may use the form or, for individually drafted petitions, any verification format permitted by statute. In light of this comment, the committees have added rule 8.972(a)(3) to clarify that a clerk may not reject a petition on the grounds that it is not verified, but the court strike such a petition later if a verification is not provided after notice to the party.
6.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose? If the judicial council is only required to promulgate rules, and not also forms, even though the CSCAC's reasoning for also including forms is sound, perhaps it would be prudent to delay the release of forms to gauge whether the volume of small claims writs actually filed warrants a form. The availability/existence of a form could encourage frivolous filings and therefore cause an increase in the number of petitions filed with the courts, most lacking in merit. There have been about three small claims writs filed in the San Diego	The committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. The committees concluded, however, that without such forms petitions that are filed would be difficult for the court to handle because they would be extremely difficult for parties to properly prepare. The petitions would have to either be individually drafted—which would be extremely difficult for self-represented parties—or somehow shoehorned into the current form APP-

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	Commentator	Position	Comment	Committee Response
			County Superior Court Appellate Division since 2011.	151 (which assumes the lodging of some version of a record of the proceedings, which record does not exist in small claims actions and is not required under the new rules). The committee concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.
			• *Should the new rules require that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling? (See discussion at footnote 3.)* No. If adopted, the rules should make the summary optional ("petition *may* include a brief statement" – please see additional comments on this issue below).	The committees have reviewed this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.
			• *Would the proposal provide cost savings? If so please quantify.* No. If the inclusion of forms causes an increase in the number of small claims writs filed, then there would be an associated *increase* in employee time and court resources related to the processing and handling	The committees appreciate the response from the commentator regarding costs resulting from the use of the newly developed forms. As noted above, the committees have concluded that in light of the mandate to make new procedural rules regarding small claims writs, and the recent

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	Commentator	Position	Comment	Committee Response
			of those writs.	legislative recognition that the appellate division is the appropriate jurisdiction for small claims writ, the committees have concluded that the form petition will make it easier for courts as well as for the parties to be able to deal with such extraordinary petitions.
			• *What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.* Training of small claims clerks and appellate clerks.	The committees appreciate the response from the commentator regarding training costs
			• *How well would this proposal work in courts of different sizes?* As a result of the higher volume of small claims matters heard in larger courts, this proposal would disproportionately impact larger courts. The San Diego Superior Court questions the need for the implementation of these rule changes and adoption of new forms as they will increase time and costs without the need being clearly established.	The recent legislation mandates that the council adopt procedural rules for writs in small claims actions, so the committee had no choice in that area. The committee concluded, as described above, that in light of that requirement, it made sense to develop a petition form for the parties to use, rather than leave it up to non-represented parties to draft petitions that would comply with what is, at best, an arcane area of civil procedure.
			Advisory Committee Comment on page 12, line 43 reads: "Code of Civil Procedure section 116.798 provides where writs in small claims actions may be **filed**." Possibly replace "filed" with "heard" to mirror the language of section 116.798.	The note has been modified in light of this comment to reflect the statutory language.

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	Commentator	Position	Comment	Committee Response
			Proposed Rule 8.972(a)(1) and (2), for Petitions filed by persons not represented by an attorney: *(a) Petitions* *(1) A person who is not represented by an attorney and who **asks** the **appellate division** for a writ under this chapter must file the petition on Petition for Writ (Small Claims) (formSC-300). For good cause the* *court may permit an unrepresented party to file a petition that is not on that form.* **Comment:** Change "asks" to "petitions." This change recognizes that as defined in the Chapter, "petition" means a request for a writ. Omit "the appellate division" because the petition will only be considered by a single judge, not the appellate division. So, the sentence would read: "A person who…petitions for a writ under this chapter…." *(2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, **it must include a statement** that fairly summarizes the proceedings, including the parties' arguments and any **statement by the small claims court supporting its ruling**.* **Comment**: Rather than eliminate this provision,	Rule 8.972(a)(1) has been modified in light of this comment. The committees have considered this and other

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	Commentator	Position	Comment	Committee Response
			to address the committee's concerns, "it must include a statement" should be revised to read "petition *may* include a **brief** statement." Making the inclusion of the summary optional could alleviate the concern while alerting self-represented litigants that any such summary should be brief. It is also noted that if the summary is optional, this might mitigate an expectation in the self-represented litigant, unschooled in the law, that the reviewing court will or must credit his/her summary. Also, change "statement by the small claims court supporting its ruling" to "statement made by the small claims court in support of its ruling" to provide greater clarity as to what is being asked of the litigant.	comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.
			FORM SC-300-INFO **Comments** • Perhaps the form or the petition should include a statement that a vexatious litigant must obtain a pre-filing order from the Appellate Division Presiding Judge before she or he can file a petition for writ and/or that a proposed writ petition by a vexatious litigant should be submitted at the same time as the request for a prefiling order. • There is no discussion of an informal	The committees declined to include anything on the proposed form or information sheet regarding procedures for vexatious litigants. Such information is not included on the small claims claim form or other pleading forms, is irrelevant to parties who are not vexatious litigants, and is already known to those who are. To the extent it might be of assistance to clerks, proper training on this issue would be a more effective method of assuring compliance with the law. The committees considered developing different,

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	Commentator	Position	Comment	Committee Response
			response as a possible order from the court on a petition for writ. This is a common response from the court which can help resolve a writ without taking the more formal alternative writ or OSC approach. It may be beneficial to include reference to this type of order from the court on a writ. **SC-300-INFO, Page 41, Item 12(b), last bullet item provides:** *Because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would **requires** the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ. You may add extra pages if you need more space.* **Comment:** "Requires" should be revised to read "require." Also, because this is a rule the CSCAC is not certain it wants to include, any ultimate decision on how or if the rule is included should be captured in the form and the petition at item 10c(4). **SC-300-INFO, Page 42, Item 13, first paragraph provides in part:**	less formal procedures for petitions for extraordinary writs in small claims actions, but concluded that the statutory procedures for extraordinary writs were most likely applicable to all writ proceedings, including those in small claims cases. The committee therefore concluded that the new rules should reflect the statutory procedures for writs set out in the Code of Civil Procedure, and they do. The typo has been corrected. The item has also been modified to clarify that the summary is to be provided in the petition form.

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SPR15-08

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	Commentator	Position	Comment	Committee Response
			*Yes. Along with the petition, you must serve and file **a documents** showing what happened in the small claims court… (see below for an explanation of how to serve and file the petition). **Since** the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division.* **Comment:** Change "a documents" to "documents." Change "Since" to "Because."	The suggested modifications have been made.

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Item number: 24

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Summary Judgment Proceedings

Committee or other entity submitting the proposal:
Civil and Small Claims and Appellate Advisory Committees

Staff contact (name, phone and e-mail): Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov
Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 2014
Project description from annual agenda: Consider amending rule 3.1350 to reflect Judicial Council sponsored-legislation amending Code of Civil Procedure § 437c to narrow the requirement to rule on evidentiary objections

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Civil Practice and Procedure: Summary Judgment Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.1350 and 3.1354

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 21, 2015

Contact
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Executive Summary

To reduce the amount of facts and evidence presented in motions for summary judgment and not pertinent to a decision on the motion, the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the California Rules of Court relating to summary judgment motions. Specifically, the committees recommend amending rule 3.1350 to define "material facts" and clarify that the separate statement of undisputed material facts in support of or opposition to a motion for summary judgment should include only material facts and not any facts that are not pertinent to the disposition of the motion. In addition, they recommend amending rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

Recommendation

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 3.1350 to define “material facts” and clarify that the separate statement of undisputed material facts in support of or opposition to a motion for summary judgment should include only material facts; and

2. Amend rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

The text of the amended rules is attached at pages 9–14.

Previous Council Action

Rule 3.1350 was amended effective January 1, 2008, to revise the format for separate statements submitted in support of a motion for summary judgment or summary adjudication of issues. Effective January 1, 2007, the council amended rule 3.1354 to specify the format of written objections to evidence in summary judgment and summary adjudication motions and to require the objecting party to provide a proposed order for ruling on the objections.

Rationale for Recommendation

The suggestion that led to this proposal and a related legislative proposal originated with the Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue. In spring 2012, the ad hoc committee proposed amending Code of Civil Procedure section 437c to limit the requirement that the court rule on objections to evidence. The proposal, which is intended to reduce the time and expense of court proceedings, would have added to subdivision (g) the following: “The court need rule only on those objections to evidence, if any, on which the court relies in determining whether a triable issue exists.” In support of this amendment, the ad hoc committee stated, in part:

> Motions for summary judgment are some of the most time-consuming pretrial matters that civil courts handle. Judges may spend hours ruling on evidentiary objections for a single summary judgment motion. Frequently, the number of objections that pertain to evidence on which a court relies in determining whether a triable issue of fact exists is a small subset of the total number of objections made by the parties. Substantial research attorney and judicial time would be saved by the proposed amendment, thus allowing the trial courts to handle other motions more promptly.

The proposal was referred to the Civil and Small Claims Advisory Committee, which determined that working with the Appellate Advisory Committee on this issue would be helpful. Through a joint subcommittee, the advisory committees developed this rule proposal and a companion proposal to amend Code of Civil Procedure section 437c.

Both proposals are intended to reduce the burden of large numbers of evidentiary objections on trial courts, without resulting in a corresponding negative impact on the appellate courts.

Although the courts have not collected comprehensive data on the time and resources expended in ruling on objections to evidence offered in support of or opposition to summary judgment motions, anecdotal reports from advisory committee members (both judges and attorneys) indicate that they are substantial. Advisory committee members state that many objections are unnecessary and there is no need for rulings on those objections. In one reported case, the moving papers in support of summary judgment totaled 1,056 pages, plaintiff's opposition was nearly three times as long and included 47 objections to evidence, and the defendants' reply included 764 objections to evidence. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 249, 250–251, and 254.)

Currently, some judges rule on evidentiary objections only if the evidence objected to is offered in support of a fact the judge is considering in determining whether to grant the motion. Many judges don't have the time to rule on all evidentiary objections, including those that will have no effect on the determination of the motion.[1] This approach was put forward in *Biljac Assocs. v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419–1420, which was overruled in part and disapproved in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532 to the extent it permits the trial court to avoid ruling on specific evidentiary objections. (Under *Biljac*, rather than a ruling on each evidentiary objection, the trial court judge's statement that the summary judgment decision was based only on competent and admissible evidence would have been sufficient. (See *Biljac, supra,* 218 Cal.App.3d at p. 1419.)

Until the California Supreme Court issued its opinion in *Reid*, the effect of a trial court's failure to rule on evidentiary objections that were properly presented was unclear. Some Courts of Appeal had held that objections made in writing were waived if not raised by the objector at the hearing and ruled on by the court.[2] In *Reid, supra,* 50 Cal.4th at pp. 531–532, the court disapproved this prior case law as well as its own prior opinions[3] to the extent they held that the failure of the trial court to rule on objections to summary judgment evidence waived those objections on appeal.

The court also held that the trial court must expressly rule on properly presented evidentiary objections, disapproving a contrary procedure outlined in *Biljac*. Thus, under *Reid*, evidentiary objections made in writing or orally at the hearing are deemed "made at the hearing" under section 437c(b)(5) and (d), must be ruled on by the trial court, and if not ruled on by the trial court, are presumed to have been overruled and are preserved for appeal. "[I]f the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal." (*Reid, supra*, 50 Cal.4th at p.

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[1] *California Judges Benchbook: Civil Proceedings—Before Trial*, 2d ed. (CJER 2008) § 13.50 and anecdotal reports.

[2] For example, *Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 369 and *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 711.

[3] *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1 and *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1186, fn. 1.

534.) The Supreme Court declined to address the standard of review that would apply to objections that were presumed to have been overruled, stating, "we need not decide generally whether a trial court's rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo." (*Id.* at p.535.)

The *Reid* court recognized "that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical. [Footnote omitted.] Trial courts are often faced with 'innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become.' [Citation omitted.]" (*Reid, supra,* 50 Cal.4th at p. 532.) The Supreme Court proposed a solution: "To counter that disturbing trend, we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices." (*Ibid*.)

Rule 3.1350. To encourage attorneys to raise only objections to evidence truly in dispute, rule 3.1350 of the California Rules of Court is amended to add the following definition of "material facts": "facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion." The definition is based on *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, in which the court stated, "In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome." The advisory committees determined that this amendment is consistent with the requirement in Code of Civil Procedure section 437c(c) that provides, in part, "In determining whether the papers show that there is no triable issue as to any material fact the court shall consider *all* of the evidence set forth in the papers, except that to which objections have been made and sustained by the court." (Italics added.) The committees defined "material facts" to clarify that the facts to be included in a separate statement are those that show whether there is a triable issue under the statute.

In addition to defining material facts, the rule is amended to provide that the separate statements in support of and opposition to summary judgment should contain only material facts and not facts that are not pertinent to the court's disposition of the motion. Specifically, subdivision (d) is amended to add the following provision:

> (2) The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.

Subdivision (f) is amended to add the following:

> (3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate

> statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

If the material facts and supporting evidence are limited to those that are pertinent to the disposition of the motion, objections to the evidence should similarly be limited, which would further the goals of the proposal. The committees expect that these changes will clarify for attorneys filing and opposing summary judgment motions that their separate statements should address only facts claimed to be without dispute and pertinent to the court's decision on the motion. An advisory committee comment to the rule reiterates this and cites to *Los Angeles Nat. Bank* and *Reid*, stating:

> Subdivision (a)(2). This definition is derived from statements in *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274 ("In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome.") and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 ("[W]e encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion.").
>
> Subdivisions (d)(2) and (f)(3). Consistent with *Reid*, these provisions are intended to eliminate immaterial facts from separate statements and thereby reduce the number of unnecessary objections to evidence.

Rule 3.1354. Rule 3.1354 of the California Rules of Court is amended to require that objections on specific evidence be referenced by the objection number in a column of a separate statement in opposition or reply to a motion. Currently, the rule provides that objections on specific evidence *may* be referenced in this manner.

The rule is also amended to eliminate one particular example of an objection on relevance grounds to evidence that is not pertinent to a decision on the motion. The advisory committees believe that, particularly in light of the proposed changes to rule 3.1350, this example is not helpful to include in the rule because the inclusion of irrelevant evidence should be rare.

These changes are intended to reduce the number of unnecessary objections and the need to rule on all objections—even those not material to disposition of the summary judgment motion—and to result in significant reduction of time spent by trial court research attorneys and judges, without causing a significant increase in appellate court time.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from April 17 to June 17, 2015. Nine commentators submitted comments; six agreed with the proposal and the other three agreed but suggested modifications.[4] Commentators included two superior courts, the California Judges Association (CJA), the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees, State Bar of California committees, and local bar associations. Commentators that agreed with the proposal and did not suggest any modifications included the CJA, the JRS, the Superior Courts of Los Angeles and San Diego Counties, a State Bar committee, and the Orange County Bar Association. The most significant comments are discussed below.

Rule 3.1350: Content of separate statement

Discussing the amendments that address what should be in the separate statements in support of and opposition to summary judgment (subdivisions (d)(2) and (f)(3), respectively), the State Bar Committee on Administration of Justice (CAJ) and its Committee on Appellate Courts suggested limiting the text to the following: "The separate statement should include only material facts." These commentators suggested that the additional language in the proposal that circulated, which states that the separate statement should not include "background facts or other facts that are not pertinent to the disposition of the motion," is unclear and likely to lead to confusion. The committees believe it would be helpful to describe what should not be included in these statements. The proposed amendment is designed to give direction to attorneys to focus on what is in dispute and not include other facts. The committees therefore declined to make the specific change suggested by the commentators, but after thorough discussions, decided to shorten the text and eliminate the word "background." The committees also believe that use of "not pertinent" is clear and declined to change it. The provisions now read "The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion."

The State Bar Litigation Section Rules and Legislation Committee suggested that subdivision (f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. The current rule provides only that the opposing party set out the moving party's facts and state whether they are disputed (and if so, provide supporting evidence) or undisputed and any additional material facts that are disputed. The suggested change would add to the items to include in the separate statement in opposition undisputed facts that show the moving party should not be granted summary judgment. The commentator notes that many practitioners already do this and it is helpful to trial courts. The commitees discussed this thoroughly. They noted that Code of Civil Procedure section 437c(b)(3) sets out what the opposition papers must include:

[4] The text of all comments received and committee responses is included in a comment chart attached at pages 15–25.

- A response to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed; and

- Any other material facts that the opposing party contends are disputed. Each fact claimed to be disputed must be followed by a reference to the supporting evidence.

To ensure that the rule amendment is consistent with section 437c, the committees declined to add a provision stating that the opposing party should or must include specifically any *undisputed* facts that would defeat summary judgment. The committees concluded that what is significant is whether the facts would defeat summary judgment, not whether the opposing party contends that the facts are disputed or undisputed. For this reason, the committees decided to modify the proposed amendment to the subdivision addressing the separate statement in opposition so that it provides, "If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement." (See proposed rule 3.1354(f)(3).)

Case citation for "material facts"

CAJ also suggests adding a citation in the advisory committee comment because the case cited (for the definition of "material facts") "merely quotes prior decisional authority" that, in turn, cites another case. Because the case cited, *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, is acceptable authority and the committees do not believe that additional authority is needed, they declined to add a citation to another case.

Rule 3.1354

Currently, rule 3.1354(b) includes among the examples of proper formatting of objections to evidence an example of irrelevant evidence and a corresponding objection on relevance grounds. CAJ does not support deletion of this example. Advisory committee members believe that this example is poor because, particularly in light of the proposed amendments to rule 3.1350, the inclusion of irrelevant evidence in separate statements should be rare, and they therefore recommend deleting it.

Alternatives

The advisory committees considered proposing the amendment of only rule 3.1350 but concluded that also amending rule 3.1354 and Code of Civil Procedure section 437c would better achieve the goals of reducing unnecessary evidentiary objections in summary judgment proceedings and the need for rulings on all evidentiary objections.[5] The advisory committees believe that education of the bar will be a necessary component for courts to reap the most benefits from the proposed changes but believe education alone would be insufficient to achieve the desired goals.

[5] See pending legislation in Senate Bill 470.

Implementation Requirements, Costs, and Operational Impacts

The proposal is expected to benefit the judicial branch, especially superior courts, by reducing the time spent in deciding summary judgment motions. Addressing this topic in response to questions in the invitation to comment, the JRS commented that the proposal would have a positive operational impact on trial courts and the amendments should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The JRS noted that the operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court. The CJA described the amendments as "modest" and stated that it is doubtful they will substantially succeed in teaching counsel to distinguish material facts from immaterial ones. The CJA commented, nevertheless, that the amendments might help and it supports the proposal.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal is consistent with strategic Goal III, Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting "innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases."[6] It also is consistent with objective III.B.5 of the related operational plan: "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."[7]

Attachments and Links

1. Cal. Rules of Court, rules 3.1350 and 3.1354, at pages 9–14
2. Chart of comments, at pages 15–25

[6] Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2016* (Dec. 12, 2014), p. 20.

[7] Judicial Council of Cal., *Justice in Focus: The Operational Plan for California's Judicial Branch, 2008–2011* (2008), p. 33.

Rules 3.1350 and 3.1354 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 3.1350. Motion for summary judgment or summary adjudication

(a) ~~Motion~~Definitions

As used in this rule:

(1) "Motion" refers to either a motion for summary judgment or a motion for summary adjudication.

(2) "Material facts" are facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.

(b)–(c) * * *

(d) Separate statement in support of motion

(1) The Separate Statement of Undisputed Material Facts in support of a motion must separately identify:

(A) Each cause of action, claim for damages, issue of duty, or affirmative defense~~,~~ that is the subject of the motion; and

(B) Each supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion.

(2) The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.

(3) The separate statement must be in ~~a~~ the two-column format~~,~~ specified in (h). The statement must state in numerical sequence the undisputed material facts in the first column followed by the evidence that establishes those undisputed facts in that same column. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

(e) Documents in opposition to motion

Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the opposition to a motion must consist of the following documents, separately stapled and titled as shown:

(1) [*Opposing party's*] memorandum in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;

(2) [*Opposing party's*] separate statement ~~of undisputed material facts~~ in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;

(3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both (if appropriate); and

(4) [*Opposing party's*] request for judicial notice in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both (if appropriate).

(f) ~~Opposition to Motion;~~ Content of separate statement in opposition to motion

The Separate Statement in Opposition to Motion must be in the two-column format specified in (h).

(1) Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page, below which must be set out the evidence said by the moving party to establish that fact, complete with the moving party's references to exhibits.

(2) On the right side of the page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is "disputed" or "undisputed." An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. ~~That~~ Citation to the evidence in support of the position that a fact is controverted must ~~be supported by citation~~ include reference to the exhibit, title, page, and line numbers ~~in the evidence submitted~~.

(3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition

of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

(g)–(i) * * *

Advisory Committee Comment

Subdivision (a)(2). This definition is derived from statements in *L.A. Nat. Bank v. Bank of Canton* (1991) 229 Cal. App. 3d 1267, 1274 ("In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome.") and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 (Parties are encouraged "to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion.")

Subdivisions (d)(2) and (f)(3). Consistent with *Reid*, *supra*, these provisions are intended to eliminate from separate statements facts that are not material, and, thereby reduce the number of unnecessary objections to evidence.

Rule 3.1354. Written objections to evidence

(a) * * *

(b) Format of objections

All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections ~~on~~ to specific evidence ~~may~~ must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement. Each written objection must be numbered consecutively and must:

(1) Identify the name of the document in which the specific material objected to is located;

(2) State the exhibit, title, page, and line number of the material objected to;

(3) Quote or set forth the objectionable statement or material; and

(4) State the grounds for each objection to that statement or material.

Written objections to evidence must follow one of the following two formats:

(First Format):

Objections to Jackson Declaration

Objection Number 1

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7–8.)

Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).

~~**Objection Number 2**~~

~~"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)~~

~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

(Second Format):

Objections to Jackson Declaration

Material Objected to:	**Grounds for Objection:**
1. Jackson declaration, page 3, lines 7–8: "Johnson told me that no widgets were ever received."	Hearsay (Evid. Code, §1200); lack of personal knowledge (Evid. Code, § 702(a)).
~~2. Jackson declaration, page 17, line 5: "A lot of people find widgets to be very useful."~~	~~Irrelevant (Evid. Code, §§ 210, 350–351).~~

(c) Proposed order

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The proposed order must be in one of the following two formats:

(First Format):

Objections to Jackson Declaration

Objection Number 1

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7–8.)

Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).

Court's Ruling on Objection 1:	Sustained: _____ Overruled:_____

~~**Objection Number 2**~~

~~"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)~~

~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

~~**Court's Ruling on Objection 2:**~~	~~Sustained: _____~~ ~~Overruled:_____~~

(Second Format):

Objections to Jackson Declaration

Material Objected to:	**Grounds for Objection:**	**Ruling on the Objection**
1. Jackson declaration, page 3, lines 7–8: "Johnson told me that no widgets were ever received."	Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).	Sustained: _____ Overruled:_____
~~2. Jackson declaration, page 17, line 5: "A lot of people~~	~~Irrelevant (Evid. Code, §§210, 350–351).~~	~~Sustained: _____~~ ~~Overruled:_____~~

~~find widgets to be very useful.”~~		
Date:	_____	_____ Judge

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

	Commentator	Position	Comment	Proposed Committee Response
1.	California Judges Association by Joan P. Weber, President	A	Summary judgment and summary adjudication are possible only if the material facts are undisputed. However, neither Code of Civil Procedure section 437c nor California Rules of Court, rule 3.1350, define "material facts." ***Description of Proposed Rule*** This proposal would amend California Rules of Court, rule 3.1350 by, inter alia: 1. Expressly defining "material facts" as being "facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion. 2. Including a provision that a "separate station should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion." ***Analysis of the Proposal*** The goal of the proposal is to ease the burden on the Courts of ruling on motions for summary judgment and summary adjudication. It is hoped that, by defining material facts and by expressly stating that background and other immaterial facts do	The committees note the commentator's support for the proposal. No response necessary.

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

	Commentator	Position	Comment	Proposed Committee Response
			not belong in separate statements of undisputed facts, counsel will be more likely to exclude immaterial facts from the separate statements, thereby both shortening the list of facts that the court must consider and eliminating facts that otherwise might draw unnecessary and time-consuming evidentiary objections. The proposal is part of a package addressing these motions. The other half of the package is SB 470, a Judicial Council-sponsored bill that would amend Code of Civil Procedure section 437c to provide that judges need rule only on those evidentiary objections that the judge deems material to its disposition of the motion. All other objections would be deemed to have been overruled and preserved for appeal. While I doubt that these modest amend-ments to rule 3.1350 will substantially succeed in teaching counsel to distinguish material facts from immaterial ones, it might help, and it couldn't hurt. CJA supports this proposal.	
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	Amending rule 3.1350 would reduce burdens on the trial courts associated with evidentiary objections in summary judgment proceedings. Trial courts	The committees note the commentator's support for the proposal.

	Commentator	Position	Comment	Proposed Committee Response
			encounter a lot of unnecessary information within statements of material facts that do not assist the court in deciding the motion. Many objections are unnecessary and there is no need for ruling on those objections. A "material fact" should not be included in the separate statement unless it tends to prove or disprove a necessary element of the cause of action/defense/claim in question. Amending rule 3. 1354 may, but is unlikely to accomplish the purpose of reducing time spent in deciding motions for summary judgment. Most evidentiary objections list multiple grounds for objection. The JRS concluded that this proposal would have a positive operational impact on trial courts. The proposed changes should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court.	The committee is hopeful that this proposal and a companion proposal to amend Code of Civil Procedure section 437c will reduce the total number of evidentiary objections made and the number of objections that a court must rule on. Under the proposed legislation, multiple grounds for objection need not be ruled on if the evidence objected to isn't material to disposition of the summary judgment motion.
3.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.
4.	San Diego County Bar Association	AM	Finally, we understand that SPR-09 and the	

	Commentator	Position	Comment	Proposed Committee Response
	Appellate Practice Section		related proposal to amend Code of Civil Procedure section 437c are intended to reduce the trial courts' increasing burden associated with ruling on voluminous and potentially unnecessary evidentiary objections in connection with summary judgment motions. Our section members report anecdotal comments offered by local judicial officers, stating that substantial judicial time and resources are squandered addressing extensive objections to evidence offered in support of or in opposition to summary judgment motions. It is important for the rules to address these concerns while balancing practitioners' historical concerns about the need to preserve appellate challenges to evidentiary objections where there is no express trial court ruling. We anticipate that the proposed amendment to section 437c will address this latter concern by adding language to the summary judgment statute, consistent with the holding in *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 534, affirming that objections made in writing, or orally at the hearing, if not ruled upon, are presumed to have been overruled and preserved for appeal. However, it would also be helpful if *Reid's* recognition about the rising tide of unnecessary evidentiary objections and its	The proposed amendment to the statute does include a provision stating that objections not ruled on for purposes of the motion for summary judgment are deemed overruled and preserved on appeal.

	Commentator	Position	Comment	Proposed Committee Response
			encouragement that parties "raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion" is also incorporated into proposed Rule 3.1354 or cited in the Advisory Committee Comments to Rule 3.1354, as it is in Rule 3.1350.	The committee believes that the best place to include such a statement is in the advisory committee comment to rule 3.1350, as it addresses the content of separate statements.
5.	State Bar of California Committee on Admin. of Justice	AM	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports this proposal subject to the comments below. A. <u>Proposed amendments to California Rules of Court, rule 3.1350</u> CAJ supports adding a definition of "Material Facts" to Rule 3.1350 and supports the proposed definition. With respect to the proposed changes to subdivision (d)(2) and the proposed identical sentence in the first sentence of the second paragraph of (f)(3), CAJ recommends that both sentences be limited to the following: "The separate statement should include only material facts." CAJ believes the balance of the proposed	**Subdivision (d)(2)** The committee used "background facts or other facts that are not pertinent to the disposition of the motion" to emphasize what should not be included. The committee believes that this description is useful but in response to the comment, shortened the statement to read, "The separate statement should

	Commentator	Position	Comment	Proposed Committee Response
			sentence ("and not background facts or other facts that are not pertinent to the disposition of the motion") is problematic for several reasons. It is not clear whether "background facts" is meant to be an example of the types of facts the proposals seek to limit or whether "pertinent facts" is intended to modify "background" i.e., background facts which are themselves not pertinent. Background facts may be "material" within the meaning of the proposed new definition, and their inclusion should be guided by that definition. In addition, the statement that parties should not include facts that are "not pertinent" is likely to lead to confusion. CAJ recognized that this use of "pertinent" comes from *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, but this proposal would define "material" and not "pertinent." If the two words are intended to have the same meaning, the proposal would essentially say that parties should include only material facts, but should not include facts that are not material. If the two words are intended to have different meanings, the extra language concerning what *should not* be included becomes ambiguous, and may result in unnecessary disputes. CAJ believes that an affirmative statement in	include only material facts and not any facts that are not pertinent to the disposition of the motion." "Not pertinent to the disposition of the motion" is another way of describing facts that will not make a difference in the disposition of the motion and are, therefore, not material facts.

	Commentator	Position	Comment	Proposed Committee Response
			subdivisions (d)(2) and (f)(3) as to what the separate statement should include is preferable and adds clarity to the point being made. CAJ also believes that moving parties will ultimately be self-guided by the practicality of citing only those facts, both by way of background and otherwise, that are most likely to persuade the trial court that judgment should be entered in their favor. With respect to the Advisory Committee Comment to subdivision (a)(2), CAJ suggests that consideration be given to adding a citation to Pettus v. Standard Cabinet Works (1967) 249 Cal.App.2d 64, 69. This suggestion is based upon the fact that the authority cited in support of subdivision (a)(2), L.A. Nat. Bank v. Bank of Canton (1991) 229 Cal.4th 512, 532-33 merely quotes prior decisional authority, i.e. Burton v. Security National Bank (1988) 197 CA3d 972, 978. Burton, in turn, cited Pettus. Pettus was felt to be preferable to citing Burton since Burton was questioned on unrelated grounds in Guz v. Bechtel National (2000) 24 Cal.4th 317, 351. B. <u>Proposed amendments to California Rules of Court, rule 3.1354</u>	The *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267 citation is acceptable authority and the committees do not think it necessary to add a citation to another case. The citation is different from the one cited by the commentator (229 Cal.App.3d 1267 compared to 229 Cal.4th 512).

	Commentator	Position	Comment	Proposed Committee Response
			CAJ does not support this part of the proposal. Under Evidence Code section 350, relevance remains a viable objection in summary judgment/adjudication proceedings. In light of the addition of a definition of "material facts" to rule 3.1350(a)(2), CAJ does not anticipate that retention of a relevance objection as an example would have the effect of "encouraging attorneys to list evidence in their separate statements that is not pertinent." Instead, CAJ believes the relevance objection may become even more important as a means of <u>discouraging</u> the inclusion of facts in violation of the amended rules - given the added definition of "material facts" and the restrictive language proposed for rule 3.1350 (d)(2) and (f)(3) that separate statements should include "only" material facts.	Committee members believe that the example in rule 3.1354 is a poor one, particularly in light of the proposed amendments to rule 3.1350 because the inclusion of irrelevant evidence in separate statements should be rare.
6.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	AM	The Committee supports this proposal but believes it should be modified to delete surplusage from the proposed new subdivision (d)(2) and (f)(3) of rule 3.1350 as follows: "The separate statement should include only material facts. ~~and not~~	**Subdivisions (d)(2) and (f)(3)** The committee used "background facts or other facts that are not pertinent to the disposition of the motion" to emphasize what should not be included. The committee believes that these examples are useful, but in

	Commentator	Position	Comment	Proposed Committee Response
			~~background facts or other facts that are not pertinent to the disposition of the motion~~." The term "material facts" is accurately and sufficiently defined in proposed new subdivision (a)(2) of rule 3.1350. Further reference to "background facts" and "facts that are not pertinent . . ." in (d)(2) and (f)(3) is surplusage and will generate confusion. We recognize that the language is derived from case authority, but used here it may trigger rules of interpretation that would give "not pertinent" a meaning other than "not material." Assuming those terms are intended to have different meanings, the difference is not clear. Also, background facts are sometimes material when combined with other facts to support an inference.	response to the comment shortened the statement to read, "The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion." "Not pertinent to the disposition of the motion" is another way of describing facts that will not make a difference in a difference in the disposition of the motion and are, therefore, not material facts.
7.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	A	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose of reducing the burden on the trial court associated with evidentiary objections on summary judgment motions without increasing the burden on the appellate courts. Please consider the following additional suggestions. We would revise the final sentence in rule	

	Commentator	Position	Comment	Proposed Committee Response
			3.1350(f)(2) to parallel the language in rule 3.1350(d)(3), which we believe more accurately conveys the notion that evidence cited in the separate statement should be referenced in a particular manner. We suggest the following revisions: "~~That~~ Citation to the evidence in support of the position that a fact is controverted must include reference ~~be supported by citation~~ to the exhibit, title, page, and line numbers." We believe that an opposing separate statement may not only indicate which material facts are disputed and cite evidence showing a dispute, but it may also very helpfully set forth additional material facts that are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. (See Rylaarsdam & Edmon, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 10:196.2, p. 10-81 ["Although neither CCP §437c nor CRC 3.1350 expressly so provides, the opposing party should also include any undisputed material facts which would *defeat* the motion and which have not been raised by the moving party"].) Many practitioners already do this, and we believe it is helpful	The committees made this change.

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

	Commentator	Position	Comment	Proposed Committee Response
			to the trial court. Accordingly, we suggest that rule 3.1350(f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. Finally, we would revise the second sentence in rule 3.1354(b) as follows: "Objections ~~on~~ to specific evidence . . . ."	The committees thoroughly discussed this and decided to recommend amending rule 3.1350(f)(3) to provide that the opposing party must include in the separate statement additional material facts that are pertinent to the disposition of the motion. The committee agrees and this change has been made.
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.

 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 26, 2015

Title
Civil Cases: Continued Suspension of Case Management Rules

Rules, Forms, Standards, or Statutes Affected
Amend. Cal. Rules of Court, rule 3.720

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that a statewide rule of court on civil case management be amended to further extend the period during which courts have discretion to exempt certain types or categories of civil cases from the mandatory case management rules. The 2013 amendments to rule 3.720 were intended to help courts better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. In light of the continuing fiscal crisis, the Civil and Small Claims Advisory Committee recommends a four-year extension of the discretion to grant such exemptions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend rule 3.720 of the California Rules of Court, effective January 1, 2016, to extend until January 1, 2020, the period during which courts, by local rule, may exempt certain categories of general civil cases from the mandatory case management rules.

The text of the proposed amendment to the rule is attached at page 8.

Previous Council Action

Pursuant to the Trial Delay Reduction Act,[1] in 2001, the Judicial Council approved a major revision of civil case management rules,[2] to modernize case management practices, establish greater uniformity, and promote good case management.[3] One of the major substantive changes approved was the addition of new requirements for individualized case management review in all general civil cases,[4] within 180 days of the filing of the complaint, with specified exceptions, and that a case management conference be conducted in all applicable unlimited civil cases unless the court found it unnecessary.[5]

The case management rules have not been substantively amended since 2001. They were renumbered in 2007 as part of an overall rules reorganization. In 2009, an amendment added a new topic—issues relating to discovery of electronically stored information—to the list of items about which parties must meet and confer before the case management conference.[6] Other than those amendments, the case management rules remained the same until 2013, with courts holding individual case management conferences in all applicable unlimited general civil cases and performing individual case management review (although generally not holding conferences) in all limited general civil cases.[7]

In 2013, following requests from the superior courts in Los Angeles and Sacramento, the Judicial Council amended rules 3.712 and 3.720. The amendments authorized courts to adopt local rules exempting specified types or categories of general civil cases from mandatory case management rules if they had alternative procedures in place for case processing and trial setting for those cases.[8] The amendments were intended to be temporary, applying only to cases filed before January 1, 2016. The purpose was to help courts in addressing the current fiscal crisis by decreasing the time that court staff and judicial officers spent in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules.

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[1] Gov. Code, § 68600 et seq.

[2] All references to rules in this report are to the California Rules of Court, unless otherwise noted.

[3] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Case Management* (Dec. 7, 2001), p. 3; *id.*, mins. (Dec. 18, 2001), pp. 16–18.

[4] See rule 1.6(4) (" 'General civil case' means all civil cases" except probate, guardianship, conservatorship, juvenile, family law, small claims, and unlawful detainer proceedings, and certain civil petitions).

[5] See rules 3.721 and 3.722 (formerly rule 212(a), (b)).

[6] See rule 3.724(8).

[7] Rule 3.722(e) authorizes courts to provide by local rule that counsel and parties need not attend case management conferences in limited civil cases.

[8] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Cases: Temporary Suspension of Case Management Rules* (Jan. 31, 2013); *id.*, mins. (Feb. 26, 2013), p. 8.

Rationale for Recommendation

Most courts throughout the state have not implemented local rules adopting exemptions from case management rules as authorized by rule 3.720. But at least six courts have implemented local rules adopting exemptions, suspending the mandated case management procedures for some or all of the general civil cases in their court. Other courts may wish to do so if the rule is amended to extend the sunset date until January 1, 2020.[9]

The Superior Court of Los Angeles County is one of the six that has exercised the temporary discretion afforded under rule 3.720.[10] It reports that it has exempted all general civil personal injury cases (more than 16,000) and also all limited civil cases from the case management rules, after determining that those cases typically required fewer appearances and less direct case management than other general civil cases. Taking this step allowed the court to consolidate the pretrial handling of cases. Attorneys and the public reportedly have endorsed the action, and it has produced substantial savings, because fewer court appearances and filings are required and fewer courtrooms require staffing.

The Superior Court of Shasta County reported a similar experience. By exempting all limited and unlimited civil cases from the case management rules,[11] it was able to combine two civil departments into one, freeing the other to assist in alleviating expanding family law calendars. The court reports that the changes have been embraced by local civil and family law attorneys and have produced sufficient savings in staff resources that it may be possible to restore clerks' office hours for the public in the new fiscal year. Both courts report that continuation of the discretion afforded by the temporary amendment to rule 3.720, allowing exemptions from the case management rules, is critical to their functioning in light of ongoing funding reductions.[12]

Although individualized case management conferences have been considered the best practice for a court's oversight of the pace of civil litigation for more than 10 years, under current budgetary constraints it is not possible for all courts to employ optimal case management practices. Extending the period during which courts may exempt certain cases from mandated case management procedures will allow courts the continued flexibility to determine whether they can more effectively manage their civil cases overall, with current limited resources, by

[9] Although courts have seen modest budget increases recently, they continue to manage nearly $290 million in ongoing reductions.

[10] See Super. Ct. L.A. County, Local Rules, rule 3.23 ("Exemption From Case Management Rules").

[11] See Super. Ct. Shasta County, Local Rules, rule 3.02 ("All Purpose Assignment; Exemption From Case Management Conference").

[12] The Monterey, Sacramento, San Bernardino, and San Joaquin courts also report having exercised the temporary discretion afforded under rule 3.720. (See Super. Ct. Monterey County, *Alternative to Civ. Case Management, www.monterey.courts.ca.gov/Documents/Civil/2013-Alternative-to-Civil-Case-Management.pdf* [exempting all civil cases]; Super. Ct. Sacramento County, Local Rules, rules 2.21, 2.52 [all limited and short cause civil cases]; Super. Ct. San Bernardino County, Local Rules, rule 411 [all general civil cases and complex cases]; Super. Ct. San Joaquin County, Local Rules, rule 3–102.A.6.)

eliminating individualized case management conferences and review for some types of cases. Having the ability to do so will free court staff from filing and processing case management statements and scheduling case management conferences, and will decrease judicial officer time spent reviewing cases and holding conferences.

At the same time, the mandates of the Trial Delay Reduction Act remain in effect and courts remain responsible for overseeing the progress of cases before them, eliminating delay in the progress and ultimate resolution of litigation. The proposed amendment would retain the provision, added to rule 3.720 in 2013, requiring that courts have an alternative method in place for processing civil cases and to ensure trial dates are set.

Comments, Alternatives Considered, and Policy Implications

Comments received

This proposal was circulated for public comment from April 17 to June 17, 2015. In addition to asking for general comments on the appropriateness of the proposed amendment, the committee specifically asked whether four years was an appropriate period for the proposed extension. The committee also asked courts for input on the following cost and implementation matters:

- Whether the proposal would provide cost savings;
- What steps would be required to implement the proposal;
- Whether two months would provide sufficient time for implementation; and
- How well the proposal would work in courts of different sizes.

Seven comments were received, with commentators including four courts, one county bar association, the California Judges Association (CJA), and the Joint Rules Subcommittee of the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees (Joint Rules Subcommittee). All agreed with the proposal. A chart summarizing all comments and the committee's responses is attached at pages 9–16.

Comments generally supporting the proposal. As noted, all of the commentators supported the proposal. CJA relayed that, with only one dissent, its membership overwhelmingly supported the proposal. The consensus was that it would allow individual courts discretion, in "uncertain financial times," to adopt alternative procedures for case processing (for example, relying on telephone status conferences instead of case management conferences). The Joint Rules Subcommittee observed that the proposal would allow courts "to modify or streamline their civil case management process to reflect their economic and staffing realities," and expressed appreciation that the proposal retained discretion for courts in this area, making the provision voluntary.

The Superior Court of Los Angeles County reported that it "strongly support[s]" the proposal, and considers approval of the proposal to be "critical" to the court's functioning. The Superior Court of Shasta County also "urges" approval of the proposal because it will give all courts "the flexibility necessary to make independent administrative and operational decisions that are best

suited for each respective court." The Shasta court noted that it particularly needs this flexibility because it has significantly fewer staff (41.5 vacant support staff positions) and a dramatically increased number of criminal, family law, and traffic filings.

Length of the extension. Five commentators specifically responded to the question about whether four years would be an appropriate extension of the temporary discretion to exempt certain categories of cases from case management rules (i.e., the Los Angeles and San Diego courts, the Joint Rules Subcommittee, the bar association, and CJA). All agreed that four years would be an appropriate period. The bar association noted that four years would allow other courts time to evaluate and implement the temporary provision, by adopting a local rule. A four-year period, the bar association observed, also would allow courts and parties to evaluate the results in terms of management of court time and resources and the effect of the exemption for certain types of cases.

CJA reported that, with one exception, its membership overwhelmingly supported either the proposed four-year extension or eliminating the sunset provision altogether. The committee has concluded that extending the sunset date by four years would be the best course as it would provide all courts further time to use the temporary provision in dealing with the continuing fiscal crisis. It also would allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.

Cost savings. Four commentators specifically responded to the question about whether the proposal would provide court savings, all agreeing that it would do so. The Joint Rules Subcommittee commented that the proposal would reduce costs because fewer court staff would be required. The bar association concurred, observing, as noted, that case management conferences generally "are time-consuming" for litigants and courts, and do not appear to improve case management.

The Los Angeles court reported that it has realized "substantial savings" as a result of the discretion that the proposal would preserve, as the court is able to handle cases with "far fewer appearances," fewer filings are required, and fewer courtrooms require staffing. The Shasta court reported that the temporary provision had allowed it to condense two dedicated civil law and motion departments into a single department, freeing the other department to help alleviate an "ever-increasing family law calendar." The court has been able reassign support staff to areas of more critical need. If the proposal is adopted, the Shasta court anticipates the resulting savings may allow it to restore services to the public by expanding the civil clerks' office hours.

Effective date of the proposed rule change. Two commentators, the Joint Rules Subcommittee and the Superior Court of Los Angeles County, responded to the specific question about whether a two month period between council approval and the effective date of the rule change would be sufficient. Both agreed that two months would suffice.

Courts of different sizes. Two commentators, the Joint Rules Subcommittee and the Superior Court of Shasta County, responded to the specific question about whether the proposal would work well in courts of different sizes. The Joint Rules Subcommittee commented that it would work "very well" because courts could exercise discretion in implementing it according to their individual needs. The Shasta court agreed, observing that the proposal would "provide courts throughout California with the flexibility" to make "independent administrative and operational decisions" best suited for their individual circumstances.

Alternatives considered

Before circulating the proposal for comments, the advisory committee considered the alternative of taking no action to extend the sunset date stated in the rule. It concluded, however, that several courts are relying on the flexibility that the temporary provision affords to manage the fiscal crisis and very much wanted to continue doing so.

The committee also considered the appropriate length of time for the extension of the sunset date, and concluded that four years was appropriate. Four years would provide courts—including recent adopters[13]—sufficient time to realize the benefits afforded by the temporary provision. It also would allow the committee time to consider whether it should propose other ongoing changes to case management rules.

Implementation Requirements, Costs, and Operational Impacts

If approved, this proposed rule change would not require any action and should not raise any costs or place any operational impacts on the courts. The proposal would retain for courts the discretion to exempt certain types or categories of general civil cases from the case management rules. A court would only avail itself of the option if it determined that doing so would assist it in better managing its resources. As the Joint Rules Subcommittee observed in its comments, if the proposal is approved, a court would only need to amend its local rules and provide notice to the local bar to avail itself of the alternative that it allows. The Los Angeles and Shasta courts both observed that they already had taken the necessary steps and do not anticipate approval of the proposal would require further action on their parts. The committee observes that rule 10.613(i) offers a method for expediting changes to courts' local rules, if good cause exists, and that this may allow courts still wishing to do so, to implement the proposed rule change without significant delay.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendation falls within the ambit of Strategic Plan Goal III: Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting "innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases."[14] It also is consistent with the Operational Plan,

[13] The Superior Court of Shasta County, for example, reportedly just took the requisite action last fall.

[14] Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California's Judicial Branch 2006–2016* (Dec. 12, 2014), p. 20.

Objective 5: "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."[15]

Attachments

1. Cal. Rules of Court, rule 3.720, at page 8
2. Chart of comments, at pages 9–16

[15] Judicial Council of Cal., *The Operational Plan for California's Judicial Branch, 2008–2011*, p. 12.

California Rules of Court, rule 3.720 would be amended, effective January 1, 2016, to read:

Rule 3.720. Application

(a) * * *

(b) Emergency suspension of rules

A court by local rule may exempt specified types or categories of general civil cases filed before January 1, ~~2016~~ 2020, from the case management rules in this chapter, provided that the court has in place alternative procedures for case processing and trial setting for such actions, including, without limitation, compliance with Code of Civil Procedure sections 1141.10 et seq. and 1775 et seq. The court must post the alternative procedures on its website.

(c) * * *

Advisory Committee Comment

Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources available to the courts as a result of the current fiscal crisis and is not intended as a permanent change in the case.

SPR15-10

Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	In 2013, the Judicial Council amended the statewide rules of court on civil case management to give courts the discretion to exempt certain types or categories of general civil cases from the mandatory case management rules. (Rule 3.720) The amendments were an emergency measure, intended to help courts to better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions requir3ed by the case management rules. The exemption provided in the rule was intended to be temporary, and by the terms of the amended rule applies only to cases filed before January 1, 2016. The proposal would extend the exemption in light of the continuing fiscal crisis. With the exception of one dissenting opinion, the overwhelming response was that Rule 3.720 should either be extended or amended with no sunset provision. As to those expressing support for the extension, all voiced support for the proposition that in these uncertain financial times each Court should have the ability and the discretion to suspend the CMC rules so long as alternative procedures are available for case processing. The TSC has proven to be a more appropriate case management tool. California Judges Association supports extending the rule or making it permanent.	The committee notes the commentator's support for extending or eliminating the sunset date provided in rule 3.720(b). The committee concluded that a four-year extension was appropriate. This will provide courts further time to use the temporary provision in dealing with the fiscal crisis, including courts that just recently adopted a local rule or that may have been considering whether to do so. It also will allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.

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

SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association By Ashleigh Aitken, President	A	The proposal adequately addresses the stated purpose and/or goal. This will save time and resources for courts which will be better spent elsewhere. CMCs are generally time-consuming for all parties, courts and staff, do not appear to result in greater case management by the courts and parties, and create unnecessary expense. The four-year time period appears to be appropriate for continuing the emergency exemption. This time period will allow the courts to continue to evaluate and implement the exemption. The time will further allow the courts and parties to determine how utilizing the exemption affects the court's time and resources and how it affects (if it does at all) the management of certain cases.	The committee notes the commentator's agreement with the proposal.
3.	Superior Court of Los Angeles County	A	We strongly support the advisory committee's proposed extension until 2020 of the exemption from the case management rules found in Rule 3.720 of the California Rules of Court. This exemption in 2012 has allowed the Los Angeles Superior Court to address the fiscal crisis that we faced and still face while still meeting our obligations to the public. Following this exemption, and in compliance with our local rule 3.23, the Court exempted general civil personal injury cases from the case management rules. These cases currently are consolidated in four courtrooms for all pretrial matters, whereas far more courtrooms would be needed to handle them without the exemption. The feedback that our Court has received from the bench, bar,	The committee notes the commentator's support for the proposal.

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

SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			and the general public is positive with an acceptance and an approval of the management of these cases. The exemption has resulted in substantial savings in that we are able to handle these cases with far fewer court appearances, filings, and staffed courtrooms. The committee asks whether four years is appropriate for the extension. We believe that it is. The committee has also asked whether there would be implementation requirements, and whether two months would be sufficient for implementation. Because we already are functioning with the exemption, there would be no new implementation requirements, and no time is needed for implementation. The continuation of the exemption is critical to our Court's functioning, and we are grateful that the advisory committee is considering recommending its continuation.	
4.	Superior Court of Riverside County	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes. Is four years an appropriate period for extending the emergency exemption? Yes.	The committee notes the commentator's agreement with the proposal.
6.	Superior Court of Shasta County by Hon. Gregory S. Gaul	A	Shasta County Superior Court (hereinafter "Court") employed two hundred (200) employees prior to 2008. As budget cuts began being imposed in 2008, the Court realized that	The committee notes the commentator's agreement with the proposal.

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

	Commentator	Position	Comment	Committee Response
			all vacant positions would need to remain unfilled, unless essential to keeping courtrooms open to the public, or as required for public safety within the courthouse. Despite exploring all available cost-cutting measures, including employee furloughs, the Court was faced with reducing services to the public. This included closure of the clerks' offices at 2:00 p.m. each day and closing the branch court located in Burney, California. At the end of fiscal year 2013/2014, the Court had more than thirty vacant employee positions, but was still faced with making tough decisions to address the projected 2014/2015 fiscal year budget shortfall. In June 2014, the Court was forced to lay off support staff for the first time in the Court's history. As a result, the Court currently has 41.5 vacant support staff positions. Despite a dramatic increase in criminal, family law, and traffic filings, the Court was, and is currently performing an increasing workload with more than twenty percent (20%) fewer employees. The resulting increase in workload, being performed by less people, meant the Court needed to have flexibility in making the best administrative and operational decisions for our specific Court. One solution to this dilemma was the Court's decision to suspend the use of civil case management conferences for all limited and unlimited civil cases, which has allowed our court to condense two dedicated civil law	

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

	Commentator	Position	Comment	Committee Response
			departments into one. A significant operational benefit from this change is that a courtroom was freed up to be available to assist in alleviating the ever-increasing family law calendars. More importantly, this change allowed the court to reassign support staff to areas of more critical need. The Court held brown bag meetings with the civil bar before and after the January 1, 2015 suspension of case management conferences. These changes have been implemented without negative repercussions, and they have been both welcomed and embraced by the local civil and family law attorneys. Significantly, from a budgetary point of view, the suspension of case management conferences has resulted in the elimination of two case management conference calendars, the support staff necessary to process case management conference filings, the support staff necessary to pull and return the files for cases that were previously calendared for case management proceedings, and the research attorney time spent reviewing and preparing the files for a judicial officer. The primary goal of our Court during fiscal year 2015/2016, will be to restore services to the public upon any receipt of restored funding. This will include expanding the civil clerk's office hours to the public. However, the saving of staff resources realized through the	

SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			suspension of civil case management conferences is essential to the Court's desire to increase the hours of public access to court services. Shasta County Superior Court urges the Judicial Council to approve the proposed amendment to California Rules of Court, Rule 3.720(b), to provide that the emergency suspension of the case management rules currently scheduled to sunset in 2016, be amended to sunset in 2020. Such an amendment will provide courts throughout California with the flexibility necessary to making independent administrative and operational decisions that are best suited for each respective court.	
7.	Judicial Council Trial Court Presiding Judges and Court Executives Advisory Committee By Joint Rules Subcommittee (JRS)	A	The JRS identified the following fiscal/operational impact on the trial courts: • Significant positive fiscal impact; and • Requires development of local rules and/or forms. This proposal would allow courts to modify or streamline their civil case management process to reflect their economic and staffing realities. The original rule required courts to enact a new local rule, and not all courts have done that because of the lead time involved. The proposed extension will allow courts to better assess their capacity and make appropriate local rule	The committee notes the commentator's agreement with the proposal.

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

	Commentator	Position	Comment	Committee Response
			changes. The subcommittee appreciates that the exemption of specified types or categories of general civil cases filed before January 1, 2020, from the case management rules in this chapter remains voluntary and at the courts' discretion. **The following are responses to the proposal's Request for Specific Comments:** Does the proposal appropriately address the stated purpose? ***Yes.*** Is four years an appropriate period for extending the emergency exemption? ***Yes.*** Would the proposal provide cost savings? If so please quantify. ***Yes. Fewer staff would be required if a court opts out of some or all of the civil case management process.*** 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? ***Implementation requirements would include a local rule change and a notice to the local bar.*** Would two months from Judicial Council approval of this proposal until its effective date	

SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			provide sufficient time for implementation? ***Yes.*** How well would this proposal work in courts of different sizes? ***Very well. Courts can adapt it to meet their own needs.***	

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

Item number: 26

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Judicial Council Forms - Proof of Service (Revise Form POS-040)

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Bruce Greenlee, 415 865-7698
bruce.greenlee@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2014
Project description from annual agenda: Proof of Service—Civil (form POS-040). Amend form to correct the provision regarding electronic service to conform to law; form incorrectly provided that server may not be party to the action, but law expressly permits electronic service to be completed by a party. Other minor amendments to form will be considered at same time.

If requesting July 1 or out of cycle, explain:

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

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: TBD

Title
Judicial Council Forms - Proof of Service

Rules, Forms, Standards, or Statutes Affected
Revise Form POS-040

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising Judicial Council form POS-040, *Proof of Service—Civil* to correct two legal errors in the current form. The recommended revisions to the form would conform it to statute.

Recommendation

The Civil and Small Claims Advisory Committee recommends revising Form POS-040, *Proof of Service—Civil,* to:

1. Remove electronic service as one of the manners of service for which the form may be used; and

2. Modify the language regarding personal service on an attorney to accurately reflect the circumstances in which statute requires that personal service on an attorney by leaving a copy at an attorney's office must be accomplished between the hours of 9:00 am and 5:00 pm.

Previous Council Action

Form POS-040 was last revised effective July 1, 2011.

Rationale for Recommendation

Statute provides that electronic service may be performed directly by a party, by an agent of a party, including the party's attorney, or through an electronic filing service provider.[1] Current Judicial Council form POS.040, *Proof of Service—Civil,* incorrectly requires that the person serving electronically state that he or she is "not a party to this action" (See Item 1 and **General Instructions** on page 3: "A party to the action cannot serve the documents.").

There is a separate form POS-050 for Proof of Electronic Service. Therefore, it is not necessary that POS-040 provide for proof of electronic service as one of its options. The Civil and Small Claims Advisory Committee therefore recommends that POS-040 be revised to remove electronic service as one of the manners of service for which the form may be used. This change will resolve the error in requiring that electronic service be effected by a nonparty in a very simple way without any loss of functionality to form users.

There is also an error on POS-040 at Item 6(a) of the form and also in the Declaration of Messenger. The form currently states that personal service on an attorney by leaving a copy at an attorney's office must be accomplished between the hours of 9:00 am and 5:00 pm. However, the requirement that service on an attorney at the attorney's office be accomplished between the hours of 9:00 am to 5:00 pm applies only if there is no receptionist or person in charge present.[2] The recommended amendments to form POS-050 would correct this error by accurately stating when the 9:00 a.m. to 5:00 p.m. limitation applies.

Comments, Alternatives Considered, and Policy Implications

External comments

The form as proposed to be revised was circulated for public comment from April 17 to June 17, 2015. Comments were received from nine different commentators. Of these, three, from the Superior Courts of Los Angeles, Riverside, and San Diego Counties, merely expressed agreement with the proposal.

The other commentators were mostly in favor of removing E-service from this form. One commentator did express a preference for a single proof of service form combining all manners of service, and another was concerned about the use of "multiple erroneous over-lapping forms

[1] Code Civ. Proc,, § 1010.6(a)(1)(A), Cal. Rules of Ct., Rule 2.251(e)(1).

[2] See Code Civ. Proc., § 1011(a).

for proof of service." However, the committee believes that multiple forms are preferable to one lengthy form. One form that covers all manners of service results in an overly complex form that is difficult to use. The fact that different manners of service have different requirements requires that each section of the form include the requirements for that manner of service.

With regard to revising the language concerning personal service on an attorney, all comments on this point pointed out that the current language is not legally correct and should be revised. There were several suggestions for wording changes for Item 6a. There are three ways presented to personally serve an attorney:(1) serve the attorney directly; (2) give the papers to a receptionist or other person in charge; or (3) leave them in a conspicuous place during business hours. Letters (a), (b), and (c) were added to emphasize that there are three options. Some other minor revisions to the wording were made in response to these comments.

Several commentators noted that the form requires that personal service be by a nonparty, and that no statute or rule of court contains this limitation. The reference in the comment noted above to "erroneous" forms almost certainly refers to this problem. For the reasons discussed under Alternatives, below, the committee declined to recommend any revisions to form POS-040 to address this issue at this time.

Alternatives

The committee considered several alternative approaches to addressing the error with respect to who can effect electronic service.

- Adding the words "other than for electronic service" before "not a party to this action" in Item 1 and in the instructions. But the committee thought that removing electronic service from the form entirely was cleaner and simpler.

- Revoking POS-040 altogether. There are separate POS forms for personal service (POS-020), service by mail (POS-030), and electronic service (POS-050). However, revocation would mean that there would not be a Judicial Council form for proof of service by fax, overnight delivery, or messenger service. To maintain a form for these modes of service, the committee concluded it was preferable to revise, rather than revoke POS-040.

The committee also considered whether to a related issue presented in POS-040. Currently, the form requires that one effecting personal service be a nonparty. However, there is no express authority in the law, either statute or rule of court, that generally requires that the person effecting personal service be a nonparty.[3] The origin of this requirement would seem to be Code of Civil Procedure section 414.10, which requires that a summons be served by a nonparty.[4] But extension of this requirement to all personal service is not required by law. The committee

[3] Electronic service is the only manner of service that expressly authorizes service by a party.

[4] Statutes governing particular proceedings may expressly require that the personal service be by a nonparty. See, e.g., Pen. Code § 18755(b)(1), gun violence restraining orders.

therefore considered whether the nonparty requirement could be removed from form POS-040 for personal service also. The committee concluded, however, that removing this requirement would impact many other forms, not just POS-040. It would be necessary to check all other proof-of-service forms, including proofs of service included as a section of another form, to see if nonparty status is required. This would entail a significant amount of work and would change a long-standing practice.In addition, the committee felt that it should not make this decision unilaterally. Other subject areas have proofs of service raising the same issue.[5] The committee's view was that the decision to revise personal service forms should be a joint project by all groups involved with forms development. For all these reasons, the committee decided not to recommend this change to form POS-040 at this time, but will consider this further as time and resources permit.

Implementation Requirements, Costs, and Operational Impacts

There should be no implementation requirements, costs, or impact on the courts from this proposal. The form is already in use by attorneys, and the revisions proposed will not have any significant impact on this use.

Attachments and Links

1. Judicial Council form POS-040 at pp. 5−7
2. Chart of comments on proposal SPR15-11 at pp. 8−13

[5] See, e.g., FL-330, Proof of Personal Service (Family Law).

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **Draft Revised 6/29/15 Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
PROOF OF SERVICE—CIVIL **Check method of service *(only one):*** ☐ By Personal Service ☐ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	DEPARTMENT:

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age **and not a party to this action**.
2. My residence or business address is:

3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*

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.)*
      (1) Fax number 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 (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (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.

Form Approved for Optional Use
Judicial Council of California
POS-040 [Rev. January 1, 2016]

PROOF OF SERVICE—CIVIL
(Proof of Service)

Code of Civil Procedure, §§ 1011, 1013, 1013a, 2015.5; Cal. Rules of Court, rule 2.306
www.courts.ca.gov

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. 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 the messenger 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.

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 (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (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

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, or (5) fax.

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).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

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 or printed. 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.
2. Print your home or business address.
3. If service was by fax service, print the fax number 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 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.

SPR15-11
Civil Forms: Proof of Service (revise POS-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Samuel Beuderwell, Attorney at Law Salinas, CA	A	While I agree with the substance of the proposed changes, the exclusion of electronic service from POS-040, which may be used for all other methods of service, may lead inexperienced litigants to believe electronic service is not permitted. This is perhaps particularly confusing where proof of personal service and proof of service by mail may be filed either using POS-040 or forms specifically tailored to those methods of service.	The committee notes the commentator's support for the proposal. The comment does not request or suggest any proposed changes to the form. The commentator's concerns are perhaps valid, but as he himself appears to recognize by agreeing in substance with the proposed changes, do not compel any different course of action with regard to PS-040.
2.	California Judges Association by Joan P. Weber, President	A	The proposal to modify POS-040 to conform to law and clarify the ambiguity as to POS-050 (POS as to electronic service) makes sense as the least intrusive method of fixing the issue. The same holds true with regard to amending Item 6a of the POS-040 as to service at an attorney's office.	The committee notes the commentator's support for the proposal; no response is necessary.
3.	Azar Elihu, Attorney at Law Los Angeles	N	Proof of Service forms should be consolidated in a single form that includes electronic service. Digging through multiple forms to find the right one is time consuming and confusing.	The committee believes that multiple forms are preferable to one lengthy form. One form that covers all manners of service results in an overly complex form that is difficult to use. The fact that different manners of service have different requirements requires that each section of the form include the requirements for that manner of service. That E-service can be made by a party is an example.
4.	Julie Goren, Author Sherman Oaks	AM	I agree with deleting eService from this form and fixing the language of 6a.	The committee notes the commentator's support for the proposal; no response is necessary.
			1. Suggested change: At 6a, by leaving "between the hours of ..." at the end of the	The committee agreed that the text would be smoother if "by leaving them" is repeated after

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

	Commentator	Position	Comment	Committee Response
			sentence, it still could be construed as modifying all manner of service. I suggest changing the order of the last part so it reads like CCP Sec. 1011 -- after "could be left," add "by leaving them between the hours of 9:00 a.m. and 5:00 p.m. in a conspicuous place in the office." I also suggest stating the times as I have done - the time requirement stands out more clearly.	"could be left" and has made this change. The committee does not see any improvement by putting the time frame before "in a conspicuous place." Nor does the committee see any improvement in replacing "in the morning and "in the evening" with "a.m." and "p.m."
			2. Suggested change: On the information sheet, I don't see how someone could try to use this form for eService when there is no provision for it. Instead of the new proposed third paragraph, I would add at the end of the first paragraph: "For electronic service, use Proof of Electronic Service (form POS-050)."	The committee does not see any difference between the proposed change and the current approach of a separate paragraph that includes "do not use this form …."
5.	Orange County Bar Association By Ashleigh Aitken, President	N	The OCBA does not believe the proposal appropriately addresses its stated purposes because it ignores and continues the misstatement of law in the continuing forms by requiring personal service only by a "non-party"	The committee recognizes that statutes do not require that personal service be made by a nonparty. Nevertheless, it concluded that addressing that issue is beyond the scope of this proposal, which is only to address E-service. The committee may address personal service by a party in the future.
6.			The OCBA does not believe the proposal appropriately addresses its stated purposes because it continues in the "Declaration of Messenger" section the old incorrect statements about service between 9am and 5pm.	The committee agrees with the comment had has revised the Declaration of Messenger section accordingly.
7.			[T]he Judicial Council is using too many multiple erroneous over-lapping forms for	Other than the question of personal service by a party (addressed above), the committee knows of

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

	Commentator	Position	Comment	Committee Response
			proofs of service: POS-010 (Proof of Service of Summons); POS-020 (Proof of Personal Service); POS-030 (Proof of Service by Mail – Civil); POS-040 (Proof of Service – Civil); and POS-050 (Proof of Electronic Service). … [N]o specific legislation is recommended to solve policy concerns about personal service by parties or to correct all of the mistaken forms here and in other areas.	no other erroneous forms, and the comment provides no specific alleged errors in any other forms. Therefore, no response is possible to the "erroneous" aspect of this comment. This proposal addresses the issue of overlapping forms to some extent by removing E-service from Form POS-040 and requiring Form POS-050 for E-service. The committee has given some consideration to recommending that the Judicial Council sponsor legislation to require that personal service by made by a nonparty. No final decision has yet been made whether to pursue a legislative solution.
8.	State Bar of California's Committee On Administration of Justice	AM	CAJ supports this proposal subject to the following comments. Proposed revision to accurately reflect law regarding service on attorneys where receptionist is not present The revised form POS-040 would separately describe the two alternatives available for personal service on an attorney: (1) service on a receptionist or an individual in charge of the office (without any restriction as to time of day); or (2) when no receptionist or other person is available, by leaving a copy in a conspicuous place between 9 am and 5 pm. This proposed revision to form POS-040 would	No response is necessary.

	Commentator	Position	Comment	Committee Response
			correct the form so that it accurately reflects California law, and the CAJ supports the proposed revision.	
9.			<u>Proposed revision to eliminate electronic service from the form</u> POS-040 specifically provides that the party signing the form cannot be a party to the action, but California law authorizes parties to serve documents electronically and to sign a proof of that service. The proposed revision eliminates the conflict by removing electronic service from the form. CAJ supports this proposal as it solves the immediate conflict.	No response is necessary.
10.			[T]he proposed revision does not address the larger problem with form POS-040 and possibly other proof of service forms. CAJ suggests… that the Judicial Council also take up and address the issues arising from the fact that POS-040 does not accurately reflect California law. As noted in the Invitation to Comment, while electronic service is the only manner of service that expressly authorizes service by a party, California does not appear to prohibit a party from personally serving documents in a civil case (other than the summons and complaint).* Thus, form POS-040 is not accurate, to the extent it indicates that	See response above to comment of Orange County Bar Association.

* CAJ has not researched this issue extensively, but notes that Code of Civil Procedure sections 1013a(1) and (2) provide that proof of service by mail "may be made" by methods that include a showing that the person making the service is not a party to the action.

	Commentator	Position	Comment	Committee Response
			service by a party is prohibited for all manner of service covered by form POS-040.	
11.			It seems clear that Form POS-040 is intended to serve as the "master" or "comprehensive" form for use in connection with service of documents in a civil case (other than for the summons and complaint), and CAJ believes that having a single proof of service form is preferable to having multiple forms. Rather than simplify and correct the larger problem in the master form, the proposed revision would solve it for electronic service only, requiring use of an additional form for that form of service only. While CAJ supports the proposal as a stopgap measure, CAJ suggests that form POS-040 should be revised to apply to all forms of service (including electronic service), with revisions as necessary to adhere to California law governing whether a party may or may not effect a particular method of service.	See response above to comment of attorney Azar Elihu.
12.			Alternatively, consideration could be given to clarifying California law to consistently allow (or disallow) service of documents by parties, with revisions to the proof of service form as necessary.	See response above to comment of Orange County Bar Association.
13.			CAJ suggests that the language used in the revision should be semantically consistent. The revision at page 1 of POS-040 (in the language beneath the caption) prohibits use of the form for electronic service (using the words "do	The committee sees no significant difference between "do not use" and "should not be used." The language on page 3 is consistent with the preceding paragraph advising that the form "should not be used to show proof of service of a

	Commentator	Position	Comment	Committee Response
			not"), but the "Use of This Form" section on page 3 merely dissuades the use ("should not").	summons and complaint."
14.	Superior Court of Los Angeles County	A	Agree with proposed changes.	The committee notes the commentator's support for the proposal; no response is necessary.
15. 16.	Superior Court of Riverside County, by Marita Ford (position not given)	A	On behalf of the Riverside Superior Court, we agree with the proposed changes. Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so, please quantify. No. What would the implementation requirements be for courts? Informational training for Court Operation Clerks who add these filings. Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? No impact.	The committee notes the commentator's support for the proposal; no response is necessary.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h); revise form CIV-020)

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail):
Debora Morrison, 415-865-8713, debora.morrison@jud.ca.gov;
Anne Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2014
Project description from annual agenda:
- Correct inconsistency in newly amended rule 3.670(h)(4) regarding notice of telephonic appearance. Rule currently requires notice to be made by 2:00 p.m. the day before hearing, but then permits written notice to be served by close of business that same day. [Rule is being re-circulated due to comment from original circulation pointing out additional change needed to assure consistency and request from court to amend rule because not all courts open up to 2:00 p.m.]
- Revise form for Notice of Telephonic Appearances (form CIV-020) to eliminate reference to out-dated requirements regarding notice.

If requesting July 1 or out of cycle, explain:
N/A

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

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 26, 2015

Title
Telephone Appearances: Time for Notice and Notice Form

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.670; revise form CIV-020

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 14, 2015

Contact
Debora Morrison, 415-865-8713
debora.morrison@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone. The recommended amendments would resolve an internal inconsistency in one provision and address an ambiguity in another. The committee also recommends revising the *Notice of Intent to Appear by Telephone* (form CIV–020), to update rule references and clarify the included instructions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that, effective January 1, 2016, the Judicial Council:

1. Amend rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone; and

2. Revise the *Notice of Intent to Appear by Telephone* (form CIV–020) to update references to the rule and expand and update the included instructions.

The text of the proposed amendment to the rule is attached at pages 9–10. Form CIV–020, reflecting the proposed revision, is attached at page 11.

Previous Council Action

The Judicial Council most recently amended rule 3.670 of the California Rules of Court, effective January 1, 2014.[1] Among other things, those amendments shortened the notice requirement for telephone appearances in regularly noticed hearings from three to two court days and added ex parte applications to the types of matters at which a party generally may appear by telephone if proper notice is provided.[2]

Rationale for Recommendation

Rule 3.670(h)(1)(B)

Two years ago, the Judicial Council amended rule 3.670(h)(1)(B), shortening the notice period for parties intending to appear by telephone at regularly noticed hearings, conferences, or proceedings.[3] As amended, the provision now requires that a party planning to appear by telephone must notify the court and all other parties at least two court days before the hearing (rather than three court days, as previously required). The amendments left unchanged the requirement in the same provision that the notice, if in writing, must be served in a manner intended to ensure delivery by the close of the next business day. Under rule 3.670(h)(1)(B), therefore, a written notice of intent to appear by telephone now may be delivered as late as *the close of the business day before the appearance.*

If notice is provided in writing, rather than orally,[4] this creates a potential Catch-22 for a party receiving the notice who decides also to appear by telephone. Under rule 3.670(h)(2), which was not affected by the recent amendment, that receiving party must notify the court and all other parties "*no later than noon on the day before the appearance*."[5] Essentially, the deadlines set by the two provisions—subsections (h)(1)(B) and (h)(2)—now overlap in a way that could make it impossible for some receiving parties to themselves provide written notice of an intent to appear by telephone within the period required under rule 3.670(h)(2). If, for example, at the close of the business day before a hearing, a party were to receive written notice of another's intent to appear by telephone and then also decide to appear by telephone, that receiving party, if desiring to provide written notice, would have to do so before noon on the day just ended, i.e., before having

[1] All references to rules in this report are to the California Rules of Court, unless otherwise noted.

[2] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Practice and Procedure: Telephonic Appearances* (Aug. 2, 2013), *id.*, mins. (Oct. 25, 2013), pp. 23–24. See also Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Telephonic Appearances in Civil Cases* (Oct. 9, 2007), pp. 5–9 (statutory and rule history related to telephone appearances).

[3] Rule 3.670(h)(1)(B) only applies if the party planning to appear by telephone for the hearing did not provide notice of that intent on the moving, opposing, or reply papers. (See rule 3.670(h)(1)(A).)

[4] Rule 3.670(h)(1)(B) allows parties to provide oral or written notice of the intent to appear by telephone. "If the notice is oral, it must be given either in person or by telephone." (Rule 3.670(h)(1)(B).)

[5] Italics added.

received the notice. Effectively, this forecloses the option of providing written notice in such instances.

To correct this overlap, the proposal would amend rule 3.670(h)(1)(B), changing the time for service of the original written notice. The amendment would require that the party originally advising of an intent to appear by telephone serve the written notice using a means authorized by law and reasonably calculated to ensure delivery to the other parties at least two court days before the appearance.[6] This would mean the party could serve written notice on the last day permitted under the rule only by using electronic means (fax transmission or e-mail) if properly authorized[7] or hand delivery. Alternatively, a party could provide oral notice two court days before the appearance.[8]

Rule 3.670(h)(4)

Although clear on the requirements for the applicant who first announces an intent to appear by telephone at an ex parte hearing,[9] the rule's description of the requirements for *any other party* who thereafter may elect to do so as well contains an ambiguity that may create confusion. In its first sentence, rule 3.670(h)(4) instructs that the other party seeking to make an ex parte appearance by telephone must "notify" the court and all other parties "no later than 2:00 p.m. on the court day before the appearance." If providing the notice in writing, that other party must file it with the court and "serve" it on all parties in a manner intended to ensure delivery "no later than the close of business" on the same day (i.e., on the court day before the appearance).[10]

The statement that *service* need not be effected until close of business the court day before the appearance seems to contradict the earlier statement requiring the other party to *notify* everyone by 2:00 p.m. the same day. The inclusion of a different (later) time for "service" of written notice in this context appears to have been an oversight. The proposed amendment would change the sentences describing the notice and service requirements to use the same language in both, establishing the same time requirements. Specifically, the proposal is to amend rule 3.670(h)(4) to state that "any other party" planning to appear by telephone for an ex parte hearing must provide notice, and must accomplish service of the notice if it is in writing, by "2:00 p.m. or the 'close of business' (as that term is defined in rule 2.250(b)(10)), whichever is earlier."[11]

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[6] By including a specific timeframe for delivery in the rule, the rule would come within the exception to the various extensions of time that the Code of Civil Procedure otherwise provides for different types of service. (See Code Civ. Proc., §§ 1013(a), (c), (e), 1010.6(a)(4).)

[7] See Code Civ. Proc., §§ 1010.6(a), 1013(e) (specifying circumstances in which electronic service is permitted); Cal. Rules of Court, rule 2.251 (same).

[8] Rule 3.670(h)(1)(B).

[9] Rule 3.670(h)(3).

[10] Rule 3.670(h)(4).

[11] See rule 2.250(b)(10) (" 'Close of business' is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier").

Form CIV–020

The information included in the instructions box at the bottom of the *Notice of Intent to Appear by Telephone* (form CIV–020) is outdated in light of the 2014 rule changes discussed above. The attached proposed form would include revisions updating references to rule 3.670, and also expanding and updating the included instructions. The following are the proposed changes:

- In the second paragraph in the instruction box, the reference to the subsection of the rule describing notice requirements would be updated to reflect current numbering required by the previous rule amendments.

- In the third paragraph in the instruction box, the description of the different notice requirements would be updated to reflect the previous rule amendments and also would be expanded to provide more information. Specifically, the paragraph would be amended to reflect the shorter two-day notice requirement for appearances by telephone for regularly noticed hearings, would add a brief statement of notice requirements for parties other than the applicant in that context, and would add a brief statement of notice requirements for applicants and other parties choosing to use the telephone for ex parte appearances. The paragraph also would refer parties to the rule for related information about service requirements, rather than providing partial information as it currently does.

Comments, Alternatives Considered, and Policy Implications

Comments received

As originally circulated for public comment, from April 18 to June 18, 2014, this proposal only included recommended amendments to rule 3.670(h)(4) (appearance by telephone for ex parte hearings) and revisions to the *Notice of Intent to Appear by Telephone* (form CIV–020). In the comments received, however, a commentator also noted an inconsistency in rule 3.670(h)(1)(B), caused by the earlier amendments reducing the period of required notice for appearances by telephone at regularly scheduled hearings. The committee revised the proposal, adding amendments that would address this further issue and making various additional wording changes responding to other input from commentators. The revised proposal was circulated for public comment from April 17 to June 17, 2015. The significant comments received in both instances are discussed below.

Original proposal (2014). The original proposal, circulated for public comment in 2014, proposed amending rule 3.670(h)(4) to clarify that a party other than the applicant who seeks to appear by telephone for an ex parte hearing must notify the court, the applicant, and any other parties of that intent in a way that is intended to ensure all receive it no later than 2:00 p.m. on the day before the hearing. It also proposed revising the *Notice of Intent to Appear by Telephone* (form CIV–020) to update the rule reference and notice period following the previous amendments to rule 3.670, modestly expanding the instructions as well.

Eight comments were received, all generally favoring the proposal. The commentators included three superior courts (Los Angeles, Riverside, and San Diego), the Joint Rules Working Group

(now a subcommittee) of the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees, the State Bar's Committee on the Administration of Justice, the Orange County Bar Association, the manager of Self-Help Services for the Superior Court of Orange County, and a small legal publisher. (The text of all comments received and committee responses are included in the comment chart for the original proposal, attached at pages 12–19.)

Two commentators approved the proposal but sought modifications.

Timing of service of Notice of Intent to Appear by Telephone (rule 3.670(h)(1)(B)). The Orange County Bar Association agreed with the original proposal but noted another inconsistency in rule 3.670(h)(1)(B) that the original proposal did not address. The inconsistency was between the recently shortened notice period for intent to appear by telephone at regularly scheduled hearings (now two court days), the unchanged deadline for delivering that notice (close of the next business day), and the deadline by which any receiving party must provide notice of a similar intent (noon on the court day before the appearance).

As noted above, the committee revised the proposal, adding amendments to resolve the issue and circulated the revised proposal for public comments. As circulated the second time, the proposed amendments directed that written notice of intent to appear by telephone at a regularly scheduled hearing must be served in a manner calculated to ensure delivery no later than 5:00 p.m. the same day that it is filed with the court.

Other suggested text changes to rule and form. Lawdable Press, a small legal publisher, also suggested several wording changes for rule 3.670(h)(1)(B) and (h)(2) to clarify requirements and raised a question about whether the *Notice of Intent to Appear by Telephone* (form CIV–020) is an optional form. The committee agreed with all but one of the wording suggestions and included them in the revised proposal, which it circulated for public comment. The question about the nature of the form arose from wording in the original proposal, which was clarified in the revised proposal. As the form itself states (in the bottom left corner), it is approved for optional use. Any suggestion to the contrary in the original proposal was unintended.

Second proposal (2015). The current (revised) proposal, circulated for public comment in 2015, received 11 comments. The commentators included four superior courts (Los Angeles, Orange, Riverside, and San Diego), the California Judges Association (CJA), three committees of the State Bar (Administration of Justice, Rules and Legislation, and Delivery of Legal Services), the Orange County Bar Association, an author and small legal publisher, and an attorney. Nine commentators agreed with the revised proposal, one agreed if modifications were made, and one suggested two points for clarification without indicating a position. (The text of all comments received and committee responses are included in the comment chart for the revised proposal, attached at pages 20–26.)

The following issues received the most significant comments (with details on each topic following):

- Bifurcated notice
- Close of business
- Revised instructions on form CIV-020
- Language access and family law hearings

Bifurcated notice (rule 3.670(h)(1)(B). The State Bar of California's Committee on Administration of Justice (CAJ) agreed with the proposal but observed that it may be difficult to serve written notice by 5:00 p.m. on the day it is filed, if the parties have not consented to service by fax or e-mail and personal delivery is impracticable.[12] The commentator suggested that the rule could be read as allowing a bifurcated method of providing notice, under which a party might file a written notice with the court but not serve it on the parties, providing notice to them orally instead. The commentator suggested amending the rule to expressly state this option.

The committee has considered this suggestion and does not agree. It does not read rule 3.670(h)(1)(B) as allowing a bifurcated approach. The provision states that, if notice is in writing, it must be "given by filing [a notice] with the court . . . *and by serving the notice*" on the other parties.[13] The committee also concluded that amending the rule to provide a bifurcated notice procedure would make it unduly complicated and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required.

The committee observed, however, that the proposed language would have the unintended consequence of unnecessarily advancing the deadline to serve notice of an intent to appear by telephone for a regularly scheduled hearing for some parties. As circulated the second time, the proposed amendment would have required that all parties filing such notice serve it in a manner intended to ensure delivery *the same day,* even if they were filing the notice with the court well in advance of the deadline (i.e., more than two court days before the hearing). The committee has revised the proposal to simply require that filing and service both occur at least two court days before the hearing.

Close of business (rule 3.670(h)(4)). Two commentators—an author and small legal publisher and CAJ—suggested that using the phrase "close of business" in the proposed amendment to rule 3.670(h)(4) introduces potential uncertainty regarding the deadline by which parties other than the applicant must provide notice of an intent to appear by telephone for an ex parte hearing. The revised proposal had suggested amending rule 3.670(h)(4) to clarify that such other parties

[12] See, e.g., Code Civ. Proc., §§ 1010.6(a)(2), 1013(e) (limiting service by fax or e-mail).

[13] Rule 3.670(h)(1)(B), italics added.

must provide notice "no later than 2:00 p.m. or *the close of business* on the court day before the appearance, whichever is earlier."[14]

The first commentator suggested revising the proposal to omit the phrase, "close of business," leaving 2:00 p.m. on the day before the appearance as the deadline to provide notice. The committee did not accept this suggestion, however, concluding that doing so could introduce new uncertainty as a court clerks' office could close on some days before 2:00 p.m. The second commentator suggested including a reference to the definition of "close of business" provided in rule 2.250(b)(10).[15] The committee has accepted this suggestion and revised its proposal to reflect it.

Notice of Intent to Appear by Telephone (form CIV–020). The author/small legal publisher commentator also observed that, as proposed, the introductory sentence to the third paragraph of amended instructions on the *Notice of Intent to Appear by Telephone* (form CIV–020) mistakenly suggested ex parte applicants "must" use that notice form. To avoid this suggestion, the commentator recommended removing the instruction that followed on notice requirements for ex parte applicants. The committee agrees that an ex parte applicant must include notice of the intent to appear by telephone on the application papers themselves, rather than filing a separate notice (the form CIV–020). Because the commentator's recommended change would eliminate helpful instructions on providing notice for ex parte applicants, however, the committee instead modified the introductory sentence to the paragraph to correct the point, removing the suggestion that ex parte applicants must use form CIV-020.

Language access and family law hearings. Two commentators—the State Bar's Standing Committee on the Delivery of Legal Services and the Superior Court of Orange County—noted an issue regarding language accessibility for telephone appearances. The court commentator suggested adding an interpreter line item to the *Notice of Intent to Appear by Telephone* (form CIV–020). The committee will refer this issue and the suggestion to the Judicial Council's Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

Finally, the Superior Court of Orange County also suggested clarifying whether rule 3.670 applies to telephone appearances subject to Family Centered Case Resolution matters covered by rule 5.83(d)(2) or adoption proceedings described in Family Code section 8613.5(a)(1)(B). The committee concludes that the rules are sufficiently clear on this point. Rule 3.670(b) expressly confirms that the rule only applies to general civil cases and specified other non–family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of "general civil cases." Telephone appearances in family law matters instead are

[14] Italics added.

[15] See rule 2.250(b)(10) (" 'Close of business' is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its counter, whichever is earlier").

addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters). Accordingly it does not recommend further amendments.

Alternatives considered

The committee considered not recommending any changes. It concluded, however, that, if rule 3.670(h)(1)(B) is not amended, it will remain internally inconsistent. This may create needless confusion for litigants, producing questions and time-consuming arguments about whether notice was appropriately given, adding to the work for courts. Similarly, if instructions on the *Notice to Appear by Telephone* (form CIV–020) are left unrevised, they will be inconsistent with current rules, referring to outdated numbering and notice requirements. Problems may arise with disputes between parties and confusion at the filing windows regarding whether the form is timely filed and served.

Implementation Requirements, Costs, and Operational Impacts

Correcting the issues described in this report should not create challenges or expense for courts. Rather the proposed amendments to the rule and the form would likely help to avoid uncertainty or confusion for litigants, reducing the number of questions directed to court clerks' offices and freeing court staff to attend to other duties. Clarification of the rule requirements related to service also may avoid errors that are time consuming for litigants, judicial officers, and court staff.

Attachments

1. Cal. Rules of Court, rule 3.670, at pages 9–10
2. Form CIV–020, at page 11
3. Chart of comments, which circulated from April 18 to June 18, 2014, at pages 12–19
4. Chart of comments, which circulated from April 17 to June 17, 2015, at pages 20–26

California Rules of Court, rule 3.670 is amended, effective January 1, 2016, to read:

Rule 3.670. Telephone appearance

(a)–(g) * * *

(h) Notice by party

(1) Except as provided in (6), a party choosing to appear by telephone at a hearing, conference, or proceeding, other than on an ex parte application, under this rule must either:

(A) Place the phrase "Telephone Appearance" below the title of the moving, opposing, or reply papers; or

(B) At least two court days before the appearance, notify the court and all other parties of the party's intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" with the court at least two court days before the appearance and by serving the notice ~~at the same time on all other parties by personal delivery, fax transmission, express mail, e-mail if such service is required by local rule or court order or agreed to by the parties, or other~~ by any means authorized by law and reasonably calculated to ensure delivery to the parties ~~no later than the close of the next business day~~ at least two court days before the appearance.

(2) If after receiving notice from another party as provided under (1) a party that has not given notice also decides to appear by telephone, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephone.

(3) An applicant choosing to appear by telephone at an ex parte appearance under this rule must:

(A) Place the phrase "Telephone Appearance" below the title of the application papers;

(B) File and serve the papers in such a way that they will be received by the court and all parties by no later than 10:00 a.m. two court days before the ex parte appearance; and

(C) If provided by local rule, ensure that copies of the papers are received in the department in which the matter is to be considered.

(4) Any party other than an applicant choosing to appear by telephone at an ex parte appearance under this rule must notify the court and all other parties that have appeared in the action, no later than 2:00 p.m. or the "close of business" (as that term is defined in rule 2.250(b)(10)), whichever is earlier, on the court day before the

appearance, of its intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" with the court and by serving the notice ~~at the same time~~ on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than 2:00 p.m. or "the close of business" (as that term is defined in rule 2.250(b)(10)), whichever is earlier, on the court day before the appearance.

(5) If a party that has given notice that it intends to appear by telephone under (1) subsequently chooses to appear in person, the party may appear in person.

(6) A party may ask the court for leave to appear by telephone without the notice provided for under (1)–(4). The court should permit the party to appear by telephone upon a showing of good cause or unforeseen circumstances.

(i)–(q) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available)*: E-MAIL ADDRESS *(if available):* ATTORNEY FOR (*Name*):	DRAFT 07/02/15 Not approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
NOTICE OF INTENT TO APPEAR BY TELEPHONE	CASE NUMBER:

1. Party intending to appear by telephone is
   - ☐ Plaintiff/Petitioner *(name):*
   - ☐ Defendant/Respondent *(name):*
   - ☐ Other *(name):*
2. The conference, hearing, or proceeding is for *(describe):*

set on *(date):* at *(time):* in *(department):*

before *(name of judicial officer, if known):*

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

See Code of Civil Procedure section 367.5 and California Rules of Court, rule 3.670 to determine if a conference, hearing, or proceeding is one generally considered appropriate for telephone appearance. Note that a court may determine on a hearing-by-hearing basis that a personal appearance is required. (Code Civ. Proc., § 367.5(c).)

This form is intended only to provide written notice to a court and parties as provided in rule 3.670(h) of the California Rules of Court. **Check with the court to determine how to make arrangements for telephone services for an appearance either directly with the court or through a court-appointed vendor.**

Read California Rules of Court, rule 3.670(h) to determine when you have to file and serve notice of the intent to appear by telephone. There are different deadlines depending upon the circumstances:

(1) On a regularly noticed hearing, notice must be given at least two court days before the appearance (Cal. Rules of Court, rule 3.670(h)(1)(B)) or, after receiving notice that another party will be appearing telephonically, by noon on the court day before the appearance (Cal. Rules of Court, rule 3.670(h)(2)).

(2) On an ex parte application, notice must be given by an applicant by 10:00 a.m. two court days before the hearing (Cal. Rules of Court, rule 3.670(h)(3)(B)). Any party other than an applicant may give notice by 2:00 p.m. or the "close of business" (as that term is defined in rule 2.251) whichever is earlier, on the court day before an ex parte appearance. (Cal. Rules of Court, rule 3.670(h)(4).)

SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lawdable Press By: Julie Goren Sherman Oaks, CA	AM	1. There is an ambiguity regarding the form of written notice. Is CIV-020 supposed to be mandatory? As currently drafted, the rule requires that when notice is in writing a "Notice of Intent to Appear by Telephone" must be filed and served. It doesn't refer to form CIV-020, and CIV-020 itself indicates that it is approved for optional use. From the rule and form, then, it appears that a "Notice of Intent to Appear by Telephone" could be drafted on pleading paper; after all, that was how it was done in the years before the optional Judicial Council form was approved. The comments to the proposal state that the rule requires written notice to be given "on the Judicial Council notice form (CIV-020)." If that is the intent, then: (1) a reference to CIV-020 ought to follow "Notice of Intent to Appear by Telephone" in both (h)(1)(B) and (h)(4), and (2) the form needs to be changed from "Form Approved for Optional Use" to "Form Adopted for Mandatory Use." If that is not the intent, the foregoing changes are not necessary. 2. I also recommend a few changes to (h)(1)(B): A. I question the use of the phrase "at the same time" and what it is meant to modify. Is it requiring filing and service at the	1. The form was approved for optional use effective 2010, to make it easier for self-represented parties to provide written notice. The reference in the text of the Invitation to Comment that the form "must" be used for written notice was a misstatement. It remains an optional form. 2.A. This phrase has been used in the rule to indicate that the time for filing and for notice were to be the same. The proposed change is outside the scope of this proposal. The committee agrees, however, that the language is ambiguous and in the revised proposal that it circulated for

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

	Commentator	Position	Comment	Committee Response
			same time? Is it requiring service on all parties at the same time? Neither could realistically be accomplished or should be required. I would delete it here and in (h)(4).	comment, it has removed this phrase.
			B. Instead of listing all of the possible service methods (and in so doing referring to service by "e-mail" instead of "electronic service" and only mentioning "agreed to by the parties" in relation to e-mail when agreement by the parties is also required for fax service), use the language in (h)(4) "any means authorized by law reasonably calculated to ensure ..."	1.B. The committee agrees and has modified its proposal to reflect the suggestion.
			C. I also have problems with the phrase "close of the next business day" as used here. (1) What is the "close"? 5:00 p.m.? Does it depend on the recipient's office? A specific time, like 5:00 p.m., would be much clearer. (2) Why use "business day" when "court day" is defined elsewhere and is used throughout this rule? Having the notice filed and served two court days before the hearing and delivered the next business day (when what actually is intended is delivery by the next court day, i.e., the court day before the appearance) could lead to unnecessary confusion. There are business days that are not court days (e.g., Cesar Chavez Day, Lincoln's Birthday, Day after Thanksgiving). As such, the next business day might not be the court day before the appearance.	1.C. The committee agrees and has modified the its proposal to reflect this suggestion.

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Were the comments in A-C to be adopted, it would read: "If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" (Judicial Council Form No. CIV-020) with the court at least two court days before the appearance and by serving the notice on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than 5:00 p.m. on the next court day."	As noted above, the Notice of Intent to Appear by Telephone (form CIV–020) was approved for optional use. The committee therefore declines to add a reference to that specific form to the rule. It agrees in substance with the other suggestions above and has modified its proposal to reflect them.
			3. Paragraph (h)(2) doesn't state how notice is to be given. For consistency, shouldn't it also be oral or written, and if written, shouldn't CIV-020 be required to be served so as to be received by noon the court day before the hearing?	3. The committee appreciates the suggestion but concludes that it is not necessary to reiterate the permissible methods for providing notice in paragraph (h)(2).
			4. The same changes suggested in 2.A. should be made to (h)(4): adding reference to CIV-020, and deleting the phrase "at the same time."	4. Please see responses to comments 1 and 2.A. above.
			Changes to CIV-020	Changes to form CIV–020.
			1. Insert "the" in the second paragraph, second line, between "with" and "court."	1. The committee agrees and has modified the proposal to reflect this suggestion.
			2. Presumably the form must be filed and served in compliance with three different	2. The committee agrees and has modified the proposal to reflect the suggestion, although

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			provisions: (1) two court days before the appearance under (h)(1)(B), (2) by noon on the court day before the appearance under (h)(2), and by 2:00 p.m. the court day before the appearance. The instruction box is somewhat misleading as it doesn't mention the (h)(2) deadline (if indeed the form is intended to be required under (h)(2)), advising the reader to look elsewhere only for the ex parte rules. There seems to be plenty of room on the form to address all three time frames. I suggest revising it to say: "There are three different deadlines for filing and serving this notice, depending upon the circumstances: (1) two court days before the appearance under Cal. Rules of Court, rule 3.670 (h)(1)(B), (2) by noon on the court day before the appearance under Cal. Rules of Court, rule 3.670 (h)(2), and by 2:00 p.m. the court day before an ex parte appearance under Cal. Rules of Court, rule 3.670 (h)(4). Be sure to comply with the rules." 3. If the form is indeed mandatory, change "Form Approved for Optional Use" to "Form Adopted for Mandatory Use."	grouping the deadlines into two categories instead, namely, notices for regularly scheduled hearings, and notices for ex parte, hearings. 3. Please see response to comment 1, above. The form is approved for optional use.
2.	Maria Livingston Manager Superior Court of Orange County	A	Commenter agrees with the proposed changes. The proposed changes are specific to the stated purpose of the changes. Self-represented litigants require clarity and this minor change clarifies one of the notice provisions for ex parte applications. This change specifies that written notice, just like oral notice of intent to appear	The committee notes the commentator's agreement with the proposal.

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

	Commentator	Position	Comment	Committee Response
			telephonically to oppose an ex parte application must be served no later than 2 p.m. on the court day before the appearance. This is an important clarification as the rule ambiguously provided for written notice to be served by the end of business day while oral notice was required by 2:00 p.m. This change will negate any arguments as to the propriety of the amount of notice given and shift arguments to more substantive matters. The other change is to Form Civ-020 which is the mandatory form for Written Notice of Intent to Appear Telephonically. The changes in this form are necessary to make the instructions reflect the current proposed rule changes and the appropriate time frame. Self-Represented Litigants rely heavily on forms and it is essential that the forms are logically related to the procedural rules which the forms implement or the litigant's become more confused. The 2 month deadline to enact these changes prior to January 2015 is more than sufficient time for the court system to adjust. The form is already in existence so no new coding should be required. The only change is the requirement that the service of the written notice must be by 2:00 p.m. the day before the appearance rather than by the end of the day. Regarding this particular proposal, the size of the court should not matter as long as the presiding judge accepts and encourages the idea	The committee notes the commentator's agreement with the proposal.

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

SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
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	Commentator	Position	Comment	Committee Response
			of telephonic appearances. Every size county and court should be attempting to cut time and expenses from each case which includes having the attorneys and parties come from long distances to hearings which could be effectively handled by a telephonic appearance.	
3.	Orange County Bar Association Orange County Bar Association	AM	Comments: A problem exists in Rule 3.670(h)(1)(B) that is not resolved by this proposed amendment: the Rule requires notice to be served by a party (if in writing) so as to be received "no later than the close of the next business day", but Rule 3.670(h)(2) requires the other parties receiving the notice to notify the court and parties "no later than noon on the court day before the appearance" of their intent to also appear by telephone. The Rule thereby precludes an opposing party from receiving notice and electing to appear telephonically if that opposing party does not receive until the "close of the next business day" which is actually after the noon court day before the appearance to also elect. The proposal otherwise addresses the stated purposes.	The committee notes the inconsistency. As the subject exceeds the scope of this proposal, the committee revised the proposal to include an amendment resolving the issue, and has circulated the revised proposal for public comment.
4.	State Bar of California, Committee on Administration of Justice Saul Bercovitch CAJ, Legislative Counsel	A	CAJ supports this proposal.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of Los Angeles County Los Angeles County Superior Court	A	No specific comment	The committee notes the commentator's agreement with the proposal.

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

SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
6.	Superior Court of Riverside County Riverside County Superior Court Staff	A	No specific comment	The committee notes the commentator's agreement with the proposal.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment	The committee notes the commentator's agreement with the proposal.
8.	TCPJAC/CEOC Joint Rules Committee TCPJAC/CEOC	A	This proposal clarifies prior rule changes. It would require development of new local rules only if courts have existing local rules in conflict with the clarification. **The following are responses to the proposal's Request for Specific Comments:** Does the proposal appropriately address the stated purpose? ***Yes, the proposal clarifies the rule.*** Would the proposal provide cost savings? If so, please quantify. ***No, we did not identify any cost savings.*** What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? ***The changes would involve minimal training of staff as to the form changes and the notice requirements.***	The committee notes the commentator's agreement with the proposal.

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

SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***Yes.*** How well would this proposal work in courts of different sizes? ***This proposal provides clarity to courts of all sizes.***	

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

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	The Judicial Council's Civil and Small Claims Advisory Committee proposes amendments to CRC 3.670 relating to the notice requirements for telephonic appearances. The amendments, which would be effective January 1, 2016, are intended to "clean up" the amendments made in 2014. Those amendments expanded the list of civil matters at which parties could appear by telephone to include ex parte applications and also shortened notice for all telephonic appearances from three days to two. The proposal would amend CRC 3.670(h)(1) to require that if written notice of intent to appear telephonically is provided in a matter other than an ex parte application, the notice must be served in a manner reasonably calculated to ensure delivery by 5 p.m. that same day, as opposed to the next business day, which the rule currently provides for. The proposal would also amend Rule 3.670(h)(4) to clarify that both written notice and oral notice of intent to appear telephonically to oppose an ex parte application must be provided to the court and the parties no later than 2 p.m. or the close of business, whichever is earlier, on the court day before the appearance. Finally, the proposal would revise Judicial Council Form CIV-020 (Notice of Intent to Appear by Telephone) to reflect these changes. The proposed amendments are not substantive and should have little or no impact on the way civil courts do business. Therefore, we support the proposal.	The committee notes the commentator's support of the proposal.

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

SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Azar Elihu, Attorney at Law Los Angeles	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
3.	Julie Goren, Author Sherman Oaks	AM	Rule 3.670(h)(4) - The inclusion of "or the close of business" and "whichever is earlier" does not comport with the comments: "The proposed amendment would change the last sentence in the subdivision to make it consistent with the first sentence by providing that written notice is to be done in such a way that it is received by all parties no later than 2 p.m." and creates an ambiguity -- whose "close of business"? I recommend simply making the change to 2 p.m. CIV-020 - In the text box at (2), the reference to notice by the applicant by 10:00 is incorrect. CRC Rule 3.670(h)(3) directs the applicant to place the phrase "Telephone Appearance" on the application; there is no provision for any other form of notice by the applicant. In the first sentence, strike "notice must be given ..." through the end of the sentence, and in the next sentence, change "Any" to "any" making it a single sentence. Also, if (h)(4) is changed so that the deadline is simply 2:00 p.m., then the wording of the form needs to change as well. The revision date of the form is incorrect.	The committee appreciates the comment and agrees that the provision can be clarified. It has modified the proposal to add reference to rule 2.250(b)(10), which defines the term close of business." The committee agrees that an applicant intending to appear by telephone for an ex parte hearing must include notice of that intent on the application papers themselves, rather than filing a separate notice (e.g., form CIV-020). The committee disagrees, however, that the referenced text about the required notice period is incorrect and declines to strike it. Instead, it has modified the first sentence of paragraph three of the proposed instructions to remove the suggestion that "this notice" (i.e., form CIV–020) must be used in all listed instances. The committee agrees and has modified its proposed amendments to the form to reflect the suggestion.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	Proposed changes appear to address the issues and correct the inconsistencies.	The committee notes the commentator's agreement with the proposal.

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SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	State Bar of California Committee On Administration of Justice	A	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports this proposal subject to the comments below. A. <u>Proposed revision to rule 3.670(h)(1)(B)</u> CAJ notes that, under the proposed amendments to rule 3.670(h)(1)(B), an applicant providing notice of intent to appear telephonically in writing must file a notice with the court two court days before the hearing, and must effect service of the notice by 5 p.m. that same day. This presumably requires either personal service or service by fax or email. However, in some cases, personal service may be impracticable and service by fax or email may not be permitted (as these forms of service require court order or consent; see Code Civ. P. § 1010.6, 1013(e)). If the parties have not agreed to email or fax service and for whatever reason (e.g., counsel reside in different cities) personal service is impracticable, the proposed amended rule would require something that cannot be done. CAJ concludes that this is unlikely to present a real world problem, because the rule permits oral notice. This would seem to permit the filing with the court of the notice of intent to appear telephonically two	The committee notes the commentator's agreement with the proposal and provides a further response below. A. The committee does not agree that, under rule 3.670(h)(1)(B), a party might file with the court a written notice and then abstain from

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

	Commentator	Position	Comment	Committee Response
			court days before the hearing, while providing oral notice that day to opposing counsel. CAJ believes that consideration should be given to stating expressly, in the amended rule, that oral notice is sufficient where it is not practicable to effect service of the written notice by the 5 p.m. deadline. B. <u>Proposed revision to rule 3.670(h)(4)</u> CAJ suggests a clarifying revision to the proposed amendment. The proposed revision requires that if a party (other than the applicant) wishes to appear telephonically at the hearing, the party must notify the court and other parties "no later than 2:00 p.m. or the close of business on the court day before the appearance, whichever is earlier." The reference to close of business being earlier than 2:00 p.m. may be confusing. CAJ understands that the early close of business may result from a court filing window closing earlier than 2 p.m., as contemplated by California Rules of Court, rule 2.250(b)(10). To avoid confusion, CAJ suggests revising the proposed rule to read as follows, with proposed new text in bold and underline: "no later than 2:00 p.m. or the close of business **<u>(as defined in California Rules of Court, rule 2.250(b)(10))</u>** on the court day before the appearance, whichever is earlier."	serving it on the other parties, providing only oral notice to them instead. The committee declines to modify its proposal to include a provision allowing such a bifurcated approach. Doing so would overly complicate the provision and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required. B. The committee agrees and has modified the proposal accordingly.

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

SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
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	Commentator	Position	Comment	Committee Response
6.	State Bar of California Litigation Section Rules and Legislation Committee By Reuben A. Ginsburg, Chair	A	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose to eliminate timing inconsistencies and correct the notice form. In addition, we note two typographical errors: the slash after "hearing" in the third line from the bottom of the page should be deleted, and the revision date of "January 1, 2065" at the bottom left of the page should be corrected.	The committee notes the commentator's support of the proposal and agrees with the suggestion. It has made the corrections to form CIV–020.
7.	State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) by Maria C. Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The intent of this proposal is to update and clarify service of notice provisions in light of the recent rule change which shortened notice requirements for all telephonic appearances from three days to two. The revisions to the *Notice of Intent to Appear by Telephone* (form CIV-020) will help avoid confusion by correcting and updating references to the rules and the changes to the rules will correct the current inconsistencies in notice timeframes. However, SCDLS notes that while telephonic appearances increase access to the courts to many litigants, self-represented limited English proficient speakers face a significant barrier in accessing this "point of entry" to the courts since there is no uniform language accessibility for telephonic appearances: this may be something to consider in the ongoing efforts to develop the statewide Language Access Plan.	The committee notes the commentator's agreement with the proposal. The committee appreciates the suggestion about language accessibility for telephone appearances. The committee will refer this suggestion to the Judicial Council's Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

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

SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
9.	Superior Court of Orange County by Family Law Operations Managers & Juvenile Court Operations Mgrs.	NI	The Advisory Committee comment under CRC 3.670 states, "*This rule does not apply… to family law matters, except in certain respects as provided in rule 5.324 relating to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act...*" It is unclear if this rule is applicable to Family Centered Case Resolution pursuant to CRC 5.83(d)(2) or adoption proceedings, specifically F.C. 8613.5 (a)(1)(B). Please provide clarification on the applicability of this rule to family court. Additionally, we recommend adding an interpreter line item to the Notice of Intent to Appear by Telephone (CIV-020).	The committee has considered this comment and concludes that the rules are sufficiently clear on this point. Rule 3.670(b) confirms that the rule only applies to general civil cases, as that term is defined in rule 1.6, and to specified other non-family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of "general civil cases." Telephone appearances in family law matters instead are addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters). Please see the response to comment 7 above.
10.	Superior Court of Riverside County (no name indicated)	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
11.	Superior Court of San Diego County By Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so please quantify. No. What would the implementation requirements be for courts? Advising staff via e-mail of the change. Our court permits appearances via	The committee notes the commentator's agreement with the proposal.

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

SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

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

	Commentator	Position	Comment	Committee Response
			telephone with notice as late as the day of the hearing. Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

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

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Judicial Council Forms – Gun Violence Restraining Orders (adopt or approve new Judicial Council forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail):
Bruce Greenlee, 415 865-7698
bruce.greenlee@jud.ca.gov

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2014
Project description from annual agenda: Item 20: Gun Violence Restraining Orders. Develop forms for new civil restraining order procedure mandated by AB 1014.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Judicial Council Forms – Gun Violence Restraining Orders

Rules, Forms, Standards, or Statutes Affected
Adopt or approve new Judicial Council forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 24, 2015

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Executive Summary

The Civil and Small Claims Advisory Committee proposes adoption or approval of 23 new Judicial Council forms: EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO to implement legislative requirements of Penal Code section 18100 et seq. establishing a civil restraining order process for surrender of firearms before they are used to commit a crime. Penal Code section 18105 requires the Judicial Council to prescribe forms to implement the process.

Recommendation

The Civil and Small Claims Advisory Committee proposes that, in order to implement the new Gun Violence Restraining Orders Act, the Judicial Council adopt or approve new forms

EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO, with a proposed effective date of January 1, 2016.

Previous Council Action

The Judicial Council periodically adopts for mandatory use or approves for optional use new or revised standard court forms, including restraining order forms. All forms included in this proposal are new.

Rationale for Recommendation

The Legislation

Gun Violence Restraining Orders[1]. Legislation, enacted in 2014 and operative January 1, 2016,[2] provides a process to obtain a court order requiring a person who poses an imminent significant danger of personal injury to himself, herself, or others to surrender—and prohibiting him or her from possessing—firearms and ammunition before the person uses a firearm to commit a crime. This legislation was motivated by a situation in Santa Barbara County in which relatives of a person exhibiting unstable behavior advised law enforcement that the person was armed and represented a danger to himself and others. But because the person legally possessed the firearms and had not yet committed any crime, the relatives and law enforcement were powerless to intervene. The person subsequently went on a killing spree.

A gun violence restraining order is a written court order prohibiting a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. Despite the location of the statutes in the Penal Code, the process to obtain a gun violence restraining order is considered a civil proceeding.[3]

The Judicial Council must prescribe the form of the petitions and orders and any other documents, and must promulgate any rules of court necessary to implement the new law.[4] This proposal primarily addresses the development of forms at this time.

The Project

Drafting these forms was a project of the Civil and Small Claims Advisory Committee, Protective Orders Subcommittee, rather than of the Protective Orders Working Group (POWG), which is a joint body comprised of members of several advisory committees. The members of

[1] See Pen. Code, § 18100 et seq.

[2] See Stats. 2014, ch. 872; AB 1014, sometimes referred to as "the Skinner Bill."

[3] Pen. Code, § 18100.

[4] Pen. Code, § 18105.

Civil and Small Claims assigned to the POWG reviewed the draft forms and approved them for the full committee, which now recommends that the Judicial Council adopt and or approve them.

The process for obtaining a gun violence restraining order is similar to that for other civil protective orders such as civil harassment.[5] Therefore, the current Judicial Council forms for civil harassment were used as templates to create the forms for gun violence restraining orders. With the exception of the Emergency Protective Order, the identifying letters "GV" were selected to refer to the forms that have been developed.

The complete list of forms proposed is as follows:

1. *Firearms Emergency Protective Order* (including application) (form EPO-002)
2. *Petition for Firearms Restraining Order* (form GV-100)
3. *Can a Firearms Restraining Order Help Me?* (information sheet) (form GV-100-INFO)
4. *Notice of Court Hearing* (form GV-109)[6]
5. Temporary Firearms Restraining Order (form GV-110)[7]
6. *Request to Continue Court Hearing for Firearms Restraining Order* (form GV-115)
7. *Notice of New Hearing Date* (form GV-116)
8. *Response to Petition for Firearms Restraining Order* (form GV-120)
9. *How Can I Respond to a Petition for Firearms Restraining Order?* (information sheet) (form GV-120-INFO)
10. *Firearms Restraining Order After Hearing* (form GV-130)[8]
11. *Proof of Personal Service* (form GV-200)[9]
12. *What Is "Proof of Personal Service"?* (information sheet) (form GV-200-INFO)
13. *Proof of Service by Mail* (form GV-250)
14. *Request to Terminate Firearms Restraining Order* (form GV-600)[10]
15. *Notice of Hearing on Request to Terminate Firearms Restraining Order* (form GV-610)
16. *Response to Request to Terminate Firearms Restraining Order* (form GV-620)
17. *Order on Request to Terminate Firearms Restraining Order* (form GV-630);
18. *Request to Renew Firearms Restraining Order* (form GV-700)[11]
19. *Notice of Hearing on Request to Renew Firearms Restraining Order* (form GV-710)[12]
20. *Response to Request to Renew Firearms Restraining Order* (form GV-720)

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[5] See Code Civ. Proc., § 527.6.

[6] Pen. Code, § 18160.

[7] Pen. Code, § 18125 et seq.

[8] Pen. Code, § 18170 et seq.

[9] Pen. Code, § Pen. Code, § 18115(e)(1).

[10] Pen. Code, § 18180(b).

[11] Pen. Code, § 18190.

[12] Pen. Code, § 18190(b).

21. *Order on Request to Renew Firearms Restraining Order* (form GV-730)
22. *Proof of Firearms Turned in or Sold* (form GV-800) [13]
23. *How Do I Turn In or Sell My Firearms?* (information sheet) (form GV-800-INFO)
24.

The proposed drafts of all the above forms are attached at pages 11−62.

Particular Issues

Format of Forms

The forms use the plain-language visual format. Because the Civil Harassment (CH) forms are in this format, using the CH forms as the template for the new GV forms saved a great amount of development time. The forms use plain language, but are not necessarily reduced to the reading level of many at self-represented parties.[14]

Title of Initiating Forms

While "Request" rather than "Petition" is used in some plain-language protective orders proceedings (see, e.g., CH-100, *Request for Civil Harassment Restraining Orders*), the committee has chosen to use the more standard "Petition."

Identification of Parties

Despite the title, the GV orders do not fit the classic understanding of "restraining orders." The protection provided is solely in the form of firearms surrender and firearm possession prohibition. There is no identifiable actual victim who might be viewed as a "protected person." Therefore, the committee elected to use the traditional labels of "Petitioner" and "Respondent" rather than the labels that are used for the parties in other protective order proceedings ("Person to Be Protected" and "Person to Be Restrained").

Emergency Protective Order and Temporary Restraining Order

Under the Penal Code, there are two different paths to a GV order. There is a "Temporary Emergency Gun Violence Restraining Order,[15]" and there is an "Ex Parte Gun Violence Restraining Order.[16]" The titles are particularly confusing because a "temporary" order may be issued ex parte,[17] and an "ex parte" order is temporary.[18] Therefore, the committee has elected

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[13] Pen. Code, § 18120(b).

[14] There are two tiers to plain language. First, all legal writing should be in plain language, avoiding legalese and expressing matters in the clearest and least wordy manner possible. We always follow this standard in developing forms. Second, for some subject areas that are commonly used by self-represented persons, we sometimes attempt to reduce the reading level of the content to a high school or lower level.

[15] Pen. Code, § 18125 et seq.

[16] Pen. Code, § 18150 et seq.

[17] Pen. Code, §18125(a).

[18] Pen. Code, § 18155(c).

not to use these labels. Instead, what the statutes refer to as the Temporary Emergency Gun Violence Restraining Order is the *Emergency Firearms Protective Order* (form EPO-002), modeled after the current *Emergency Protective Order* (form EPO-001). What the statutes refer to as the Ex Parte Gun Violence Restraining Order is the *Temporary Firearms Restraining Order* (GV-110), modeled after the temporary restraining order (TRO) forms for other civil protective order proceedings (see e.g., form CH-110).

There are three major differences between the "temporary" and "ex parte" orders. First, the temporary order may only be requested by a law enforcement officer, while the ex parte order may be requested by a law enforcement officer or an immediate family member (as defined).[19] Second, the temporary order expires in 21 days with no procedure for extending it or making it "permanent." The ex parte order also expires in 21 days, but provides for a hearing to be held within 21 days to consider whether a GV order with a duration of one year should be issued.[20]

The third difference is in the showing required to get the order. The temporary order requires a showing of *immediate and present danger,*[21] while the ex parte order requires a showing of *a significant danger in the near future*.[22] With the temporary order, before the 21 days are up, the law enforcement officer can petition for an order after hearing.[23]

The temporary order may also be obtained by using the procedures to obtain an oral search warrant if time and circumstances do not permit the filing of a petition.[24] Hence, it would appear that the temporary order is a tool to be used by law enforcement in an emergency situation, when there is a perceived need to remove guns from someone acting erratically and aggressively and to prohibit him or her from possessing a firearm.[25] If the restraining order is issued and the restrained party has not relinquished the firearm then under the amendments to Penal Code Section 1524(14), a search warrant for the firearms can be issued.

In summary, law enforcement can seek a temporary order in an emergency or an ex parte order for danger in the near future. A family member can only seek an ex parte order. Either may seek an order after hearing,

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[19] Compare Pen. Code, § 18125(a) with Pen. Code, § 18150(a).

[20] Compare Pen. Code, §§ 18125−18140 (no provision for hearing after temporary order) with Pen. Code, § 18165 (hearing required after ex parte order). At the hearing, the petitioner must prove the grounds for the order by clear and convincing evidence. See Pen. Code, § 18170(b).

[21] Pen. Code, § 18125(a)(1).

[22] Pen. Code, § 18150(b)(1).

[23] Pen. Code, § 18170(a).

[24] Pen. Code, § 18145(a)(2).

[25] Suggesting that maybe this order could be labeled "Emergency Temporary Restraining Order." The ex parte order might be then be just "Temporary Restraining Order," since it occupies the role of the TRO in other protective order proceedings.

Continuances and Extending Temporary Orders

The gun violence legislation provides for a continuance on the motion of either party on a showing of good cause. Any temporary order remains in effect until the new hearing date.[26]

Service by Mail of Order After Hearing

Other protective order statutes have a provision that the Order After Hearing may be served on the respondent by mail if he or she was not present at the hearing, was personally served with a TRO, and the order after hearing is the same as the TRO except for the expiration date.[27] The gun violence statutes do not include this provision; personal service is required if the respondent did not attend the hearing.[28] Therefore, no form corresponding to CH-260, *Service of Order After Hearing by Mail,* has been drafted.

Service of Papers for Termination and Renewal

The statutes provide processes by which the respondent can seek to terminate the order[29] and by which the petitioner can seek to renew the order before it expires.[30] The termination statute is completely silent on any service requirements for the request (proposed form GV-600) and the order on the request (proposed form GV-630). The renewal statute requires that an order of renewal (proposed form GV-730) be personally served on the respondent if he or she did not attend the hearing.[31] Otherwise, the renewal statute is also silent on service requirements.

Given the statutory silence, the committee has elected to provide on the Notice of Hearing forms for both proceedings a two-checkbox option for service of the initiating forms on the opposing party. The court can either require personal service or permit service by mail.

For both proceedings, the committee has provided that service of the order is not required if the order was granted and the losing party was present at the hearing. For renewal, if the order is granted and the respondent did not attend, personal service is required per Penal Code section 18197. For termination, if the order was granted and the petitioner did not attend the hearing, the court may require personal service or allow service by mail. For both termination and renewal, if the order was denied and the petitioner did not attend, service by mail is sufficient.

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[26] Pen. Code, § 18195.

[27] See, e.g., Code Civ. Proc., § 527.6(p)(2) on civil harassment.

[28] See Pen. Code, § 18197.

[29] See Pen. Code, § 18185.

[30] See Pen. Code, §

[31] See Pen. Code, § 18197.

Comments, Alternatives Considered, and Policy Implications

Comments

The forms as proposed to be adopted or approved were posted for public comment from April 17, 2015, to June 17, 2015. Comments were received from only 10 different commentators, but the comments submitted were extensive. Most requested specific changes to specific items in specific forms. A chart showing the comments received and the committee's responses is attached at pages 63−126.

Two commentators objected to the number of forms. In the words of one: "There are so many forms that it will be extremely difficult for a person of average intelligence to navigate through the process, regardless of the plain language format. … Fewer forms would reduce the amount of time spent both by the litigant and by court staff."

The committee sees the role and use of standardized court forms differently. In addition to providing for petitions and orders, the gun violence statutes provide procedures for obtaining a continuance, renewing an order that is near expiration, and terminating the order. "Fewer forms would reduce the amount of time spent both by the litigant and by court staff" only if the lack of forms meant that these procedures and remedies were never pursued. If pursued, they would be more costly and time-consuming to initiate, defend, and adjudicate. Petitions and responses would still have to be drafted and filed; orders would still have to be issued.

Judicial Council forms benefit litigants, counsel, and ultimately the courts. They save time and money and make the presentation and defense of claims easier for everyone. Further, the forms proposed are similar to currently existing forms for other protective order procedures. Therefore, the committee believes that the number and specific types of forms recommended are appropriate to achieve the purposes of the legislation and to assist the public and the courts to effectively and efficiently implement it.

Alternatives

Format of Emergency Order

The committee considered two different formats for the emergency order. Staff drafted two separate forms, one for a petition and one for an order, in the standard plain-language format. However, the committee prefers a single form modeled after the EPO-001 *Emergency Protective Order,* which has an application and order on a single page. The conclusion was that the form would be used exclusively by law enforcement in the field in a potentially volatile situation, and needed to be as simple and quick to fill out as possible. Also, the form must be in NCR triplicate format so that it may be served and filed and entered into the Department Justice (DOJ) Database and the California Law Enforcement Telecommunications System (CLETS).

Supporting Facts

For the temporary (ex parte) order and order after hearing, the statute provides a lengthy list of factors that the court must consider in deciding whether the grounds for the order have been proved.[32] The petition (form GV-100) includes an "affidavit" item[33] for the petitioner to set forth the supporting facts. The facts need to address the statutory factors. The committee has elected not to list all the factors in the petition. An option is provided to incorporate the supporting facts in the TRO and Order After Hearing as the court's findings in support of the orders.

Policy implications

Possible Judicial Council–sponsored Legislation

There are several anomalies about the statutes that perhaps should have or could have been done differently. The committee is considering proposing that the Judicial Council sponsor legislation to address these issues.

First there is the placement of the statutes in the Penal Code despite the express statement that the statutes establish "a civil restraining order process." This procedure would seem to fit more logically in the Code of Civil Procedure with other civil restraining order statutes.[34]

There is the confusing nomenclature previously noted, by which a temporary order is issued ex parte and an ex parte order is temporary. The law would be clearer if the more traditional terms of "emergency order" and "temporary restraining order" had been used.

Other protective order statutes on firearms relinquishment were recently amended to provide for storage with a licensed gun dealer as a third option, to surrender to law enforcement, or sell to a dealer.[35] This storage option has not been included in the gun violence statutes.[36]

As noted above, the statutes provide a process by which the respondent can seek to terminate the order[37] and a process by which the petitioner can seek to renew an order that is about to terminate. For both proceedings, the manner of service of the initiating forms, whether personal or by mail, should be specified in the statute. Also, service requirements for the order should be clarified, whether it is granted or denied and whether or not a party attended the hearing.

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[32] See Pen. Code, §§ 18155(b), 18175(a).

[33] See Pen. Code, § 18155(a)(2).

[34] See Code Civ. Proc., §§ 527.6 (Civil Harassment), 527.8 (Workplace Violence), 527.85 (Private Post Secondary School Violence).

[35] See Code Civ. Proc., § 527.9.

[36] See Pen. Code, § 18120(b).

[37] See Pen. Code, § 18185.

The statutes provide expressly for the entry by law enforcement of proof of service forms into the California Restraining and Protective Order System (CARPOS).[38] However, there is no requirement that the orders themselves be entered.[39]

Several Penal Code statutes address violations of enumerated restraining or protective orders.[40] There should be consideration as to whether these statutes should be amended to include gun violence restraining orders.

Implementation Requirements, Costs, and Operational Impacts

One commentator noted the anticipated implementation requirements for the courts listed below. It should be noted that the forms are required to implement recent legislation and training in the substantive changes resulting from the new laws is needed independent of the new forms.

- Self-Help Centers—Self-Help staff would require training, and forms would need to be available at the court's Self-Help kiosks as well as printed at the Self-Help centers at the various court locations.

- Case management system—The court would need to add the filing types into the case management system. This process will take time to add the required documents, conduct testing, and for court management to approve the changes.

- Minute Order Codes (MOCS)—The court will need to add the MOCS codes that reflect the appropriate code language. This process could take a few weeks to add the codes, for testing, and for final management approval.

- Training case processing staff—The court will need to train case processing staff on how to file documents, where the hearings will take place, and understanding the timeliness of setting the hearings in accordance with the code timelines.

- Training courtroom clerks—Courtroom clerks will need to be trained as to including appropriate language in the minutes as well as knowing which MOCS codes to use. Courtroom clerks will need to create associated calendars. Further, the court may need to create MACROS related to this implementation and the courtroom clerks would need to be trained on this as well.

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[38] See Pen. Code, § 18115(e)(1).

[39] However, Penal Code section 18115(a) does require that the court notify the Department of Justice when a gun violence restraining order has been issued or renewed under this division no later than one court day after issuing or renewing the order.

[40] See Pen. Code, §§ 166(c) (contempt of court), 273.6 (punishment for violation of protective order), 836 (arrest without warrant),

- Procedures—Staff would need at least a few weeks to draft procedures for both case processing clerks as well as for courtroom clerks. Procedures that would require drafts include:
    - Civil: processing gun violence petitions, renewals, terminations, etc.;
    - Criminal: processing search warrants when firearms are not surrendered; and
    - Protective Order Unit: updating the DOJ CARPOS system.

- Communication with law enforcement—The court will need to coordinate a communication plan with law enforcement agencies to provide direction on the submission of Gun Violence Restraining Orders, any applicable renewals, and terminations.

- Protective Order Registry/WebDV and CARPOS—Protective Order Registry/WebDV will require modifications to allow entry to Gun Violence Restraining Orders and terminations. In addition, DOJ will need to modify CARPOS to allow for the entry of these orders into the system, as well as remove the existing "protected party" requirement.

- Docket codes—The court will need to create new docket codes for the filing of new petitions/forms and types of hearings.

Attachments and Links

1. Judicial Council forms at pages 11−62
2. Chart of comments on proposal SPR15-13 [this proposal] at pages 63−126

EPO-002

FIREARMS EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

1. **RESTRAINED PERSON** *(insert name of subject):* _____

Sex: ☐ M ☐ F Ht.: _____ Wt.: ____ Hair color: ____ Eye color: ____ Race: _____ Age: ____ Date of birth: _____

2. **TO THE RESTRAINED PERSON** *(Also see important Warnings and Information on Page 2)***:**
YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition. If you have any firearms or ammunition, you **MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST.** If no request has been made, you must surrender all firearms and ammunition in a safe manner to your local law enforcement agency or sell them to a licensed gun dealer **within 24 hours** of being served with this order. You must then **file a receipt proving surrender or sale with the Court listed below within 48 hours,** or if the court is closed, then on the next business day after the firearms are surrendered or sold. **FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER .**
(Name and address of court):

3. **THIS ORDER WILL EXPIRE ON:** _____ **TIME** _____
INSERT DATE OF 21st CALENDAR DAY
DO NOT COUNT DAY THE ORDER IS GRANTED

4. Reasonable grounds for the issuance of this Order exist, and a Firearms Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving a firearm; **and** (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

5. **To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.**

Judicial officer *(name):* granted this Order on *(date):* at *(time):*

APPLICATION

6. Officer has a reasonable cause to believe that the grounds set forth in Item 4, above, exist. *(state supporting facts and dates; specify weapons—number, type and location):*

_____
_____
_____
_____
_____

7. ☐ Firearms were: ☐ observed ☐ reported ☐ searched for ☐ seized

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

By: _____ ▶ _____
(PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: Telephone No.: Badge No.:

PROOF OF SERVICE

8. Person served *(name):* _____
9. I personally delivered copies of this Order to the person served as follows: Date: _____ Time: _____
Address:

10. At the time of service, I was at least 18 years of age. ☐ I am a California law enforcement officer.
11. My name, address, and telephone number are *(this does not have to be server's home telephone number or address):*

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

Date: _____ _____ ▶ _____
(TYPE OR PRINT NAME OF SERVER) (SIGNATURE OF SERVER)

WARNINGS AND INFORMATION

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm or ammunition. (Pen. Code, § 18125 et seq.) A violation of this Order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in your firearms to a law enforcement agency or sell them to a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender or sale must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms Turned In or Sold,* for this purpose.

This Firearms Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front.

A law enforcement officer or agency or a family member may seek a more permanent restraining order from the court. However, you can seek to terminate this order or any more permanent order before expiration by filing a request with the court listed on the front.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the State of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A la persona restringida: Tiene prohibido ser dueño de un arma de fuego, poseer, comprar o tratar de comprar, recibir o tratar de recibir u obtener un arma de alguna otra manera. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de $1000 y encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego a una agencia del orden público o venderlas a un comerciante de armas autorizado hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Dentro de las 48 horas de recibir esta orden, se tiene que presentar a la corte una prueba de haberlas entregado o vendido. Se puede usar la forma GV-800 por este propósito.

Esta orden de protección de emergencia de arma de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 al otro lado.

Un agente o agencia del orden público o un familiar puede pedir que la corte emita una orden de restricción más permanente de la corte. Sin embargo, puede pedir dar fin a esta orden antes de su fecha de vencimiento al presentar una solicitud con la Corte indicada en el punto 3 al otro lado.

Si está en violación de este orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o intentar comprar o recibir un arma de fuego o municiones por otro periodo de cinco años mas, a comenzar a partir del vencimiento de la orden de restricción actual de violencia con armas de fuego. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Firearms Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. A copy must be filed with the court as soon as practicable after issuance. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this Temporary Firearms Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

GV-100 Petition for Firearms Restraining Order

Clerk stamps date here when form is filed.

Read *Can a Firearms Restraining Order Help Me?* (Form GV-100-INFO) before completing this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):

_____

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Respondent

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: ____ Zip: _____

4 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The Respondent lives in this county.
b. ☐ Other *(specify):* _____

Other Court Cases

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

☐ Yes ☐ No *If yes, on the next page, check each kind of case and give as much information as you know as to where and when each was filed:*

This is not a Court Order.

Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1) ☐ Civil Harassment			
(2) ☐ Domestic Violence			
(3) ☐ Divorce, Nullity, Legal Separation			
(4) ☐ Paternity, Parentage, Child Custody			
(5) ☐ Elder or Dependent Adult Abuse			
(6) ☐ Eviction			
(7) ☐ Workplace Violence			
(8) ☐ Criminal			
(9) ☐ Other *(specify):*			

b. Are there now any protective or restraining orders in effect relating to Respondent?
☐ Yes ☐ No ☐ I don't know *If yes, attach a copy if you have one.*

5 Description of Respondent's Firearms

If you have reason to believe that the respondent is in possession of firearms, answer (a) or check (b).

a. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms and ammunition. *(Describe the number, types, and locations of any firearms and ammunition that you believe that the Respondent currently possesses or controls)*:

b. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls firearms and ammunition, but I have no further specific information as to the number, types, and locations of those firearms and and ammunition.

6 Grounds for Issuance of a Firearms Restraining Order

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

This is not a Court Order.

b. A firearms restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

c. The facts supporting the above statements are set forth:

☐ Below

☐ On the attached Form MC-031, *Attached Declaration*

7 Request for Firearms and Ammunition Restraining Order

I request that the court issue an order prohibiting Respondent from having in his or her custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a firearm or ammunition. I further request that Respondent be ordered to immediately surrender all firearms and ammunition currently in his or her possession to a law enforcement officer or to sell the firearms and ammunition to a licensed gun dealer.

8 Request for Hearing

I request that the court set a hearing in this matter for the purpose of issuing a firearms restraining order that will last for one year.

9 Request for Immediate Temporary Order

Do you want the court to make a firearms restraining order now that will last until the hearing without notice to Respondent? ☐ Yes ☐ No *(If you answered yes, explain why below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 9—Request for Immediate Temporary Order" for a title.*

This is not a Court Order.

Case Number:

10 ☐ Request to Give Less Than Five Days' Notice

You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (Form GV-200-INFO explains What Is "Proof of Personal Service"? *Form GV-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Request to Give Less Than Five Days' Notice" for a title.*

_____

_____

_____

_____

_____

11 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

GV-100-INFO Can a Firearms Restraining Order Help Me?

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer or a self-help center.

What is a firearms restraining order?

It is a court order that prohibits someone from having any guns or ammunition. The person must surrender any guns and ammunition that he or she currently owns.

Can I get a firearms restraining order against someone?

You can ask for one against a person who is an immediate family member. Immediate family members include (1) your spouse or domestic partner; (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent; (3) your spouse's parents, children (your stepchildren), siblings, grandparents, and grandchildren; and (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household. If you do not have the necessary relationship, advise a law enforcement officer of the situation. The officer may investigate and file the petition if he or she finds that the grounds exist.

Will the order protect me in other ways, such as keeping the person from coming near me?

No, the only order the court can make is to force the person to not have firearms and ammunition. If you need personal protection from a family member, you should proceed under the Domestic Violence Protection Act. See Form DV-500-INFO, *Can a Domestic Violence Restraining Order Help Me?*, for information on how to proceed.

Will I have to pay a filing fee to request the order?

Yes. If you cannot afford to pay the filing fee, ask the clerk how to apply for a fee waiver. Form FW-001 is available for this purpose.

What forms do I need to get the order?

You must fill out all of Form GV-100, *Petition for Firearms Restraining Order,* and Form CLETS-001, *Confidential CLETS Information*. You must also fill out items 1 and 2 on Form GV-109, *Notice of Court Hearing*, and items 1 and 2 on Form GV-110, *Temporary Firearms Restraining Order.*

Where can I get these forms?

You can get the forms from legal publishers or on the Internet at *www.courts.ca.gov.* You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must go to the superior court in the county where the person to be restrained lives. At the court, ask where you should file your request for a firearms restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.) Give your forms to the clerk of the court. The clerk will give you a hearing date on the *Notice of Court Hearing* form.

How soon can I get the order?

You can ask for a *Temporary Firearms Restraining Order*, which will be effective right away if granted. The court may decide whether or not to grant the temporary order based only on the facts that you have stated in your petition. If so, the court will decide within 24 hours whether or not to make the temporary order. Sometimes the court will want to examine you personally under oath. The clerk will tell you whether you should wait to talk to the judge or come back later to find out if the court has signed a temporary order.

If you don't ask for a temporary restraining order, you will have to wait until the hearing, at which the court will decide whether to make an order that will last for one year.

How will the person to be restrained know about the order?

If the court issues a temporary restraining order, someone age 18 or older—**not you**—must personally "serve" (give) the person to be restrained a copy of the order. The server must then fill out Form GV-200, *Proof of Personal Service*, and give it to you to file with the court. If the person to be restrained attends the hearing, no further proof of service is required. But if he or she does not attend the hearing, then any order issued at the hearing must also be personally served. For help with service, ask the court clerk for Form GV-200-INFO, *What Is "Proof of Personal Service?"*.

What do I have to prove to get the order?

You will have to convince the judge that the person to be restrained poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

You will also have to convince the judge that a firearms restraining order is needed to prevent personal injury to the person to be restrained or to another person because less restrictive alternatives either have been tried and haven't worked, or are inadequate or inappropriate for the current circumstances.

How can I convince the judge?

You will need to give the judge specific information. You should tell the judge everything that you know about the firearms that the person to be restrained currently owns, including how many the person owns, the types, and where they are kept.

Then you will need to present facts to show that the person to be restrained is dangerous. This could be information about any threat of violence that the person to be restrained has made, any violent incident in which the person has been involved, or any crime of violence the person has committed. It could also be evidence that the person to be restrained has violated a protective order or abuses controlled substances or alcohol. It could also be evidence of the unlawful and reckless use, display, or brandishing of a firearm or the recent acquisition of a firearm. Or it could be evidence that the person to be restrained has been identified by a mental health provider as someone prohibited from purchasing, possessing or controlling any firearms.

You should include all of this information in your Petition and also be prepared to present it to the judge at the hearing.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you.

Will I see the restrained person at the court hearing?

If the person comes to the hearing, yes. If you are afraid, tell the court officer.

Can I bring someone with me to court?

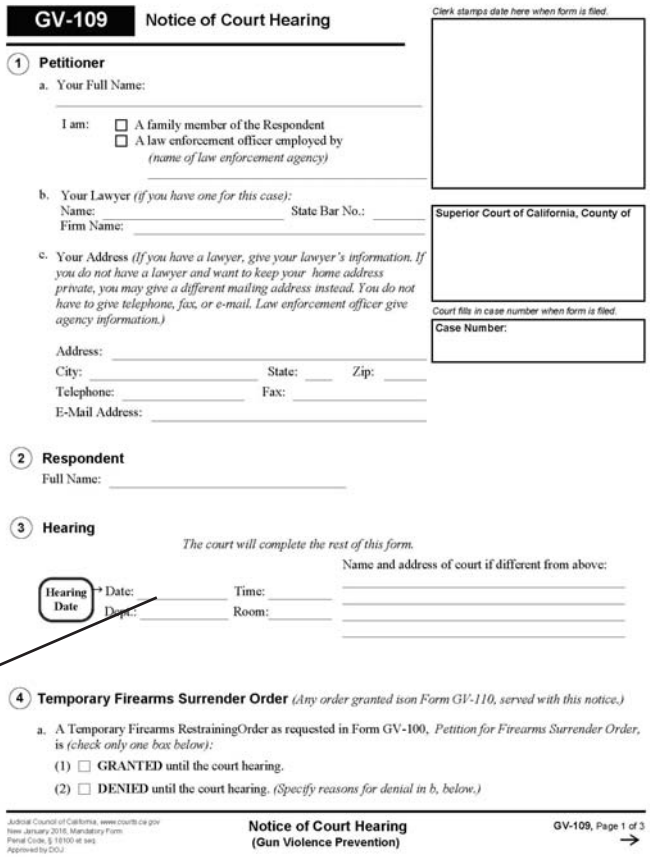
Yes. You can bring someone to sit with you during the hearing, but that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

Do I need to bring a witness to the hearing?

Witnesses are not required, but it helps to have more proof than just your word. For example, consider bringing:

- Witnesses
- Written statements from witnesses made under oath
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, e-mails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use Form MC-030, *Declaration*, for this purpose.)



GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

(1) **Petitioner**

a. Your Full Name:

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by *(name of law enforcement agency)*

b. Your Lawyer *(if you have one for this case)*:
Name: State Bar No.:
Firm Name:

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer give agency information.)*
Address:
City: State: Zip:
Telephone: Fax:
E-Mail Address:

Superior Court of California, County of

Court fills in case number when form is filed.
Case Number:

(2) **Respondent**
Full Name:

(3) **Hearing**
The court will complete the rest of this form.
Name and address of court if different from above:
Hearing Date → Date: Time:
Dept.: Room:

(4) **Temporary Firearms Surrender Order** *(Any order granted ison Form GV-110, served with this notice.)*
a. A Temporary Firearms RestrainingOrder as requested in Form GV-100, *Petition for Firearms Surrender Order*, is *(check only one box below)*:
(1) ☐ **GRANTED** until the court hearing.
(2) ☐ **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

Judicial Council of California, www.courts.ca.gov
New January 2016, Mandatory Form
Penal Code, § 18100 et seq.
Approved by DOJ

Notice of Court Hearing
(Gun Violence Prevention)

GV-109, Page 1 of 3 →

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court makes a temporary order, it will last until your hearing date, which must be within 21 days of the date of the temporary order. If at the hearing the court issues a more permanent order, it will last for one year. It may be renewed for additional one-year periods.

What if the restrained person does not obey the order?

Call the police. The restrained person can be arrested and charged with a crime.

Can I agree with the restrained person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. The restrained person would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court's clerk or self-help center if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

For help in your area, contact:

[Local information may be inserted.]

GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by
(*name of law enforcement agency*):

_____

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Respondent

Full Name: _____

3 Hearing

The court will complete the rest of this form.

Name and address of court if different from above:

_____
_____
_____
_____

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

4 Temporary Firearms Restraining Order *(Any order granted is on Form GV-110, served with this notice.)*

a. A Temporary Firearms Restraining Order as requested in Form GV-100, *Petition for Firearms Restraining Order,* is *(check only one box below):*

(1) ☐ **GRANTED** until the court hearing.

(2) ☐ **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons for denial of a Temporary Firearms Restraining Order as requested in Form GV-100, *Petition for Firearms Restraining Order*, are:

(1) ☐ The facts as stated in Form GV-100 do not show that there is a substantial likelihood that both of the following are true:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

(2) ☐ Other *(as set forth):* ☐ Below ☐ On Attachment 4b(2).

_____

_____

_____

_____

_____

5 Service of Documents on Respondent

At least ☐ five ☐ _____ calendar days before the hearing, a law enforcement officer or someone age 18 or older—**and not a party to the action—**must personally give (serve) a court file-stamped copy of this Form GV-109 to the Respondent, along with a copy of all the forms indicated below:

a. GV-100, *Petition for Firearms Restraining Order* (file-stamped)
b. ☐ GV-110, *Temporary Firearms Restraining Order* (file-stamped) **IF GRANTED**
c. GV-120, *Response to Petition for Firearms Restraining Order* (blank form)
d. GV-120-INFO, *How Can I Respond to a Request for a Firearms Restraining Order?*
e. GV-250, *Proof of Service of Response by Mail* (blank form)
f. ☐ Other *(specify):* _____

Date: _____ _____

Judicial Officer

To the Petitioner in 1 :

- The court cannot make an order at the court hearing unless the Respondent has been personally given (served) a copy of the Petition and a temporary order if issued. To show that the Respondent has been served, the person who served the forms must fill out a proof of service form. Form GV-200, *Proof of Personal Service,* may be used.
- For information about service, read Form GV-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the Respondent in time, you may ask for a later hearing date, which will give you more time to serve the documents. Use Form GV-115, *Request to Continue Court Hearing for Firearms Restraining Order*.

Case Number:

To the Respondent:

- If you want to respond to the *Petition for Firearms Restraining Order* in writing, file Form GV-120, *Response to Petition for Firearms Restraining Order* and have someone age 18 or older—**not you—**mail it to the Petitioner.
- The person who mailed the form must fill out a proof of service form. Form GV-250, *Proof of Service by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may order you to turn in to law enforcement, or sell to a licensed gun dealer, any firearms and ammunition that you own or possess. If issued, the order will last for one year.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

GV-110 Temporary Firearms Restraining Order

Clerk stamps date here when form is filed.

Petitioner must complete items (1) and (2) only.

(1) Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):

_____

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Respondent

Full Name: _____
Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____
Hair Color: _____ Eye Color: _____ Age: _____ Race: _____
Home Address *(if known)*: _____
City: _____ State: _____ Zip: _____
Relationship to Petitioner: _____

The court will complete the rest of this form.

(3) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

Case Number:

4 Findings

☐ Having examined ☐ Petitioner ☐ and other witnesses under oath,

☐ Having considered the declarations of ☐ Petitioner ☐ and other witnesses under penalty of perjury,

a. The court finds that there is a substantial likelihood that both of the following are true:

(1) Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

(2) A temporary gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The court has received credible information that Respondent owns or possesses one or more firearms.

c. ☐ The facts as stated in the Petition and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.

and/or for the reasons set forth below.

☐ See the attached Form MC-025, *Attachment*

This is a Court Order.

5 Order Prohibiting All Firearms and Ammunition

a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm or ammunition.

b. The court has received credible information that you own or possess one or more firearms that have not been surrendered or sold. You must:

(1) Surrender all firearms and ammunition in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms and ammunition to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must surrender all of your firearms and ammunition within 24 hours of being served with this order. You may do so by either: (1) surrendering all of your firearms and ammunition in a safe manner to the local law enforcement agency; or (2) selling all of your firearms and ammunition to a licensed gun dealer.

(2) Within 48 hours of receiving this Order, file a receipt with the court that proves that your firearms have been turned in or sold. *(You may use Form GV-800,* Proof of Firearms Turned In or Sold, *for the receipt.)* You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

6 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. You are required to surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. A hearing will be held on the date and at the time noted on Page 1 to determine if a more permanent gun violence restraining order should be issued. Failure to appear at the hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with the Order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

Violation of this Order is a misdemeanor. If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be changed only by an order of the court.

This is a Court Order.

After You Have Been Served With a Temporary Order

- Obey the order by turning in your firearms and ammunition to a law enforcement agency or selling them to a licensed gun dealer.
- Read Form GV-120-INFO, *How Can I Respond to a Petition for Firearms Restraining Order?,* to learn how to respond to this Order.
- If you want to respond, fill out Form GV-120, *Response to Petition for Firearms Restraining Order,* and file it with the court clerk.
- You must have Form GV-120 served by mail on the Petitioner or the Petitioner's attorney. You cannot do this yourself. The person who does the mailing should complete and sign Form GV-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration,* for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make a firearms restraining order against you that lasts for one year. Tell the judge why you disagree with the order requested.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Respondent must do the following:

- Order the Respondent to immediately surrender all firearms and ammunition to him or her.
- Issue a receipt to the Respondent for all firearms and ammunition that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms and Ammunition

The law enforcement agency that has received surrendered firearms and ammunition must do the following:

- Retain the firearms and ammunition until the termination or expiration of this Order or of any other firearms restraining order issued by the court.
- On the expiration of this Order or of any later firearms restraining order issued by the court, return the firearms and ammunition to the respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms or ammunition that are not claimed are subject to the requirements of section 34000.

This is a Court Order.

Instructions for Law Enforcement

(continued)

- If someone other than the Respondent claims title to any of the firearms or ammunition surrendered, determine whether that person is the lawful owner. If so, return the firearms and ammuition to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The Respondent was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the Respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it *(see above: Duties of Officer Serving This Order).*

The provisions in this *Temporary Firearms Restraining Order* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Temporary Firearms Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

GV-115 Request to Continue Court Hearing for Firearms Restraining Order

Clerk stamps date here when form is filed.

1 Party Seeking Continuance

a. Full Name:

_____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Other Party

Full Name: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

3 Request to Continue Hearing

I ask the court to continue the hearing currently scheduled for *(date):* _____

a. ☐ A *Temporary Firearms Restraining Order* (Form GV-110) was issued on *(date):* _____
Please attach a copy of the order.

b. I request that the hearing be continued because *(check one or both)*:

(1) ☐ The Respondent could not be served before the hearing date.

(2) ☐ Other for the reasons stated ☐ below ☐ on Attachment 3b(2)

_____

_____

_____

_____

c. (1) ☐ This is the first request for a continuance.

(2) ☐ The hearing has previously been continued ____ times.

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

GV-116 Notice of New Hearing Date

Party seeking continuance complete items (1), (2), and (3)a.

Clerk stamps date here when form is filed.

(1) Party Seeking Continuance

a. Full Name:

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

Full Name: _____

(3) New Hearing Date

a. A hearing in this case is currently set for *(date):* _____ at *(time):* _____

b. The court orders a new hearing date:

(1) ☐ at the request of the Petitioner

(2) ☐ at the request of the Respondent

(3) ☐ in its discretion

c. Because:

(1) ☐ the Respondent could not be served before the current hearing date.

(2) ☐ the parties have agreed to postpone the hearing and ask for a new hearing date.

(3) ☐ for the reasons stated ☐ below ☐ on Attachment 3c

_____
_____
_____

(4) Order for Continuance and Notice of Hearing

The court hearing on the *Petition for Firearms Restraining Order* (Form GV-100) is continued and rescheduled:

Name and address of court if different from above:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

_____
_____
_____
_____

Case Number:

5 Service of Order

A copy of this Order must be served by the requesting party on the other party at least ____ days before the hearing unless both parties were in court at the time the continuance was granted. A copy of Form GV-100, *Petition for Firearms Restraining Order,* and Form GV-110, *Temporary Firearms Restraining Order,* must also be served on the Respondent if they were not previously served and a proof of service filed with the court before the original hearing date.

Warning and Notice to the Respondent:

If a *Temporary Firearms Restraining Order* (Form GV-110) was issued, it remains in full force and effect until the new hearing date. You must continue to obey it until the end of the hearing.

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of New Hearing Date* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

GV-120 Response to Petition for Firearms Restraining Order

Clerk stamps date here when form is filed.

Use this form to respond to the *Petition* (Form GV-100)

- Read *How Can I Respond to a Petition for Firearms Restraining Order?* (Form GV-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to his or her lawyer. *(Use Form GV-250,* Proof of Service by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

See Petition for case number and fill in:

Case Number:

1 Petitioner

Name of person seeking order (*see Form GV-100, item* 1): _____

2 Respondent

a. Your Name: _____

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from Form GV-109 item 3 here:

Hearing Date ➔ Date: _____ Time: _____
Dept.: _____ Room: _____

If a *Temporary Firearms Restraining Order* was issued, you must obey it until the hearing. At the hearing, the court may make an order against you for one year.

3 Firearms Restraining Order

☐ I do not agree to the order requested in the Petition.

4 ☐ Denial

I did not do anything described in item 6 of Form GV-100.

5 ☐ Justification or Excuse

If I did some or all of the things that the Petitioner has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5—Justification or Excuse" as a title.*

_____
_____
_____
_____
_____
_____
_____

Case Number:

6 Surrender of Firearms and Ammunition

If a *Temporary Firearms Restraining Order* (Form GV-110) was issued, you cannot own or possess any guns, other firearms, or ammunition. (See item 5 of Form GV-110.) You must sell to a licensed gun dealer, or turn in to a law enforcement agency, any guns, other firearms, and ammunition in your immediate possession or control within 24 hours of being served with Form GV-110. You must file a receipt with the court. You may use Form GV-800, *Proof of Firearms Turned In or Sold*, for the receipt.

a. ☐ I do not own or control any guns, other firearms, or ammunition.
b. ☐ I have turned in my guns, other firearms, and ammunition to a law enforcement officer or agency, or sold them to a licensed gun dealer.
A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

7 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

GV-120-INFO How Can I Respond to a Petition for Firearms Restraining Order?

What is a firearms restraining order?

It is a court order that prohibits someone from having any guns or ammunition. The person must surrender any guns and ammunition that he or she currently owns.

Who can ask for a firearms restraining order?

The petition must have been filed by a law enforcement officer or an immediate family member of yours. Immediate family members include (1) your spouse or domestic partner; (2) your parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent; (3) your spouse's parents, children (your stepchildren), siblings, grandparents, and grandchildren; and (4) any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

I've been served with a *Petition for Firearms Restraining Order*. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* tells you when to appear in court. There may also be a *Temporary Firearms Restraining Order* prohibiting you from having any firearms and ammunition, and requiring you to surrender any firearms and ammunition that you currently own or possess. You must obey the order until the hearing.

What if I don't obey the temporary order?

The police can arrest you. You can go to jail and pay a fine.

What if I don't agree with what the order says?

If you disagree with the order that the Petitioner is asking for, fill out Form GV-120, *Response to Petition for Firearms Restraining Order*, before your hearing date and file it with the court. You can get the form from legal publishers or on the Internet at *www.courts.ca.gov*. You also may be able to find it at your local courthouse or county law library.

Will I have to pay a filing fee?

Yes. If you cannot afford to pay the filing fee, ask the clerk how to apply for a fee waiver. Form FW-001 is available for this purpose.

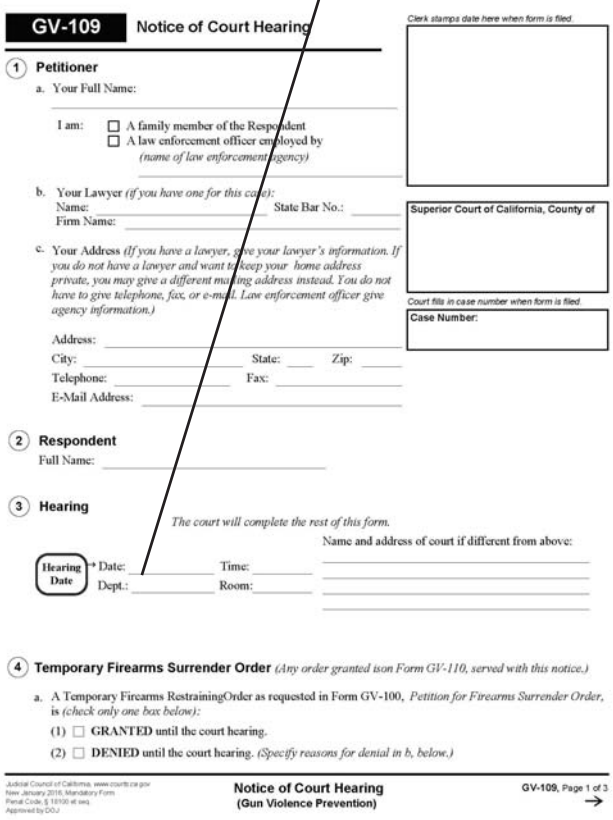
Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—**not you**—mail a copy of completed Form GV-120 to the person who asked for the order (or that person's lawyer). (This is called "service by mail.")

The person who serves the form by mail must fill out Form GV-250, *Proof of Service by Mail.* Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on Form GV-109, *Notice of Court Hearing*. If you do not go to the hearing, the judge can extend the order against you for up to one year without hearing from you.



GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

(1) Petitioner

a. Your Full Name:

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (name of law enforcement agency)

b. Your Lawyer (if you have one for this case):
Name: State Bar No.:
Firm Name:

c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer give agency information.)
Address:
City: State: Zip:
Telephone: Fax:
E-Mail Address:

Superior Court of California, County of

Court fills in case number when form is filed.
Case Number:

(2) Respondent
Full Name:

(3) Hearing
The court will complete the rest of this form.
Name and address of court if different from above:
Hearing Date → Date: Time:
Dept.: Room:

(4) Temporary Firearms Surrender Order (Any order granted ison Form GV-110, served with this notice.)
a. A Temporary Firearms RestrainingOrder as requested in Form GV-100, Petition for Firearms Surrender Order, is (check only one box below):
(1) ☐ GRANTED until the court hearing.
(2) ☐ DENIED until the court hearing. (Specify reasons for denial in b, below.)

Judicial Council of California, www.courts.ca.gov
New January 2016, Mandatory Form
Penal Code, § 18100 et seq.
Approved by DOJ

Notice of Court Hearing
(Gun Violence Prevention)

GV-109, Page 1 of 3 →

Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. It is probably best not to talk to him or her unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. (You can use Form MC-030, *Declaration*, for this purpose.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide whether to issue a firearms restraining order that can last for one year.

Can I agree with the protected person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. You would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask your court's clerk or self-help center if your court will provide an interpreter for you at no cost. If not, you will have to pay a fee for the interpreter. If an interpreter is not available for your court date, you should ask someone who is over age 18 to interpret for you.

What if I am deaf or hard of hearing?

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

For help in your area, contact:

[Local information may be inserted.]

GV-130 Firearms Restraining Order After Hearing

Clerk stamps date here when form is filed.

Petitioner must complete items (1) and (2) only.

(1) Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):

_____

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Respondent

Full Name: _____
Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____
Hair Color: _____ Eye Color: _____ Age: _____ Race: _____
Home Address *(if known)*: _____
City: _____ State: _____ Zip: _____
Relationship to Petitioner: _____

The court will complete the rest of this form.

(3) Expiration Date

This Order expires at:

(Time): _____ ☐ a.m. ☐ p.m. ☐ midnight on *(Date):* _____

If no expiration date is written here, this Order expires one year from the date of issuance.

This is a Court Order.

4 Hearing

a. There was a hearing 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 (3) ☐ The lawyer for the Petitioner *(name):* _____

(2) ☐ The Respondent (4) ☐ The lawyer for the Respondent *(name):* _____

5 Findings

a. The court finds by clear and convincing evidence that both of the following are true:

(1) Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The court has received credible information that the Respondent owns or possesses one or more firearms.

c. ☐ The facts as stated in the Petition and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.

and/or for the reasons set forth below.

☐ See the attached Form MC-025, *Attachment*

This is a Court Order.

6 Order Prohibiting All Firearms and Ammunition

a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm or ammunition.

b. You must:

(1) Surrender all firearms and ammunition in your custody or control or that you possess or own. If a law enforcement officer orders you to surrender all of your firearms and ammunition to him or her, you must do so immediately. If no order to surrender is made by a law enforcement officer, you must dispose of all of your firearms and ammunition within 24 hours of receiving notice of this order. You may do so by either: (1) surrendering all of your firearms and ammunition in a safe manner to the local law enforcement agency; or (2) selling all of your firearms and ammunition to a licensed gun dealer.

(2) Within 48 hours of receiving this Order, or if the court is closed, then on the next business day, file a receipt with the court that proves that your guns or firearms have been turned in or sold. *(You may use Form GV-800,* Proof of Firearms Turned In or Sold, *for the receipt.)* You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

7 Service of Order on Respondent

a. ☐ The Respondent personally attended the hearing. No other proof of service is needed. The clerk has provided the Respondent with a blank copy of Form GV-600, *Request to Terminate Firearms Restraining Order*.

b. ☐ The Respondent did not attend the hearing. The Respondent must be personally served with a court file-stamped copy of this Order and a blank copy of Form GV-600, *Request to Terminate Firearms Restraining Order*, by a law enforcement officer or someone age 18 or older -- **and not a party to the action.**

8 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warnings and Notices to the Respondent

This Order is valid until the expiration date and time noted on page 1. If you have not done so already, you must surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this Order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

This is a Court Order.

Violation of this Order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.) If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be terminated only by an order of the court.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this Order on the Respondent must do the following:

- Order the Respondent to immediately surrender all firearms and ammunition to him or her.
- Issue a receipt to the Respondent for all firearms and ammunition that he or she has surrendered.
- Complete a proof of personal service and file it with the court. You may use Form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms and Ammunition

The law enforcement agency that has received surrendered firearms and ammunition must do the following:

- Retain the firearms and ammunition until the expiration of this order or of any other firearms restraining order issued by the court.
- On the expiration of this order or of any later firearms restraining Order issued by the court, return the firearms and ammunition to the Respondent as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850). Firearms or ammunition that are not claimed are subject to the requirements of section 34000.
- If someone other than the Respondent claims title to any of the firearms or ammunition surrendered, determine whether that person is the lawful owner. If so, return the firearms and ammunition to him or her as provided by Chapter 2 of Division 11 of Title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The respondent was informed of the Order by an officer.
- Item 7a is checked.

This is a Court Order.

Instructions for Law Enforcement

(continued)

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it *(see above: Duties of Officer Serving This Order).*

The provisions in this *Firearms Restraining Order After Hearing* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Firearms 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.

GV-200 Proof of Personal Service

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner

Name: _____

2 Respondent

Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be the Petitioner unless the Petitioner is a law enforcement officer.
- Give a copy of all documents checked in 4 to the Respondent. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the Petitioner.

PROOF OF PERSONAL SERVICE

4 I personally gave the Respondent a copy of the forms checked below:

a. ☐ GV-100, *Petition for Firearms Restraining Order*
b. ☐ GV-109, *Notice of Court Hearing*
c. ☐ GV-110, *Temporary Firearms Restraining Order*
d. ☐ GV-116, *Notice of New Hearing Date*
e. ☐ GV-120, *Response to Petition for Firearms Restraining Order* (blank form)
f. ☐ GV-120-INFO, *How Can I Respond to a Petition for Firearms Restraining Order?*
g. ☐ GV-130, *Firearms Restraining Order After Hearing*
h. ☐ GV-600, *Request to Terminate Firearms Restraining Order* (blank form)
i. ☐ GV-800, *Proof of Firearms Turned In or Sold* (blank form)
j. ☐ Other *(specify):* _____

5 I personally gave copies of the documents checked above to the Respondent:

a. On *(date):* _____ b. At *(time):* _____ ☐ a.m. ☐ p.m.

c. At this address: _____

City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____ _____ ▶ _____

Type or print server's name *Server to sign here*

GV-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your legal papers to the other party. There are many kinds of service—in person, by mail, and others. This form is about personal or "in-person" service. The *Petition for Firearms Restraining Order* (Form GV-100), the *Notice of Court Hearing* (Form GV-109), and the *Temporary Firearms Restraining Order* (Form GV-110) must be served "in person." That means that someone must personally "serve" (give) a copy of the forms to the respondent (the person to be prohibited from having guns).

These forms cannot be served by mail; they must be given to the respondent personally.

Service lets the respondent know:
- Why you are asking for a Firearms Restraining Order;
- The hearing date;
- How to respond.

Why do I have to get the orders served?

- The police cannot arrest anyone for violating an order unless that person knows about the order.
- No hearing can be held to extend the order for a year unless the respondent was served and knows about the hearing.

Don't serve it by mail!

Who can serve?

Any law enforcement officer may serve the respondent, even if the petition was filed by a law enforcement officer. **It is recommended that you ask a law enforcement officer to serve the forms because of the potential for gun violence.**

However, service may also be by any person who is at least 18 years old and not a party to the action. That means that if the petitioner is a family member rather than a law enforcement officer, that person may not serve the forms on the respondent. You may use a process server. A "registered process server" is a business that you pay to deliver court forms. Look for "Process Serving" in the Yellow Pages or on the Internet.

How to serve

Ask the server to:
- Make personal contact with the person to be served.
- Make sure it is the right person. Ask the person's name.
- Give the person copies of all papers checked on Form GV-200, *Proof of Personal Service*.
- Fill out and sign the *Proof of Personal Service* form.
- Give the signed *Proof of Personal Service* to you.

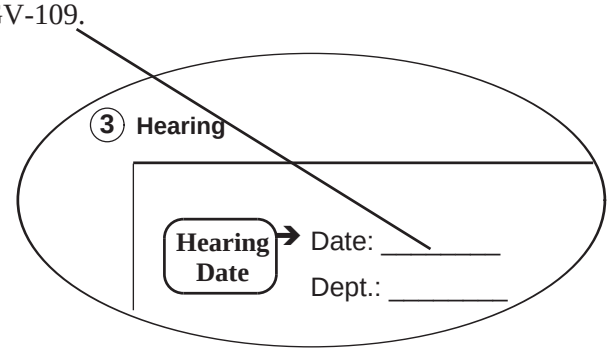
What if the person won't take the papers or tears them up?

- If the person won't take the papers, just leave them near him or her.
- It doesn't matter if the person tears them up. Service is still complete.

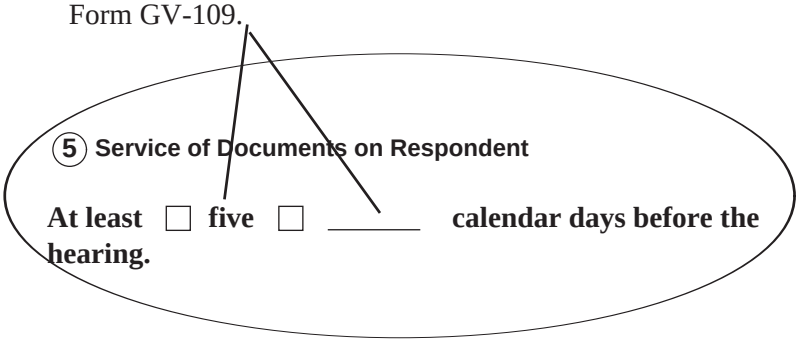
When do the orders have to be served?

It depends. To know the exact date, you have to look at two things on Form GV-109, *Notice of Court Hearing:*

First, look at the hearing date on page 1 of Form GV-109.



Next, look at the number of days in item (5) on page 2 of Form GV-109.



Look at a calendar. Subtract the number of days in (5) from the hearing date. That is the final date to have the orders served. It is always OK to serve earlier than that date. If nothing is checked or written in (5), you must serve the orders at least five days before the hearing.

Who signs the *Proof of Personal Service?*

Only the person who serves the forms can sign Form GV-200, *Proof of Personal Service*. You do not sign it; the restrained person does not need to sign it.

What do I do with the completed *Proof of Personal Service?*

If someone other than a law enforcement officer serves the papers, you should:

- Make several copies.
- File the original with the court before your hearing.
- Bring a copy of the completed *Proof of Personal Service* to your hearing.
- Always keep an extra copy of the restraining orders with you for your safety.

What happens if I can't get the orders served before the hearing date?

You will need to ask the court to "continue" (postpone and reschedule) the hearing until after you are able to have the respondent served. Fill out and file Form GV-115, *Request to Continue Court Hearing for Firearms Restraining Order*. If the court grants you a continuance, the *Temporary Firearms Restraining Order* (Form GV-110) will remain in effect until the new hearing date.

GV-250 Proof of Service by Mail

Clerk stamps date here when form is filed.

1 Petitioner

Full Name: _____

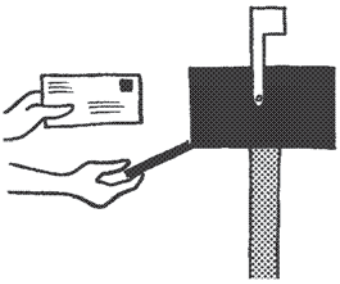
2 Respondent

Full Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Live or be employed in the county where the mailing took place.
- Not be a party to the case.
- Mail a copy of all documents checked in 4 to the person in 1.
- Complete and sign this form and give it to the person in 2.



Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

4 PROOF OF SERVICE BY MAIL

I am 18 years of age or older and not a party to this case. I live or am employed in the county where the mailing took place. I mailed the ☐ Petitioner ☐ Respondent a copy of all documents checked below:

a. Form GV-120, *Response to Petitioner for Firearms Restraining Orders*

b. ☐ Other *(specify)*: _____

_____

5

I placed copies of the documents above in a sealed envelope and mailed them as described below:

a. Mailed to *(name)*: _____

b. To this address: _____

City: _____ State: _____ Zip: _____

c. On *(date)*: _____ Mailed from: City: _____ State: _____

6 Server's Information

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

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

Date: _____

_____
Type or print server's name

▶ _____
Server to sign here

GV-600 Request to Terminate Firearms Restraining Order

Clerk stamps date here when form is filed.

1 Respondent

a. Full Name: _____

b. Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Petitioner

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 ☐ Request to Terminate Restraining Order

a. I ask the court to terminate the

☐ *Firearms Restraining Order After Hearing* (Form GV-130)

☐ *Order on Request to Renew Firearms Restraining Order* (Form GV-730)

because *(give reasons below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3—Reasons to Terminate Order" for a title. You may use Form MC-025,* Attachment.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

b. ☐ A copy of the current order is attached.

This is not a Court Order.

c. ☐ I have not previously requested that the court terminate the Order.

☐ The Order has been renewed. I have not previously requested that the court terminate the Order since it was renewed.

(You may only request termination of a firearms restraining order once during the initial period while the order is in effect and once during any period of renewal. If the court denies your request, you may not request termination again unless the order is renewed for another year.)

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

This is not a Court Order.

GV-610 Notice of Hearing on Request to Terminate Firearms Restraining Order

Clerk stamps date here when form is filed.

Respondent completes items (1) and (2).

(1) Respondent

a. Full Name: _____

b. Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Petitioner

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

Name and address of court if different from above:

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

_____

_____

_____

_____

To the Respondent:

(4) Service

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Petitioner:

- GV-600, *Request to Terminate Firearms Restraining Order;*
- GV-610, *Notice of Hearing on Request to Terminate Firearms Restraining Order* (this form); and
- GV-620, *Response to Request to Terminate Firearms Restraining Order* (blank copy).

This is a Court Order.

☐ The forms must be personally served on the Petitioner _____ days before the hearing.
☐ The forms may be served by mail on the Petitioner or the Petitioner's attorney _____ days before the hearing.

The person who serves the forms must fill out either Form GV-200, *Proof of Personal Service*, or Form GV-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the completed proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see Form GV-200-INFO, *What is "Proof of Personal Service"?*.

Date: _____

_____
Judicial Officer

To the Petitioner:

If you wish to make a written response to this request to terminate the current firearms restraining order, you may fill out Form GV-620, *Response to Request to Terminate Firearms Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—** mail a copy of it to the other party at the address in ① at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail*, with the court before the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Terminate Firearms Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

This is a Court Order.

GV-620 Response to Request to Terminate Firearms Restraining Order

Clerk stamps date here when form is filed.

Use this form to respond to the *Request to Terminate Firearms Restraining Order* (Form GV-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Respondent at the address in (2) below. Use Form GV-250, *Proof of Service of Response by Mail.*

(1) Petitioner

a. Your Name: _____

I am: ☐ A family member of the Respondent.
☐ A law enforcement officer employed by (*name of law enforcement agency*):
_____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will consider your response at the hearing. Write your hearing date, time, and place from Form GV-610 item (3) here.

Hearing Date → Date: _____
Time: _____

Dept.: _____ Room: _____

(2) Respondent

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

(3) Response

a. ☐ I do not oppose termination of the order.

b. ☐ I oppose termination of the order for the following reasons *(specify below)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Terminate" for a title. You may use Form MC-025,* Attachment.

_____

_____

_____

_____

_____

_____

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

To the Petitioner:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-620 to the Respondent or to the Respondent's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service by Mail.* Have the person who did the mailing sign the original. Take the completed Proof of Service form back to the court clerk or bring it with you to the hearing.

GV-630 Order on Request to Terminate Firearms Restraining Order

Clerk stamps date here when form is filed.

Prevailing party completes items (1) and (2). If the Order is granted, the Respondent is the prevailing party. If the Order is denied, the Petitioner is the prevailing party.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Respondent

a. Full Name: _____

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

(2) Petitioner

Full Name: _____
Address *(if known)*: _____
City: _____ State: _____ Zip: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.
These people were at the hearing:

a. ☐ The Petitioner
b. ☐ The Respondent
c. ☐ The lawyer for the Petitioner *(name):* _____
d. ☐ The lawyer for the Respondent *(name):* _____

(4) Findings

☐ The court finds that there is no longer clear and convincing evidence that:

Respondent poses a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

This is a Court Order.

Case Number:

A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

☐ There remains clear and convincing evidence that grounds continue to exist to support the order.

5 Order on Request to Terminate

The request to terminate the *Firearms Restraining Order After Hearing* (Form GV-130), originally issued on *(date)*: _____ ☐ and most recently renewed on *(date)*: _____, is:

a. ☐ **GRANTED**. The order is terminated as of *(date of hearing)* _____

b. ☐ **DENIED**. The order and expiration date remain in effect.

To the Prevailing Party:

6 Service of Order

If service is required, someone age 18 or older**—not you—**must serve a copy of this order on the other party. If a party is represented, you are required to serve the attorney instead of the party.

☐ **Order Granted—**The Petitioner attended the hearing. **No further service is required.**

☐ **Order Granted—**The Petitioner did not attend the hearing. **Service is required:** This Order:

☐ Must be personally served on the Petitioner within _____ days of the date of this Order.
☐ May be served by mail on the Petitioner within 5 days of the date of this Order.

☐ **Order Denied—**If the Petitioner did not attend the hearing -- **Service by Mail:** The Petitioner may be served with this Order by mail.

Date: _____ _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Terminate Firearms Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

GV-700 Request to Renew Firearms Restraining Order

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):

_____

b. Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Respondent

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the *Firearms Restraining Order After Hearing* (Form GV-130) for an additional period of one year. A copy of the order is attached.

a. The order currently will end on *(date):* _____

(If the order has already expired, you must file a new petition.)

b. ☐ This is my first request to renew the order.
☐ The order has been renewed _____ times.

c. I ask the court to renew the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Reasons to Renew Order" for a title. You may use Form MC-025,* Attachment.

_____

_____

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

Date: _____ _____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

GV-710 Notice of Hearing on Request to Renew Firearms Restraining Order

Clerk stamps date here when form is filed.

Petitioner completes items (1) and (2).

(1) Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by
(*name of law enforcement agency*):

_____

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Respondent

Full Name: _____
Address *(if known)*: _____
City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect.

Hearing Date →
Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:

_____
_____
_____
_____

This is a Court Order.

Case Number:

To the Petitioner:

(4) Service on Respondent

Someone age 18 or older**—not you—**must serve a copy of the following forms on the Respondent

- GV-700, *Request to Renew Firearms Restraining Order;*
- GV-710, *Notice of Hearing on Request to Renew Firearms Restraining Order* (this form);
- GV-720, *Response to Request to Renew Firearms Restraining Order* (blank copy);

☐ The forms must be personally served on the Respondent _____ days before the hearing.
☐ The forms may be served by mail on the Respondent or the Respondent's attorney _____ days before the hearing.

Date:_____ _____

Judicial Officer

To the Respondent:

At the hearing, the judge can renew the current restraining order for another year. You *must* continue to obey the current restraining order. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* continue to obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out Form GV-720, *Response to Request to Renew Firearms Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—**mail a copy of it to the Petitioner at the address in (1) at least _____ days before the hearing. Also file Form GV-250, *Proof of Service by Mail, w*ith the court before the hearing or bring it with you to the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Notice of Hearing on Request to Renew Firearms Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____

Clerk, by _____ , Deputy

This is a Court Order.

GV-720 Response to Request to Renew Firearms Restraining Order

Clerk stamps date here when form is filed.

Use this form to respond to the *Request to Renew Firearms Restraining Order* (Form GV-700).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner at the address in (1) below. Then file Form GV-250, *Proof of Service by Mail* with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Petitioner *(From Form GV-700, item (1))*

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

(2) Respondent

a. Your Name: _____

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

The court will consider your *Response* at the hearing. Write your hearing date, time, and place from Form GV-710 item (3) here.

Hearing Date → Date: _____
Time: _____

Dept.: _____ Room: _____

You must continue to obey the current restraining order until the hearing. At the hearing, the court can extend the order against you for another year.

(3) Response

a. ☐ I do not oppose renewal of the order.
b. ☐ I oppose renewal of the order for the following reasons *(specify below)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Renew" for a title. You may use Form MC-025,* Attachment.

_____
_____
_____
_____
_____
_____
_____

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

To the Respondent:

Have someone age 18 or older—**not you**—mail a copy of this completed Form GV-720 to the Petitioner or to the Petitioner's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out Form GV-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

GV-730 Order on Request to Renew Firearms Restraining Order

Clerk stamps date here when form is filed.

Prevailing party completes items (1) and (2). If the Order is granted, the Petitioner is the prevailing party. If the Order is denied, the Respondent is the prevailing party.

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

a. Your Full Name: _____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):
_____

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

(2) Respondent

Full Name: _____

Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

a. ☐ The Petitioner
b. ☐ The Respondent
c. ☐ The lawyer for the Petitioner *(name):* _____
d. ☐ The lawyer for the Respondent *(name):* _____

This is a Court Order.

Case Number:

4 Order on Request for Renewal

The request to renew the attached *Firearms Restraining Order After Hearing* (Form GV-130), originally issued on *(date)*: _____, is:

☐ **DENIED**. The attached order expires as stated in item 3 of the order.

☐ **GRANTED**. The attached order is renewed for one year and will now expire:

on *(date):* _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

If no expiration date is written here, the order expires one year from the date of the hearing in item 3.

a. The court finds by clear and convincing evidence that both of the following are true:

(1) Respondent continues to pose a significant danger of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A gun violence restraining order remains necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The facts as stated in the *Request to Renew Firearms Restraining Order* (Form GV-700) and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order.

and/or for the reasons set forth below.

_____

_____

_____

_____

_____

_____

_____

☐ See the attached Form MC-025, *Attachment*

c. **To the Respondent: If this Order is renewed, it will last until the date and time noted above. If you have not done so already, you must surrender all firearms and ammunition that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. Pursuant to section 18185, you have the right to request one hearing to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the Order.**

This is a Court Order.

Case Number:

To the Prevailing Party:

5 Service of Order

Someone age 18 or older**—not you—**must serve a copy of this order on the other party.

☐ **Order Granted—**The Respondent attended the hearing. **No further service is required**.

☐ **Order Granted—**The Respondent did not attend the hearing. **Personal service is required**. The Respondent must be personally served with this Order. *(After the Respondent has been served, file Form GV-200,* Proof of Personal Service *with the court clerk. For help with service, read Form GV-200-INFO, What is "Proof of Personal Service"?.)*

☐ **Order Denied—Service by Mail—**If the Petitioner did not attend the hearing, the Petitioner may be served with this Order by mail. *(After the Petitioner has been served, the person doing the mailing should fill out Form POS-030,* Proof of Service by First-Class Mail**—**Civil. *File the form with the court clerk. For help with service by mail, read the Information Sheet on page 2 of Form POS-030.)*

Date: _____

_____
Judicial Officer

This is a Court Order.

GV-800 Proof of Firearms Turned In or Sold

Clerk stamps date here when form is filed.

1 Petitioner

Name: _____

2 Respondent

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

3 To the Respondent

The court has ordered you to surrender all of your firearms and ammunition by turning them in to law enforcement or selling them to a licensed gun dealer. You may use this form to prove to the court that you have obeyed its orders. When you deliver your unloaded weapons, ask the law enforcement officer or the licensed gun dealer to complete item 4 or 5 and item 6.

4 To Law Enforcement

Fill out items 4 and 6 of this form. Keep a copy and give the original to the person who turned in the firearms.

The firearms listed in 6 were turned in on:

Date: _____ at: ____ ☐ a.m. ☐ p.m.

To: _____

Name and title of law enforcement agent

_____

Name of law enforcement agency

_____

_____

Address

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

▶ _____

Signature of law enforcement agent

Badge Number _____

5 To Licensed Gun Dealer

Fill out items 5 and 6 of this form. Keep a copy and give the original to the person who sold you the firearms.

The firearms listed in 6 were sold to me on:

Date: _____ at: ____ ☐ a.m. ☐ p.m.

To: _____

Name of licensed gun dealer

_____ _____

License number *Telephone*

_____

_____

Address

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

▶ _____

Signature of gun dealer

Case Number:

After the form is signed, file it with the court clerk and with the law enforcement agency that served you with the gun violence restraining order. Keep a copy for yourself. Failure to file a receipt with the court and with the law enforcement agency is a violation of this order.

For help, read Form GV-800-INFO, *How Do I Turn In or Sell My Firearms?*

6 Firearms

	Make	Model	Serial Number
a.			
b.			
c.			
d.			
e.			

☐ *Check here if you turned in or sold more firearms. Attach a sheet of paper and write "GV-800, Item 6—Firearms Turned In or Sold," for a title. Include make, model, and serial number of each firearm.*

7 Do you have, own, possess, or control any other firearms besides the firearms listed in 6? ☐ Yes ☐ No

If you answered yes, have you turned in or sold those other firearms? ☐ Yes ☐ No

If yes, check one of the boxes below:

a. ☐ I filed a *Proof of Firearms Turned In or Sold* for those firearms with the court on (*date):* _____

b. ☐ I am filing the proof for those firearms along with this proof.

c. ☐ I have not yet filed the proof for the other firearms. *(Explain why not):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on the attached sheet of paper and write "Attachment 7c" for a title.*

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

Date:

_____
Type or print your name

▶ _____
Sign your name

GV-800-INFO How Do I Turn In or Sell My Firearms?

1 What is a firearm?

A firearm is a:

- Handgun
- Rifle
- Shotgun
- Assault weapon

If you own or have any firearms or ammunition you must:

2
- If demanded, give them to the law enforcement officer when he or she serves you with the court order requiring surrender; otherwise, within 24 hours:
  - Turn them in to your local law enforcement agency; or
  - Sell them to a licensed firearms dealer.

3 How do I sell my firearms?

Find a California licensed firearms dealer in your area.
Look under "Firearms Dealers" in your local Yellow Pages or on the Internet. Make sure the dealer is licensed.

4 How do I take my firearms to law enforcement?

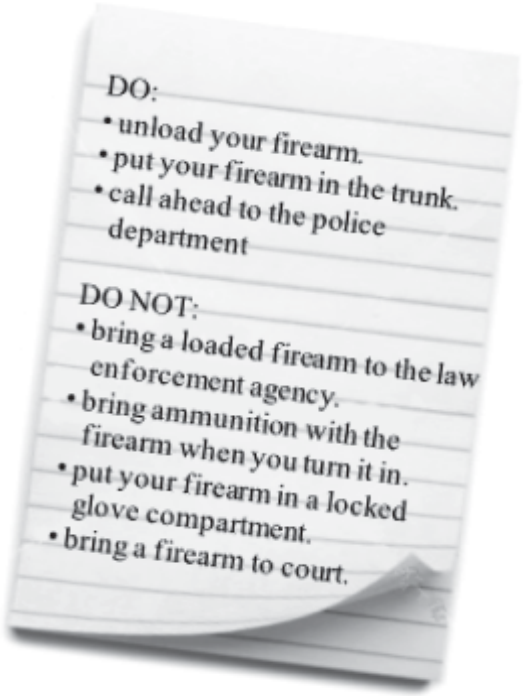
Call your local law enforcement agency to ask about their procedures. Take a copy of the court order with you. Go directly to the law enforcement agency. Do not go anywhere else with firearms in your vehicle!

5 If I turn my firearms in to law enforcement, how long will they keep them?

As long as any firearms restraining order against you remains in effect.

6 After I give my firearms to law enforcement, can I sell them later if I change my mind?

Yes. You are allowed to sell them to a licensed gun dealer. To do this, the gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the firearms that you are selling.



7 Do I have to pay the law enforcement agency to keep my firearm?

You may have to pay the agency for keeping your firearms. Contact your local law enforcement agency and ask if a fee is charged. The agency will tell you how much you need to pay.

8 Do I have to prove that I have turned in or sold my firearms?

Yes. Within 48 hours you must file a receipt with the court and the law enforcement agency showing that you have surrendered your firearms to a law enforcement agency or sold them to a licensed gun dealer. You may use Form GV-800, *Proof of Firearms Turned In or Sold,* for this purpose.

9 Questions?

Call your local law enforcement agency:
(Insert local information here.)

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-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.	California Judges Association By Joan P. Weber, President	NI	See attached letter.	We agree that training of bench officers support staff is necessary. The working group proposes to help support education programs through CJER.
2.	Deborah Coel Operations Analyst Superior Court of Orange County	AM	See comments on specific provisions below.	Responses are below with comments.
3.	Christine Copeland Commissioner Superior Court of Santa Clara County	AM	Opening comments: I read the legislation until my eyes started to cross and same with forms-whoever worked on all of these brand-new forms for a brand-new law should be commended. It's the weirdest restraining order ever because no one person or persons gets protection, and no one is restrained in the traditional sense. My comments below may likely indicate that I didn't read the legislation closely enough or understand the forms well enough, so I may have over-commented. See comments on specific provisions below.	Responses are below with comments.
4.	Educational Fund to Stop Gun Violence Josh Horwitz Executive Director	AM	I am emailing on behalf of the Educational Fund to Stop Gun Violence and have attached our Executive Director, Josh Horwitz's comments on the Civil Forms: Gun Violence Restraining Order which were proposed on April 17, 2015. The Educational Fund to Stop Gun Violence	Responses are below with comments.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-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**
			("Ed Fund") is a non-profit organization founded in 1978 that seeks to reduce gun violence through research, education, and strategic engagement. We agree generally with the proposals made, but recommend making the changes we have outlined in the attached document.[1]	
5.	Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	A	The JRS agrees with the proposed changes, but requests that the Civil and Small Claims Committee consider how to simplify the process for obtaining gun violence restraining orders, especially in regard to implementation.	The process for obtaining gun violence protective orders has been established by the Legislature in Penal Code section 18100 et seq. The Civil and Small Claims Advisory Committee cannot change a process established by statute.
6.	National Rifle Association and California Rifle and Pistol Association C.D. Michel Senior Counsel	AM	We write on behalf of the National Rifle Association (NRA), the California Rifle and Pistol Association (CRPA), and the hundreds of thousands of individual members of those associations in California, as well as numerous individual firearm manufacturers, dealers, and owners in California. This letter provides comments on the 23 proposed Judicial Council forms, known as the	Responses are below with comments.

[1] Summary of statutory provisions omitted

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			Civil Forms: Gun Violence Restraining Orders, and address whether the proposed forms appropriately address their stated purpose pursuant to Penal Code ' 18100 et seq.[2]	
7.	Orange County Bar Association By Ashleigh Aitken, President Newport Beach	A	Agree with proposed changes.	No response is necessary.
8.	Superior Court of Los Angeles County Janet Garcia Court Manager	AM	See comments on specific provisions below.	Responses are below with comments.
9.	Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	AM	See comments on specific provisions below.	Responses are below with comments.
10.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	See comments on specific provisions below.	Responses are below with comments.

[2] Summary of statutory provisions omitted

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

COMMENTS APPLICABLE TO MULTIPLE FORMS		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	The committee agrees with this comment and has changed this instruction to direct the person filing the form to fill in the case number in all forms after the initiating form.
Educational Fund to Stop Gun Violence Josh Horwitz Executive Director	[T]he Temporary Gun Violence Restraining Order and the Gun Violence Restraining Order are variously referred to throughout the forms as a "protective order," "protection order," or "restraining order." We recommend that the orders be referred consistently throughout the forms as a "Temporary Gun Violence Restraining Order," and "Gun Violence Restraining Order."	The decision to call the EPO-002 a "protective" order was intentional to conform to the EPO-001. Otherwise, the forms use "restraining order" consistently per the statutes. "Protection order" is always wrong and has been changed in the one form where it was found. "Protective order" has been changed to "restraining order" wherever it was found, other than in form EPO-002.
Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	This process involves numerous forms. The JRS would appreciate CSAC considering how the number of related forms can be reduced to still achieve the statutory objectives.	The gun violence statutes, in addition to providing for petitions and orders, provide procedures for obtaining a continuance, renewing an order that is near expiration, and terminating the order. All of these procedures are easier to pursue, defend, and adjudicate if there are standardized forms that litigants, counsel, and courts can use. Judicial Council forms benefit litigants, counsel, and ultimately the courts. They save time and money and make the presentation and defense of claims easier for everyone. Further, the forms proposed are similar to currently existing forms for other protective order procedures. Therefore, the committee believes that the number and specific types of forms recommended are appropriate to achieve the purposes of the legislation and to assist the public and the courts to effectively and efficiently implement it.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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COMMENTS APPLICABLE TO MULTIPLE FORMS		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County Janet Garcia Court Manager	[All forms] calling for [the filing party's] address… provide for the applicant (whether petitioner or respondent) to have a confidential address. While it may be advisable for the petitioner to have a confidential address, the GVRO legislation did not make provision for this and there appears to be no reason for a respondent to have a confidential address.	All protective order forms allow for a mailing address. No protective order or other statute or rule of court requires that a party provide a home address on a pleading or paper. All that is required is that there be some address at which the party agrees to accept service. This address may be a home address, a mailing address, or an attorney address. It is proper for these forms to advise the parties of the option of using an address that will minimize security concerns.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The following forms do not include a Clerk's Certificate section: •GV-610 Notice of Hearing to Terminate Firearms RO •GV-630 Order on Request to Terminate Firearms RO •GV-710 Notice of Hearing to Renew Firearms RO •GV-730 Order on Request to Renew Firearms RO	The committee does not feel that a Clerk's Certificate is essential as it may be made by stamp. However, a Clerk's Certificate has been added to forms for which space is available without increasing the number of pages.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	This form uses multiple titles for the party which may cause confusion. The Court recommends using only one title in this form.	The committee assumes that this comment refers to the form's using both "Restrained Person" and "Respondent." In response, the form has been changed to consistently refer to "Restrained Person."
	Item #2: reflects filing of the original receipt of firearm sale with the court within 48 hours. If an order is made on a weekend or holiday, it will be impossible to file proof with the court within 48 hours. The Court recommends rewording to reflect the filing timeline as, "within 48 hours or if the court is closed then the next business day after firearm is surrendered."	This language has been added to Item 2.
	Item #3: Increase the size of the Court address field. Larger courts have multiple civil divisions and the forms should accommodate the inclusion of the division information.	One additional line has been added by deleting the box under Item 1, which warns of the obligation to surrender firearms to law enforcement on demand. This language is repetitive of language in Item 1.
	Item #4: The Court recommends striking the word "Respondent" and replacing it with the word "Restrained Person." [Item 6]	Item 6 has been revised to remove the reference to "Respondent."
	Item #6: The Court recommends striking the word "Respondent" and replacing it with the word "Restrained Person". Thus, the sentence should read: "Officer has a reasonable cause to believe: an Order (1) is necessary because *Restrained Person* poses an immediate danger of personal injury to himself / herself or another and…"	See response above
	Page 2, paragraph 1: First paragraph on page two of the form	The referenced text is now the second paragraph on page

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	orders restrained person to file proof of surrender or receipt. This is inconsistent with item #2, which orders the receipt to be filed. The Court recommends adding option of filing the proof of surrender (not just the receipt) into item #2.	2 of the form. The gun violence statutes all refer to filing a "receipt" (see Pen.Code, § 18120(b)(2)), so this language has been retained. Use of form GV-800, *Proof of Firearms Turned in or Sold,* is optional. A reference to the form has been added to page 2.
Christine Copeland Commissioner Superior Court of Santa Clara County	Page 1 uses "Respondent" and "Restrained Person" ; but page 2 uses "Restrained Person"-it may be confusing to use different terms	Please see committee response to similar comment above.
	Item 7- Could we have a box to check that says "None reported"? This shows officer did her due diligence in asking about firearms (parenthetically, I have the same request on the EPO-001 at item 10 but that form is not up for revisions)	A report of firearms is what triggers this process. "None reported" would mean that there are no grounds to issue an order.
	At bottom of page 1 where it says to keep one copy for the court, if no GV request is filed, does the court have any duty to keep the EPO-002 , and if so, where and for how long?	The question of retention of papers is beyond the scope of the committee's charge to develop forms.
National Rifle Association and California Rifle and Pistol Association C.D. Michel Senior Counsel	Form EPO-002 may only be utilized by law enforcement officers. To avoid mistakes in enforcement and the potential for law enforcement overreaching, the form needs to contain clear, unambiguous language detailing the specific prerequisite circumstances that must exist before law enforcement officers can seek a Firearms Emergency Protective Order.	The committee does not believe that this is necessary. Law enforcement will be trained on what to do and how to avoid mistakes. That is not the function of a form.
	1. Section 2 and Reverse Section 2, regarding notice to the restrained person, should include language informing a restrained person of how to	The committee does not see any need to emphasize this sentence on the right to request termination. The statutory warning (see Pen. Code, §18135) on the front of the form advises the restrained person to consult an

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	terminate this order. While one sentence pertaining to the termination of this order is buried towards the bottom of the second page in a small, indistinguishable font, this advisory should also be included in this section on the first page in a bold-type font and underlined. This will serve to provide the restrained person with notice of their rights, beyond merely advising them that they can hire an attorney. For example: YOU CAN SEEK TO TERMINATE THIS ORDER BEFORE EXPIRATION BY FILING A REQUEST WITH THE COURT LISTED IN ITEM 3. Additionally, the sentence pertaining to the termination of this order, located on the second page should also be in a bold-type font and underlined. This would provide the respondent with easily identifiable information and notice that they have and can assert their rights under the law.	attorney.
	[T] he Notice to Law Enforcement located on the bottom of the second page should include additional, unequivocal language in a bold-type font reiterating that this order is only to be utilized as a method of last resort, and only when other less restrictive alternatives have proven ineffective.	The committee does not believe that there is any reason to state the law in the form.

FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	For example: **<u>THIS FORM MUST BE USED *ONLY* WHERE THERE IS EVIDENCE OF LESS RESTRICTIVE ALTERNATIVES BEING UTILIZED AND SHOWN TO BE INEFFECTIVE, INADEQUATE, OR INAPPROPRIATE PRIOR TO THE ISSUANCE OF THIS ORDER.</u>**	
	2. Section 4 Section numbers 4 and 6 pertaining to reasonable grounds for issuance of this order should be in a bold-type and large font. This makes it clear to law enforcement officers that both of these prerequisites must exist to establish reasonable grounds for issuance of this order. Alternatively, should the entirety of section 4 not be in a bold-type and large font, then the connective term and connecting items 1 and 2 should be in a bold-type font and underlined to highlight that both prerequisites must exist before issuance of this order is permitted. Again, this order is a method of last resort. Pursuant to Penal Code § 18125, less restrictive alternatives must be attempted and determined to be ineffective or otherwise inadequate or inappropriate by a judicial officer before this order can be utilized. Unless this is emphasized, the GVRO process can be abused.	The committee does not believe that the use of capital letters, bold face fonts, and underlining to emphasize certain aspects of the legislation is a proper function of a form.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	Every effort should be made to make certain that anyone seeking a GVRO, and anyone issuing a GVRO, is aware of this requirement. Therefore, item number 2 in section 4 indicating less restrictive alternatives as being ineffective should be underlined and made to stand out to, so that it is clearly understood use of EPO-002 is a method of last resort. For example: Reasonable grounds for the issuance of this Order exist, and a Firearm Emergency Protective Order **(1) is necessary because Respondent poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.** Additional and unequivocal language should also be included to reinforce this restriction. For example: **THIS FORM MUST BE USED ONLY WHERE THERE IS EVIDENCE OF LESS RESTRICTIVE ALTERNATIVES BEING UTILIZED AND SHOWN TO BE INEFFECTIVE, INADEQUATE, OR INAPPROPRIATE PRIOR TO THE**	

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	ISSUANCE OF THIS ORDER.	
	3. Section 6 Section 6, indicating that reasonable cause exists for a law enforcement officer's belief that the issuance of this order is necessary, should use alternative language. The code requires for the law enforcement officer to assert, and the judicial officer to find that reasonable cause exists. Cal. Pen. Code ' 18125(a). "An Officer [having] a reasonable cause to believe..." is not a phrase used in any related statute, and is not the only catalyst for the issuance of EPO-002. Rather a judicial officer must also find there is reasonable cause to believe both items 1 and 2 of section 6 before a Firearms Emergency Protective Order is issued. To suggest otherwise, such as EPO-002 currently does, is a misstatement of the law. Leaving the language as is would undermine the legislative intent for application of a GVRO because it would purport to allow for a law enforcement officer's unfettered discretion in determining whether less restrictive alternatives were ineffective or otherwise inadequate to warrant the issuance of this order. Section 6 should be amended to make clear that there needs to be dual findings of both items 1 and 2, by a law enforcement officer and a judicial officer, before this order can be issued. For example: THIS APPLICATION WILL NOT BE GRANTED UNLESS A	Item 6 is the Application, not the order. The committee does not believe that the form suggests that the officer's reasonable belief is sufficient. The proposed additional language is not needed.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
	JUDICIAL OFFICER ALSO FINDS REASONABLE CAUSE TO BELIEVE THE ABOVE INFORMATION. Section 6 also fails to provide enough space for law enforcement officer to fill in crucial and required information. Unlike GV-100 which provides over a dozen lines (and the ability of the petitioner to add attached documents), the EPO-002 provides only three lines for a law enforcement officer to write-in this information. This is insufficient space considering the importance of this requirement.	
	Similarly to the issues with Section 4, Section 6 includes the connective term “and,” connecting items 1 and 2 in a bold-type font. But this term should also be underlined as well to make sure law enforcement officers understand that both items must be present before EPO-002 can be used.	As with item 4 above, the committee does not believe that any emphasis on the second requirement is needed in item 6.
	Section 6 also fails to provide enough space for law enforcement officer to fill in crucial and required information. Unlike GV-100 which provides over a dozen lines (and the ability of the petitioner to add attached documents), the EPO-002 provides only three lines for a law enforcement officer to write-in this information. This is insufficient space considering the importance of this requirement.	The committee understands the problem and had made a few minor spacing changes to provide a few extra lines. But as noted above, this form must be limited to a single page. Penal Code section 18135(d) imposes a textual requirement of information that must be given to the respondent (Item 5). It is impossible to include this text and also provide more lines for the officer’s statement of facts in Item 6.
Superior Court of Los Angeles County Janet Garcia	The form uses the terms "respondent" and "restrained person" interchangeably. Substitute "Person to be restrained" in the officer's portion (application).	Please see committee response to similar comment above.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
Court Manager	There is insufficient space for the officer to complete the application. It is anticipated this section may require a lengthy declaration.	Please see committee response to similar comment above.
	Page 1, [name of judicial officer granting order]: capital "O" for officer	Judicial Council Forms standards do not require a capital letter here.
	Page 1, #6, respondent or restrained person?	Please see committee response to similar comment above.
	Page 2, paragraph 1, line 5, period after closed parentheses.	The citations within the form have been made consistent by placing the period inside of the closed parenthesis.
	Page 2, paragraph 4, How do they accomplish this without case # from the court?	The committee cannot respond because the comment is unclear about what the "this" is to be accomplished.
	Is it necessary to attach a copy of the EPO if the court did not receive a copy?	There is no requirement that the EPO be attached to any subsequent filing.
	Does this require a hearing?	There is no hearing with regard to the issuance of an EPO.
	Does the court order return the guns?	Assuming that the comment refers to the expiration of the EPO and no TRO is issued, Penal Code section 18120(c)(1) provides that "Upon expiration of any order, any firearms or ammunition shall be returned to the restrained person in accordance with the provisions of Chapter 2 (commencing with Section 33850) of Division 11 of Title 4."
	If there is another RO, does the court relate/consolidate?	The committee believes that the consolidation statutes would permit, though not require, consolidation of

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM EPO-002: FIREARMS EMERGENCY PROTECTIVE ORDER		
Commentator	**Comment**	**Committee Response**
		multiple protective order proceedings.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Item #2 reflects filing of the original receipt of firearm sale with the court within 48 hours. If an order is made on a weekend or holiday, it will be impossible to file proof with the court within 24 hours. We recommend rewording to reflect the filing timeline as, "within one business day after firearm is surrendered."	Please see committee response to similar comment above.
	First paragraph on page two of the form orders [respondent] to file proof of surrender or receipt. This is inconsistent with item #2, which orders the receipt to be filed. We recommend adding option of filing the proof of surrender (not just the receipt).	Please see committee response to similar comment above.
	"Respondent" and "restrained person" is used interchangeably, which may create confusion. See item #6 and first paragraph on page two of the form.	Please see committee response to similar comment above.
	Expand the court address field. Large size courts have multiple civil divisions and the forms should accommodate the inclusion of the division information.	Please see committee response to similar comment above.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-100: PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	Page 1 - item 1- since the "family member" definition per PC code here is a bit unusual in that it includes someone (unrelated) who has lived in the home last 6 months, it would be useful to flag people here to see form GV-100-INFO for definition of family member.	The information on the form preceding says to read GV-100 INFO. Also, Item 1 is a caption item. It should not be augmented beyond the necessary information.
	Item 2 uses "Respondent;" if it is decided to use the term "restrained person" instead for sake of consistency, then change term.	Form EPO-002 consistently uses "Restrained Person." All other forms consistently use "Respondent."
	Item 2- add gender and DOB fields.	The petitions in all civil protective order proceedings do not require respondent identifying information. This information is collected on the CLETS form, which is not a public record. Law enforcement does not use the petition in order to determine the identity of the respondent.
	Page 3 item 7- isn't there an option to store firearms with a CA licensed gun dealer?	The gun violence statutes do not include the option to store firearms with a licensed dealer as a means of surrender.
	Page 4 item 10 – insert "calendar" after "five" and before "days" in first sentence.	The committee agreed and has made this change.
Educational Fund to Stop Gun Violence Josh Horwitz Executive Director	GV-100, the Petition for Firearms Restraining Order form, requests that the petitioner "[d]escribe the number, types, and locations of any firearms and ammunition that [he or she] believe that the Respondent currently possesses or controls." The petition further provides that petition set forth facts to support the following assertions:	Assuming that "all the enumerated factors" in the comment are those found in Penal Code section 18155(b)(1) and (2): this is a lengthy list. Including them all would create a very imposing and user unfriendly form. The committee does not believe that the factors need to be in the petition.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-100: PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing or receiving a firearm. b. A gun firearms restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances. The Ed Fund recommends that the petition, GV-100, list all of the enumerated factors and provide space beneath each factor for the petitioner to set forth the facts supporting each factor. We also recommend that, in addition to listing the code section for the protective orders referenced in the factors, to provide the common names for the various protective orders.	
National Rifle Association and California Rifle and Pistol Association C.D. Michel Senior Counsel	Because Form GV-100 can be used by either law enforcement officers or immediate family members of the respondent, it must contain clear, unambiguous language understandable by laypersons. Immediate family members of the respondent likely will have no sophistication or knowledge of civil proceedings or related terminology.	Plain language is the committee's goal.
	Section 1, pertaining to the petitioners information, should include a clear definition of the phrase "family member" in parenthesis and an italicized font in a similar fashion to the	Please see committee response to similar comment above.. The first sentence on the form advises the user to read GV-100 INFO.

FORM GV-100: PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	specification for a law enforcement agency that is also included on the form. Because the phrase "immediate family" is clearly defined in Penal Code § 18150(a)(2), and excludes all other members of the respondent's family, then this indication should be clearly identified so unqualified people do not attempt to use the form. For example: (A family member includes any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.) The form indicates "I am a family member of the Respondent." But it fails to include a qualifying statement of which specified family members are legally permitted to petition for a GVRO. As a matter, lay people viewing GV-100 have no reason to think that legally excluded family members could not petition for a GVRO. If this language is not included, courts will receive petitions from persons not eligible to file them.	
	Section 6 should be highlighted again, as discussed above, relating to the A less restrictive alternative. For example: A gun firearms restraining order (1) is necessary to prevent	As noted above with regard to Form EPO-002, the committee does not believe that this emphasis is needed.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-100: PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	personal injury to Respondent or to another person because **(2) less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.**	
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, #3, [Venue]: How do we place this on Case Cover Sheet? What are the other reasons/examples?	The gun violence statutes do not include any venue provisions; therefore, Code of Civil Procedure section 395 controls. The committee cannot say with certainty that venue must be in the county of the respondent's residence in all cases. Therefore, an option for "other" (venue) is appropriate.
	Page 3, c., case number should be added.	The committee does not understand this comment. Item 6c is on page 3 is for supporting facts. There would appear to be no relevance of the case number.
	Page 3, #9, line 3, move check box up to c. "Check here is there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 9-Request for Immediate Temporary Order" for a title.	The committee also does not understand this comment. There is no "c" for Item 9.
	Page 4, [Item 10] line 4, period after closed parentheses.	The only closed parenthesis in this item is at line 3. The material within is a complete sentence, so the period goes inside.
	Page 4, line 6, add "and case number".	Again, the committee does not understand the comment. Page 4, line 6 would seem to be in Item 10. But nowhere in Item 10 would the words "and case number" be relevant.
Superior Court of San Diego County	Page 3 item 6b states, "A gun firearms restraining order"; however, the word "gun" is redundant and should be removed.	The committee agrees and has removed the word "gun."

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-100: PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Michael M. Roddy, Executive Officer		

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	Page 1: Under "Can I get a firearms…." (2nd paragraph) for "step" relationships, should we specify that the marriage has to be a current one (so current "step" relationship)?	"Step" relationships arise from relation by "affinity" per Penal Code sections 422.4(b)(3) and 18135(a)(2)). First degree affinity includes stepchildren and stepparents. There is no limitation of a current marriage, though it may be that if the marriage though which the step relationships arise is terminated, so are the relationships. Second degree affinity includes one's *spouse's* grandparent or grandchild. Therefore, there is a marriage requirement in second degree affinity. It is theoretically possible for a grandparent or grandchild of a former spouse to mistakenly file for a gun violence restraining order. However, the committee does not believe that this possibility is of sufficient significance to address in the INFO sheet.
	Under "Will the order protect me"- where we say to file form DV-100, maybe we should instead say "see DV-500-INFO for what forms you will need."	The committee agreed and has made this revision.
	2nd column "What do I need to do to get the order?"- I may have glanced over it in the statute(s), but I couldn't find a venue requirement.	See response above re: the venue item in GV-100. There is no venue requirement in the gun violence statutes. GV-100-INFO does direct the petitioner to file in the court of the respondent's residence without mentioning any other possibility for venue. But because any other

FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
		basis for venue is uncertain and likely to be rarely used, the committee believes that the direction to file in the county of the respondent's residence is appropriate. To suggest a theoretical alternative would be more confusing than helpful.
	2nd column "How will the person to be restrained…."- re: personal service requirement, doesn't PC 18197 qualify after-hearing service requirement to if restrained person can be "reasonably located"?	Penal Code section 18197 applies and requires personal service on the respondent if he or she did not attend the hearing. This requirement is clearly stated in the last paragraph on page 1 of the form, which also cross refers to Form GV-200-INFO, *What Is Proof of Personal Service?"*
	Page 2- first column under "Will I see the restrained person at the court hearing?"- Second sentence isn't correct- there is nothing to make us assume that the responding party is not permitted to talk to the applicant (unless a DV, CH, CPO, or other type of RO is in effect and that separate order prohibits contact/communication).	The committee agreed with the comment and has removed this language from the form.
	2nd column under "Do I need to bring a witness…" I know we encourage this in other INFO sheets, but why set expectations that the court is going to give any weight at all to hearsay declarations or letters. I think we should take this out.	The committee made only a very minor change to the wording of this section. The committee believes that the petitioner should be encouraged to marshal his or her evidence despite any possible issues of admissibility.
	Anywhere within the INFO page- would it be worthwhile to mention the legal standard of proof is Clear and Convincing? Just thought this might be helpful since we'll all be new to this for a while.	Clear and convincing evidence is a legal term of art. The committee does not believe that it will have much meaning to the petitioner.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
Educational Fund to Stop Gun Violence Josh Horwitz Executive Director	Additionally, we recommend that the petition form or the accompanying form, GV-100-INFO, state that "recent" is defined as within the six months prior to the date the petition was filed.	This definition of "recent" appears in Penal Code section 18155(b)(3), which is the lengthy list of factors that the court is to consider in deciding whether there is clear and convincing evidence supporting the order. "Recent" is an element of some of the factors. The committee does not believe that it is important to include all of the factors in the INFO sheet. It would increase the length of the form considerably and make it less user friendly. It would be difficult to express many of the factors in plain English.
	On GV-100-INFO, under the heading "How can I convince the judge?" the Ed Fund recommends that the second paragraph be revised to read: "Then you will need to present facts to show that the person to be restrained is dangerous. This could be information about <u>any threat of violence the person to be restrained has made</u>, any violent incident in which the person has been involved, or any crime of violence the person has committed. <u>It could also be evidence of the violation of a protective order, documentary evidence of abuse of controlled substances or alcohol by the person to be restrained. It could also be evidence of the unlawful and reckless use, display, or brandishing of a firearm or the recent acquisition of a firearm by the person to be restrained.</u> ~~It could also be evidence of any erratic or~~	The committee agreed that the "How can I convince the judge?" section could benefit from the proposed additional language, and has revised it along the lines suggested. There is, however, evidence in the legislative history that a history of mental health problems is relevant. Therefore, the last sentence has not been deleted.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
	~~irrational behavior tending to indicate that the person suffers from a mental illness.~~"	
	We also recommend that the Judicial Council add a section to GV-100-INFO that reads "What if I don't have the relationship necessary to petition for a GVRO?" and advise such persons that they may discuss their concerns with a law enforcement officer who, upon investigation of the situation, may petition for a GVRO.	The committee agreed that the suggested information is valuable. It has been added to the "Can I get a firearms restraining order against someone?" section rather than as a new section.
Superior Court of Los Angeles County Janet Garcia Court Manager	The form should use the "service" explanation in the new DV-400-INFO, page 3, paragraphs 13-20.	The Judicial Council has not yet approved or adopted Form DV-400-INFO. The committee believes that the information on service included in Form GV-200-INFO, *What Is "Personal Service?"*, is sufficient.
	Given the circumstances under which these petitions are anticipated to be brought, consider a warning about the danger of anyone other than law enforcement serving the petition or orders.	This warning is given in Form GV-200-INFO, *"What Is Proof of Personal Service?"*GV-100-INFO cross refers to GV-200-INFO.
	The form indicates that witness statements under oath, photos, medical reports, etc. will be accepted by the court. Because the Evidence Code applies in a GVRO proceeding, the informational language in new DV-520 INFO is more appropriate.	Please see committee response to similar comment above. The language suggested from Form DV-520-INFO is: "You can bring documents or witnesses to help support your case. Provide the other party with a copy of all documents or witness statements. Your witnesses can

FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
		write their statements about what they saw or heard, signed under penalty of perjury. They can use Form MC-030, *Declaration*, or a sheet of paper titled "Declaration." The committee believes that the DV language, though different, is not appreciably better than the proposed GV language.
	Page 1, question 4, remove "if you can afford to pay".	The committee agreed and has made this deletion.
	Page 1, question 4 [filing fee], Law enforcement too?	This form really is not directed at law enforcement petitioners; the committee does not think it necessary to address the issue.
	Page 1, question 7, line 1, capitalize "superior court" and underline "restrained".	Judicial Council forms format standards do not capitalize "superior court" when the reference is generic, rather than to a particular court. The committee does not see a need to underline "restrained."
	Page 3, question 4, Free interpreter per new law?	New law expands the availability of free interpreter services, but does not guarantee it. The section "What if I need help to understand English?" already advises the petitioner to inquire about the availability of interpreter services. The committee has made a minor revision to the text of this section to reference a possible self-help center.
	Page 2, question 5 [Can I bring somebody with me to court?], line 2, change [from "hearing. But"] to "hearing, but"	The committee agreed and has made this change.
	Page 3, question 3 [Can I agree with the restrained person to	The committee agreed and has made this change.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-100-INFO: CAN A FIREARMS RESTRAINING ORDER HELP ME?		
Commentator	**Comment**	**Committee Response**
	terminate the order?], line 3, change "cancel" to "terminate."	
Superior Court of San Diego County Michael M. Roddy, Executive Officer	Page 2 "Will I see the restrained person at the court hearing? section: It appears this portion was copied from the Civil TRO form. It states "…that person does not have the right to speak with you." There is no TRO protecting the petitioner, but rather restricting respondent's access to firearms and ammo. This section should be removed.	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-109: NOTICE OF COURT HEARING		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	page 2, item 4b. Perhaps add a few rejection reasons: b(3) insufficient relationship between applicant and restrained person; b(4) venue in this county is improper; (if, in fact, there is a venue requirement; see comment above re: form GV-100-INFO above	The committee did not believe that any more possible grounds were needed given that "other" is provided for.
	Item 5- after "five" add "calendar" to specify 5 calendar days	The committee agreed and has made this addition.
	First bullet point paragraph at bottom section under "To the Petitioner in 1" block: The court cannot make an order "after"- get rid of "after" and instead say "at."	The committee agreed and has made this change.
	Page 3- first bullet point- should we specify 2 calendar days service deadline, or does the statute(s) not specify?	The gun violence statutes do not specify any time for service of the response.
	Under 5th bullet, we just have sell or turn in, but what about 3rd option effective 7/1/14- store with CA licensed gun dealer?	The storage option was not included in the gun violence statutes.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 2, (2), Is there another form?	The committee does not understand to what the comment refers. On page 2, there is Item 4b(2), which is the open text field for "other" grounds for denying a TRO. The reference to "another form" is not clear.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-110: TEMPORARY RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Item #5(b)(2): This section orders respondent to file receipt that proves firearms have been turned in or sold. The Court recommends inserting option of filing the GV800.	This language is currently stated in the parenthetical: "(*You may use Form GV-800*, Proof of Firearms Turned In or Sold, *for the receipt.*)"
	[T]here may be instances where the firearm may have already been surrendered (e.g., Firearm Emergency Protective Order) and therefore item #5(b)(2) would not apply. The Court recommends adding #5(b)(3) with a selection box to reflect, "Respondent previously surrendered all firearms." The Court is concerned that there may be confusion that other firearms may need to be surrendered and may create errors in CARPOS.	The committee agreed that this possibility should be addressed. But instead of a new 5b(3), the committee has added language at Item 5b (before subitems (1) and (2)).
	Page 4, 4th bullet: This should reflect serving the *Response to Petition for Firearms Restraining Order* (GV-120) after it has been filed with the court.	Bullet point 3 instructs the respondent to file the response with the court.
Christine Copeland Commissioner Superior Court of Santa Clara County	page 3- under item 5(b)(c)- again, 3rd option re: gun storage with CA licensed gun dealer should be added.	Please see committee response to similar comment above.
	Page 4- first section, first bullet- again, mention gun storage option	Please see committee response to similar comment above.
	4th bullet- mention at least 2 calendar days before.	Please see committee response to similar comment above.
	5th bullet point- as per above re: setting unrealistic expectations: we shouldn't let litigants believe judicial officers will rely on hearsay declarations.	The committee does not believe that the respondent should be deterred from marshaling his or her evidence because of possible inadmissibility.

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-110: TEMPORARY RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	Page 5- first bullet first section: LEA returning firearm to a third party could create an access issue if that third person lives with or associates with restrained person in GV order.	The committee understands that this could be true, but the statute provides for it.
National Rifle Association and California Rifle and Pistol Association C.D. Michel Senior Counsel	Because Form GV-110 must be completed by a judge and then disseminated to both the Petitioner and Respondent, it should contain clear, unambiguous language in lay terms instructing the parties on how to comply with the order, as well as to law enforcement officers enforcing this order.	Clear and unambiguous language is the committee's objective.
	Section 5 entitled "Order Prohibiting All Firearms and Ammunition" must be amended to provide adequate notice to the Respondent, so that effective compliance may be ensured. Particularly, section 5(b)(2) notifies the Respondent that he or she must file a receipt with the court and law enforcement agency that served him or her with the order, showing that the firearms were turned in or sold. Cal Pen Code ' 18120(b)(2)(A) and (B). Even though Respondent is notified in a bold-type and all capitalized font that failing to file the receipt constitutes a violation of the order, there is otherwise nothing to indicate to the Respondent that he or she must file the receipt at two different locations (if the order was serve by law enforcement) in order to be in compliance. The language notifying the Respondent that the receipt must be filed at both the court and the law enforcement agency who	The committee believes that Item 5(b)(2) adequately tells the respondent what to do.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-110: TEMPORARY RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	served him or her with the order should be in a bold font and otherwise made to stand out.	
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, 2. Move "Date of Birth" to second line and "Race" to first line	The committee sees no need to make this change.
	[Item 4] on page 2 are to be completed by court re reason for the issuance of an order. Legibility of handwritten orders is often questioned by law enforcement. Is it acceptable to attach a typed minute order?	The committee believes that each court should decide whether to attach a minute order at Item 4c.
	Page 2 [Item 4]: Do "b" and "c" always get checked off?	If something is not an option and must be included, no check box is provided. The presence of a check box means that the matter may or may not apply.
	Page 4, line 3, remove "," after "?".	Form titles are always set off with commas before and after.
	Page 5, add case name to top of form?	The case name is not included in the header on any subsequent page of any form.
	Page 5, line 6, change "Pen" to "Penal".	Code abbreviations are used in parentheticals.
	Page 5, line 12, change "restrained person" to "Respondent".	This error has been fixed.
	For Gun Violence Restraining Order Exparte Request:-Will the court require Notice to be given or a finding of good cause that was not given?	Nothing in the gun violence statutes requires that any effort be made to alert the respondent that somebody is seeking an order against him or her.
Superior Court of Orange County by Family Law Operations Managers	Page 3, item #5(b)(2) orders respondent to file receipt that proves firearms have been turned in or sold. Recommend inserting option of filing the GV800.	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-110: TEMPORARY RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
and Juvenile Court Operations Managers		
	There may be instances where the firearm may have already been surrendered (e.g., Firearm Emergency Protective Order) and therefore item #5(b)(2) would not apply. Recommend adding #5(b)(3) with a selection box to reflect, "Respondent previously surrendered firearm." Otherwise, there may be confusion that other firearms may need to be surrendered and may create errors in CARPOS.	Please see committee response to similar comment above.
	If a firearm restraining order is made on a weekend or holiday, it will be impossible to file proof with the court within 24 hours. We recommend rewording to reflect the filing timeline as, "within one business day after firearm is surrendered."	Please see committee response to similar comment above. for EPO-002
	Page 4, 4th bullet should reflect serving the *Response to Petition for Firearms Restraining Order* (GV-120) after is has been filed with the court.	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-115: REQUEST TO CONTINUE COURT HEARING FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	The committee agrees and had made this change.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, 3b(2), on Attachment 3b, Use minute order?	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-116: NOTICE OF NEW HEARING DATE		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	The committee agreed and has made this change.
Superior Court of Los Angeles County Janet Garcia Court Manager	RE page 2 – The statement "If you were served with a temporary firearms Restraining Order…" This language is misleading. The language implies that the temporary restraining order will not remain in effect until the continued hearing date.	While the committee is not sure why the commentator considers the language misleading, it has changed "If you were served with a *Temporary Firearms Restraining Order"* to "If a *Temporary Firearms Restraining Order* was issued,".
	If at the court's discretion, is GV-116 necessary?	The form gives all parties notice of the new hearing date when a continuance is granted. The parties need to know the new hearing date regardless of how the continuance came about.
	Add Date, Clerk, by Deputy.	The form currently includes a Clerk's Certificate.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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FORM GV-120: RESPONSE TO PETITION FOR FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, “Court fills in case number when form is filed” as the Case Number should be completed by the party filing the form on all subsequent filings.	The committee agreed and has made this change. The respondent should be able to get the case number from the papers served.
Christine Copeland Commissioner Superior Court of Santa Clara County	page 1- in the box for hearing information: take out the word “additional” as that implies the RO has already been in effect for one year, which is not the case unless there is a renewal.	The committee agreed and has deleted “additional.”
	Page 2- item 6- gun storage is a 3rd option?	As noted above, it is not.
Superior Court of Los Angeles County Janet Garcia Court Manager	GV 120 [hearing information box] says "present the Response at the hearing." The informational form inconsistently instructs to serve by mail.	The committee has reworded this instruction so that it does not suggest that prior service by mail is not needed.
	Page 2, Interpreter fees?	Assuming that this comment refers to the possibility of a free interpreter, it is addressed above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-120-INFO: HOW CAN I RESPOND TO A PETITION FOR FIREARMS RESTRAINING ORDER?		
Commentator	**Comment**	**Staff Proposed Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	2nd paragraph re: "Who can ask…" refer to GV-100-INFO for definition of immediate family member	The committee would not refer the respondent to the GV-100-INFO for this information. However, it has been added to the section "Who can ask for a firearms restraining order?"
	Last paragraph right column on page 1- "How long does the order last" There is a typo- see 2nd sentence "decide to whether…."	This error has been fixed.
	Page 2, second blurb "Will I see the person…" I don't think we should be saying that parties cannot talk to each other, as no TRO from a GV request would deal with no contact (a GV order only orders relinquishment, and not stay away, no contact, etc.).	The form does not say that the respondent cannot talk to the petitioner. It says not to talk to him or her. The committee believes that this remains good advice despite the lack of a TRO imposing compulsory silence. The language has been softened to suggest that it is "probably best" not to talk to the petitioner.
	3rd paragraph- as per above, I am against encouraging parties to bring hearsay declarations.	Please see committee response to similar comment above.
Superior Court of Los Angeles County Janet Garcia Court Manager	As in GV 100, the form suggests hearsay will be accepted. The new DV 520 INFO form is more correct.	Please see committee response to similar comment above.
	GV 120 says "present the response at the hearing." The informational form inconsistently instructs to serve by mail.	Please see committee response to similar comment above.
	Page 1, No indication of fees or fee waiver.	The committee has added the section "Will I have to pay a filing fee?"

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-120-INFO: HOW CAN I RESPOND TO A PETITION FOR FIREARMS RESTRAINING ORDER?		
Commentator	**Comment**	**Staff Proposed Response**
	Page 2, Interpreter fees?	Please see committee response to similar comment above.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	Page 2 "Will I see the person who asked for the order at the person at hearing? Section: It states "Do not talk to him or her unless the judge or the person's attorney says that you can." Again, there is no stay away order in place; therefore, there is no need for this section.	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-130: FIREARMS RESTRAINING ORDER AFTER HEARING		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	page 2- add 4(d), or add to already existing 4(c) to allow the TRO to remain in effect pending the next court date.	There is actually no need to be concerned with a continued hearing and extension of the TRO if an order after hearing is being issued. Therefore, the committee has removed Item 4c (providing for a continuance and new hearing date) from the form. If the hearing is continued without an order being issued, then Form GV-116 should be used.
	Item 6(b)(2): if the restrained person was in court when the relinquishment order was made, why do they have to be served with the order before the 48 hour relinquishment requirement takes effect?	The committee agreed with this comment. It has replaced "being served with" the order as the trigger for the relinquishment time period with "receiving notice of" the order. The committee also has changed "you must surrender all of your firearms" to "you must dispose of all of your firearms."
	Last section of that page under "Warnings and Notice" – nit picky point: After the first "this" we have "order" with a big "O". The very last word is "order" with a small "o".	The word "order" has been consistently capitalized whenever the text refers to the order itself.
Superior Court of Los Angeles County Janet Garcia Court Manager	Item 7 needs a provision for explanation of service by law enforcement.	The committee has construed this comment to suggest that the form include an option to require service by law enforcement. This addition has been made.
	Sections on page 2 are to be completed by court re reason for the issuance of an order. Legibility of handwritten orders is often questioned by law enforcement. Is it acceptable to attach a typed minute order?	Please see committee response to similar comment above.
	Page 1, (2): Respondent, move "age" to first line and "weight" to second line.	The committee sees no advantage in this suggestion.

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-130: FIREARMS RESTRAINING ORDER AFTER HEARING		
Commentator	**Comment**	**Committee Response**
	Page 2, 4b, line 4 [additional persons present], Is clerk supposed to do this?	Per the instructions on page 1, "[t]he court will complete the rest of this form."
	Page 2, 4c, Why is [checkbox for continuance] an option on GV-130?	As noted above, the committee agrees that an order after hearing should not provide for a continuance.
	Page 3, add case name to top of form?	Please see committee response to similar comment above.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Page two, item #4 should caution users to, "Ensure the continuance date is before the expiration date of the Gun Violence Emergency Protection Order, if one exists."	Penal Code section 18195 keeps the TRO in place until the continued hearing date. But as noted above, the committee has removed the checkbox to continue the hearing at Item 4c from the form.
	If a firearm restraining order is made on a weekend or holiday, it will be impossible to file proof with the court within 24 hours. We recommend rewording to reflect the filing timeline as, "within one business day after firearm is surrendered."	24 hours is the time allowed to dispose of the firearms; 48 hours are allowed to file the receipt. Item 6b(2) has been revised to account for the end of the 48-hour period falling on a day when the court is closed.

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-200: PROOF OF PERSONAL SERVICE		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	The committee agreed and has revised this instruction.
	The Court recommends adding to item #4, "Notice of New Hearing Date (GV-116), if applicable."	The committee agreed and has made this addition.
Christine Copeland Commissioner Superior Court of Santa Clara County	Should we add to item 4 GV-115 and/or GV-116 check boxes?	As addressed above, the committee has added GV-116. There is no available space to add any more forms. GV-115 will have to be an "Other" under 4i.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3, bullet 1, add "and not a party".	This point is made by "Not be the Petitioner unless the Petitioner is a law enforcement officer."
	Page 1, section 6. Why "type of print server's name" if it is on first line.	This is the standard way that a signature block for service is presented.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Item #4, recommend adding, "Notice of New Hearing Date (GV-116), if applicable."	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-200-INFO: WHAT IS "PROOF OF PERSONAL SERVICE?"		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	page 2, segment under the circled examples- can we insert "calendar" after five and before days?	The committee has made this revision.
	Do we also need to mention form GV-116?	This form is about *how* to serve, not *what* to serve.
Superior Court of Los Angeles County Janet Garcia Court Manager	Given the circumstances under which these petitions are anticipated to be brought, there should be a warning about the danger of anyone other than law enforcement serving the orders.	The form currently states: "It is recommended that you ask a law enforcement officer to serve the forms because of the potential for gun violence." This language has been elevated to bold face font.
	Page 1, paragraph 1, line 4, add "over the age of 18 and not a party to the case".	This is stated in the "Who can serve?" paragraph: "However, service may also be by any person who is at least 18 years old and not a party to the action."

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-250: PROOF OF SERVICE OF RESPONSE BY MAIL		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	Many other GV forms reference GV-250 as being a form that can be utilized by both the Petitioner and the Respondent. The Court recommends deleting #3, Notice to Server, the third bullet, which states "Not the Respondent" and replace it with "Not be a party to this proceeding." That way, the form can be used by both parties.	The committee agreed with the comment and has revised the form to allow for use by either party.
	Additionally, #4, Proof of Service By Mail, the Court recommends adding the word "Respondent" into the third sentence. Thus, the sentence would read, "I mailed the Petitioner / Respondent a copy of all documents checked below:…"	As addressed above, this addition has been made.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 4, line 1, change "proceeding" to case/action.	The committee has changed the word to "case."
	Under Section 6, Below Name: Add Type or print server's name.	The committee sees no reason to make this change.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-600: REQUEST TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	Item #3(a): The Court recommends adding, "…or Order on Request to Renew Firearm Restraining Order (GV-730), as this may also be terminated."	The committee agreed with the comment and has added checkboxes for GV-130 and GV-730.
	Further, page 2, the paragraph in italics references a "protective order". To be consistent, the Court recommends deleting "protective order" and replacing it with "restraining order".	The committee has made this correction.
Christine Copeland Commissioner Superior Court of Santa Clara County	I'm not clear: can only a restrained person file this, or can the person or LEA who initiated case file to terminate before one year expiration?	The gun violence statutes only provide for a motion to terminate by the respondent. The committee considers it unlikely that a law enforcement agency would ever be involved in a decision to terminate. If the family member and respondent agree to termination, the respondent should file the motion.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3b. Does [the current order] have to be attached?	The checkbox indicates that it is optional. While it certainly should be attached, it's not required, and the respondent might not have a copy.
	Page 2, what do we do if they file the [Request to Terminate] more than one time?	Though not expressly addressed in the statutes, presumably the court would simply deny the petition.
	Is the request to terminate going to serve as the initiating document?	Any request to terminate the order would be a subsequent filing in the case initiated by law

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-600: REQUEST TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
		enforcement or a family member.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Item #3(a) recommend inserting, "…or Order on Request to Renew Firearm Restraining Order (GV-730)", as this may also be terminated.	As addressed above, the committee agrees.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-610:NOTICE OF HEARING TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	The paragraph entitled "To the Petitioner:", the last sentence tells the Petitioner to use form GV-250. Currently, GV-250 is only for use by the Respondent. This will cause confusion for the Petitioner and should be remedied. The Court recommended in 2f GV-250, to modify GV-250 to allow both parties to use the form. Should that recommendation be rejected the Court recommends deleting the reference to GV-250 and instruct the Petitioner to use POS-030.	As addressed above, GV-250 has been revised for use by either party.
Christine Copeland Commissioner Superior Court of Santa Clara County	page 1 item 4: too bad there is no like requirement per FC 6345(d) and DV cases: in those, if a restrained person seeks to do away with the RO, service of the motion has to be by personal delivery. Does GV legislation allow mail service? If so, how many days before the hearing (usual CCP 1005 requirement of 16 court days + 5 calendar days ahead)?	Penal Code section 18185, the termination statute, does not address service of motions to terminate. Civil harassment statutes require personal service. (See Code Civ. Proc, § 527.6(j)(3).) Because personal service is highly preferable to ensure that the petitioner has notice of the motion, the committee has provided checkboxes by which the court may require personal service or allow service by mail.
Superior Court of Los Angeles County Janet Garcia Court Manager	This form indicates that a request to terminate can be served by mail. In the proposed DV forms, the request to terminate, if brought by the restrained person, generally must be served personally (See SPR 15-16 and proposed forms therein). This is a sound policy to assure that the protected person in fact has	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-610:NOTICE OF HEARING TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
	notice of the request to terminate.	
	Page 1, section 2, move "Court will fill in box" up.	The committee sees no need to do this.
	Page 2, Date: Why is this a box?	The date field on page 2 is for the date of the court's signature on the form. There is no box.
	Page 2, move 2nd paragraph [To the Petitioner] up above date and Judicial Officer below 2nd paragraph.	These kinds of instructions usually go after the form itself.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The following forms do not include a Clerk's Certificate section: •GV-610 Notice of Hearing to Terminate Firearms RO	A clerk's certificate has been added.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-620: RESPONSE TO REQUEST TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	This form instructs the Petitioner to use form GV-250. Currently, GV-250 is only for use by the Respondent. This will cause confusion for the Petitioner and should be remedied. The Court recommended in 2.f GV-250, to modify GV-250 to allow both parties to use the form. Should that recommendation be rejected, the Court recommends deleting the reference to GV-250 and instruct the Petitioner to use POS-030.	Please see committee response to similar comment above.. Form GV-250 has been modified to permit use by both petitioner and respondent.
	Page 1, should section 1 [Respondent information] and 2 [Petitioner information] be in reverse order?	The committee agreed that they should be switched. Because this form is for use by the petitioner, the petitioner should be first.
	Page 2, information regarding proof of service is on first page already.	Because there is ample space on page 2, the committee sees no harm in repeating the information on both pages.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-630: ORDER ON REQUEST TO TERMINATE FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3, line 2, add stamp next to *name of judicial officer*.	Item 3 asks for the name of the judicial officer who presided at the hearing. The committee does not understand the relation of a stamp to this information.
	Page 1, section 3, last check box [additional persons present], add "clerk to attach if applicable?"	The committee does not believe that this additional language is needed.
	Page 2, add clerk's certificate and seal.	Because there is room on page 2, the committee has added the clerk's certificate and space for the seal.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The following forms do not include a Clerk's Certificate section: •GV-630 Order on Request to Terminate Firearms RO	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-700:REQUEST TO RENEW FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	The Court recommends adding a note, "If your Gun Violence Restraining Order has expired, a new Petition for Firearm Restraining Order (GV-100) must be filed."	The committee agreed and has added this instruction.
Christine Copeland Commissioner Superior Court of Santa Clara County	item 3(b) does law allow for more than one renewal after the initial one year duration? My reading is you can get the first order after hearing for one year, and then it is subject to renewal for just one more year. I am not clear if I am reading that correctly and/or am not clear if repeat renewals are allowed (i.e. can you get a one year order for 10 years straight?).	See Penal Code section 18190(f). Multiple renewals are permitted: "subject to further renewal by further order of the court."
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3. How many times?	Please see committee response to similar comment above.. There is no limit on the number of renewals.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Recommend adding, "If your Gun Violence Restraining Order has expired, a new Petition for Firearm Restraining Order (GV-100) must be filed."	Please see committee response to similar comment above.

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-710: NOTICE OF HEARING TO RENEW FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
Christine Copeland Commissioner Superior Court of Santa Clara County	page 2 the placement for judge's signature is a little weird/hard to find.	The committee agreed and has moved the court signature line up to before the "To the Respondent" box.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3, line 1, bold "Court will fill in box below".	The text is italicized. The committee believes that is sufficient emphasis.
	Page 1, box below section 3, first line: add "until the end of the hearing." After effect.	Even though the proposed addition is accurate, the committee is concerned that it might be misconstrued as meaning that once the hearing was over, the order is no longer in effect.
	Page 2, clerk's certificate is missing at the end of the form.	A clerk's certificate has been added.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The following forms do not include a Clerk's Certificate section: GV-710 Notice of Hearing to Renew Firearms RO	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-720: RESPONSE TO REQUEST TO RENEW FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	In the Hearing Date box, there is a word missing from the last sentence. The sentence should read: "At the hearing, the court can extend the order against you for another year."	This error has been fixed.
Christine Copeland Commissioner Superior Court of Santa Clara County	page 1 in the dialog box below the case number box has a typo: a missing word after against and before for.	Please see committee response to similar comment above.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 2, There is already a bullet on 1st page regarding proof of service. Is it necessary again?	Because there is ample space on page 2, the committee sees no harm in repeating the information on both pages.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-730: ORDER ON REQUEST TO RENEW FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	Committee Response
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	Page 2: The Court recommends separating the findings from the orders. Otherwise, this may cause confusion when entering orders into CARPOS.	The committee does not believe that there will be any problem with CARPOS. The actual order remains the Order After Hearing on Form GV-130. This order just extends the effective date for a year. That information is clearly noted in Item 4.
	Page 3: The Court recommends adding a 4th selection box to reflect: "Service is not required because petitioner and respondent were present in court."	The service item has been revised to state that if the respondent was present, no further service is required. (See Pen. Code, § 18187.) The petitioner's presence is not relevant if the order is granted. If renewal is denied and the petitioner was not present at the hearing, the form now provides for service by mail.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 3, Is the clerk responsible for attaching the names of other people present?	The committee has removed this item from the form.
	Page 2, section 4a, enter 1 line after ammunition.	This comment would appear to be a request for more space between 4a(1) and 4a(2). The committee does not think that more space is needed.
	Page 3, Will judge or clerk need to review the previous order thoroughly in order to determine whether the respondent appeared at the original Firearms Hearing. May take longer to process.	The committee has removed reference to appearance at the original hearing as a factor to determine what manner of service is required.

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

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-730: ORDER ON REQUEST TO RENEW FIREARMS RESTRAINING ORDER		
Commentator	**Comment**	Committee Response
	Page 3, bottom, missing Clerk's certificate missing.	A clerk's certificate has been added.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Page two, item #4, under the denial section, it should reference item #4 of a previous Renewal Orders (GV-730) for instances where prior renewals exist.	A checkbox indicating that the order has previously been renewed has been added to Item 4.
	Page two, recommend separating sections for the findings and orders. Otherwise, this may cause confusion when entering orders into CARPOS.	Please see committee response to similar comment above.
	Page three, add a fourth selection box to reflect, "Service is not required because petitioner and respondent were present in court."	Please see committee response to similar comment above.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The following forms do not include a Clerk's Certificate section: •GV-730 Order on Request to Renew Firearms RO	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-800:PROOF OF FIREARMS TURNED IN OR SOLD		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Case Number Box The Court recommends deleting the sentence in italics above the Case Number box, "Court fills in case number when form is filed" as the Case Number should be completed by the party filing the form on all subsequent filings.	This change has been made.
	Will CARPOS need to be updated when a GV-800 (Proof of Firearms Turned in or Sold) form is filed with the Court?	The question of CARPOS requirements is beyond the scope of the committee's charge to develop forms.
	In #3, To the Respondent, the first sentence references the word "surrender" twice. The Court recommends deleting the second reference to the word "surrendering" in the first sentence and replacing it with the word "selling". Thus, the sentence should read "The court has ordered you to surrender all of your firearms and ammunition by turning them in to law enforcement or selling them to a licensed gun dealer."	The committee agreed and has made this change.
Christine Copeland Commissioner Superior Court of Santa Clara County	Does the firearm storage with CA-licensed gun dealer option not exist as it does in other RO types effective 7/1/14?	It does not.
Superior Court of Los Angeles County Janet Garcia Court Manager	Page 1, section 4, badge #?	A field for the officer's badge number has been added.
	Page 2, section 7, does the court need to set a further hearing for proof of turn in?	No further hearing on failure to file receipt is provided for or required by statute. If the respondent fails to comply, then there is a violation of the order.
Superior Court of Orange County	Will CARPOS need to be updated when a GV-800 (Proof of	Please see committee response to similar comment

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

FORM GV-800:PROOF OF FIREARMS TURNED IN OR SOLD		
Commentator	**Comment**	**Committee Response**
by Family Law Operations Managers and Juvenile Court Operations Managers	Firearms Turned in or Sold) form is filed with the Court?	above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Form GV-800-INFO: HOW DO I TURN IN OR SELL MY FIREARMS?		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Item #2 should reflect 24 hours, not 48 hours.	The committee agreed with the comment and has made this change.
	The Court recommends adding requirement to file proof with the court regarding sale/surrender.	The committee agreed with the comment and has added a new question on proof of surrender.
Christine Copeland Commissioner Superior Court of Santa Clara County	Does the firearm storage with CA-licensed gun dealer option not exist as it does in other RO types effective 7/1/14?	It does not.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	Item #2 should reflect 24 hours, not 48.	Please see committee response to similar comment above.
	We recommend adding requirement to file proof with the court regarding sale/surrender.	Please see committee response to similar comment above.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Amend Rule 3.1152		
Commentator	**Comment**	**Committee Response**
Christine Copeland Commissioner Superior Court of Santa Clara County	Enhance CRC 3.1152 to specify that court can grant restrained person one continuance if good cause exists? Or does GV-115 form take care of the issue?	Penal Code section 18195 provides for a continuance to either party on a showing of good cause. Rule 3.1152 conforms to this statutory provision. The committee does not believe that one continuance for the respondent as a matter of right is necessary.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	The intended purpose of this proposal is to implement Penal Code section 18100 et seq. through the use of civil gun violence restraining order forms. The Court believes that the proposed forms sufficiently provide the mechanism for law enforcement and the public to obtain a restraining order while maintaining due process. The proposed forms function in a manner that will help to ensure that an individual who presents a danger to himself / herself or to society will not have access to firearms.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Los Angeles County Janet Garcia Court Manager	Yes, the proposal appropriately addresses the stated purpose. Because the forms are similar to other restraining order forms, the time needed for training court staff will not be substantial.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	The proposal addresses the stated purpose.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	The proposal addresses the stated purpose but in such a way that will require EXTENSIVE training (both initially and ongoing) to staff who must convey the information to the public. There are so many forms that it will be extremely difficult for a person of average intelligence to navigate through the process, regardless of the plain language format. We currently see the average Civil Harassment Restraining	The committee appreciates this response to the specific questions in the invitation to comment. But as noted above, the committee believes that all the forms serve a useful purpose and will facilitate initiating, defending, and adjudicating these proceedings.

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
	Order plaintiff spend several hours attempting to complete those forms, even with considerable assistance. Fewer forms would reduce the amount of time spent both by the litigant and by court staff.	

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: Would the proposal provide cost savings? If so please quantify.		
Commentator	**Comment**	**Staff Proposed Response**
Deborah Coel Operations Analyst Superior Court of Orange County	The Court does not believe that implementing the new forms will result in a cost savings to the Court. In fact, the Court will incur costs in the form of procedure drafting, training of staff and judicial officers, updating the case management system, and processing, including but not limited to, renewals and terminations. Further, the Court will have to enter the orders into the DOJ CARPOS system.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Los Angeles County Janet Garcia Court Manager	No. On the contrary, the proposal creates work in family law and criminal cases.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	There is no anticipated cost savings. This legislation will create a new workload in processing Gun Violence Restraining Orders, renewals and terminations. There is also a new workload in entering these orders into the DOJ CARPOS system.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	No cost savings would be realized; however, a cost expenditure would occur in order to staff the business offices where these would be filed and the courtrooms where they will be heard. There is also a cost to train said staff. There is also the cost to order/maintain forms and the cost to modify our electronic case management system.	The committee appreciates this response to the specific questions in the invitation to comment.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: 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.		
Commentator	**Comment**	**Staff Proposed Response**
Deborah Coel Operations Analyst Superior Court of Orange County	The following list describes the anticipated implementation requirements for the Court: •Self Help: Self Help staff would require training, forms would need to be available at the Court's Self Help kiosks as well as printed at the Self-Help centers at the various Court locations. •Case Management System: The Court would need to add the filing types into the case management system. This process could take a few weeks for our Court Technology Dept to add the required documents, conduct testing, and for Court management to approve the changes. •Minute Order Codes (MOCS): The Court will need to add the MOCS codes that reflect the appropriate code language. This process could take a few weeks for the Court Technology Dept to add the codes, for testing, and for final management approval. •Training case processing staff: The Court will need to train case processing staff in the following ways: how to file documents, where the hearings will take place, understanding the timeliness of setting the hearings in accordance with the code timelines. Training could take place in the form of large group classes or smaller group sessions.	The committee particularly appreciates this detailed response to the specific questions in the invitation to comment.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: 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.		
Commentator	**Comment**	**Staff Proposed Response**
	•Training courtroom clerks: Courtroom clerks will need to be trained as to including appropriate language in the minutes as well as knowing which MOCS codes to utilize. Courtroom clerks will need to create calendars associated. Further, the Court may need to create MACROS related to this implementation and the courtroom clerks would need to be trained on this as well. •Procedures: Staff would need at least a few weeks to draft procedures for both case processing clerks as well as for courtroom clerks. Procedures that would require drafts include: oCivil: processing Gun Violence petitions, renewals, terminations, etc.; oCriminal: processing search warrants when firearms are not surrendered; and oProtective Order Unit: updating the DOJ CARPOS system. •Communication with law enforcement: The Court will need to coordinate a communication plan with law enforcement agencies to provide direction on the submission of Gun Violence Restraining Orders, any applicable extensions, and terminations. •Protective Order Registry/WebDV and CARPOS: Protective Order Registry/WebDV will require modifications to allow	

SPR15-13

Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: 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.		
Commentator	**Comment**	**Staff Proposed Response**
	entry to Gun Violence Restraining Orders and terminations. In addition, DOJ will need to modify CARPOS to allow for the entry of these orders into the system, as well as remove the existing 'protected party' requirement. •Docket codes: The Court will need to create new docket codes for the filing of new petitions/forms and types of hearings.	
Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	Regarding operational impact on the trial courts, staff will need to be trained. The time spent training staff will vary based on the area of litigation. As an example, criminal staff may need training not only on processing forms, but also on learning the case management system used to enter restraining orders. Case management systems will also need to be modified to include new codes.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Los Angeles County Janet Garcia Court Manager	Staff will need to be trained. The time spent training staff will vary based on the area of litigation. As an example, criminal staff may need training not only processing forms, but also learning the CMS used to enter restraining orders. The CMS will also need to be modified to include new codes.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations	• Procedures will need to be created/revised and training will be required for: o Civil staff processing Gun Violence petitions, renewals, etc.	The committee appreciates this response to the specific questions in the invitation to comment.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: 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.		
Commentator	**Comment**	**Staff Proposed Response**
Managers	o Criminal staff processing search warrants when firearms are not surrendered; and o Protective Order Unit staff updating the DOJ CARPOS system. • Communication will need to be coordinated with law enforcement agencies to provide direction on the submission of Gun Violence Restraining Orders, any applicable extensions, and terminations. • System changes will be required for the Protective Order Registry/WebDV to allow entry to Gun Violence Restraining Orders and terminations. In addition, DOJ will need to modify CARPOS to allow for the entry of these orders into their system, as well as remove the existing "protected party" requirement. New docket codes will need to be created for the filing of these new petitions/forms and new hearing types will need to be created.	
Superior Court of San Diego County Michael M. Roddy, Executive Officer	See answer to number 2, above.	The committee appreciates this response to the specific questions in the invitation to comment.

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: - The advisory committee also seeks comments from *courts* on the following cost and implementation matters: Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	Due to the significant changes that the Court needs to address, the Court requests six months to implement the changes associated with the new legislation. In addition to the court specific implementation noted in section c above, the DOJ will need to provide the Court with direction regarding entry of the new order type into CARPOS.	The committee appreciates this response to the specific questions in the invitation to comment. It should be noted that the forms are required to implement recent legislation, and training in the substantive changes resulting from the new laws will be needed independent of the new forms. It is preferable to have the forms in place for use on the effective date of the statutes, even if training takes time.
Superior Court of Orange County by Family Law Operations Managers and Juvenile Court Operations Managers	This legislation introduces significant changes to the courts. Courts need to await direction from DOJ regarding entry of the new order type into CARPOS. Once clarification/direction is received, changes to local Protective Order Registries/WebDV could be made. Therefore, we recommend a six-month timeframe to implement these changes.	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	At least 6-8 months would be needed to implement such a change.	The committee appreciates this response to the specific questions in the invitation to comment. It should be noted that the forms are required to implement recent legislation, and training in the substantive changes resulting from the new laws will be needed independent of the new forms. It is preferable to have the forms in place for use on the effective date of the statutes, even if training takes time.

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

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Civil Forms: Gun Restraining Orders (amend rule 3.1152, and adopt forms EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV-620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO)

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

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: How well would this proposal work in courts of different sizes?		
Commentator	**Comment**	**Committee Response**
Deborah Coel Operations Analyst Superior Court of Orange County	The Court believes that this proposal should work well for courts of all sizes	The committee appreciates this response to the specific questions in the invitation to comment.
Superior Court of San Diego County Michael M. Roddy, Executive Officer	Costs and impact would be larger in a court with a large civil filing volume.	The committee appreciates this response to the specific questions in the invitation to comment.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 8, 2015

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Trial Court Management: Public Access to Administrative Decisions of Trial Courts
(Amend rule 10.620)

Committee or other entity submitting the proposal:
The Trial Court Presiding Judges Advisory Committee (TCPJAC)
Court Executives Advisory Committee (CEAC)

Staff contact (name, phone and e-mail):

Claudia Ortega, Senior Analyst, 415-865-7623

Katherine Sher, Attorney, 415-865-8031

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Approved by E&P on 12/11/14

Project description from annual agenda:

Review Rule 10.620 (Public access to administrative decisions of trial courts)

Rule 10.620 addresses public access to certain administrative decisions made by trial courts. It sets forth requirements for trial courts to provide public notice, and seek public input, regarding budget recommendations made by trial courts to the Judicial Council and specified administrative decisions. The decisions subject to public notice and comment requirements include any decision to close or reduce the hours of a court location. (Cal. Rules of Court, rule 10.620(d)(3).) When notice is required, the rule specifies the ways in which it must be given, including a requirement that notice be posted at all court locations that accept papers for filing. (Cal. Rules of Court, rule 10.620(g)(3).)

Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The TCPJAC and CEAC will jointly propose amending the rule to repeal those provisions that are inconsistent with Gov. Code section 68106, leaving the statute as the sole governing authority regarding notice where it is applicable, and to make the language of the rule regarding posting of notice at court facilities consistent with section 68106.

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Trial Court Management: Public Access to Administrative Decisions of Trial Courts

Rules, Forms, Standards, or Statutes Affected
Rule 10.620

Recommended by
Trial Court Presiding Judges Advisory Committee
Hon. Brian L. McCabe, Chair

Court Executives Advisory Committee
[TBD - To Be Appointed Late August], Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 28, 2015

Contact
Claudia Ortega, 415-865-7623
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Katherine Sher, 415-865-8031
katherine.sher@jud.ca.gov

Executive Summary

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) recommend the amendment of California Rules of Court, rule 10.620, to repeal the provisions of that rule that apply its requirements for public notice to the decisions of trial courts to close court facilities or reduce the hours of a court location, as these provisions are inconsistent with statutory requirements.

Rule 10.620 addresses public access to certain administrative decisions made by trial courts. It sets forth requirements for trial courts to provide public notice, and seek public input, regarding budget recommendations made by trial courts to Judicial Council and specified administrative decisions. The decisions subject to public notice and comment requirements include any decision to close or reduce the hours of a court location. (Cal. Rules of Court, rule 10.620(d)(3).)

Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The TCPJAC and CEAC recommend amending the rule to repeal those provisions that are inconsistent with Gov. Code section 68106, leaving the statute as the sole governing authority regarding notice where it is applicable.

Recommendation

The TCPJAC and CEAC recommend that the Judicial Council:

1. Amend subdivision (b) of rule 10.620 to update two references to the Administrative Office of the Courts to refer instead to the Administrative Director in one instance and the Judicial Council in the other;

2. Amend subdivision (d) of rule 10.620 to change the reference to the Administrative Office of the Courts in paragraph (1) to refer instead to Judicial Council staff, and to repeal paragraph (3), which requires courts to seek public input regarding court closures and reductions in service; and

3. Repeal paragraph (5) of subdivision (f) of rule 10.620, which applies the public notice requirements of rule 10.620 to court closures or reductions in service.

4. Add an Advisory Committee Comment noting that the provisions of rule 10.620 do not apply where statutes specify another procedure for giving public notice and allowing public input.

The text of the proposed amended rule is attached at pages 6-9.

Previous Council Action

Rule 10.620 was adopted in 2004 (as Rule 6.620) pursuant to Government Code section 68511.6, which requires that Judicial Council adopt rules providing for public notice and an opportunity to comment regarding trial court administrative and financial decisions.

Rationale for Recommendation

When rule 10.620 was adopted in 2004, it put in place requirements for public notification and public input regarding trial court administrative decisions, including decisions to close court facilities or to reduce service hours. Government Code section 68106 then took effect in 2010, putting in place specific requirements for public notice and opportunity to comment on decisions to close courtrooms, or to close or reduce the hours of clerks' offices.

Under the previous language of section 68106, subsection (b), sixty day advance written public notice was required before closing any courtroom or closing or reducing the hours of a clerks'

office. To reconcile the requirements of the statute and of the rule, some courts used a two-step notice procedure. A first notice would be issued, pursuant to the rule, fifteen court days before the decision was made, with public comment invited. Then, pursuant to the statute, another notice would be provided sixty days before the decision was implemented, but no further public comment would be solicited.

Section 68106 was amended effective January 1, 2012, to add the following requirements: 1) that notice be given "by electronic distribution to individuals who have subscribed to the court's electronic distribution service …." (subd. (b)(1)); 2) that the notice include "information on how the public may provide written comments during the 60-day period on the court's plan …." (subd. (b)(2)(A)); 3) that the court "review and consider all public comments received" (ibid.); and 4) that the court "immediately provide notice to the public," if it changes its plans during the comment period (ibid.).

The existing notice requirements of rule 10.620, as applied to court closures and reduction of hours, are inconsistent with these new provisions of section 68106. In particular, rule 10.620 requires that public notice be given at least fifteen court days before a decision is made, including a decision to close or significantly reduce the hours of a court location, and that public comment be allowed within that notice period. The rule further requires that a second public notice be given of such closures or service reductions within fifteen court days after the action is taken. By contrast, Government Code section 68106 now requires public notice to be provided no less than sixty days before a courtroom is closed or a clerks' office closed or its hours reduced, with the public comment period running concurrent with the notice period. Courts have continued to struggle with the question of how to provide notice due to the inconsistency of rule 10.620 with the new statutory requirements.

Trial court leadership have conveyed to members of both the TCPJAC and CEAC that the existing inconsistency between the rule and the statute has led to difficulty in determining how to provide notice and an opportunity to comment on court closures or reductions in service. A number of trial courts have asked Judicial Council's Legal Services Office for guidance regarding the notice requirements. Other courts, unaware of the statutory changes and resulting conflict, have mistakenly followed the now superseded requirements of the rule rather than the new statutory requirements.

With the repeal of subdivisions (d)(3) and (f)(5), rule 10.620 would no longer apply to notice of court closures or reductions in service. Notice of such decisions would be subject solely to the statutory requirements of Government Code section 68106, eliminating any confusion over how to provide for public notice and comment.

Comments, Alternatives Considered, and Policy Implications

Comments

An Invitation to Comment on this proposal was circulated for public comment from April 17, 2015 to June 17, 2015. Four comments were received. Two support the proposed amendments and two support the amendments but suggest modification.

Both the Superior Court of Riverside County and the State Bar of California's Standing Committee on the Delivery of Legal Services raise issues regarding the proposed language of subdivision (g)(3), requiring that notices under the rule be posted "within or about court facilities" rather than, under the existing language, "at all locations of the court that accept papers for filing." The Riverside County Court suggests that language be added to the proposed language of (g)(3) such that notice would be required to be posted "within or about court facilities that are open to the public."

The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) elaborates further on the issues raised by the proposed change to subdivision (g)(3). SCDLS notes that the existing requirements for posting notice are more likely to result in notices being seen by self-represented litigants, as those litigants must at times come to those locations to file their documents. SCDLS further comments that these self-represented litigants are the people who will be hit hardest if they do not get notice of a reduction in service or a court closure, as they may have to take multiple days of work to file court documents. SCDLS also notes that the existing language of subdivision (g)(3) does not conflict with Gov. Code section 68106, so no change is necessary.

The TCPJAC and CEAC, upon consideration of these comments, recommend that the change to subdivision (g)(3) of rule 10.620 be dropped from the proposed amendments. The TCPJAC and CEAC agree with SCDLS that the existing language of section (g)(3) better ensures that litigants, including self-represented litigants, will receive notice of a trial court's proposed and completed administrative decisions. The TCPJAC and CEAC also note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply the posting of notice of the decisions covered under Government Code section 68106. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions.

TCPJAC and CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.

Alternatives Considered

The committees considered amending the rule to conform the notice and comment requirements regarding court closures and service reductions to the requirements of Government Code section 68106. The committees concluded that such amendment would require significant revision of the rule to leave existing notice and comment requirements in place for the other types of decisions

covered under the rule while creating new specially applicable provisions for court closures and service reductions. The end result, however, would be the same as is accomplished by the simpler alternative of repealing subdivisions (d)(3) and (f)(5). Moreover, rewriting the rule to conform to the statute runs the risk of the statute once again being amended, leaving courts facing inconsistent requirements yet again.

Implementation Requirements, Costs, and Operational Impacts

The repeal of subdivisions (d)(3) and (f)(5) should have a positive operational impact on the trial courts, as they will no longer face conflicting requirements for public notice and comment regarding court closures and service reductions. There is a potential cost savings as courts will no longer have to give the two-step notification previously required to comply with both the statute and the rule.

Attachments and Links

1. Cal. Rules of Court, rule 10.620, at pages 6-9
2. Chart of comments, at pages 10-13

Rule 10.620 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 10.620. Public access to administrative decisions of trial courts

(a) Interpretation

The provisions of this rule concern public access to administrative decisions by trial courts as provided in this rule. This rule does not modify existing law regarding public access to the judicial deliberative process and does not apply to the adjudicative functions of the trial courts or the assignment of judges.

(b) Budget priorities

The Administrative-Director ~~Office of the Courts~~ may request, on 30 court days' notice, recommendations from the trial courts concerning judicial branch budget priorities. The notice must state that if a trial court is to make recommendations, the trial court must also give notice, as provided in (g), that interested members of the public may send input to the Judicial Council~~Administrative Office of the Courts~~.

(c) Budget requests

Before making recommendations, if any, to the Judicial Council on items to be included in the judicial branch budget that is submitted annually to the Governor and the Legislature, a trial court must seek input from the public, as provided in (e), on what should be included in the recommendations.

(d) Other decisions requiring public input

Each trial court must seek input from the public, as provided in (e), before making the following decisions:

(1) A request for permission from ~~the~~ Judicial Council staff ~~Administrative Office of the Courts~~ to reallocate budget funds from one program component to another in an amount greater than $400,000 or 10 percent of the total trial court budget, whichever is greater.

(2) The execution of a contract without competitive bidding in an amount greater than $400,000 or 10 percent of the total trial court budget, whichever is greater. This subdivision does not apply to a contract entered into between a court and a county that is provided for by statute.

(3) ~~The planned, permanent closure of any court location for an entire day or for more than one-third of the hours the court location was previously open for either court sessions or filing of papers. As used in this subdivision, planned closure does not~~

~~include closure of a location on a temporary basis for reasons including holidays, illness, or other unforeseen lack of personnel, or public safety.~~

~~(4)~~ The cessation of any of the following services at a court location:

(A) The Family Law Facilitator; or

(B) The Family Law Information Center.

(e) Manner of seeking public input

When a trial court is required to seek public input under this rule, it must provide public notice of the request at least 15 court days before the date on which the decision is to be made or the action is to be taken. Notice must be given as provided in (g). Any interested person or entity who wishes to comment must send the comment to the court in writing or electronically unless the court requires that all public comment be sent either by e-mail or through a response system on the court's Web site. For good cause, in the event an urgent action is required, a trial court may take immediate action if it (1) gives notice of the action as provided in (f), (2) states the reasons for urgency, and (3) gives any public input received to the person or entity making the decision.

(f) Information about other trial court administrative matters

A trial court must provide notice, not later than 15 court days after the event, of the following:

(1) Receipt of the annual allocation of the trial court budget from the Judicial Council after enactment of the Budget Act.

(2) The awarding of a grant to the trial court that exceeds the greater of $400,000 or 10 percent of the total trial court budget.

(3) The solicitation of proposals or the execution of a contract that exceeds the greater of $400,000 or 10 percent of the trial court budget.

(4) A significant permanent increase in the number of hours that a court location is open during any day for either court sessions or filing of papers. As used in this paragraph, a significant increase does not include an emergency or one-time need to increase hours.

(5) ~~A significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by (d)(3). As used in this paragraph, a significant decrease does not include a decrease~~

~~in response to an emergency need to close a location on a temporary basis for reasons including illness or other unforeseen lack of personnel or public safety.~~

~~(6)~~ The action taken on any item for which input from the public was required under (d). The notice must show the person or persons who made the decision and a summary of the written and e-mail input received.

(g) Notice

When notice is required to be given by this rule, it must be given in the following ways:

(1) Posted on the trial court's Web site, if any.

(2) Sent to any of the following persons or entities—subject to the requirements of (h)—who have requested in writing or by electronic mail to the court executive officer to receive such notice:

(A) A newspaper, radio station, and television station in the county;

(B) The president of a local or specialty bar association in the county;

(C) Representatives of a trial court employees organization;

(D) The district attorney, public defender, and county counsel;

(E) The county administrative officer; and

(F) If the court is sending notice electronically using the provisions of (h), any other person or entity that submits an electronic mail address to which the notice will be sent.

(3) Posted at all locations of the court that accept papers for filing.

(h) Electronic notice

A trial court may require a person or entity that is otherwise entitled to receive notice under (g)(2) to submit an electronic mail address to which the notice will be sent.

(i) Materials

When a trial court is required to seek public input under (b), (c), or (d), it must also provide for public viewing at one or more locations in the county of any written factual materials that have been specifically gathered or prepared for the review at the time of making the

decision of the person or entity making the decision. This subdivision does not require the disclosure of materials that are otherwise exempt from disclosure or would be exempt from disclosure under the state Public Records Act (beginning with Government Code section 6250). The materials must be mailed or otherwise be made available not less than five court days before the decision is to be made except if the request is made within the five court days before the decision is to be made, the materials must be mailed or otherwise be made available the next court day after the request is made. A court must either (1) provide copies to a person or entity that requests copies of these materials in writing or by electronic mail to the executive officer of the court or other person designated by the executive office in the notice, if the requesting person or entity pays all mailing and copying costs as determined by any mailing and copy cost recovery policies established by the trial court, or (2) make all materials available electronically either on its Web site or by e-mail. This subdivision does not require the trial court to prepare reports. A person seeking documents may request the court to hold the material for pickup by that person instead of mailing.

(j) Other requirements

This rule does not affect any other obligations of the trial court including any obligation to meet and confer with designated employee representatives. This rule does not change the procedures a court must otherwise follow in entering into a contract or change the types of matters for which a court may contract.

(k) Enforcement

This rule may be enforced under Code of Civil Procedure section 1085.

Advisory Committee Comment

The procedures required under this rule do not apply where statutes specify another procedure for giving public notice and allowing public input. (See, e.g., Gov. Code, § 68106 [notice of reduced court services]; id., § 68511.7 [notice of proposed court budget plan].)

SPR15-30

Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)

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

	Commentator	Position	Comment	Committee Response
1.	Superior Court of Riverside County Marita Ford, Public Information Officer	AM	Agree with modification. Suggested change to section (g) *Notice* (3), "Posted within or about court facilities that are open to the public."	The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific. TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.
2.	Orange County Bar Association Ashleigh Aitken, President	A	Conforms Cal. Rule of Court, Rule 10.620 where inconsistent with Government Code § 68106; statute will be sole authority as to	The commentator's support for the proposal is noted.

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

	Commentator	Position	Comment	Committee Response
			notices where applicable. Inconsistency and confusion will be curtailed.	
3.	Superior Court of San Diego County Mike Roddy, CourtExecutive Officer	A	No additional comments.	The commentator's support for the proposal is noted.
4.	State Bar Standing Committee on the Delivery of Legal Services Maria C. Livingston, Chair	AM	*(Agree with proposal if modified)* The bulk of the proposal is necessary to conform to existing law that expands the notice and comment period for court closures and reduction in hours. The proposal improves the opportunity for litigants and other interested parties to comment on how the changes would impact their ability to access the courts. However, the revised language of Rule 10.620(g)(3) is vague. In practice, this new language could result in notices being posted almost anywhere which could mean the stakeholders this proposal was intended to help failing to receive notices of the administrative changes. **Specific Comments** <u>Does the proposal appropriately address the stated purpose?</u> Generally, yes. This proposal is intended to	The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific. TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and

	Commentator	Position	Comment	Committee Response
			bring Cal. Rules of Court, rule 10.620 regarding advance notice of administrative decisions closing courts or limiting their hours and seeking public comment on those changes into conformity with Government Code section 68106. The change is necessary and beneficial to the public, in that Section 68106 provides more time (60 days) for notice and comments than does Rule 10.620 (15 days). However, the proposed change to Rule 10.620(g)(3) may be counter-productive in part. Section 68106 provides that notices must be "Posted within or about court facilities" in addition to the methods of notice provided for in Rule 10.620(g)(1) and (2). Rule 10.620(g)(3) currently reads that all such notices must be "Posted at all locations of the court that accept papers for filing." SCDLS does not feel that the existing language of Rule 10.620(g)(3) conflicts with Section 68106, so no change to the rule is required. Moreover, compliance with the existing rule seems more likely to result in notices actually being seen by self-represented litigants if the notices are posted where they will file documents. SCDLS also notes that low and moderate income self-represented litigants may be hardest hit by these	CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.

SPR15-30

Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)

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

	Commentator	Position	Comment	Committee Response
			changes as they may have to take off multiple days of work, possibly without pay, to file court documents if they are unaware of court closures or reduced hours.	

Item number: 30

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/8/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service

Committee or other entity submitting the proposal:
Court Technology Advisory Committee, Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, Traffic Law Advisory Committee, and Appellate Law Advisory Committee.

Staff contact (name, phone and e-mail): Patrick O'Donnell, patrick.o'donnell@jud.ca.gov, 415-864-7665; Tara Lundstrom, tara.lundstrom@jud.ca.gov, 415-865-7650;

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Approved by JCTC 8/20/2015
Project description from annual agenda:
Modernize Rules of Court Modernize Trial and Appellate Court Rules to Support E-Business Major Tasks: (a) In collaboration with other advisory committees, review rules and statutes in a systematic manner and develop recommendations for comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

This project also appears on the annual agendas for the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, Traffic Law Advisory Committee, and Appellate Law Advisory Committee

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title

Technology: Modernization of the Rules of Court to Facilitate E-Business, E-Filing, and E-Service

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rules 2.10, 7.802, 8.11, and 8.804; renumber and amend rule 8.803; and amend rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702,8.703, 8.800, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018

Recommended by

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2016

Date of Report

August 24, 2015

Contact

Tara Lundstrom, 415-865-7650
tara.lundstrom@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court to modernize the rules. The minor, nonsubstantive amendments to the rules facilitate electronic filing, electronic service, and modern business practices. The Civil and Small Claims, Traffic, Family and Juvenile Law, Probate and Mental Health, and Appellate Advisory Committees also recommend the amendments to the rules in their respective subject-matter areas.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Adopt rules 2.10, 7.802, 8.11, and 8.804;

2. Renumber and amend rule 8.803; and

3. Amend rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018.

The text of the new and amended rules is attached at pages 13–97.

Previous Council Action

Over the past 20 years, the Judicial Council has regularly taken action to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Sen. Bill 367; Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320).

In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first as a pilot project in the Court of Appeal, Second Appellate District, in 2010 and then to all appellate courts in 2012.

Rationale for Recommendation

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC has coordinated with five other advisory committees with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. These recommended rule amendments mark the culmination of phase I: an initial round of technical rule amendments to address language in the rules that is incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. Next year, ITAC and the other advisory committees will undertake phase II, which will involve a more in-depth examination of any statutes and rules that may hinder e-business practices.

This report recommends various technical amendments to the rules in titles 2–5, 7, and 8.

Amendments to title 2

The amendments to title 2 will:[1]

- Define "papers" as including not only papers in a tangible or physical form, but also in an electronic form (see amended rule 2.3(2));
- Add a new rule defining the scope of the trial court rules to include documents filed both on paper and electronically (see new rule 2.10);
- Amend language to clarify when certain form and formatting rules apply to electronic documents (see amended rules 2.103, 2.104, 2.105, 2.106, 2.107, 2.108(4), 2.111(3), 2.113, 2.114, 2.115, and 2.117), electronic forms (see amended rules 2.133, 2.134(a)–(c), and 2.150), and jury instructions filed electronically (see amended rule 2.1055(b)(4));
- Extend the application of the general rules on forms in chapter 2 to forms filed electronically (see amended rule 2.130);
- Amend the definition of "record" to apply to records filed or lodged electronically (see amended rule 2.550(b)(1));
- Amend the rule for filing records under seal to recognize that records and notices may be transmitted electronically and kept by the court in electronic form (see amended rule 2.551);[2]

[1] These amendments have been recommended by ITAC and the Civil and Small Claims Advisory Committee.

- Amend the rule for filing confidential name change records under seal to recognize that petitions may be transmitted electronically (see amended rule 2.577(d) and (f));
- Amend the rules governing motions to withdraw stipulations to court-appointed temporary judges to allow the moving party to provide copies of the motion to the presiding and temporary judge by electronic means (see amended rules 2.816(e)(3) and 2.831(f)); and
- Allow electronic service on the Attorney General of copies of a judgment and notice of judgment declaring a state statute or regulation unconstitutional (see amended rule 2.1100).

Amendments to title 3

The amendments to title 3 will:[3]

- Insert an electronic service exception to the duties associated with maintaining and updating the list of parties and their addresses (see amended rule 3.254(a) and (b));
- Amend language in the rules to recognize electronic filing and service (see amended rules 3.524(a)(2), 3.544(a), 3.670(h)(1)(B), 3.815(b)(2)–(3), 3.823(d), 3.827(b), 3.1010(b)(1), 3.1109(a), 3.1300(a), 3.1302(a), 3.1320(c), 3.1326, 3.1327(a) and (c), 3.1330, 3.1340(b), 3.1346, 3.1347(a) and (c), 3.1350(e), 3.1351(a) and (c), 3.1700(a)(1) and (b)(1), 3.1900, and 3.2107(a)–(b));
- Establish that the times prescribed in the rule governing evidence at arbitration hearings are increased by two days where service is accomplished by electronic means (see amended rule 3.823(d));
- Require that appointed referees provide their e-mail addresses (see amended rule 3.931(b));
- Correct a cross-reference to the appellate court rules (see amended rule 3.1109(c));
- Clarify when certain formatting rules apply to motion papers filed electronically (see amended rules 3.1110(e) and 3.1113(i)(1)–(2) and (m));
- Require that ex parte applications state the e-mail addresses of attorneys or parties (see amended rule 3.1202(a));
- Recognize that rules 2.253(b)(7) and 2.259(c) apply to motion papers that are required to be filed electronically (see amended rule 3.1300(e));
- Require that any materials lodged electronically specify an electronic address to which they may be returned and allow the clerk to return them by electronic means (see amended rule 3.1302(b));
- Require the clerk to post electronically a general schedule for law and motion hearings (see amended rule 3.1304(a));

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[2] The amendments to rule 2.551 on filing sealed records in the trial courts, unlike most of the other rule amendments, are not solely technical and nonsubstantive. However, they are closely based on the recent amendments to rule 8.46 that changed the appellate rule on sealed records to reflect modern business practices.

[3] These amendments have been recommended by ITAC and the Civil and Small Claims Advisory Committee.

- Authorize a court to require that a party submitting written objections provide the proposed order accompanying the objections in electronic form (see amended rule 3.1354(c)); and
- Recognize that the court may electronically sign written judgments (see amended rule 3.1590(*l*).

Amendment to title 4

The amendment to title 4 will:[4]

- Allow courts to e-mail copies of countywide bail and penalty schedules to the Judicial Council (see amended rule 4.102).

Amendments to title 5

The amendments to title 5 will:[5]

- Delete references to the back side of a summons (see amended rules 5.50(b) and (c)(1)–(2) and 5.91);
- Allow court employees to notify parties of deficiencies in their paperwork by any means approved by the court (see amended rule 5.83(d)(5));
- Replace references to "videotapes" (see amended rules 5.215(d)(5) and 5.242(k)(4)(G)); and
- Add a definition for "software" (see amended rule 5.275(g)).

Amendment to title 7

The amendment to title 7 will:[6]

- Clarify that Code of Civil Procedure section 1010.6 and rules 2.250–2.261 apply in contested probate proceedings (see new rule 7.802).

Amendments to title 8

The amendments to title 8 will:[7]

- Add definitions of "attach or attachment," "copy or copies," "cover," and "written or writing" to clarify their application to electronically filed documents (see renumbered and amended rule 8.803 and amended rule 8.10);
- Add new rule 8.11 and amend rule 8.800(b) to clarify that the rules are intended to apply to documents filed and served electronically;

[4] This amendment has been recommended by ITAC and the Traffic Advisory Committee.

[5] These amendments have been recommended by ITAC and the Family and Juvenile Law Advisory Committee.

[6] This new rule has been recommended by ITAC and the Probate and Mental Health Advisory Committee.

[7] These amendments have been recommended by ITAC and the Appellate Advisory Committee.

- Replace references to "mail" with "send" throughout;
- Replace references to "file-stamped" with "filed-endorsed" throughout;
- Clarify that requirements for numbers of copies of documents and for the colors of covers of documents apply only to documents filed on paper (see amended rules 8.40 and 8.44);
- Add language requiring that all confidential or sealed documents that are transmitted electronically must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g));
- Clarify which requirements about form apply to electronically filed records, briefs, supporting documents, or petitions (see amended rules 8.144, 8.204, 8.486, 8.504, 8.610, 8.824, 8.838, 8.883, 8.928, and 8.931);
- Replace references to "type" with "font" (see amended rules 8.204, 8.883, and 8.928 and the amended advisory committee comment to rule 8.204);
- Expand advisory committee comments to note that the recoverable costs to notarize, serve, mail, and file documents are intended to include fees charged by electronic service providers for filing or service (see amended comments to rules 8. 278 and 8.891);
- Clarify when requirements for multiple copies to be filed or served apply only to paper documents (see amended rules 8.44, 8.144(c), 8.346(c), 8.380(c), 8.385(b), 8.386(b), 8.495(a), 8.540(b), 8.548(d), 8.630(g), 8.843(d), 8.870(d), 8.921(d), and 8.1018(c));
- Correct a typographical error (see amended rule 8.474(b));
- Clarify that the record and exhibits need only be returned to a lower court if they were transmitted in paper form (see amended rules 8.224, 8.512(a), 8.843(e), 8.870(e), 8.890(b), 8.921(e), and 8.1018(d)); and
- Clarify that signatures on electronically filed documents must comply with rule 8.77 (see new rule 8.804 and amended rule 8.882(b)).

Comments, Alternatives Considered, and Policy Implications

Eleven commentators submitted comments in response to the invitation to comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

Comments

The advisory committees' responses to all comments received during the comment period are provided in the attached comments chart. In addition, specific responses to certain comments, including the response submitted after the comment period, are addressed further below.

Electronic form and formatting rules. These amended rules clarify that many of the form and formatting rules apply only to documents filed on paper, and not filed electronically. Three commentators—the Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee and Joint Technology Subcommittee, and the State Bar's Committee on Appellate Courts—submitted comments urging that electronic form and formatting rules be adopted in the near future. The

subcommittees specifically recommended future amendments to require bookmarking exhibits and attachments submitted with electronic documents.

The Superior Court of San Diego County submitted a comment in response to the proposed amendment to rule 3.1110(f), which would limit the requirement that parties tab their motions papers to those filed physically in paper form. The court objected to the amendment unless the council were to add similar language requiring bookmarking or its equivalent for all electronically filed documents. The court explained that it refers to rule 3.1110(f) in requiring litigants to bookmark their electronically filed motions because bookmarking is the electronic equivalent to tabbing. Bookmarking allows the court to easily locate documents and exhibits filed with motions. The court also proposed language for amending rule 3.1110(f) that would expressly authorize the bookmarking of electronic documents.

Electronic form and formatting rules, including any rules governing the bookmarking of electronic documents, will be considered during phase II of the Rules Modernization Project. Meanwhile, in response to the concerns raised by the Superior Court of San Diego County, rule 3.1110(f) has not been amended, so the court may continue to rely on that rule in requiring that parties bookmark electronic documents.

Typewriters. The State Bar's Committee on Administrative Justice (CAJ) submitted comments regarding the proposed amendments to rules 2.3(3), 2.104, and 2.150. CAJ opposed removing references to "typewritten," "typewriting," and "typewriter" from these rules.[8] It explained that typewriters "provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors." In response to CAJ's concerns, the references to "typewritten," "typewriting," and "typewriter" have been left in these rules.

E-mail addresses. Rule 2.111(1) provides that the top of the first page of papers should list an "e-mail address (if available)," among other identifying information. The Civil Unit Managers of the Superior Court of Orange County submitted comments recommending that the phrase "e-mail address (if available)" be replaced with "e-mail address (if available and/or required if submitted electronically)." The managers explained that their proposal would allow the court to capture accurate data for electronic service because it would require all electronic filers to provide the court with their e-mail adresses. The managers further explained that the rules do not require placing the e-mail address on documents and that there is no mechanism for placing e-mail addresses on documents.

Under rule 2.111(1), an e-mail address may be provided on the first page of papers, if available, as a convenience to the court and parties. However, this e-mail address is not necessarily the

[8] Retaining these references also makes the amendments to the trial court rules consistent with the appellate rules: before circulating the invitation to comment, ITAC and the Appellate Advisory Committee decided against removing these references in the appellate rules because indigent and incarcerated litigants may have access only to typewriters.

electronic service address; the electronic service address might instead be registered with an Electronic Filing Service Provider. As provided in the rule, an attorney or litigant may list his or her work or personal e-mail address on the first page of a paper without consenting to receive electronic service at that address. (See Cal. Rules of Court, rule 2.111(1) ["The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law"].)

A party consents to permissive electronic service by filing form EFS-005, *Consent to Electronic Service and Notice of Electronic Service Address,* which requires that the party specify his or her electronic service address.[9] This form captures the electronic service address only where electronic service is permissive. In addition, rule 2.256(a)(4) requires parties to provide "one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept electronic service." Because courts already have the ability to require parties to provide their electronic service addresses, rule 2.111(1) has not been amended.

Filing records under seal. Rules 2.551 (governing procedures for filing records under seal) and 2.577 (governing procedures for filing confidential name change records under seal) have been amended. They state specific procedures for filing electronically transmitted records under seal by court order.

As circulated, the rules proposal would have amended rules 2.551(e)(1) and 2.577(f)(3) to require that, when a court grants an order sealing a record, it must replace the cover sheet with a filed-endorsed copy of the court's order. In addition, the rules proposal would have required the court, if the record was in electronic form, to place the record ordered sealed in a secure electronic file, clearly identified as sealed by court order on a specified date.

After the comment period closed, Mr. Alan Carlson—the Court Executive Officer of the Superior Court of Orange County—provided his response to these proposed amendments. He explained that removing the cover sheet and attaching the court's order for records and petitions transmitted electronically is unworkable in his court's electronic case and document management systems. Once these records and petitions have been electronically transmitted by the parties, the court cannot alter these documents; however, the court can change the level of access to these documents and can identify these documents as sealed by court order on a specific date. Mr. Carlson also explained that his document management system does not store electronic documents in a secure electronic "file."

The amendments to rules 2.551(e)(1) and 2.577(f)(3) incorporate Mr. Carlson's recommendations.

Rule 2.551(e)(1) is amended to provide as follows:

[9] Form EFS-005 is available at *www.courts.ca.gov/documents/efs005.pdf*.

> If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in an electronic format, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Rule 2.577(f)(3) is amended as follows:

> For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY UNDER SEAL," ~~and~~ add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*,~~.~~" and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Electronic submission of documents after close of business. Four commentators submitted comments in response to the proposed amendment to rule 3.1300(e), which governs the filing and service of motion papers.[10] Under the rules proposal, as circulated, subdivision (e) would have been amended as follows:

> A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day.

Three commentators identified an error in the proposed language in that papers are initially "received," not filed. Ms. Robin Brandes-Gibbs, an employee at the Superior Court of Orange County, proposed replacing the term "filed" with "received by the court." Amended rule 3.1300(e) incorporates Ms. Brandes-Gibbs's suggested language because it corrects the error and tracks the language of rule 2.259(c).[11]

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[10] Ms. Robin Brandes-Gibbs referenced subdivision (c) of rule 3.1300, but her comments appear directed toward subdivision (e).

[11] Rule 2.259(c) provides in full:

> A document that is received electronically by the court after the close of business is deemed to have been received on the next court day, unless the court has provided by local rule, with respect to documents filed under the mandatory electronic filing provisions in rule 2.253(b)(7), that documents received electronically before midnight on a court day are deemed to have been filed on that court day, and documents received electronically after midnight are deemed filed on the

In response to the error, the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee proposed adding the phrase "if, after review by the clerk, it is accepted for filing" to the end of the proposed amendment. Amended rule 3.1300(e) does not incorporate this recommendation because the subcommittee's concern is already addressed by the cross-reference in rule 3.1300(e) to rule 2.259(c), which provides that electronically filed documents must "be processed and satisfy all other legal filing requirements to be filed as an official court record."

In addition, Ms. Brandes-Gibbs questioned whether the proposed amendment to rule 3.1300(e), as well as rules 2.253(b)(7) and 2.259(c),[12] contradict Code of Civil Procedure section 1010.6(b)(3), which provides that "[a]ny document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day." It also defines "close of business" as meaning "5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier."

Code of Civil Procedure section 1010.6(b)(3) governs only *permissive* electronic filing. Subdivision (g) exempts superior courts from complying with subdivision (b)(3) where electronic filing is *mandatory*. Subdivision (f), in turn, instructs the Judicial Council to adopt uniform rules governing mandatory electronic filing that conform with the conditions in section 1010.6, including the exception in subdivision (g) to subdivision (b)(3). Thus, Code of Civil Procedure section 1010.6 provides an exception to the close-of-business rule where electronic filing is mandatory.

The amendment to rule 3.1300(e) tracks this legislative scheme. By its cross-reference to rule 2.259(c), which in turn references rule 2.253(b)(7), the amendment to rule 3.1300(e) applies only to papers that are required to be filed electronically. Even though the amendment to rule 3.1300(e) is authorized under Code of Civil Procedure section 1010.6, it includes additional language to clarify that it applies only to mandatory filing. In response to Ms. Brandes-Gibbs's comments, rule 3.1300(e) is amended to provide:

> A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7) and* 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received electronically by the court* before midnight on a court day is deemed filed on that court day.

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next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

[12] Rule 2.253(b)(7) addresses mandatory electronic filing and is cross-referenced in rule 2.259(c). It recognizes that courts may provide by local rule that electronically filed documents received before midnight will be deemed to have been filed by that court day.

In its comments to the proposed amendment to rule 3.1300(e), the Superior Court of Sacramento County recommended against "encouraging inconsistencies throughout the State." Currently, the Code of Civil Procedure and trial court rules allow for electronic filing deadlines to vary depending on whether electronic filing is permissive or mandatory and depending on the court's local rules. Addressing the court's concern about inconsistencies is beyond the scope of the present rules proposal because it would require a substantive amendment to the rules and possibly to the Code of Civil Procedure. The advisory committees may address the court's concern during phase II of the Rules Modernization Project.

Use of an electronic record on appeal. CAJ expressed concern about the impact of the proposed amendments to rules 8.122, 8.144, 8.336, and 8.838 on indigent appellate litigants, particularly incarcerated appellants and others who do not have access to computers. The proposed amendments to these rules would have expressly allowed all or part of the record on appeal to be in electronic form where authorized by local rule of the appellate court or division. In addition, the proposed amendments to rule 8.832, not specifically mentioned by CAJ, would have added language to the rule's advisory committee comment parallel to the language proposed for the comment to rule 8.122, but applying to appeals to an appellate division of a superior court.

Recognizing that the exceptions for self-represented litigants in the electronic filing and service rules do not apply to the form of the record on appeal, the proposed amendments to 8.122, 8.144, 8.832, and 8.838—which would have expressly allowed use of an electronic record on appeal—have been withdrawn from phase I for further consideration in phase II of the Rules Modernization Project. Other amendments to rules 8.144 and 8.838, as well as the amendment to rule 8.336, remain part of this phase. These amendments clarify application of the rules where the clerk's or reporter's transcript is in electronic form.

At least one of the courts of appeal is currently receiving the clerk's transcripts in electronic form from one of the superior courts within the district. This practice, already in effect under the existing rules of court, should be able to continue unchanged while further consideration is given to how best to address this issue in the rules of court.

Alternatives

As an alternative to making technical changes at this time, ITAC considered deferring action and proposing a single rules proposal that would have included both substantive and technical changes to the rules at a later date. One benefit of this approach would have been to increase the project's overall efficiency by reviewing and ultimately implementing all changes at the same time. By dividing the work into technical and substantive phases, however, the council will modernize the rules, to the extent possible, on a more responsive timeline for those courts that are already implementing electronic filing and service and adopting modern business practices.

Implementation Requirements, Costs, and Operational Impacts

Because the recommended rule changes are not substantive, they are not expected to generate any new costs or require implementation. To the extent that the changes clarify existing law, they

will facilitate electronic filing and service in the trial and appellate courts and provide cost efficiencies.

Only minimal costs are associated with amending the rules.

Attachments and Links

1. Cal. Rules of Court, title 2 rules, at pages 13–22
2. Cal. Rules of Court, title 3 rules, at pages 23–35
3. Cal. Rules of Court, title 4 rules, at page 36
4. Cal. Rules of Court, title 5 rules, at pages 37–40
5. Cal. Rules of Court, title 7 rules, at pages 41
6. Cal. Rules of Court, title 8 rules, at pages 42–97
7. Comments chart, at pages 98–108

Rule 2.10 of the California Rules of Court is adopted and rules 2.3, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.108, 2.111, 2.113, 2.114, 2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, and 2.1100 are amended, effective January 1, 2016, to read:

Title 2. Trial Court Rules

Rule 2.3. Definitions

As used in the Trial Court Rules, unless the context or subject matter otherwise requires:

(1) "Court" means the superior court~~;~~.

(2) "Papers" includes all documents, except exhibits and copies of exhibits, that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions. ~~; and~~ Unless the context clearly provides otherwise, "papers" need not be in a tangible or physical form but may be in an electronic form.

(3) "Written," "writing," "typewritten," and "typewriting" include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor.

Rule 2.10. Scope of rules ~~[Reserved]~~

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 2.102. One-sided paper

When papers are not filed electronically, ~~On papers,~~ only one side of each page may be used.

Rule 2.103. Size, quality, and color~~, and size~~ of paper

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight~~,8½ by 11 inches~~.

Rule 2.104. Printing; ~~type~~ font size

All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in ~~type~~ a font not smaller than 12 points.

Rule 2.105. ~~Type~~ Font style

The ~~typeface~~ font must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.106. Font color ~~of print~~

The font color ~~of print~~ must be black or blue-black.

Rule 2.107. Margins

The left margin of each page must be at least one inch from the left edge ~~of the paper~~ and the right margin at least 1/2 inch from the right edge ~~of the paper~~.

Rule 2.108. Spacing and numbering of lines

The spacing and numbering of lines on a page must be as follows:

(1)–(3) * * *

(4) Line numbers must be placed at the left margin and separated from the text ~~of the paper~~ by a vertical column of space at least 1/5 inch wide or a single or double vertical line. Each line number must be aligned with a line of type, or the line numbers must be evenly spaced vertically on the page. Line numbers must be consecutively numbered, beginning with the number 1 on each page. There must be at least three line numbers for every vertical inch on the page.

Rule 2.111. Format of first page

The first page of each paper must be in the following form:

(1)–(2) * * *

(3) On line 8, at or below 3 1/3 inches from the top of the ~~paper~~ page, the title of the court.

(4)–(11) * * *

Rule 2.113. Binding

Each paper not filed electronically must consist entirely of original pages without riders and must be firmly bound together at the top.

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to ~~typewritten~~ computer-processed materials in legibility and permanency of image.

Rule 2.115. Hole punching

When papers are not filed electronically, each paper presented for filing must contain two prepunched normal-sized holes, centered 2½ inches apart and 5/8 inch from the top of the paper.

Rule 2.117. Conformed copies of papers

All copies of papers served must conform to the original papers filed, including the numbering of lines, pagination, additions, deletions, and interlineations except that, with the agreement of the other party, a party serving papers by nonelectronic means may serve that other party with papers printed on both sides of the page.

Rule 2.130. Application

The rules in this chapter apply to Judicial Council forms, local court forms, and all other official forms to be filed in the trial courts. The rules apply to forms filed both in paper form and electronically, unless otherwise specified.

Rule 2.133. Hole punching

All forms not filed electronically must contain two prepunched normal-sized holes, centered 2½ inches apart and ⅝ inch from the top of the form.

Rule 2.134. Forms longer than one page

(a) Single side may be used

If a form not filed electronically is longer than one page, the form may be printed on sheets printed only on one side even if the original has two sides to a sheet.

(b) Two-sided forms must be tumbled

If a form not filed electronically is filed on a sheet printed on two sides, the reverse side must be rotated 180 degrees (printed head to foot).

(c) Multiple-page forms must be bound

If a form not filed electronically is longer than one page, it must be firmly bound at the top.

Rule 2.150. Authorization for computer-generated or typewritten forms for proof of service of summons and complaint

(a) Computer-generated or typewritten forms; conditions

Notwithstanding the adoption of mandatory form *Proof of Service of Summons* (form POS-010), a form for proof of service of a summons and complaint prepared entirely by word processor, typewriter, or similar process may be used for proof of service in any applicable action or proceeding if the following conditions are met:

(1)–(4) * * *

(5) The text of form POS-010 must be copied in the same order as it appears on ~~the printed~~ form POS-010 using the same item numbers. A declaration of diligence may be attached to the proof of service or inserted as item 5b(5).

(6) Areas marked "For Court Use" must be copied in the same general locations and occupy approximately the same amount of space as on ~~the printed~~ form POS-010.

(7)–(8) * * *

(9) Material that would have been ~~typed~~ entered onto ~~the printed~~ form POS-010 must be ~~typed~~ entered with each line indented 3 inches from the left margin.

(b) * * *

Advisory Committee Comment

This rule is intended to permit process servers and others to prepare their own shortened versions of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant to show the method of service used.

Rule 2.550. Sealed records

(a) * * *

(b) Definitions

As used in this chapter:

(1) "Record." Unless the context indicates otherwise, "record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise.

(2)–(3) * * *

(c)–(e) * * *

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1) * * *

(2) *Service of motion or application*

A copy of the motion or application must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already ~~possesses copies of~~ has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version. If a party's attorney but not the party has access to the record, only the party's attorney may be served with the complete, unredacted version.

(3) *Procedure for party not intending to file motion or application*

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly remove all the documents in (A)(i) from the envelope, ~~or~~ container, or secure electronic file where they are located and place them in the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain

conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4) * * *

(5) *Redacted and unredacted versions*

If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete, unredacted version conditionally under seal. The cover of the redacted version must identify it as "Public—Redacts materials from conditionally sealed record." The cover of the unredacted version must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record."

(6) *Return of lodged record*

If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing ~~within 10 days after the order denying the motion or application~~ that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.

(c) * * *

(d) Procedure for lodging of records

(1) A record that may be filed under seal must be transmitted to the court in a secure manner that preserves the confidentiality of the records to be lodged. If the record is transmitted in paper form, it must be put in an envelope or other appropriate container, sealed in the envelope or container, and lodged with the court.

(2) The materials to be lodged under seal must be clearly identified as "CONDITIONALLY UNDER SEAL." If the materials are transmitted in paper form, the envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."

(3) The party submitting the lodged record must affix to the electronic transmission, the envelope, or the container a cover sheet that:

(A)–(B) * * *

(4) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in an electronic format, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2) The order must state whether—in addition to the sealed records ~~in the envelope or container~~ —the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) * * *

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed ~~records or papers~~.

**(f)–(g) * * *

(h) Motion, application, or petition to unseal records

(1)–(2) * * *

(3) If the court proposes to order a record unsealed on its own motion, the court must ~~mail~~ give notice to the parties stating the reason for unsealing the record ~~therefor~~. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is provided ~~mailed or within such time as the court specifies.~~ and any other party may file a response within 5 days after the filing of an opposition.

(4) * * *

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or

both. If, in addition to the records in the envelope, ~~or~~ container, or secure electronic file, the court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

Rule 2.577. Procedures for filing confidential name change records under seal

(a)–(c) * * *

(d) Procedure for lodging of petition for name change

(1) The records that may be filed under seal must be lodged with the court. If they are transmitted on paper, they must be placed in a sealed envelope. If they are transmitted electronically, they must be transmitted to the court in a secure manner that preserves the confidentiality of the documents to be lodged.

(2) If the petitioner is transmitting the petition on paper, the petitioner must complete and affix to the envelope a completed *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program* (*Safe at Home)* (form NC-400) and in the space under the title and case number mark it "CONDITIONALLY UNDER SEAL." If the petitioner is transmitting the petition electronically, the first page of the electronic transmission must be a completed *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program* (*Safe at Home)* (form NC-400) with the space under the title and case number marked "CONDITIONALLY UNDER SEAL."

(3) On receipt of a petition lodged under this rule, the clerk must endorse the ~~affixed~~ cover sheet with the date of its receipt and must retain but not file the record unless the court orders it filed.

(4) * * *

(e) * * *

(f) Order

(1)–(2) * * *

(3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY

UNDER SEAL," ~~and~~ add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*." and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(g)–(h) * * *

Rule 2.816. Stipulation to court-appointed temporary judge

(a)–(d) * * *

(e) Application or motion to withdraw stipulation

An application or motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation. In addition:

(1)–(2) * * *

(3) The application or motion must be served and filed, and the moving party must ~~mail or deliver~~ provide a copy to the presiding judge.

(4) * * *

Rule 2.831. Temporary judge—stipulation, order, oath, assignment, disclosure, and disqualification

(a)–(e) * * *

(f) Motion to withdraw stipulation

A motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must ~~mail or deliver~~ provide a copy to the temporary judge. If the motion to withdraw the stipulation is based on grounds for the disqualification of the temporary judge first learned or arising after the temporary judge has made one or more rulings, but

before the temporary judge has completed judicial action in the proceeding, the provisions of rule 2.816(e)(4) apply. If a motion to withdraw a stipulation is granted, the presiding judge must assign the case for hearing or trial as promptly as possible.

Rule 2.1055. Proposed jury instructions

(a) * * *

(b) Form and format of proposed instructions

(1)–(3) * * *

(4) Each set of proposed jury instructions filed on paper must be bound loosely.

(c)–(e) * * *

Rule 2.1100. Notice when statute or regulation declared unconstitutional

Within 10 days after a court has entered judgment in a contested action or special proceeding in which the court has declared unconstitutional a state statute or regulation, the prevailing party, or as otherwise ordered by the court, must ~~mail~~ serve a copy of the judgment and a notice of entry of judgment ~~to~~ on the Attorney General and file a proof of service with the court.

Rules 3.254, 3.524, 3.544, 3.670, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, and 3.2107 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 3. Civil Rules

Rule 3.254. List of parties

(a) Duties of first-named plaintiff or petitioner

Except as provided under rule 2.251 for electronic service, if more than two parties have appeared in a case and are represented by different counsel, the plaintiff or petitioner named first in the complaint or petition must:

(1)–(2) * * *

(b) Duties of each party

Except as provided under rule 2.251 for electronic service, each party must:

(1)–(3) * * *

Rule 3.524. Order assigning coordination motion judge

(a) Contents of order

An order by the Chair of the Judicial Council assigning a coordination motion judge to determine whether coordination is appropriate, or authorizing the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases, must include the following:

(1) The special title and number assigned to the coordination proceeding; and

(2) The court's address or electronic service address for submitting all subsequent documents to be considered by the coordination motion judge.

(b) * * *

Rule 3.544. Add-on cases

(a) Request to coordinate add-on case

A request to coordinate an add-on case must comply with the requirements of rules 3.520 through 3.523, except that the request must be submitted to the coordination

trial judge under Code of Civil Procedure section 404.4, with proof of ~~mailing~~ service of one copy ~~to~~ on the Chair of the Judicial Council and proof of service as required by rule 3.510.

(b)–(d) * * *

Rule 3.670. Telephone appearance

(a)–(g) * * *

(h) Notice by party

(1) Except as provided in (6), a party choosing to appear by telephone at a hearing, conference, or proceeding, other than on an ex parte application, under this rule must either:

(A) Place the phrase "Telephone Appearance" below the title of the moving, opposing, or reply papers; or

(B) At least two court days before the appearance, notify the court and all other parties of the party's intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" with the court at least two court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, ~~e-mail~~ electronic service if such service is required by local rule or court order or agreed to by the parties, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.

(2)–(6) * * *

(i)–(q) * * *

Rule 3.815. Selection of the arbitrator

(a) * * *

(b) Selection absent stipulation or local procedures

If the arbitrator has not been selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:

(1) * * *

(2) The administrator must select at random a number of names equal to the number of sides, plus one, and ~~mail~~ send the list of randomly selected names to counsel for the parties.

(3) Each side has 10 days from the date ~~of mailing~~ on which the list was sent to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4)–(5) * * *

**(c)–(f) * * *

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased by two days. If service is by mail, the times prescribed in this rule ~~for delivery of documents, notices, and demands~~ are increased by five days.

Rule 3.827. Entry of award as judgment

(a) * * *

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must ~~mail~~ serve notice of entry of judgment ~~to~~ on all parties who have appeared in the case and must execute a certificate of ~~mailing~~ service and place it in the court's file in the case.

(c) * * *

Rule 3.931. Open proceedings, notice of proceedings, and order for hearing site

(a) * * *

(b) Notice regarding proceedings before referee

(1) In each case in which he or she is appointed, a referee must file a statement that provides the name, telephone number, e-mail address, and mailing address of a person who may be contacted to obtain information about the date, time, location, and general nature of all hearings scheduled in matters pending before the referee that would be open to the public if held before a judge. This statement must be filed at the same time as the referee's certification under rule 3.904(a) or 3.924(a). If there is any change in this contact information, the referee must promptly file a revised statement with the court.

(2) In addition to providing the information required under (1), the statement filed by a referee may also provide the address of a publicly accessible ~~Web site~~ website at which the referee will maintain a current calendar setting forth the date, time, location, and general nature of any hearings scheduled in the matter that would be open to the public if held before a judge.

(3) * * *

(c) * * *

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

(a) * * *

(b) Appearing and participating in depositions

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Written notice of such appearance is served by personal delivery, e-mail, or fax at least three court days before the deposition;

(2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(c)–(e) * * *

Rule 3.1109. Notice of determination of submitted matters

(a) Notice by clerk

When the court rules on a motion or makes an order or renders a judgment in a matter it has taken under submission, the clerk must immediately notify the parties of the ruling, order, or judgment. The notification, which must specifically identify the matter ruled on, may be given by serving electronically or mailing the parties a copy of the ruling, order, or judgment, and it constitutes service of notice only if the clerk is required to give notice under Code of Civil Procedure section 664.5.

(b) * * *

(c) Time not extended by failure of clerk to give notice

The failure of the clerk to give the notice required by this rule does not extend the time provided by law for performing any act except as provided in rules 8.104(a) or ~~8.824~~ 8.822(a).

Rule 3.1110. General format

(a)–(d) * * *

(e) Binding

For motions filed on paper, all pages of each document and exhibit must be attached together at the top by a method that permits pages to be easily turned and the entire content of each page to be read.

(f)–(g) * * *

Rule 3.1113. Memorandum

(a)–(h) * * *

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority and tabbed or separated as required by rule 3.1110(f).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged and tabbed or separated as required by rule 3.1110(f).

(3) * * *

**(j)–(*l*) * * *

(m) Proposed orders or judgments

If a proposed order or judgment is submitted, it must be lodged and served with the moving papers but must not be attached to them. The requirements for proposed orders, including the requirements for submitting proposed orders by electronic means, are stated in rule 3.1312.

Rule 3.1202. Contents of application

(a) Identification of attorney or party

An ex parte application must state the name, address, e-mail address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, e-mail address, and telephone number of the party if known to the applicant.

(b)–(c) * * *

Rule 3.1300. Time for filing and service of motion papers

(a) In general

Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service.

(b)–(d) * * *

(e) Computation of time

A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules 2.253(b)(7) and 2.259(c), a court may provide by local rule that a paper that is required to be filed electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.

Rule 3.1302. Place and manner of filing

(a) Papers filed in clerk's office

Unless otherwise provided by local rule or specified in a court's protocol for electronic filing, all papers relating to a law and motion proceeding must be filed in the clerk's office.

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which the materials may be returned. After determination of the matter, the clerk may mail or send the material back to the party lodging it.

Rule 3.1304. Time of hearing

(a) General schedule

The clerk must post electronically and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing.

(b)–(d) * * *

Rule 3.1320. Demurrers

(a)–(b) * * *

(c) Notice of hearing

A party filing a demurrer must serve and file therewith a notice of hearing that must specify a hearing date in accordance with the provisions of Code of Civil Procedure

section 1005 and, if service is by electronic means, in accordance with the requirements of Code of Civil Procedure section 1010.6(a)(4) and rule 2.251(h)(2).

(d)–(j) * * *

Rule 3.1326. Motions for change of venue

Following denial of a motion to transfer under Code of Civil Procedure section 396b, unless otherwise ordered, 30 calendar days are deemed granted defendant to move to strike, demur, or otherwise plead if the defendant has not previously filed a response. If a motion to transfer is granted, 30 calendar days are deemed granted from the date the receiving court ~~mails~~ sends notice of receipt of the case and its new case number.

Rule 3.1327. Motions to quash or to stay action in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a motion to quash service of summons on the ground of lack of jurisdiction or to stay or dismiss the action on the ground of inconvenient forum must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1167.4.

(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or before the court day before the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1330. Motion concerning arbitration

A petition to compel arbitration or to stay proceedings pursuant to Code of Civil Procedure sections 1281.2 and 1281.4 must state, in addition to other required allegations, the provisions of the written agreement and the paragraph that provides for

arbitration. The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference.

Rule 3.1340. Motion for discretionary dismissal after two years for delay in prosecution

(a) * * *

(b) Notice of court's intention to dismiss

If the court intends to dismiss an action on its own motion, the clerk must set a hearing on the dismissal and ~~mail~~ send notice to all parties at least 20 days before the hearing date.

(c) * * *

Rule 3.1346. Service of motion papers on nonparty deponent

A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record.

Rule 3.1347. Discovery motions in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a discovery motion must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1170.8.

(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be served and filed on or before the court day before the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure

delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1350. Motion for summary judgment or summary adjudication

(a)–(d) * * *

(e) Documents in opposition to motion

Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the opposition to a motion must consist of the following separate documents, ~~separately stapled and~~ titled as shown:

(1)–(4) * * *

(f)–(i) * * *

Rule 3.1351. Motions for summary judgment in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a motion for summary judgment must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1170.7.

(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or before the court day before the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1354. Written objections to evidence

(a)–(b) * * *

(c) Proposed order

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The court may require that the proposed order be provided in electronic form. The proposed order must be in one of the following two formats:

* * *

Rule 3.1590. Announcement of tentative decision, statement of decision, and judgment

(a)–(k) * * *

(*l*) Signature and filing of judgment

If a written judgment is required, the court must sign and file the judgment within 50 days after the announcement or service of the tentative decision, whichever is later, or, if a hearing was held under (k), within 10 days after the hearing. An electronic signature by the court is as effective as an original signature. The judgment constitutes the decision on which judgment is to be entered under Code of Civil Procedure section 664.

(m)–(n) * * *

Rule 3.1700. Prejudgment costs

(a) Claiming costs

(1) *Trial costs*

A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of ~~mailing~~ service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. The

memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case.

(2) * * *

(b) Contesting costs

(1) *Striking and taxing costs*

Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum. If the cost memorandum was served by mail, the period is extended as provided in Code of Civil Procedure section 1013. If the cost memorandum was served electronically, the period is extended as provided in Code of Civil Procedure section 1010.6(a)(4).

(2)–(4) * * *

Rule 3.1900. Notice of renewal of judgment

A copy of the application for renewal of judgment must be physically or electronically attached to the notice of renewal of judgment required by Code of Civil Procedure section 683.160.

Rule 3.2107. Request for court order

(a) Request before trial

If a party files a written request for a court order before the hearing on the claim, the requesting party must mail, ~~or~~ personally deliver, or if agreed on by the parties electronically serve a copy to all other parties in the case. The other parties must be given an opportunity to answer or respond to the request before or at the hearing. This subdivision does not apply to a request to postpone the hearing date if the plaintiff's claim has not been served.

(b) Request after trial

If a party files a written request for a court order after notice of entry of judgment, the clerk must ~~mail~~ send a copy of the request to all other parties in the action. A party has 10 calendar days from the date on which the clerk ~~mailed~~ sent the request to file a response before the court makes an order. The court may schedule a hearing on the request, except that if the request is to vacate the judgment for lack of appearance by the plaintiff, the court must hold a hearing. The court may give

notice of any scheduled hearing with notice of the request, but the hearing must be scheduled at least 11 calendar days after the clerk has ~~mailed~~ sent the request.

Rule 4.102 of the California Rules of Court is amended, effective January 1. 2016, to read:

Title 4. Criminal Rules

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail <u>or e-mail</u> a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

(1)–(2) * * *

* * *

Rules 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534 and 5.906 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 5. Family and Juvenile Rules

Rule 5.50. Papers issued by the court

(a) * * *

(b) Automatic temporary family law restraining order in summons; handling by clerk

Under Family Code section 233, in proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a summons that includes automatic temporary (standard) restraining orders ~~on the reverse side of the summons~~.

(1)–(2) * * *

(c) Individual restraining order

(1) On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders in (b) included ~~on the back of~~ in the family law summons under Family Code section 233.

(2) Individual restraining orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.83. Family centered case resolution

(a)–(c) * * *

(d) Family centered case resolution conferences

(1)–(4) * * *

(5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, ~~or~~ in writing, or by other means approved by the court, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

(e)–(g) * * *

Rule 5.91. Individual restraining order

On a party's request for order and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders included ~~on the back of~~ in the family law summons. Individual orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.215. Domestic violence protocol for Family Court Services

(a)–(c) * * *

(d) Family Court Services: Description and duties

(1)–(4) * * *

(5) *Providing information*

Family Court Services staff must provide information to families accessing their services about the effects of domestic violence on adults and children. Family Court Services programs, including but not limited to orientation programs, must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence. ~~Where~~ Whenever possible, ~~the videotapes provided~~ information delivered in video or audiovisual format should be closed-captioned.

(6)–(8) * * *

(e)–(j) * * *

Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

(a)–(j) * * *

(k) Other considerations

Counsel is not required to assume the responsibilities of a social worker, probation officer, child custody evaluator, or mediator and is not expected to provide nonlegal services to the child. Subject to the terms of the court's order of appointment, counsel for a child may take the following actions to implement his or her statutory duties in representing a child in a family law proceeding:

(1)–(3) * * *

(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child's interest, which may include:

(A)–(F) * * *

(G) Reviewing relevant photographs, video- or audio~~tapes~~ recordings, and other evidence;

(H)–(L) * * *

(5) * * *

Rule 5.275. Standards for computer software to assist in determining support

(a)–(f) * * *

(g) Definitions

As used in this ~~rule~~ chapter:

(1) "Software" refers to any program or digital application used to calculate the appropriate amount of child or spousal support.

~~(1)~~(2) "Default settings" refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (1) the user is permitted to change the settings back to the default without reinstalling the software, (2) the computer screen prominently indicates whether the software is set to the default settings, and (3) any printout from the software prominently indicates whether the software is set to the default settings.

~~(2)~~(3) "Contains" means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

(h)–(j) * * *

Rule 5.534. General provisions—all proceedings

(a)–(m) * * *

(n) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

(1)–(5) * * *

(6) When form JV-290 or a caregiver letter is filed, the court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter immediately upon receipt. The clerk also must complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The clerk may use any technology designed to speed the distribution process, including drop boxes in the courthouse, e-mail ~~or,~~ fax, or other electronic transmission, as defined in rule 2.250, to distribute the JV-290 form or letter and proof of service form.

(o)–(p) * * *

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e))

(a)–(b) * * *

(c) Filing the request

(1) * * *

(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) Filed with the juvenile court that maintained general jurisdiction; or

(B) Submitted to the juvenile court in the county in which the nonminor currently resides, after which:

(i) The court clerk must record the date and time received on the face of the originals submitted and provide a copy of the originals marked as received to the nonminor at no cost to ~~the~~ him or her.

(ii)–(v) * * *

(C) * * *

(3)–(5) * * *

(d)–(i) * * *

Rule 7.802 of the California Rules of Court is adopted, effective January 1, 2016, to read:

Title 7. Probate Rules

Chapter 17. Contested Hearings and Trials

Rule 7.802. Electronic filing and service in contested probate proceedings

The provisions of Code of Civil Procedure section 1010.6 and rules 2.250–2.261 of the California Rules of Court concerning filing and service by electronic means apply to contested proceedings under the Probate Code and the Probate Rules to the same extent as they apply to other contested civil proceedings in each superior court in this state.

Rules 8.11 and 8.804 of the California Rules of Court are adopted; rule 8.803 is renumbered and amended; and rules 8.10, 8.40, 8.42, 8.44, 8.45, 8.46, 8.47, 8.50, 8.100, 8.104, 8.108, 8.112, , 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384, 8.385, 8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.806, 8.814, 8.821, 8.822, 8.823, 8.824, , 8.833, 8.834, 8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881, 8.882, 8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926, 8.927, 8.928, 8.931, and 8.1018 are amended, effective January 1. 2016, to read:

Title 8. Appellate Rules

Rule 8.10. Definitions and use of terms

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

(1)–(7) * * *

(8) "Attach" or "attachment" may refer to either physical attachment or electronic attachment, as appropriate.

(9) "Copy" or "copies" may refer to electronic copies, as appropriate.

(10) "Cover" includes the cover page of a document filed electronically.

(11) "Written" and "writing" include electronically created written materials, whether or not those materials are printed on paper.

Rule 8.11. Scope of rules

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 8.40. Form of filed documents

(a) * * *

(b) Cover color

(1) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray

Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
Petition for transfer of appellate division case to Court of Appeal	white
Answer to petition for transfer of appellate division case to Court of Appeal	blue
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

(2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(3) * * *

(c) * * *

Rule 8.42. Requirements for signatures of multiple parties on filed documents

When a document to be filed~~,~~ in paper form, such as a stipulation, requires the signatures of multiple parties, the original signature of at least one party must appear on the document filed in the reviewing court; the other signatures may be in the form of copies of the signed signature page of the document. Electronically filed documents must comply with the relevant provisions of rule 8.77.

~~**Advisory Committee Comment**~~

~~Please note that rule 8.77 establishes different requirements for documents that are electronically filed.~~

Rule 8.44. Number of copies of filed documents

~~Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:~~

(a) Documents filed in the Supreme Court

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in the Supreme Court and that is filed in paper form is as follows:

(1)–(6) * * *

(b) Documents filed in a Court of Appeal

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a Court of Appeal and that is filed in paper form is as follows:

(1)–(7) * * *

(c) Electronic copies

A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition, a court may provide by local rule for the submission of an electronic copy of a document that is not electronically filed either in addition to the copies of a document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must specify the format of the electronic copy and provide for an exception if it would cause undue hardship for a party to submit an electronic copy.

Rule 8.45. General provisions

(a) * * *

(b) Definitions

As used in this article:

(1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court by electronic means or otherwise.

(2)–(7) * * *

(c) Format of sealed and confidential records

(1) Unless otherwise provided by law or court order, sealed or confidential records that are part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be kept separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court and in a secure manner that preserves their confidentiality.

(A)–(D) * * *

(2) * * *

(3) Records relating to a request for funds under Penal Code section 987.9 or other proceedings the occurrence of which is not to be disclosed under the court order or applicable law must not be bound together with, or electronically transmitted as a single document with, other sealed or confidential records and must not be listed in the index required under (1)(D) or the alphabetical or chronological indexes to a clerk's or reporter's transcript, appendix, supporting documents to a petition, or other records sent to the reviewing court.

(d) * * *

Rule 8.46. Sealed records

(a)–(c) * * *

(d) Record not filed in the trial court; motion or application to file under seal

(1)–(2) * * *

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule 8.40(c) and labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper format, it must be placed in a sealed envelope or other appropriate sealed container.

(4)–(9) * * *

(e) Unsealing a record in the reviewing court

(1)–(2) * * *

(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must send ~~mail~~ notice to the parties. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is sent ~~mailed~~, and any other party may serve and file a response within 5 days after an opposition is filed.

(4)–(7) * * *

(f) * * *

Rule 8.47. Confidential records

(a) * * *

(b) Records of *Marsden* hearings and other in-camera proceedings

(1)–(2) * * *

(3) A defendant may serve and file a motion or application in the reviewing court requesting permission to file under seal a brief, petition, or other filing that raises a *Marsden* issue or an issue related to another in-camera hearing covered by this subdivision and requesting an order maintaining the confidentiality of the relevant material from the reporter's transcript of or documents filed or lodged in connection with the in-camera hearing.

(A)–(B) * * *

(C) At the time the motion or application is filed, the defendant must:

(i) * * *

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record."

(D) * * *

(c) Other confidential records

Except as otherwise provided by law or order of the reviewing court:

(1) * * *

(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)–(B) * * *

(C) At the time the motion or application is filed, the party must:

(i) * * *

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record." Material from a confidential record disclosed in this version must be identified and accompanied by a citation to the statute, rule of court, case, or other authority establishing that the record is required by law to be closed to inspection in the reviewing court.

(D) * * *

Rule 8.50. Applications

(a)–(b) * * *

~~**(c) Envelopes**~~

~~An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.~~

**~~(d)~~(c) Disposition * * *

Rule 8.100. Filing the appeal

(a) * * *

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the $775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee ~~should~~ may be paid by check or money order payable to "Clerk, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt. The fee may also be paid by any method permitted by the court pursuant to rules 2.258 and 8.78.

(2)–(3) * * *

(c)–(d) * * *

(e) Superior court clerk's duties

(1) The superior court clerk must promptly ~~mail~~ send a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.

(2) The notification must show the date it was ~~mailed~~ sent and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented party.

(3) * * *

(4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5)–(6) * * *

(f) * * *

(g) Civil case information statement

(1) Within 15 days after the superior court clerk ~~mails~~ sends the notification of the filing of the notice of appeal required by (e)(1), the appellant must serve and file in the reviewing court 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.

(2) If the appellant fails to timely file a case information statement under (1), the reviewing court clerk must notify the appellant ~~by mail~~ in writing that the appellant must file the statement within 15 days after the clerk's notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may either impose monetary sanctions or dismiss the appeal. If the appellant fails to file the statement as specified in the notice, the court may impose the sanctions specified in the notice.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c)(2). * * *

Subdivision (e). Under subdivision (e)(2), a notification of the filing of a notice of appeal must show the date that the clerk ~~mailed~~ sent the document. This provision is intended to establish the date when the 20-day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

Subdivision (e)(1) requires the clerk to ~~mail~~ send a notification of the filing of the notice of appeal to the appellant's attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows the appellant's attorney or the appellant to track the running of the 20-day extension of time to file a cross-appeal under rule 8.108(e).

Rule 8.104. Time to appeal

(a) Normal time

(1) Unless a statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, showing the date either was served;

(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(C) * * *

(2) * * *

(3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a file~~d-stamped~~endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b)–(e) * * *

Rule 8.108. Extending the time to appeal

(a)–(e) * * *

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 90 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment, or a filed ~~-stamped~~endorsed copy of the judgment, showing the date either was served;

(2) 90 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(3) * * *

(g)–(h) * * *

Rule 8.112. Petition for writ of supersedeas

(a) Petition

(1)–(3) * * *

(4) If the record has not been filed in the reviewing court:

(A)–(B) * * *

(C) The documents listed in (B) must comply with the following requirements:

(i) If filed in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) If filed in paper form, they must be index-tabbed by number or letter, and

(iii) They must begin with a table of contents listing each document by its title and its index ~~-tab~~ number or letter.

(5) * * *

(b)–(d) * * *

Rule 8.123. Record of administrative proceedings

(a)–(b) * * *

(c) Transmittal to the reviewing court

Except as provided in (d), if any administrative record is designated by a party, the superior court clerk must transmit the original administrative record, or electronic administrative record, with any clerk's or reporter's transcript sent to the reviewing court under rule 8.150. If the appellant has elected under rule 8.121 to use neither a clerk's transcript nor a reporter's transcript, the superior court clerk must transmit any administrative record designated by a party to the reviewing court no later than 45 days after the respondent files a designation under (b)(2) or the time for filing it expires, whichever first occurs.

(d)–(e) * * *

Rule 8.124. Appendixes

(a)–(b) * * *

(c) Document or exhibit held by other party

If a party preparing an appendix wants it to contain a copy of a document or an exhibit in the possession of another party:

(1)–(2) * * *

(3) If the party possessing the document or exhibit sends it to the requesting party non-electronically, that party must copy and return it to the possessing party within 10 days after receiving it.

(4) * * *

(5) On request, the reviewing court may return a document or an exhibit to the party that sent it non-electronically. When the remittitur issues, the reviewing court must return all documents or exhibits to the party that sent them, if they were sent non-electronically.

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144(~~a~~b)–(~~c~~d) for a clerk's transcript.

(2) * * *

(3) An appendix must not be bound or transmitted electronically as one document with a brief.

**(e)–(g) * * *

Rule 8.128. Superior court file instead of clerk's transcript

(a) * * *

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must send ~~mail~~ the appellant an estimate of the cost to prepare the file, including the cost of sending the index under (3). The appellant must deposit the cost or file an application for, or an order granting, a waiver of the cost within 10 days after the clerk sends ~~mails~~ the estimate.

(2)–(4) * * *

Rule 8.130. Reporter's transcript

(a) * * *

(b) Deposit or substitute for cost of transcript

(1) * * *

(2) If the reporter believes the deposit is inadequate, within 15 days after the clerk ~~mails~~ sends the notice under (d)(1) the reporter may file with the clerk and send ~~mail~~ to the designating party an estimate of the transcript's total cost at the statutory rate, showing the additional deposit required. The party must deposit the additional sum within 10 days after the reporter ~~mails~~ sends the estimate.

(3) * * *

(c) * * *

(d) Superior court clerk's duties

(1) * * *

(2) The clerk must promptly ~~mail~~ send the reporter notice of the designation and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent ~~mailed~~ to the reporter, when the court receives:

(A)–(C) * * *

(3) If the appellant does not present the deposit under (b)(1) or a substitute under (b)(3) with its notice of designation or does not present an additional deposit required under (b)(2):

(A) The clerk must promptly notify the appellant in writing ~~by mail~~ that, within 15 days after the notice is sent ~~mailed~~, the appellant must take one of the following actions or the court may dismiss the appeal:

(i)–(v) * * *

(B) * * *

.

(4)–(5) * * *

**(e) * * *

(f) Filing the transcript; copies; payment

(1) Within 30 days after notice is ~~mailed~~ sent under (d)(2), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

(2)–(4) * * *

**(g) * * *

(h) Agreed or settled statement when proceedings cannot be transcribed

(1) If any portion of the designated proceedings cannot be transcribed, the superior court clerk must so notify the designating party in writing ~~by mail~~; the notice must show the date it was sent ~~mailed~~. The party may then substitute an agreed or settled statement for that portion of the designated proceedings by complying with either (A) or (B):

(A) Within 10 days after the notice is sent ~~mailed~~, the party may file in superior court, under rule 8.134, an agreed statement or a stipulation that the parties are attempting to agree on a statement. If the party files a stipulation, within 30 days thereafter the party must file the agreed statement, move to use a settled statement under rule 8.137, or proceed without such a statement; or

(B) Within 10 days after the notice is sent ~~mailed~~, the party may move in superior court to use a settled statement. If the court grants the motion, the statement must be served, filed, and settled as rule 8.137 provides, but the order granting the motion must fix the times for doing so.

(2)–(3) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c). * * *

Subdivision (d). Under subdivision (d)(2), the clerk's notice to the reporter must show the date on which the clerk sent ~~mailed~~ the notice. This provision is intended to establish the date when the period for preparing the reporter's transcript under subdivision (f)(1) begins to run.

Subdivision (e). * * *

Subdivision (f). * * *

Rule 8.137. Settled statement

(a) Motion to use settled statement

(1)–(2) * * *

(3) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk sends ~~mails~~, or a party serves, the order of denial.

(b) Time to file; contents of statement

(1) Within 30 days after the superior court clerk sends ~~mails~~, or a party serves, an order granting a motion to use a settled statement, the appellant must serve and file in superior court a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.

(2)–(5) * * *

(c) * * *

Rule 8.140. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party in writing ~~by mail~~ that it must do the act specified in the notice within 15 days after the notice is sent ~~mailed~~, and that if it fails to comply, the reviewing court may impose one of the following sanctions:

(1)–(2) * * *

(b)–(c) * * *

Rule 8.144. Form of the record

(a) Paper and format

(1) In the clerk's and reporter's transcripts:

(A) All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight;

(B)–(D) * * *

(E) The margin must be at least 1¼ inches from the left edge ~~on the bound side of the page~~.

(2) If filed in paper form, in the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1¼ inches on each edge.

(3) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

(4) The clerk's and reporter's transcripts must comply with rules 8.45–8.47 relating to sealed and confidential records.

(b) Indexes

Except as provided in rule 8.45, at the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2)–(3) * * *

(d)–(f) * * *

Advisory Committee Comment

Subdivisions (a) and (b). Subdivisions (a)(4) and (b)~~(1)~~ refer to special requirements concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special requirements regarding references to sealed and confidential records in the alphabetical and chronological indexes to clerk's and reporter's transcripts.

Rule 8.147. Record in multiple or later appeals in same case

(a) * * *

(b) Later appeal

In an appeal in which the parties are using either a clerk's transcript under rule 8.122 or a reporter's transcript under rule 8.130:

(1) A party wanting to incorporate by reference all or parts of a record in a prior appeal in the same case must specify those parts in its designation of the record.

(A) The prior appeal must be identified by its case name and number. If only part of a record is being incorporated by reference, that part must be identified by citation to the volume, where applicable, and page numbers of the record where it appears and either the title of the document or documents or the date of the oral proceedings to be incorporated. The parts of any record incorporated by reference must be identified in a separate section at the end of the designation of the record.

(B)–(C) * * *

(2) * * *

Rule 8.150. Filing the record

(a) * * *

(b) Reviewing court clerk's duties

On receiving the record, the reviewing court clerk must promptly file the original and send ~~mail~~ notice of the filing date to the parties.

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight.

(2) Any conventional font ~~typeface~~ may be used. The font ~~typeface~~ may be either proportionally spaced or monospaced.

(3) The font ~~type~~ style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the font ~~type~~ size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5)–(7) * * *

(8) If filed in paper form, the brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) * * *

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b). ~~and, in~~ In addition to providing the cover information required by rule 8.40(c), the cover must state:

(A)–(D) * * *

(11) * * *

(c)–(e) * * *

Advisory Committee Comment

Subdivision (b). The first sentence of subdivision (b)(1) confirms that any method of reproduction is acceptable provided it results in a clear black image of letter quality. The provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *font* ~~*typeface,*~~ *font* ~~*type*~~ *style,* and *font*~~*type*~~ *size* (see also subd. (b)(11)(C)). ~~The first two terms are defined in *The Chicago Manual of Style* (15th ed., 2003) p. 839. Note that computer programs often refer to typeface as "font."~~

Subdivision (b)(2) allows the use of any conventional font ~~typeface —~~ e.g., Times New Roman, Courier, Arial, Helvetica, etc.—and permits the font ~~typeface~~ to be either proportionally spaced or monospaced.

Subdivision (b)(3) requires the font ~~type~~ style to be roman, but permits the use of italics, boldface, or underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions are derived from FRAP 32(a)(6).

Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief writer.

See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation form of the *California Style Manual* (4th ed., 2000).

Subdivision (c). * * *

Subdivision (d). * * *

Subdivision (e). * * *

Rule 8.208. Certificate of Interested Entities or Persons

(a)–(c) * * *

(d) Serving and filing a certificate

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 15 days after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(4) * * *

(e)–(f) * * *

Rule 8.212. Service and filing of briefs * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). Extensions of briefing time are limited by statute in some cases. For example, under Public Resources Code section 21167.6(h) in cases under section 21167, extensions are limited to one 30-day extension for the opening brief and one 30-day extension for "preparation of responding brief."

Under rule 8.42, the original signature of only one party is required on the stipulation filed with the court; the signatures of the other parties may be in the form of copies of the signed signature page of the document. Signatures on electronically filed documents are subject to the requirements of rule 8.77.

Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 8.50 rather than by motion under rule 8.54.

Subdivision (c). * * *

Rule 8.220. Failure to file a brief

(a) Notice to file

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief must be filed within 15 days after the notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(1)–(2) * * *

(b)–(d) * * *

Rule 8.224. Transmitting exhibits

(a) * * *

(b) Transmittal

Unless the reviewing court orders otherwise, within 20 days after the first notice under (a) is filed:

(1) The superior court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the reviewing court ~~with two~~

~~copies of a list of the exhibits sent~~. The superior court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the superior court clerk must send two copies of the list. If the reviewing court clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the superior court clerk.

(2) Any party in possession of designated exhibits returned by the superior court must put them into numerical or alphabetical order and send them to the reviewing court ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the reviewing court clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(c) * * *

(d) Request and return by reviewing court

At any time the reviewing court may direct the superior court or a party to send it an exhibit. On request, the reviewing court may return an exhibit to the superior court or to the party that sent it. When the remittitur issues, the reviewing court must return all exhibits not transmitted electronically to the superior court or to the party that sent them.

Rule 8.248. Prehearing conference

(a)–(c) * * *

(d) Time to file brief

The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of Appeal sends ~~mails~~ notice of the conference until the date it sends ~~mails~~ notice that the conference is concluded.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (d). If a prehearing conference is ordered before the due date of the appellant's opening brief, the time to file the brief is not *extended* but *tolled,* in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] sends ~~mails~~ notice that the conference is *concluded"* (italics added). This provision is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of Appeal clerk to send ~~mail~~ the parties a notice that the conference is concluded. This provision is intended to facilitate the calculation of the new briefing due dates.

Rule 8.252. Judicial notice; findings and evidence on appeal

(a)–(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer the original, a certified copy, ~~or~~ a photocopy, or, in a case in which electronic filing is permitted, an electronic copy. The court may admit the document in evidence without a hearing.

Rule 8.264. Filing, finality, and modification of decision

(a)–(c) * * *

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files ~~two copies~~ a copy of a consent in the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed ~~stamped~~endorsed copy of the consent to the superior court with the remittitur.

Rule 8.272. Remittitur

(a) * * *

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) * * *

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur and a filed ~~stamped~~endorsed copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) * * *

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a filed ~~-stamped~~endorsed copy of the Supreme Court opinion or order.

(c)–(d) * * *

Rule 8.278. Costs on appeal

(a)–(d) * * *

Advisory Committee Comment

This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493 for provisions addressing costs in writ proceedings.

Subdivision (c). * * *

Subdivision (d). Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

Subdivision (d)(1)(D), allowing recovery of the "costs to notarize, serve, mail, and file the record, briefs, and other papers," is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.

"Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

Rule 8.304. Filing the appeal; certificate of probable cause

(a)–(b) * * *

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly send ~~mail~~ a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not send ~~mail~~ the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was sent ~~mailed~~, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented defendant.

(3)–(4) * * *

(5) The sending ~~mailing~~ of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Rule 8.308. Time to appeal

**(a) * * *

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) * * *

(d) Reporter's transcript

(1)–(3) * * *

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and combined ~~bound~~ with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(5) * * *

(e)–(h) * * *

Rule 8.344. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 8.134, but the appellant must file an original and, if the statement is filed in paper form, three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 8.346. Settled statement

(a)–(b) * * *

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and, if the statement is filed in paper form, three copies of the settled statement.

Rule 8.360. Briefs by parties and amici curiae

(a)–(b) * * *

(c) Time to file

(1)–(4) * * *

(5) If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief must be filed within 30 days after the notice is sent ~~mailed~~, and that failure to comply may result in one of the following sanctions:

(A)–(B) * * *

(6) * * *

(d)–(f) * * *

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a)–(b) * * *

(c) Number of copies

In the Court of Appeal, the petitioner must file the original of the petition under (a) and one set of any supporting documents. In the Supreme Court the petitioner must file an

original and, if the petition is filed in paper form, 10 copies of the petition and an original and, if the document is filed in paper form, 2 copies of any supporting document accompanying the petition unless the court orders otherwise.

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

(1)–(2) * * *

(3) The petition and any memorandum must support any reference to a matter in the supporting documents by a citation to its index number or letter ~~tab~~ and page.

(b)–(d) * * *

Rule 8.385. Proceedings after the petition is filed

(a) * * *

(b) Informal response

(1) * * *

(2) The response must be served and filed within 15 days or as the court specifies. If the petitioner is not represented by counsel in the habeas corpus proceeding, one copy of the informal response and any supporting documents must be served on the petitioner. If the petitioner is represented by counsel in the habeas corpus proceeding, ~~two copies~~ the response must be served on the petitioner's counsel. If the response is served in paper form, two copies must be served on the petitioner's counsel. If the petitioner is represented by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must also be served on the applicable appellate project.

(3) * * *

(c)–(f) * * *

Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court

(a) * * *

(b) Serving and filing return

(1)–(2) * * *

(3) ~~Two copies of the~~ The return and any supporting documents must be served on the petitioner's counsel~~, and if~~. If the return is served in paper form, two copies must be served on the petitioner's counsel. If the petitioner is represented for the habeas corpus proceeding by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must be served on the applicable appellate project.

(c) Form and content of return

(1) * * *

(2) Rule 8.486(c)(1) and (2) govern the form of any supporting documents accompanying the return. The return must support any reference to a matter in the supporting documents by a citation to its index ~~tab~~ number or letter and page.

(3) * * *

(d)–(g) * * *

Rule 8.405. Filing the appeal

(a) * * *

(b) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) ~~Mail~~ Send a notification of the filing to:

(i)–(vi) * * *

(B) * * *

(2) The notification must show the name of the appellant, the date it was ~~mailed~~ sent, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented party.

(3)–(4) * * *

(5) The sending ~~mailing~~ of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at ~~*www.courtinfo.ca.gov/forms*~~ www.courts.ca.gov/forms.

Rule 8.406. Time to appeal

(a) * * *

(b) Cross-appeal

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 20 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.411. Abandoning the appeal

(a)–(b) * * *

(c) Clerk's duties

(1) If the abandonment is filed in the superior court, the clerk must immediately send ~~mail~~ a notification of the abandonment to:

(A)–(C) * * *

(2) If the abandonment is filed in the reviewing court and the reviewing court orders the appeal dismissed, the clerk must immediately send ~~mail~~ a notification of the order of dismissal to every party.

Rule 8.412. Briefs by parties and amici curiae

(a)–(c) * * *

(d) Failure to file a brief

(1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, in writing ~~by mail~~ that the brief must be filed within 30 days after the notice is sent ~~mailed~~ and that failure to comply may result in one of the following sanctions:

(A)–(B) * * *

(2)–(3) * * *

**(e) * * *

Rule 8.474. Procedures and data

**(a) * * *

(b) Data

The clerks of the superior courts and the reviewing courts must ~~the~~ provide the data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

**(a)–(b) * * *

(c) Superior court clerk's duties

After entering the judgment, the clerk must immediately:

(1) * * *

(2) Send ~~Mail~~ certified copies of the judgment to the Court of Appeal and the Attorney General.

**(d)–(f) * * *

(g) Confidential material

(1) * * *

(2) Material under (1) must be sent to the reviewing court in a secure manner that preserves its confidentiality. If the material is in paper format, it must be sent to the reviewing court in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT A COURT ORDER."

(h)–(i) * * *

Rule 8.486. Petitions

(a)–(b) * * *

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) If submitted in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) If submitted in paper form, t~~T~~hey must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than 5 days.

(3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the Supreme Court. Rule 8.44(b) governs the number of supporting documents to be filed in the Court of Appeal.

(d)–(e) * * *

Rule 8.488. Certificate of Interested Entities or Persons

(a)–(c) * * *

(d) Failure to file a certificate

(1) If a party fails to file a certificate as required under (b) and (c), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 10 days after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(2) * * *

Rule 8.495. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1)–(2) * * *

(3) The petition must be accompanied by proof of service of ~~two copies~~ a copy of the petition on the Secretary of the Workers' Compensation Appeals Board in San Francisco, or two copies if the petition is served in paper form, and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board's local district office is not required.

(b) * * *

(c) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

Rule 8.496. Review of Public Utilities Commission cases

(a)–(b) * * *

(c) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party ~~by mail~~ in writing that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

(a)–(c) * * *

(d) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party ~~by mail~~ in writing that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

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

(a) * * *

(b) Contents of a petition

(1)–(3) * * *

(4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion showing its filing date and a copy of any order modifying the opinion or directing its publication must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

(5) If the petition seeks review of a Court of Appeal order, a copy of the order showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

(6)–(7) * * *

(c)–(e) * * *

Rule 8.512. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court.

If the petition is denied, the Supreme Court clerk must promptly return the record to the Court of Appeal if the record was transmitted in paper form.

(b)–(d) * * *

Rule 8.540. Remittitur

(a) * * *

(b) Clerk's duties

(1) * * *

(2) After review of a Court of Appeal decision, the Supreme Court clerk must address the remittitur to the Court of Appeal and send that court ~~two copies~~ a copy of the remittitur and ~~two~~ a filed~~-stamped~~endorsed ~~copies~~ copy of the Supreme Court opinion or order. The clerk must send two copies of any document sent in paper form.

(3) After a decision in an appeal from a judgment of death or in a cause transferred to the court under rule 8.552, the clerk must send the remittitur and a filed~~-stamped~~endorsed copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) * * *

(c) * * *

Rule 8.548. Decision on request of a court of another jurisdiction

(a)–(c) * * *

(d) Serving and filing the request

The requesting court clerk must file an original, and if the request is filed in paper form, 10 copies, of the request in the Supreme Court with a certificate of service on the parties.

(e) * * *

(f) Proceedings in the Supreme Court

(1)–(5) * * *

(6) After filing the opinion, the clerk must promptly send filed~~-stamped~~endorsed copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

(7) * * *

Rule 8.610. Contents and form of the record

(a)–(b) * * *

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 8.332. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together if filed in paper form, must be included in the record sent to the Supreme Court.

(d) * * *

Rule 8.616. Preparing the trial record

(a) * * *

(b) Reporter's duties

(1) * * *

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and ~~bound~~ combined with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(3) * * *

(c)–(d) * * *

Rule 8.630. Briefs by parties and amicus curiae

(a)–(f) * * *

(g) Service

(1) * * *

(2) The Attorney General must serve two paper copies or one electronic copy of the respondent's brief on each defendant's appellate counsel and, for each defendant sentenced to death, one copy on the California Appellate Project in San Francisco.

(3) * * *

**(h) * * *

Rule 8.702. Appeals

**(a) * * *

(b) Notice of appeal

(1) *Time to appeal*

The notice of appeal must be served and filed on or before the earlier of:

(A) Five court days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, showing the date either was served; or

(B) Five court days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, accompanied by proof of service.

(2) * * *

(c)–(g) * * *

Rule 8.703. Writ proceedings

(a) * * *

(b) Petition

(1) *Time for filing petition*

A petition for a writ challenging a superior court judgment or order governed by the rules in this chapter must be served and filed on or before the earliest of:

(A) Thirty days after the superior court clerk serves on the party filing the petition a document entitled "Notice of Entry" of judgment or order, or a file~~d-stamped~~endorsed copy of the judgment or order, showing the date either was served; or

(B) Thirty days after the party filing the petition serves or is served by a party with a document entitled "Notice of Entry" of judgment or order, or a file~~d-stamped~~endorsed copy of the judgment or order, accompanied by proof of service.

(2) * * *

Rule 8.800. Application of division and scope of rules

(a) Application

The rules in this division apply to:

(1)–(2) * * *

(b) Scope of rules

The rules in this division apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule ~~8.804~~ 8.803. Definitions

As used in this division, unless the context or subject matter otherwise requires:

(1)–(22) * * *

(23) "Attach" or "attachment" may refer to either physical attachment or electronic attachment, as appropriate.

(24) "Copy" or "copies" may refer to electronic copies, as appropriate.

(25) "Cover" includes the cover page of a document filed electronically.

(26) "Written" and "writing" include electronically created written materials, whether or not those materials are printed on paper.

Rule 8.804. Requirements for signatures on documents

Except as otherwise provided, or required by order of the court, signatures on electronically filed documents must comply with the requirements of rule 8.77.

Rule 8.806. Applications

(a)–(b) * * *

(c) Envelopes

If any party or parties in the case are served in paper form, a~~A~~n application must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to ~~all~~ those parties.

(d) * * *

Rule 8.814. Substituting parties; substituting or withdrawing attorneys

(a)–(b) * * *

(c) Withdrawing attorney

(1) * * *

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address, e-mail address, and telephone number.

(3) * * *

Rule 8.821. Notice of appeal

(a)–(c) * * *

(d) Notification of the appeal

(1) When the notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing of the notice of appeal to the attorney of record for each party and to any unrepresented party. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent and must state the number and title of the case and the date the notice of appeal was filed.

(3) * * *

(4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5) * * *

(e) * * *

Rule 8.822. Time to appeal

(a) Normal time

(1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 30 days after the trial court clerk serves the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, showing the date it was served;

(B) 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(C) * * *

(2) * * *

(3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed ~~-stamped~~endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b)–(d) * * *

Rule 8.823. Extending the time to appeal

(a)–(e) * * *

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 60 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, showing the date either was served;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(3) * * *

(g)–(h) * * *

Rule 8.824. Writ of supersedeas

(a) Petition

(1)–(3) * * *

(4) If the record has not been filed in the reviewing court:

(A)–(B) * * *

(C) The documents listed in (B) must comply with the following requirements:

(i) If filed in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) If filed in paper form, they must be index-tabbed by number or letter; and

(iii) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter.

(5) * * *

(b)–(d) * * *

Rule 8.833. Trial court file instead of clerk's transcript

(a) * * *

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the appellant elects to use a clerk's transcript, the trial court clerk may ~~mail~~ send the appellant a notice indicating that the appellate division for that court has elected by local court rule to use the original trial court file instead of a clerk's transcript and providing the appellant with an estimate of the cost to prepare the file, including the cost of sending the index under (4).

(2) Within 10 days after the clerk ~~mails~~ sends the estimate under (1), the appellant must deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for a waiver of the cost under rule 8.818 or an order granting a waiver of this cost.

(3)–(5) * * *

Rule 8.834. Reporter's transcript

(a) Notice

(1)–(3) * * *

(4) Except when a party deposits a certified transcript of all the designated proceedings under (b)(2)(D) with the notice of designation, the clerk must promptly ~~mail~~ send a copy of each notice to the reporter. The copy must show the date it was ~~mailed~~ sent.

(b) Deposit or substitute for cost of transcript

(1) Within 10 days after the clerk ~~mails~~ sends a notice under (a)(4), the reporter must file the estimate with the clerk—or notify the clerk in writing of the date that he or she notified the appellant directly—of the estimated cost of preparing the reporter's transcript at the statutory rate.

(2) * * *

(3) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(A)–(C) * * *

(D) If the Court Reporters Board provisionally approves the application, the reporter's time to prepare the transcript under (d)(1) begins when the clerk ~~mails~~ sends notice of the provisional approval under (4).

(4) * * *

**(c)–(e) * * *

(f) Notice when proceedings cannot be transcribed

(1) If any portion of the designated proceedings were not reported or cannot be transcribed, the trial court clerk must so notify the designating party ~~by mail~~ in writing; the notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the designating party must file a new election notifying the court whether the party elects to proceed with or without a record of the identified oral proceedings. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) the party elects to use.

(A)–(C) * * *

(3) * * *

Rule 8.835. Record when trial proceedings were officially electronically recorded

(a)–(c) * * *

(d) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant ~~by mail~~ in writing if any portion of the designated proceedings was not officially electronically recorded or cannot be transcribed. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the appellant must file a new election notifying the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the appellant elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use.

(A)–(C) * * *

Rule 8.838. Form of the record

(a) * * *

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2)–(3) * * *

Rule 8.840. Completion and filing of the record

(a) * * * *

(b) Filing the record

When the record is complete, the trial court clerk must promptly send the original to the appellate division and send to the appellant and respondent copies of any certified statement on appeal and any copies of transcripts or official electronic recordings that they have purchased. The appellate division clerk must promptly file the original and ~~mail~~ send notice of the filing date to the parties.

Rule 8.842. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.843. Transmitting exhibits

(a)–(c) * * *

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.852. Notice of appeal

(a) * * *

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and title of the case, the date the notice of appeal was filed, and whether the defendant was represented by appointed counsel.

(3)–(4) * * *

(5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Advisory Committee Comment

Notice of Appeal (Misdemeanor) (form CR-132) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at ~~*www.courtinfo.ca.gov/forms*~~ *www.courts.ca.gov/forms*.

Subdivision (a). The only orders that a defendant can appeal in a misdemeanor case are (1) orders granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

Rule 8.853. Time to appeal

(a) * * *

(b) Cross-appeal

If the defendant or the People timely appeal from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 15 days after the trial court clerk ~~mails~~ sends notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.862. Preparation of clerk's transcript

(a)–(b) * * *

(c) Probation officer's reports

A probation officer's report included in the clerk's transcript under rule 8.861(12)(D) must appear in only the copies of the appellate record that are sent to the reviewing court, to appellate counsel for the People, and to appellate counsel for the defendant who was the subject of the report or to the defendant if he or she is self-represented. If the report is in paper form, it must placed in a sealed envelope. The reviewing court's copy of the report, and if applicable, the envelope, must be ~~placed in a sealed envelope~~ marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—PROBATION OFFICER REPORT."

(d)–(e) * * *

Rule 8.864. Record of oral proceedings

(a) Appellant's election

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from an official electronic recording of the proceedings under rule 8.868(b). If the appellant elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of appellant's notice making this election and the notice of appeal to each court reporter;

(2)–(3) * * *

(b)–(c) * * *

Rule 8.866. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the appellant is the defendant and that the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript.

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was ~~mailed~~ sent.

(C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the appellant must do one of the following:

(i)–(vii) * * *

(D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(vi) * * *

(E) * * *

(b)–(e) * * *

(f) Notice when proceedings were not reported or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the reporter's transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.868. Record when trial proceedings were officially electronically recorded

(a)–(d) * * *

(e) When preparation begins

(1) * * *

(2) If the appellant is the defendant and the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the defendant files the election under rule 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was ~~mailed~~ sent.

(B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the appellant must do one of the following:
(i)–(v) * * *

(C) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(iv) * * *

(D) * * *

(f) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the transcript was not officially electronically recorded under Government Code section 69957 or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified oral proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.870. Exhibits

(a)–(c) * * *

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after the first notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.872. Sending and filing the record in the appellate division

(a)–(b) * * *

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and ~~mail~~ send notice of the filing date to the parties.

Rule 8.874. Failure to procure the record

(a) Notice of default

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the appellate division may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.881. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send a notice to each appellate counsel or unrepresented party giving the dates the briefs are due.

Rule 8.882. Briefs by parties and amici curiae

(a) * * *

(b) Extensions of time

(1) Except as otherwise provided by statute, in a civil case, the parties may extend each period under (a) by up to 30 days by filing one or more stipulations in the appellate division before the brief is due. Stipulations must be signed by and served on all parties. If the stipulation is filed in paper form, the original signature of at least one party must appear on the stipulation filed in the appellate division; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation. If the stipulation is electronically filed, the signatures must comply with the requirements of rule 8.77.

(2)–(4) * * *

(c) Failure to file a brief

(1) If a party in a civil appeal fails to timely file an appellant's opening brief or a respondent's brief, the appellate division clerk must promptly notify the party ~~by mail~~ in writing that the brief must be filed within 15 days after the notice is ~~mailed~~ sent and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(3) If the respondent in a misdemeanor appeal fails to timely file a brief, the appellate division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(4) * * *

**(d)–(e) * * *

Rule 8.883. Contents and form of briefs

**(a)–(b) * * *

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

(2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either proportionally spaced or monospaced.

(3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be smaller than 13-point.

(5)–(8) * * *

(9) If filed in paper form, the brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(10)–(11)

**(d) * * *

Rule 8.888. Finality and modification of decision

(a)–(b) * * *

(c) Consent to increase or decrease in amount of judgment

If an appellate division decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (a), the party serves and files ~~two copies~~ a copy of a consent in the appellate division. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed ~~stamped~~endorsed copy of the consent to the trial court with the remittitur.

Rule 8.890. Remittitur

(a) * * *

(b) Clerk's duties

(1) If an appellate division case is not transferred to the Court of Appeal under rule 8.1000 et seq., the appellate division clerk must:

(A) * * *

(B) Send the remittitur to the trial court with a filed ~~stamped~~endorsed copy of the opinion or order; and

(C) Return to the trial court with the remittitur all original records, exhibits, and documents sent nonelectronically to the appellate division in connection with

the appeal, except any certification for transfer under rule 8.1005, the transcripts or statement on appeal, briefs, and the notice of appeal.

(2) * * *

(c)–(d) * * *

Rule 8.891. Costs and sanctions in civil appeals

(a)–(e) * * *

Advisory Committee Comment

Subdivision (d). "Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

Subdivision (d)(1)(D), allowing recovery of the "costs to notarize, serve, mail, and file the record, briefs, and other papers," is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.

Rule 8.901. Notice of appeal

(a) * * *

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and title of the case, and the date the notice of appeal was filed.

(3)–(4) * * *

(5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Rule 8.902. Time to appeal

(a) * * *

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the trial court clerk ~~mails~~ sends notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.911. Prosecuting attorney's notice regarding the record

If the prosecuting attorney does not want to receive a copy of the record on appeal, within 10 days after the notification of the appeal under rule 8.901(b) is ~~mailed~~ sent to the prosecuting attorney, the prosecuting attorney must serve and file a notice indicating that he or she does not want to receive the record.

Rule 8.915. Record of oral proceedings

(a) Appellant's election

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1)–(2) * * *

(3) A reporter's transcript under rules 8.918–8.920 or a transcript prepared from an official electronic recording of the proceedings under rule 8.917(b). If the appellant elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of appellant's notice making this election and the notice of appeal to each court reporter.

(b)–(c) * * *

Rule 8.917. Record when trial proceedings were officially electronically recorded

(a)–(d) * * *

(e) When preparation begins

(1) * * *

(2) If the appellant is the defendant:

(A) Within 10 days after the date the appellant files the election under rule 8.915(a), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was ~~mailed~~ sent.

(B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the appellant must do one of the following:

(i)–(v) * * *

(C) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(iv) * * *

(D) * * *

(f) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the transcript were not officially electronically recorded under Government Code section 69957 or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.919. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the defendant:

(A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was ~~mailed~~ sent.

(C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the appellant must do one of the following:

(i)–(vii) * * *

(D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(vi) * * *

(E) * * *

**(b)–(e) * * *

(f) Notice when proceedings cannot be transcribed

(1) If any portion of the oral proceedings to be included in the reporter's transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.921. Exhibits

**(a)–(c) * * *

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.922. Sending and filing the record in the appellate division

(a)–(b) * * *

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and ~~mail~~ send notice of the filing date to the parties.

Rule 8.924. Failure to procure the record

(a) Notice of default

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.926. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send, to each appellate counsel or unrepresented party, a notice giving the dates the briefs are due.

Rule 8.927. Briefs

(a) * * *

(b) Failure to file a brief

(1) If the appellant fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 20 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may dismiss the appeal.

(2) If the respondent fails to timely file a brief, the appellate division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within 20 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the court will decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant.

(3) * * *

(c) * * *

Rule 8.928. Contents and form of briefs

(a)–(b) * * *

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

(2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either proportionally spaced or monospaced.

(3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be smaller than 13-point.

(5)–(8) * * *

(9) If filed in paper form, the brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(10)–(11) * * *

**(d) * * *

Rule 8.931. Petitions filed by persons not represented by an attorney

(a)–(b) * * *

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) If submitted in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) If submitted in paper form, they must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) * * *

(3) Unless the court provides otherwise by local rule or order, only one set of ~~any separately bound~~ the supporting documents needs to be filed in support of a petition, an answer, an opposition, or a reply.

(d) * * *

Rule 8.1018. Finality and remittitur

(a)–(b) * * *

(c) When the Court of Appeal issues a decision

If the Court of Appeal issues a decision on a case it has ordered transferred from the appellate division of the superior court, filing, finality, and modification of that decision are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk must address the remittitur to the appellate division and send that court ~~two copies~~ a copy of the remittitur and ~~two file-stamped copies~~ a filed-endorsed copy of the Court of Appeal opinion or order. If the remittitur and opinion are sent in paper format, two copies must be sent. On receipt of the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(d) Documents to be returned

When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the Court of Appeal clerk must return to the appellate division any part of the record sent nonelectronically to the Court of Appeal under rule 8.1007 and any exhibits that were sent nonelectronically.

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Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	AM	See comments on specific provisions below.	See responses to comments below.
2.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	A	DCSS supports modernizing and increasing efficiencies with our justice partners including the proposed technical amendments to address language in the rules that is incompatible with the current statutes and rules governing e-filing, e-service, and e-business processes in general. Overall, the proposed changes meet the business needs of DCSS. See comments on specific provisions below.	DCSS's support is noted.
3.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	Position on proposal: Agree with the proposed changes with the following recommendation noted below.	See responses to comments below.
4.	Law Office of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No specific comment.	No response required.
5.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	AM	CAJ supports this proposal in general, but has the following comments. See comments on specific provisions below.	CAJ's support is noted.
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	NI	See comments on specific provisions below.	See responses to comments below.

 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				
	Commentator	**Position**	**Comment**	**Committee Response**
7.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	A	No specific comment.	No response required.
8.	Superior Court of Riverside County by Marita Ford	A	No specific comment.	No response required.
9.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	NI	See comments on specific provisions below.	See responses to comments below.
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	See comments on specific provisions below.	See responses to comments below.
11.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committees (CEAC), Joint Rules Subcommittee and Joint Technology Subcommittee	A	The subcommittees agree that the proposed rule changes are necessary to begin facilitating an e-business environment in the trial courts. The subcommittees determined that the proposal will result in additional training, which requires the commitment of staff time and court resources.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's support is noted. The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's comment is noted. To the extent that this rules proposal, as circulated, recommends only technical, non-substantive changes to the rules, ITAC and CSCAC anticipate that training should not be too burdensome for the courts and would be otherwise necessary as courts modernize by adopting e-filing, e-service, and e-business practices already authorized by relevant statutes and rules.

SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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**
			The subcommittees would like to note that it would be helpful if ITAC would, in the future, consider whether filing parties should be required to bookmark electronic exhibits or attachments submitted with electronic documents filed with the courts. See comments on specific provisions below.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's recommendation is noted. It will be considered next year during phase II of the Rules Modernization Project.

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
12.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	This proposal would replace references to "file-stamped" with "filed-endorsed" throughout the rules. CAJ recommends retaining the term "file-stamped." The term "filed-endorsed" is unclear, and does not correspond to the way documents are actually file-stamped by clerks in various California courts, which do not appear to use the terminology "filed-endorsed."	ITAC, CSCAC, and AAC note CAJ's objection. However, they recommend retaining the proposal to change all references to "file-stamped" to "filed-endorsed" because the term "filed-endorsed" is used in relation to both paper and electronic documents and is generally understood and used by the courts, including those that have not converted to a paperless case management system.
13.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	The Committee notes that "electronic form" and "electronic format" are used in the appellate rules as well as other rules. The Committee believes that more experience by both litigants and the courts may be needed before those terms are defined, but recommends that consideration be given to defining those terms sooner rather than later.	ITAC and CSCAC note the CAC's recommendation to define electronic form and formatting in the trial and appellate rules in the future. This recommendation will be considered next year during phase II of the Rules Modernization Project.

SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
14.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	Please note that many of the comments on SPR15-16 are "global": • Consistency with the use of singular v. plural – i.e., we prefer "party" to "parties" • Over use of the word "also" • Consistency when identifying JC forms – i.e., we prefer stating "form FL-xxx" v. "FL-xxx" • Use of old language "child visitation" or "visitation" v. new language "parenting time" [*General comment made in response to three Invitations to Comment, including SPR15-32]	ITAC and CSCAC decline to pursue the general suggestions regarding the use of the words "also" and "parties," which appear to be directed beyond the rules covered in this proposal. The comments referring to Judicial Council forms and to the terms "visitation" and "parenting time" do not apply to SPR15-32.

	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
15.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	That said, DCSS would encourage the Judicial Council to review California Rules of Court, Rule 2.257 as part of its ongoing modernization effort. The current retention requirements of Rule 2.257 pose three problems, two of which may require statutory changes to California Code of Civil Procedure section 1010.6. First, the absence of directions regarding the amount of time original signatures must be retained encourages divergent practices. Second, the rule imposes burdens on individuals in excess of that imposed on the court since the court need not maintain originals indefinitely under Government Code section 68152. Third, the rule does not provide parties with the option to electronically store signed documents as the	ITAC and CSAC decline to pursue DCSS's recommendation; it is outside the scope of this rules proposal, as circulated, because it involves substantive, non-technical changes to the rules. It may be considered by the committees during phase II of the Rules Modernization Project. ITAC and CSCAC agree that changing the retention requirements in rule 2.257(a) may require amending Code of Civil Procedure section 1010.6(b)(2)(B), which requires maintaining "the printed form of the document bearing the original signatures" where any electronically filed

	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
		court is permitted to do under Government Code section 68150.	documents are signed under penalty of perjury.
16.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page In addition to the proposed rule 2.111(3) change, the Court respectfully requests that the Judicial Council amend California Rule of Court 2.111(1) by deleting the words "if available" in the first sentence and replacing them with "if available and / or required if submitting electronically". Thus, the sentence would read as follows: "In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address (if available and / or required if submitting electronically), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person." The Court believes that this change would result in the Court's ability to capture accurate data for eService because it would require every e-filer to provide the Court with its email address. Currently, there is no requirement to have email addresses placed on the document. Further, there is no mechanism to have email addresses placed on the document. Modifying the language in this rule falls in line with the Judicial Council's objective of modernizing rules to facilitate e-business practices as well as e-filing.	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page ITAC and CSCAC decline to pursue this recommendation. Under rule 2.111(1), an e-mail address may be provided on the first page, if available, as a convenience to the court and parties. However, this email address is not necessarily the electronic service address. Parties consent to permissive electronic service by filing form EFS-500, *Consent to Electronic Service and Notice of Electronic Service Address*, which requires that the party specify his or her electronic service address. In addition, rule 2.256(a)(4) requires parties to provide one or more electronic service addresses, in the manner specified by the court, at which the filer agrees to accept service. So courts already have the ability to require parties to provide their electronic service addresses.

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	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
17.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rule 2.3(3) CAJ opposes removing references to "typewritten" and "typewriting" from rule 2.3(3), rule 2.104, and 2.150, and the word "typewriter" from rule 2.150. Typewriters provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors. CAJ also recommends that "printing on a word processor" be changed in this rule to "printing from a word processor." As amended, rule 2.3(3) would state: "Written," "writing," "typewritten," and "typewriting" include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor. Rule 2.105 CAJ recommends that the rule be edited to state: "The font must be essentially equivalent in terms of its simplicity and legibility to Courier, Times New Roman, or Arial."	Rule 2.3(3) ITAC and CSCAC agree. Both of CAJ's suggestions are incorporated into the proposed amendment of rule 2.3(3). Rule 2.105 ITAC and CSCAC decline to follow this suggested language as it is outside the scope of this rules proposal, as circulated. They note that the language in rule 2.105 specifying that the font be "essentially equivalent" was included to allow for use of Helvetica, as well as Arial, which are virtually identical, but named differently for proprietary reasons.

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

	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
18.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	The wording of the proposed modification to California Rule of Court, rule 3.1300(c) should track the language of rules 2.253(b)(7) and 2.259(c) to refer to the document as being "received by the court" instead of "filed." In addition, do all three of these rules contradict the language of Code of Civil Procedure section 1010.6 subdivision (b)(3)? "Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier." (Id.) The statute does not authorize a local court rule to allow a later filing.	This rules proposal, as circulated, does not contemplate modifying subdivision (c) of rule 3.1300. However, ITAC and CSCAC agree that the proposed language in subdivision (e) of rule 3.1300 should be modified by replacing "filed" with "received by the court." Code of Civil Procedure section 1010.6(b)(3) governs for cases involving *permissive* electronic filing. Under subdivisions (f) and (g) of section 1010.6, *mandatory* electronic filing rules are exempt from complying with subdivision (b)(3). ITAC and CSCAC recommend additional language to clarify that the proposed amendment to rule 3.1300(e) only applies to mandatory electronic filing. To address the concerns of Ms. Brandes-Gibbs, the proposed amendment to rule 3.1300(e) would be revised as follows: (e). "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."

19.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rule 3.1302 As proposed, this rule would create an unnecessary procedure for a clerk to "return" a digital copy of lodged material. The rule should be edited to state: "Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. After determination of the matter, the clerk may mail the material back to the party lodging it. If the material was lodged electronically, the clerk may delete it." Rule 3.1304 CAJ recommends that this rule be edited to state: "The clerk must post both on the court's website and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing."	Rule 3.1302 ITAC and CSCAC decline to pursue CAJ's recommendation at this time. The group foresees that potential issues may arise by instructing clerks only to delete the materials. Having clerks return the materials would provide the parties with notice. The committees will give further consideration to this rule during phase II of the Rules Modernization Project. Rule 3.1304 ITAC and CSCAC decline to pursue this recommendation because it would narrow the scope of the proposed rule amendment. By requiring courts to post the schedules "electronically," the proposed amendment is intended to encompass posting the schedules not only on court websites, but also by other electronic means.
20.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	We would recommend not encouraging inconsistency throughout the State. [*Comment provided in response to proposed amendment to rule 3.1300(e): "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day."]	ITAC and CSCAC decline to pursue this recommendation at this time because it falls outside of the scope of this rules proposal, as circulated. The proposed amendment to rule 3.1300(e) is a technical, non-substantive amendment that brings this rule into line with rule 2.259(c). The committees may consider the court's suggestion during phase II of the Rules Modernization Project.

21.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	Our court objects to the amendment that seeks to limit application of the tabbing requirement contained in California Rule of Court 3.1110 (f) to motions filed in paper unless a similar requirement can be added that would apply bookmarking, or something similar, to electronically filed documents. Our court utilizes that rule to require litigants to bookmark their e-file motions, which is the equivalent to tabbing, so that documents filed with a motion are able to be located easily. We have found without the ability to require bookmarking to locate documents and exhibits filed within a motion, attempting to navigate a 100+ page summary judgment filing or anything similar thereto can be almost impossible. We recommend language be added to subsection (f) of the rule that states: "For motions filed electronically, court's may adopt, via there E-file procedures, a requirement that exhibits be bookmarked or similarly identified in place of physically tabbing the documents."	ITAC and CSCAC note the court's objection and agree that it is prudent to wait until phase II to amend rule 3.1110(f). Postponing this amendment for further consideration during phase II will allow the court to continue relying on this rule in requiring that parties bookmark electronic documents. The court's specific recommendation for an electronic bookmarking rule will be considered next year during phase II of the Rules Modernization Project.
22.	TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee	<u>Suggested modification</u> The subcommittees propose one amendment to the proposal. Given the extensive nature of the changes in this proposal, the subcommittee members solicited input from a number of court executive officers whose courts could be impacted by the proposed changes. This input is a contributing factor to the modification that is proposed here. The subcommittees recommend that the new provisions contained in Rule 3.1300(e) should read as follows (see highlighted text): **(e) Computation of time**	<u>Suggested modification</u> ITAC and CSCAC agree that the proposed amendment to rule 3.1300(e) should be revised to clarify that electronically filed papers are initially "received," not "filed." As discussed above in response to Ms. Brandes-Gibbs comment, the proposed amendment has been changed to track the language in rule 2.259(c). ITAC and CSCAC decline the suggested language as unnecessary. The proposed amendment to rule 3.1300(e) cross-references rule 2.259(c), which provides in relevant part: "This provision concerns only the effective date of filing. Any document that is electronically filed must be processed and satisfy

		A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day if, after review by the clerk, it is accepted for filing.	all other legal filing requirements to be filed as an official court record." **(e) Computation of time** A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."

	Title Eight—Appellate Rules		
	Commentator	**Comment**	**Committee Response**
23	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rules 8.122, 8.144 and 8.336, and 8.838 CAJ urges consideration regarding the potential impact of these proposed changes on indigent appellate litigants, including, in particular, incarcerated appellants and individuals who do not have access to computers.	ITAC and AAC agree with CAJ regarding the importance of considering the potential impact on indigent litigants of authorizing use of a trial court record in electronic form. Where the appellate rules authorize the appellate courts to require parties to file or serve documents electronically, they include protections for self-represented litigants. (See Cal. Rules of Court, rule 8.73(a)(2)(A).) The committees agree that, where express authorization for the record to be in electronic form is included in the rules, consideration should be given to including include similar protections. The amendments expressly authorizing use of a record in electronic form have been withdrawn from this rules proposal. ITAC and

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	Title Eight—Appellate Rules		
	Commentator	**Comment**	**Committee Response**
			AAC may consider amendments to these rules, including protections for self-represented litigants, during phase II of the Rules Modernization Project. While this process continues, those appellate courts that accept part or all of the record in electronic form will be able to continue their practices, as they have under the existing rules. However, ITAC and AAC do not propose modifying those parts of the proposed amendments to rules 8.144, 8.336, and 8.838 that clarify application of those rules to documents in electronic format.

Item number: 32

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/8/15

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Forms: Miscellaneous Technical Changes

Committee or other entity submitting the proposal:
Judicial Council staff

Staff contact (name, phone and e-mail): Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:

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

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 27, 2015

Title
Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rule 3.35; and revise forms CH-700, CH-710, CH-720, CR-132, CR-165, DV-150, JV-100, JV-110, WG-002, and WG-030

Recommended by
Judicial Council staff
Susan R. McMullan, Senior Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1,2 016

Date of Report
July 30, 2015

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 a rule of the California Rules of Court and Judicial Council 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, 2016:

1. Amend rule 3.35(b) to correct a reference from “rules 5.70 and 5.71” to “5.425”.

2. Revise forms CH-700, CH-710, and CH-720 to reflect an amendment to Code of Civil Procedure section 527.6(n) proposed in AB 1081. Subdivision (n) currently provides:

(n) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

The proposed amendment would bring subdivision (n) in line with subdivision (j)(1), which raised the maximum duration of a renewed civil harassment protective order from three years to five. Should the Legislature not pass or the Governor not sign AB 1081, these changes would not go forward.

3. Revise form CR-132, page 2, "Reminder", to correct a reference from "8.835(b)" to "8.853".

4. Revise form CR-165, "Notice of Termination of Protective Order in Criminal Proceeding (CLETS)," to remove the word "CLETS" from the title of the form, and to add the word "Cancel" to the parenthetical in the form's footer to read "(CLETS-CANCEL)," as requested by the Department of Justice. These revisions will facilitate accuracy in coding courts' termination of criminal protective orders when those orders are entered into the California Law Enforcement Telecommunications System (CLETS) background check database. The revision would also make the format of form CR-165's footer consistent with proposed form DV-400, "Findings and Order to Terminate Restraining Order After Hearing."

5. Revise form DV-150 to eliminate all references to "therapeutic visitation providers," to conform with Family Code section 3200.5. Requirements recently enacted by Family Code section 3200.5, which governs supervised visitation, recognize only two types of supervised visitation providers: nonprofessional or professional. The Judicial Council, effective January 1, 2015, approved revisions to standard 5.20 of the California Standards of Judicial Administration, to conform to these requirements To ensure that form DV-150is consistent with both section 3200.5 and standard 5.20, item 5.c. on this form, which references "therapeutic" as a type of provider, has been eliminated. A similar change was made to form FL-341(A) effective January 1, 2015, to delete the option to order therapeutic visitation.

6. Revise forms JV-100 and JV-110 to allow for auto-text to be programmed rather than requiring manual entry of one of the checkboxes on both forms. Effective June 20, 2014, Welfare and Institutions Code section 300 was amended to add a new subsection (b)(2) and the previous language in (b) was renumbered as (b)(1) (see Senate Bill 855 [Stats. 2014, ch 29]). Forms JV-100 and JV-110 are alternative petition forms to initiate a juvenile dependency proceeding and contain checkboxes for each applicable subdivision—on form JV-100, under item a, and on form JV-110 under item b. Most counties use the Child Welfare Services/Case Management System (CMS/CWS) to complete the petitions, and staff for CMS/CWS requested that these current checkboxes be split into b(1) and b(2) on both forms to correspond with the statutory change and allow for auto-text to be programmed rather than requiring manual entry.

7. Revise forms WG-002 and WG-030 to update the table on page 2 to reflect the new state minimum wage of $10.00, effective January 1, 2016; This change in minimum wage will change the maximum amount of a judgment debtor's earnings that may be garnished under an earning withholding order. WG-002 and WG-030 include instructions to employers describing the maximum amounts that may be garnished. The forms should be amended so that they will describe the correct amounts to be garnished based on the increased minimum wage.

Copies of the revised rule and forms are attached at pages 4–21.

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. Rule 3.35 at page 4;
2. Forms CH-700, CH-710, CH-720, CR-132, CR-165, DV-150, JV-100, JV-110, WG-002, and WG-030 at pages 5–21

Rule 3.35 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 3.35. Definition of limited scope representation; application of rules

(a) * * *

(b) Application

Rules 3.35 through 3.37 apply to limited scope representation in civil cases, except in family law cases. Rule~~s 5.70 and 5.71~~ 5.425 ~~apply~~ applies to limited scope representation in family law cases.

(c) * * *

CH-700 Request to Renew Restraining Order

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Protected Person

a. Your Full Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Restrained Person

Full Name: _____

Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the *Civil Harassment Restraining Order After Hearing* (form CH-130). A copy of the order is attached.

a. The order ends on *(date):* _____

b. ☐ This is my first request to renew the order.

☐ The order has been renewed _____ times.

c. I want the order to be renewed for ☐ five years ☐ other *(specify):* _____

d. I ask the court to renew the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3d—Reasons to Renew Order" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

This is not a Court Order.

CH-710 Notice of Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

1 Protected Person

a. Your Full Name:

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):*

Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Restrained Person

Full Name: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

To the Restrained Person

3 Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect until the end of the hearing.

Name and address of court if different from above:

Hearing Date →
Date: _____ Time: _____
Dept.: _____ Room: _____

At the hearing, the judge can renew the current restraining order for up to another five years. You *must* continue to obey the current restraining order until the hearing. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out form CH-720, *Response to Request to Renew Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the protected person at the address in 1 at least _____ days before the hearing. Also file form CH-250, *Proof of Service of Response by Mail, w*ith the court before the hearing.

This is a Court Order.

Case Number:

To the Protected Person:

4 Service and Response

Someone age 18 or older**—not you or anyone else protected by the restraining order—**must personally serve (give) a copy of the following forms on the restrained person at least _____ days before the hearing.

- CH-700, *Request to Renew Restraining Order;*
- CH-710, *Notice of Hearing to Renew Restraining Order* (this form);
- CH-720, *Response to Request to Renew Restraining Order* (blank copy);
- CH-130, the current *Civil Harassment Restraining Order After Hearing* for which renewal is requested.

After the restrained person has been served, file form CH-200, *Proof of Personal Service,* with the court clerk. For help with service, read form CH-200-INFO, *What Is "Proof of Personal Service"?*

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

This is a Court Order.

CH-720 Response to Request to Renew Restraining Order

Clerk stamps date here when form is filed.

Use this form to respond to the *Request to Renew Restraining Order* (Form CH-700)

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not the restrained person**—serve the protected person by mail with a copy of this form and any attached pages. *(Use form CH-250,* Proof of Service of Response by Mail*.)*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Protected Person *(Form CH-700, item 1)*

Name: _____

2 Restrained Person

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

The court will consider your *Response* at the hearing. Write your hearing date, time, and place from Form CH-710 item 3 here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

You must continue to obey the current restraining order until the hearing. At the hearing, the court can extend the order against for up to another five years.

3 Response

a. ☐ I agree to extend the order.

b. ☐ I do not agree to extend the order.

c. ☐ I agree to the following order instead *(specify below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Order Requested" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

d. ☐ I ask the court not to renew the order for the following reasons *(specify below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 3d—Reasons Not to Renew" for a title.*

_____

_____

_____

_____

Case Number:

Date: _____

_____ ▶ _____

Lawyer's name, if you have one *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case.** You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail *(if available):* _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form is *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available):* _____

2 Judgment or Order You Are Appealing

I am/My client is appealing *(check one):*

a. ☐ The final judgment of conviction in this case (Penal Code section 1466(b)(1)).
   ☐ I am/My client is contesting only the conditions of the probation.

b. ☐ The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(b)(1)).
   ☐ An order modifying the conditions of probation.
   ☐ Other*(describe the action you are appealing and give the date the trial court took the action):*
   _____

c. ☐ The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).

d. ☐ Other action *(describe the action you are appealing and give the date the trial court took the action):*
   _____
   _____
   _____

3 Record on Appeal

See form CR-131-INFO for information about the record on appeal.)

a. ☐ I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

b. ☐ I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in he trial court proceedings.

4 Court-Appointed Lawyer

a. I/My client ☐ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court.

b. I am/My client is *(check (1) or (2)):*

(1) ☐ asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.

(2) ☐ **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

_____ ▶ _____

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

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
PEOPLE OF THE STATE OF CALIFORNIA *VS.* DEFENDANT:	
NOTICE OF TERMINATION OF PROTECTIVE ORDER IN CRIMINAL PROCEEDING **(Penal Code, §§ 136.2, 136.2(i)(1), 273.5(j), 646.9(k), and 1203.097(a)(2))**	CASE NUMBER:

NOTICE: THIS TERMINATION ORDER DOES *NOT* TERMINATE ANY EXISTING FAMILY, JUVENILE, OR PROBATE COURT ORDERS.

ORDER

1. **THE COURT ORDERS:**

   Effective *(today's date):* , the Protective Order in the above-entitled case and issued on *(date):* ,

   restraining *(name of restrained person):* ,

   listing as protected person(s):

   ,

   is terminated.

2. This termination order supersedes all prior protective orders in the above-entitled case.

3. The court or its designee must ensure that this order is electronically transmitted to the Department of Justice within one business day by either:
   a. ☐ transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS); or
   b. ☐ entering the order into CLETS directly, but only with the approval of the Department of Justice.

4. ☐ The prosecuting agency is to notify the protected person(s) of this order.

Executed on: _____ _____ Department/Division:
(DATE) (SIGNATURE OF JUDICIAL OFFICER)

DV-150 Supervised Visitation and Exchange Order

Case Number:

This form is attached to ☐ DV-110, *Temporary Restraining Order* ☐ DV-130, *Restraining Order After Hearing*
☐ DV-140, *Child Custody and Visitation Order*

1 **Name of Protected Person:** _____ ☐ Mom ☐ Dad ☐ Other*

2 **Other Parent's Name:** _____ ☐ Mom ☐ Dad ☐ Other*

**If* Other, *specify relationship to child:* _____

The Court Orders:

3 Mediation, Visitation and Exchange

a. ☐ Parties must go to mediation at: _____
b. ☐ Visitation of children is supervised.
Parent to be supervised is: ☐ Mom ☐ Dad ☐ Other *(name):* _____
c. ☐ Exchanges of children are supervised.

4 Schedule of Supervised Visits

a. ☐ All visits as provided in the schedule on Form DV-140, item 4 (d) are to be supervised.
b. ☐ Supervised visits shall be _____ visit(s) per week of _____ hours(s) each, to be arranged with the provider.
c. ☐ Other schedule of supervised visits is attached. *(Check here and attach a sheet of paper with "DV-150, Other Schedule" for a title.)*

5 Type of Provider

a. ☐ Professional (individual or supervised visitation center)
b. ☐ Nonprofessional

6 Provider's Information

Name: _____
Telephone number: _____
Address: _____

7 Costs Will Be Paid As Follows:

☐ Mom to pay: _____ %
☐ Dad to pay: _____ %
☐ Other: _____

8 Contact With Provider

☐ Mom to contact provider before *(date):* _____
☐ Dad to contact provider before *(date):* _____
☐ Other: _____

9 The court also orders *(specify):* _____

This is a Court Order.

For counties filing a separate dependency petition for each child or for counties using *Additional Children Attachment* (form JV-101(A)) **JV-100**

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

FOR COURT USE ONLY

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

CASE NAME:

CASE NUMBER:

RELATED CASE *(if any):*

JUVENILE DEPENDENCY PETITION (VERSION ONE)
(Welf. & Inst. Code, § 300 et seq.)

☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 1a for concise statements of facts):*
☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name: | c. Age: | d. Date of birth: | e. Sex:

f. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*
☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

2. I have asked about Indian ancestry for this child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A). *(If this is a subsequent filing and there is no new information, form ICWA-010(A) is not required.)*

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

3. Petitioner requests that the court find these allegations to be true.

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

Date:

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

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____ ☐ Other children are listed on *Additional Children Attachment* (form JV-101(A))

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

For counties filing a joint dependency petition for children with the same mother and father **JV-110**

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:	
CASE NAME:	
JUVENILE DEPENDENCY PETITION (VERSION TWO) **(Welf. & Inst. Code, § 300 et seq.)** ☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**	CASE NUMBER: RELATED CASE *(if any):*

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable subdivisions for each child; see attachment 1a for concise statements of facts)* :

b.

Child's name	Age	Date of birth	Sex	Section 300 subdivisions *(check all that apply):*
1.				☐ a ☐ b(1) ☐ b(2) ☐ c ☐ d ☐ e ☐ f ☐ g ☐ h ☐ i ☐ j
2.				☐ a ☐ b(1) ☐ b(2) ☐ c ☐ d ☐ e ☐ f ☐ g ☐ h ☐ i ☐ j
3.				☐ a ☐ b(1) ☐ b(2) ☐ c ☐ d ☐ e ☐ f ☐ g ☐ h ☐ i ☐ j
4.				☐ a ☐ b(1) ☐ b(2) ☐ c ☐ d ☐ e ☐ f ☐ g ☐ h ☐ i ☐ j
5.				☐ a ☐ b(1) ☐ b(2) ☐ c ☐ d ☐ e ☐ f ☐ g ☐ h ☐ i ☐ j

c. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

d. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

e. Name: ☐ mother
Address: ☐ father
☐ guardian
☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

f. Other *(state name, address, and relationship to child):*

☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

g. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

h. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*

☐ Relative ☐ Shelter/foster care ☐ Other

2. I have asked about Indian ancestry for each child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A).

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.
Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Address and telephone number *(if different person signing than listed in caption above):*

☐ Number of pages attached: _____

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	LEVYING OFFICER (*Name and address*):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: **DEFENDANT/RESPONDENT:**	CASE NUMBER:
EARNINGS WITHHOLDING ORDER **(Wage Garnishment)**	LEVYING OFFICER FILE NUMBER:
EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* **EMPLEADO:** *GUARDE ESTE PAPEL OFICIAL.*	

EMPLOYER: Enter the following date to assist your recordkeeping.

Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer	Name and address of employee
	Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form).* Pay the withheld sums to the **levying officer** *(name and address above*).

   If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions* (form WG-003)** within 10 days after receiving this order.

   Complete both copies of the form *Employer's Return* (form WG-005) and **mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The *INSTRUCTIONS TO EMPLOYER* on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-002 [Rev. January 1, 2016]

EARNINGS WITHHOLDING ORDER
(Wage Garnishment)

Code of Civil Procedure, §§ 706.022, 706.108, 706.125
www.courts.ca.gov

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-002

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period.*

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN)* is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form *(Employer's Return)* for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows *HOW MUCH TO WITHHOLD* when the state minimum wage is $10.00 per hour, for different amounts of *disposable earnings* (as described in the Computation Instructions) and different pay periods. If the minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of $2000 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or $500.

The chart below is based on the state minimum wage that is in effect on January 1, 2016. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order,* an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $10.00 per hour **(Beginning January 1, 2016)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
$400.00 or less in a workweek: No withholding	$800.00 or less: No withholding	$866.67 or less: No withholding	$1,733.33 or less: No withholding
From $400.01 to $533.32: Amount above $400.00	From $800.01 to $1,066.66: Amount above $800.00	From $866.68 to $1,155.55: Amount above $866.67	From $1,733.34 to $2,311.10: Amount above $1,733.33
$533.33 or more: 25% of disposable earnings	$1,066.67 or more: 25% of disposable earnings	$1,155.56 or more: 25% of disposable earnings	$2,311.11 or more: 25% of disposable earnings

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	LEVYING OFFICER (*Name and address*):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: **DEFENDANT/RESPONDENT:**	CASE NUMBER:
EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)	LEVYING OFFICER FILE NUMBER:

EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* ***EMPLEADO:*** *GUARDE ESTE PAPEL OFICIAL.*

EMPLOYER: Enter the following date to assist your record keeping.
Date this order was received by employer (*specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed*):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer

Name and address of employee

Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee *(see instructions on reverse of this form).*

   Pay the withheld sums to the **levying officer** *(name and address above).* If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions (form WG-003)*** within 10 days after receiving this order.

   Complete both copies of the *Employer's Return* (form WG-005) and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

2. a. The total amount due is: $
   b. The amount arising from an elder or dependent financial abuse claim is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on *(date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-030 [Rev. January 1, 2016]

EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)

Code of Civil Procedure,
§§ 706.023 706.108, 706.052
www.courts.ca.gov

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-030

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period.*

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN)* is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form *(Employer's Return)* for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows *HOW MUCH TO WITHHOLD* when the state minimum wage is $10.00 per hour, for different amounts of *disposable earnings* (as described in the Computation Instructions) and different pay periods. If the minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of $2000 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or $500.

The chart below is based on the state minimum wage that is in effect on January 1, 2016. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order,* an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $10.00 per hour **(Beginning January 1, 2016)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
$400.00 or less in a workweek: No withholding	$800.00 or less: No withholding	$866.67 or less: No withholding	$1,733.33 or less: No withholding
From $400.01 to $533.32: Amount above $400.00	From $800.01 to $1,066.66: Amount above $800.00	From $866.68 to $1,155.55: Amount above $866.67	From $1,733.34 to $2,311.10: Amount above $1,733.33
$533.33 or more: 25% of disposable earnings	$1,066.67 or more: 25% of disposable earnings	$1,155.56 or more: 25% of disposable earnings	$2,311.11 or more: 25% of disposable earnings

JUDICIAL COUNCIL OF CALIFORNIA
RULES AND PROJECTS COMMITTEE

www.courts.ca.gov/rupromeetings.htm
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RULES AND PROJECTS COMMITTEE

MINUTES OF OPEN MEETING

June 17, 2015
EMail

Advisory Body Members Present: Hon. Harry E. Hull (chair), Hon. Brian L. McCabe (vice-chair), Hon. Brian J. Back, Hon. David De Alba, Mr. Richard D. Feldstein, Mr. James P. Fox, Hon. David E. Gunn, Ms. Debra Elaine Pole, Hon. David Rosenberg, and Hon. Martin J. Tangeman, and Hon. Joan P. Weber.

Others Present: Hon. Mark S. Borrell, Ms. Camilla Kieliger, Ms. Susan McMullan, and Mr. Patrick O'Donnell.

DISCUSSION AND ACTION ITEMS

Item 1

Traffic Law: Payment and Forfeiture of Bail in Installments (revise form TR-300)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's June 26, 2015, consent agenda, with the following modifications:

I want to pay and forfeit bail for the violation(s) listed above, but I am not able to pay the entire amount at the present time. ~~and~~ I ask the court to allow me to pay in installments. I understand that ~~the court has costs and expenses from accepting a request to pay and forfeit bail in installments and~~ the court does not have to allow me to make installment payments.

Additionally, the Traffic Advisory Committee is asked to consider adding space for the court to indicate to whom payment is made, where it is to be paid, and the form of payment that is acceptable.

Item 2

Traffic and Criminal Law: Notice to Appear Forms (amend Cal. Rules of Court, rule 4.103; revise forms TR-INST, TR-115, TR-120, and TR-130; and adopt forms TR-135 and TR-145)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's June 26, 2015, consent agenda.

ADJOURNMENT

There being no further business, the meeting was adjourned.

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

July 6, 2015
Teleconference

Advisory Body Members Present:	Hon. Harry E. Hull (chair), Hon. Brian L. McCabe (vice-chair), Hon. Brian J. Back, Mr. James P. Fox, Hon. David E. Gunn, Ms. Debra Elaine Pole, Hon. David Rosenberg, and Hon. Martin J. Tangeman.
Advisory Body Members Absent:	Hon. David De Alba, Mr. Richard D. Feldstein, and Hon. Joan P. Weber.
Others Present:	Ms. Heather Anderson, Ms. Camilla Kieliger, Ms. Susan McMullan, Mr. Douglas C. Miller, Mr. Patrick O'Donnell, and Hon. John H. Sugiyama.

DISCUSSION AND ACTION ITEMS

Item 1

Probate: Court fee waivers in decedent estates, guardianships, and conservatorships and for wards and conservatees participating in civil actions (Action Required) (Recommend for Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's July 28, 2015, consent agenda.

ADJOURNMENT

There being no further business, the meeting was adjourned.

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

July 14, 2015
EMail

Advisory Body Members Present:	Hon. Harry E. Hull (chair), Hon. Brian L. McCabe (vice-chair), Hon. Brian J. Back, Hon. David De Alba, Mr. Richard D. Feldstein, Mr. James P. Fox, Hon. David E. Gunn, Ms. Debra Elaine Pole, Hon. David Rosenberg, and Hon. Martin J. Tangeman, and Hon. Joan P. Weber.
Others Present:	Ms. Camilla Kieliger, Ms. Susan McMullan, Mr. Patrick O'Donnell, and Ms. Anne Ronan.

DISCUSSION AND ACTION ITEMS

Item 1

Civil Practice and Procedure: Adjustment of Maximum Amount of Imputed Liability of Parent or Guardian for Tort of a Minor (revise Appendix B)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's July 28, 2015, consent agenda.

ADJOURNMENT

There being no further business, the meeting was adjourned.

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

July 30, 2015
Teleconference

Advisory Body Members Present:	Hon. Harry E. Hull (chair), Hon. Brian L. McCabe (vice-chair), Hon. Brian J. Back, Mr. Richard D. Feldstein, Mr. James P. Fox, Hon. David Rosenberg, and Hon. Martin J. Tangeman.
Advisory Body Members Absent:	Hon. David De Alba, Hon. David E. Gunn, Ms. Debra Elaine Pole, and Hon. Joan P. Weber.
Others Present:	Ms. Heather Anderson, Ms. Jessica Craven, Ms. Camilla Kieliger, Ms. Tara Lundstrom, Ms. Susan McMullan, Mr. Patrick O'Donnell, and Ms. Robin Seeley.

DISCUSSION AND ACTION ITEMS

Item 1

Proposed revisions to the California Criminal Jury Instructions (CALCRIM)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's August 21, 2015, consent agenda.

Item 2

Trial Courts: Extending Authorization for Remote Video Proceedings in Traffic Infraction Cases (amend rule 4.220; revise form TR-500-INFO)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's August 21, 2015, consent agenda, for a September 1, 2015, effective date.

Item 3

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's August 21, 2015, consent agenda, for a September 1, 2015, effective date.

Item 4

Minutes (February 3, February 25, March 20, April 15, April 22, May 8, May 11, May 21, June 1, and June 15, 2015)

Action: The Rules and Projects Committee approved the minutes.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Approved by the advisory body on enter date.