Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Procedure: Revision of Wage Garnishment Form Instructions

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M Ronan, 415-865-8933

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: October 22, 2015
Project description from annual agenda:
SB 501 (enacted 10/11/15) This bill, effective July 1, 2016, changes the method of calculating the amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order. The change must be reflected in the instructions to employers on the back of the two Judicial Council wage garnishment order forms.

If requesting July 1 or out of cycle, explain:
Statute enacted in October 2015 provides that new calculations will be operative in July 2016

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Staff is working on getting a url for the new section of the California Courts Self-Help website referenced on the form (currently shown as www.courts.ca.gov/self-help-xxxxxxx.htm) and will revise the forms to include that as soon as it is available.

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 April 14–15, 2016

Title
Civil Practice and Procedure: Revision of Wage Garnishment Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms WG-002 and WG-030

Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 3, 2016

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

Senate Bill 501 amends the method of computing the amount of a judgment debtor's earnings that may be garnished under an earnings withholding order. The Civil and Small Claims Advisory Committee recommends revising two wage garnishment forms to reflect the new method of calculating the amounts of wages to be withheld.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2016, revise the Instructions to Employers on *Earnings Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding Order for Elder or Dependent Adult Financial Abuse* (form WG-030), to reflect the new method of calculating the amounts of wages to be withheld, presented by Senate Bill 501.

The revised forms are attached at pages 5–8.

Previous Council Action

The council first adopted mandatory wage garnishment forms in 1980. In January 2012, these forms, along with other wage garnishment forms, were revised so that a judgment debtor's social security number would not be included on the publicly accessible forms but instead limited to a confidential form. In July 2013, the forms were further revised to reflect a new method of computing the maximum amount to be garnished, based on the state minimum wage rather than the federal minimum wage. The chart currently included on the form as an aid for calculating the appropriate amount to withhold has been amended several times over the past 10 years to reflect changes in the amount of the federal and, later, state minimum wage.

Rationale for Recommendation

Statute limits the amount of earnings of a judgment debtor that may be subject to an earnings withholding order. (See Code Civ. Proc., § 706.050.)[1] Currently, law prohibits the amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25 percent of the individual's weekly disposable earnings or (2) the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable, unless an exception applies.

Commencing July 1, 2016, Senate Bill 501 (Wieckowski; Stats. 2015, ch. 800) will change the second aspect of calculating the maximum amount to be withheld in two ways. The new law reduces the prohibited amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25 percent of the individual's weekly disposable earnings (this part stays the same as in current law) or (2) ***50 percent*** of the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage, ***or applicable local minimum hourly wage***, if higher, in effect at the time the earnings are payable (the 2016 amendments are shown in bold italics).

This recommendation revises the second pages of each form (WG-002 and WG-030), which provide almost identical instructions to employers regarding their duties upon receipt of the order—including the duty to withhold the correct amount of earnings and instructions on how to calculate that amount. Section 706.127 mandates that the council prepare these instructions and revise them as needed to reflect any changes in the applicable law. The current forms, in addition to explaining how to calculate disposable earnings, contain a chart that shows how much of the disposable earnings to withhold based on the amount of such earnings and the pay period, based on the state minimum wage.

The revised forms no longer contain a chart. Because the amended law provides for employers to calculate the amount to withhold using the local minimum wage, if that is higher than the state minimum wage, a single chart of amounts to withhold is no longer applicable to all employers. In

[1] All statutory references hereafter are to the Code of Civil Procedure unless otherwise indicated.

place of the chart, the proposed forms contain step-by-step instructions on how to calculate the amount to be withheld based on the provisions in section 706.050.

The revised forms also provide a reference to the California Courts Self-Help Center public website, which is being expanded to include information help an employer calculate the maximum amount to withhold from an employee's pay. This information will include a table showing the maximum withholding amount when the state minimum wage is the applicable amount to use, along with instructions on how to calculate the maximum withholding amount—whether it is the state or a local minimum hourly wage—that is to be used in the calculation. An online electronic calculator will also likely be made available on the website, as resources permit.

Comments, Alternatives Considered, and Policy Implications

The proposed form revisions are required to make the mandatory forms consistent with law as of July 1, 2016. Therefore the only alternatives considered by the committee were *how* to revise the instructions on the two forms, not *whether* to do so.

The proposed revised forms, with the calculation table removed and the full text of the statutory provisions for calculating withholding amounts, were circulated for comment in December 2015 and January 2016. Six comments were received, three from bar groups and three from courts. All commentators agreed that the changes were necessary, four agreed with the changes proposed, and two suggested different revisions.[2]

The Standing Committee on the Delivery of Legal Services (SCDLS) of the State Bar recommended that, in place of the text of the statute, the form include a step-by-step description of how to make the calculations required by the statute, and proposed language to be used for such instructions. The committee agreed, although it made a minor modification in the proposed instruction. The two revised forms incorporate the step-by-step instructions.

The Litigation Section of the State Bar proposed retaining the chart showing the amount to withhold based on the state minimum wage, for the convenience of those employers in areas without a local minimum wage law. The committee concluded that room on the forms is insufficient to include the table along with the rest of the needed information without making some items substantially smaller. Further, there was some concern that including such a table, even with the proposed precautionary language, could result in employers' using figures from the table without looking further into the small print on the form, not understanding that the table should not be used if there is a higher local minimum wage amount in effect at the place of employment.

[2] All comments and the committee's responses are set out in the chart attached at pages 9–13.

The committee initially had considered providing multiple charts on the form, using additional pages, for different levels of minimum wage amounts, so that employers could more easily calculate the appropriate withholding amount. However, that option was deemed impractical in light of the increasing number of municipalities with minimum wage amounts higher than the state minimum wage, the fact that those amounts differ from each other, and the different schedules for changing them.[3] Trying to ensure that all the charts are up to date as various municipal minimum wage amounts are changed would be very difficult and result in a continuous stream of changed forms as often as twice each year.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by parties or levying officers, so revisions should not have any cost burden or operational impact on the courts.

Attachments and Links

1. Revised forms WG-002 and WG-030, at pages 5–8
2. Chart of comments, at pages 9–13
3. Link A: Senate Bill 501, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB501*

[3] Some of the higher local minimum wages currently in effect are set to change each January for several years, some are set to change each July, and at least one will change in October for the next two years.

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*): **DRAFT** 01/31/16 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:	

EARNINGS WITHHOLDING ORDER (Wage Garnishment)	LEVYING OFFICER FILE NO.:	COURT CASE NO.:

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. July 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 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* (form WG-005) 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.

COMPUTATION INSTRUCTIONS

California law provides how much earnings to withhold, if any, for different amounts of disposable earnings and different pay periods, and takes into consideration different minimum wage amounts. The method of calculation is at Code of Civil Procedure section 706.050 and is described in the column to the right. You may also look on the California Courts Self-Help website for assistance in determining the maximum withholding amounts for different amounts of disposable income, for different pay periods, and with different minimum wage amounts. The information is at ***www.courts.ca.gov/self-help-xxxxxxx.htm***.

THESE COMPUTATION INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

State 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.

(A) To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), first compute the employee's *disposable earnings.*

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 because they are not paid by the employer.

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.

(B) After the employee's disposable earnings are known, to determine what amount should be withheld, you may look to the statute, follow the directions below in (C), or seek assistance on the California Courts Self-Help website at ***www.courts.ca.gov/self-help-xxxxxxx.htm***. Note that you also need to know the amount of the minimum wage in the location where the employee works.

(C) Calculate the maximum amount that may be withheld from the employee's disposable earnings, which is the *lesser* of the following two amounts:

- 25 percent of disposable earnings for that week; **or**
- 50 percent of the amount by which the employee's disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage.

To calculate the correct amount, follow the steps below:

Step 1: Determine the applicable minimum wage per pay period.

- For a daily or weekly pay period, multiply the applicable hourly minimum wage by 40.
- For a biweekly pay period, multiply the applicable hourly minimum wage by 80.
- For a semimonthly pay period, multiply the applicable hourly minimum wage by 86 2/3.
- For a monthly pay period, multiply the applicable hourly minimum wage by 173 1/3.

Step 2: Subtract the amount from Step 1 from the employee's disposable earnings during that pay period.

Step 3: If the amount from Step 2 is less than zero, do not withhold any money from the employee's earnings.

Step 4: If the amount from Step 2 is greater than zero, multiply that amount by one-half.

Step 5: If the amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.

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.
3. 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!

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*): **DRAFT 3/04/16** **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:**	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 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. 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. July 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 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 (form WG-005))* 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.

COMPUTATION INSTRUCTIONS

California law provides how much earnings to withhold, if any, for different amounts of disposable earnings and different pay periods, and takes into consideration different minimum wage amounts. The method of calculation is at Code of Civil Procedure section 706.050, and is described in the column to the right. You may also look on the California Courts Self-Help website for assistance in determining the maximum withholding amounts for different amounts of disposable income, for different pay periods, with different minimum wage amounts. The information is at ***www.courts.ca.gov/self-help-xxxxxxx.htm***.

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State 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.

(A) To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), first compute the employee's *disposable earnings.*

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 because they are not paid by the employer.

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.

(B) After the employee's disposable earnings are known, to determine what amount should be withheld, you may look to the statute, follow the directions below in (C), or seek assistance on the California Courts Self-Help website at ***www.courts.ca.gov/self-help-xxxxxxx.htm***. Note that you will also need to know the amount of the minimum wage in the location where the employee works.

(C) Calculate the maximum amount that may be withheld from the employee's disposable earnings, which is the *lesser* of the following two amounts:

- 25 percent of disposable earnings for that week; **or**
- 50 percent of the amount by which the employee's disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage

To calculate the correct amount, follow the steps below:

Step 1: Determine the applicable minimum wage per pay period.

- For a daily or weekly pay period, multiply the applicable hourly minimum wage by 40.
- For a biweekly pay period, multiply the applicable hourly minimum wage by 80.
- For a semimonthly pay period, multiply the applicable hourly minimum wage by 86 2/3.
- For a monthly pay period, multiply the applicable hourly minimum wage by 173 1/3.

Step 2: Subtract the amount from Step 1 from the employee's disposable earnings during that pay period.

Step 3: If the amount from Step 2 is less than zero, do not withhold any money from the employee's earnings.

Step 4: If the amount from Step 2 is greater than zero, multiply that amount by one-half.

Step 5: If the amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.

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.
3. 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!

EARNINGS WITHHOLDING ORDER
FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE
(Wage Garnishment)

W16-01

Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions (Revise forms WG-002 and WG-030)

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

	Commentator	Position	Comment	Committee Responses
1.	Orange County Bar Association by Todd G. Friedland, President	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
2.	State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Chair San Francisco, CA	AM	We agree with the proposal, except we would retain the chart showing the amount to withhold based on the state minimum wage for convenience for those in areas without a local minimum wage law. We suggest adding precautionary language on the need to determine whether a local minimum wage law applies.	The committee considered the suggested modification, but concluded that there is insufficient room on the forms to include the chart along with the rest of the needed information without making some items substantially smaller. Further, there was some concern that including such a table, even with the proposed precautionary language, could result in employers using figures from the table without looking further into the small print on the form, not understanding that the table should not be used if there was a higher local minimum wage amount in effect at the place of employment.
3.	State Bar of California, Standing Committee on the Delivery of Legal Services (SCDLS) by Phong S. Wong, Chair San Francisco, CA	AM	<u>Does the proposal appropriately address the stated purpose?</u> Partially. SCDLS agrees generally with the proposal to change forms WG-002 and WG-030 so that they comply with SB 501. However, while the revised forms cite to Code of Civil Procedure section 706.050, as amended by SB 501, the forms mistakenly refer to the "state hourly minimum wage" rather than the "applicable hourly minimum wage" in subsections (b)(2), (3), and (4). In the "Additional Specific Comments" section below, SCDLS also suggests some modifications to reduce the likelihood that an employer may garnish an employee's paycheck in excess of what the amended statute permits.	The committee agrees that the language in the forms should refer to "applicable minimum wage rather than "state minimum wage" and has further revised the forms to so reflect.

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

	Commentator	Position	Comment	Committee Responses
			Additional Specific Comments While the new forms comply with SB 501, SCDLS believes that restating the statutory requirements as a series of steps (rather than quoting the statute in its entirety) would decrease the likelihood of an employer withholding more than is allowable under the law. Instead of quoting Code of Civil Procedure section 706.050, SCDLS proposes that the Computation Instructions section of both Form WG-002 and WG-030 could read as follows starting with (C). **COMPUTATION INSTRUCTIONS** (C) After the employee's disposable earnings are known, you may follow the steps below to determine what amount should be withheld, or you may seek assistance by using the on-line calculator on the Self-Help website at www.courts.ca.gov/self-help-xxxxx.htm. Note that you also need to know the amount of the minimum wage in the location where the employee works. (D) Calculate the maximum amount that may be withheld from the employee's disposable earnings, which is the lesser of the following two amounts: • 25 percent of disposable earnings for that week; OR • 50 percent of the amount by which the	The committee agrees that the step-by-step instructions for calculating the maximum withholding amount is an improvement over using the statutory language, and has modified the forms to reflect this. The committee made two minor changes to the proposed text, however: • A note has been added advising the employer that he or she can look to the statute directly or to the self-help website as an alternative to following the steps set out on the form, and • A correction was made to the proposed Step 1, combining subparts i and ii into a single item, to reflect that text of the statute at 706.050(b)(1) which provides that withholding for a pay period of 8-hours should be calculated the same as for a pay period of 40 hours.

	Commentator	Position	Comment	Committee Responses
			employee's disposable earnings that week exceed the applicable minimum wage. If there is a local minimum wage in effect in the location where the employee works that exceeds the state minimum wage at the time the earnings are payable, the local minimum wage is the applicable minimum wage To calculate the correct amount, follow the steps below: a. Step 1: Determine the applicable minimum wage per pay period. i. For a daily pay period, multiply the applicable hourly minimum wage by 8. ii. For a weekly pay period, multiply the applicable hourly minimum wage by 40. iii. For a biweekly pay period, multiply the applicable hourly minimum wage by 80. iv. For a semimonthly pay period, multiply the applicable hourly minimum wage by 86 2/3. v. For a monthly pay period, multiply the applicable hourly minimum wage by 173 1/3. b. Step 2: Subtract the amount from Step 1 from the employee's disposable earnings during that pay period. c. Step 3: If the amount from Step 2 is less than zero, do not withhold any money from	

	Commentator	Position	Comment	Committee Responses
			the employee's earnings. d. Step 4: If the amount from Step 2 is greater than zero, multiply that amount by one-half. e. Step 5: If amount from Step 4 is lower than 25 percent of the employee's disposable earnings, withhold this amount. If it is greater than 25 percent of the employee's disposable earnings, withhold 25 percent of the disposable earnings.	
4.	Superior Court of Orange County by Civil Operations Managers	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of Riverside County	A	Self Help website will need to be updated to contain online calculator and city/county minimum wage changes.	The committee agrees that the online California Courts Self Help Center should include a page to provide assistance to employers in calculating wage garnishments, including a chart for those using the state minimum wage and a reminder that the employer must use the local minimum wage amount if applicable. An online calculator will be included as resources permit.
6.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	In answer to the request for specific responses, our court provides the following: Q: Would the proposal provide cost savings? No. Q: What are implementations requirements for courts?	The committee notes the commentator's agreement with the proposal, and appreciates the information regarding court cost and implementation impacts.

	Commentator	Position	Comment	Committee Responses
			Minimal/none. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? No significant impact. Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? Yes. Q: Does the proposal appropriately address the state purpose? Yes.	

Item number: 02

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Procedure: Expedited Jury Trials

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

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: December 10, 2016
Project description from annual agenda: Expedited Jury Trial Rules and Forms.
• Develop new rules and forms and amend current ones to implement AB 555, which provides for mandatory expedited jury trials in most limited cases and amends the provisions for the current voluntary expedited jury trials.
• Consider amending current rules for voluntary expedited jury trials in order to simplify them

If requesting July 1 or out of cycle, explain:
New and amended rules and forms are to implement provisions of AB 555 which become operative July 1, 2016.

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: April 14–15, 2016

Title
Civil Practice and Procedure: Expedited Jury Trials

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 3.1546; amend rules 3.1545 and 3.1547–3.1552; renumber rule 3.1553; adopt new forms EJT-003 and EJT-004; approve new forms EJT-005 and EJT-018; revise and renumber forms EJT-001-INFO and EJT-022A; revise form EJT-020

Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 10, 2016

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend and revise the California Rules of Court and forms applicable to current voluntary expedited jury trials to reflect statutory amendments to the time frame for those cases, and adopt new rules and forms for the new mandatory expedited jury trials in limited civil cases. These changes are to implement Assembly Bill 555 (Alejo; Stats. 2015, ch. 330), which lifts the sunset provisions in the Expedited Jury Trial Act, which went into effect on January 1, 2011, to establish an expedited jury trial process—a consensual process designed to promote the speedy and economic resolution of cases and to conserve judicial resources. The bill also amends the time frame applicable to such trials from three hours per side to five hours per side, and significantly expands the statute to require expedited jury trials in most limited civil actions other than unlawful detainers. The statute mandates that the new and amended rules and forms be operative by July 1, 2016.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective July 1, 2016, to implement the new and amended statutory provisions regarding expedited jury trials:

1. Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553;

2. Adopt new *Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-003) and *Objection to Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-004);

3. Approve new *Order on Request to Opt Out of Mandatory Expedited Jury Trial* Procedures (form EJT-005), and *Agreement of Parties (Mandatory Expedited Jury Trial Procedures)* (form EJT-018); and

4. Revise and renumber *Expedited Jury Trial Information Sheet* (form EJT-001-INFO) and *Attachment* (form EJT-022A); and

5. Revise *[Proposed] Consent Order for Voluntary Expedited Jury Trial* (form EJT-020).

The text of the new and amended rules are attached, beginning at page 13. The new and revised forms are attached beginning at page 21.

Previous Council Action

In 2010, the Legislature passed the Expedited Jury Trials Act, and the council adopted a series of rules and forms to implement that act. Unfortunately, while all stakeholders, including the courts and plaintiff and defense bar organizations, were enthusiastic about the idea of expedited jury trials—consensual trials that were shorter and used smaller juries than traditional civil trials—the procedures have not been used much. In the period from January 2011 through August 2014, fewer than 200 EJTs were reported as having occurred across that state. Twenty-five courts reported that EJTs had not been used in any cases during that period.

Last year, at the request of representatives from California Defense Counsel and Consumer Attorneys of California, the Chief Justice asked the Judicial Council's Governmental Affairs office to gather together a group of interested parties to examine the issue and consider possible solutions. Discussion among that group eventually led to legislation, Assembly Bill 555, [1] which the council supported. This proposal is to implement that legislation.

[1] AB 555 may be viewed at *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB555*.

Rationale for Recommendation

The original expedited jury trial (EJT) process was developed to address litigants' lack of access to the courts in smaller civil cases and the high expense of going to trial under existing civil laws and procedures. It is a consensual process, intended to be quicker and less expensive than a traditional jury trial, saving time and money for all involved: litigants, lawyers, courts, and jurors. The original EJT differs from a regular jury trial in the following key ways:

- *Shorter trial length*. Each side had three hours to put on all its witnesses, show the jury its evidence, and argue its case.
- *Smaller jury*. The jury consists of 8 jurors instead of 12, with no alternates.
- *Faster jury selection process*. The parties exercise fewer peremptory challenges (three per side); and voir dire is limited to 15 minutes per side (plus 15 minutes for the judge).
- *Swifter finality*. All parties had to waive their rights to appeal. In order to help keep down the costs of litigation, there are no appeals following an expedited jury trial except in very limited circumstances.

In order to assure that the parties would be ready to proceed swiftly on the day of trial, the rules provide for pretrial exchanges of exhibits and witnesses and early filing of motions in limine. The EJT process was set up to be very flexible, allowing the parties to enter into agreements governing the rules of procedure for the trial and pretrial exchanges, including the manner and method of presenting evidence and high/low agreements on damages. The scheduling of expedited jury trials and the assignment of judicial officers is left to each superior court. As enacted in 2010, the law included a sunset date of December 31, 2015.

AB 555 deleted the sunset date, thereby extending the EJT process indefinitely. In addition, AB 555 addresses two concerns that were seen as hampering wider use of the EJT process: the extremely short time frame allotted for trial (three hours per side) and the lack of appeal rights. The Legislature ultimately concluded that the current consensual or voluntary EJT procedures should continue, with a longer, five-hour time period for each side at trial (folding jury voir dire into that time). See Code of Civil Procedure section 630.03(e)(2).[2] The Legislature also concluded that EJTs should be *required* in most smaller civil cases, although with appeal rights, [3] and so included provisions for mandatory EJTs in most limited civil cases[4] (§ 630.20). Parties may opt out of the mandatory EJTs if a limited civil case meets certain criteria. *Id*. AB 555 directs the Judicial Council to develop procedures for opting out, along with other rules and forms appropriate for mandatory EJTs (§ 630.28).

[2] All statutory references herein are to the Code of Civil Procedure, unless otherwise noted. All rules references are the California Rules of Court.

[3] The mandatory EJTs also differ from the voluntary EJTs in that up to four (rather than three) peremptory challenges per side are permitted in mandatory EJTs (§ 630.23(c)).

[4] Unlawful detainers are expressly exempted from this new statute (§ 630.20(c)).

New and amended rules

The proposal amends the current rules of court on EJTs, beginning at rule 3.1545, to provide for both mandatory EJTs and voluntary EJTs.

Mandatory EJT rule. New rule 3.1546 applies only to mandatory EJTs. It provides that the parties in those cases should follow the pretrial procedures (including the limitations on discovery) and case management procedures that apply to limited civil cases generally. Rule 3.1546(a), (b).

Rule 3.1546(c) sets out the procedures for opting out of a mandatory EJT:

- A newly developed mandatory form must be used to make the request and identify the applicable criteria supporting an opt-out. (See proposed form EJT-003.)
- Generally, the request must be served and filed by at least 45 days before the date first set for trial.[5]
- For cases in which the date first set for trial has already occurred at the time the rule (and the new law) goes into effect on July 1, 2016, the request must be filed at least 45 days before the first date set for trial after July 1.
- Any objection to the request must be served and filed within 15 days after service of the request using a mandatory form. (See proposed form EJT-004.)
- The deadlines each have good cause exceptions so that courts may allow a shorter time frame for making a request or objecting to one when appropriate.[6]
- Should the criteria on which an opt-out is based no longer apply, the parties are to promptly inform the court and the court may return the case to the mandatory EJT procedures.

The rules do not anticipate that a hearing must be held on these requests to opt out, because in most instances the party will have the right to opt out under section 630.20(b) and the request will be routinely granted by the court on the paper filed. Should the court decide a hearing is necessary, the optional order form allows the courts to set one. See proposed form EJT-005.

Rule 3.1546(d) notes that the parties may agree to modify the pretrial and trial procedures (see § 630.23(d) expressly allowing this), and identifies proposed new form EJT-018 and its attachment form as a means to formalize any such agreement.

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[5] That date parallels the earliest date on which a party in a limited civil case may ask the other side for a pretrial statement identifying planned trial witnesses and exhibits. See § 96.

[6] An Advisory Committee Comment to the new rule notes that the good cause exception is expected to be invoked liberally to allow parties and the courts to handle cases with trial dates within the first couple months following the adoption of the rule, when it will be impossible or very difficult to meet the deadlines for requesting an opt-out or objecting to such a request.

Voluntary EJT rules. The committee also recommends minor amendments to current rules 3.1547 and 3.1548, as described below:

- First, the titles of both rules and pertinent subparts are changed to clarify that they apply only to voluntary EJTs.
- Second, rule 3.1547(b)(1) has been amended to clarify that the requirements of, as well as timelines for, the pretrial submissions may be modified by agreement of the parties. (A similar change has been made to the attachment to the consent order (form EJT-022A.)
- Third, rule 3.1547(b)(4) was amended to change the three-hour time frame for each side's case to a five-hour time frame.
- Finally, an additional item was added to the list of subjects to be considered at the pretrial conference—the issue of how the award of attorney's fees and costs is to be handled in cases with high/low agreements.

Rules applicable to all EJTs. The time limits regarding voir dire (in rule 3.1550) were eliminated and the time frame in rule 3.1551 was amended to reflect the change in the statute. Former rule 3.1546 was moved to this new article and renumbered as rule 3.1553. The remaining trial rules otherwise remain the same, amended only to clarify that they are applicable to both types of EJTs.

New and amended forms

New forms were developed for the opt-out procedure and potential agreements of parties in mandatory EJTs. The current EJT forms are being amended to reflect the increased trial time and to make some of them usable in mandatory EJT cases as well as in voluntary EJT cases.

Expedited Jury Trial Information Sheet **(form EJT-001-INFO).** The information sheet is renumbered (it had been EJT-010-INFO), so that it will remain the first form in this form series, and has been revised in order to cover both types of expedited jury trials.

Request to Opt Out of Mandatory Expedited Jury Trial Procedures **(form EJT-003).** This new form is the mandatory form to be used for a request to opt out. There are check boxes for each of the criteria for opting out in § 630.20(b), with separate items for those criteria that permit a party to opt out upon request (630.20(b) 1–8), and for the one criteria that requires a judge to make a finding. See § 630.20(b)(9): a court may allow opt-out for good cause. There is also an item to address any good cause for late filing. The form must be completed under penalty of perjury. The back of the form has instructions for requesting an opt-out and for objecting to such a request, and a reminder that, even after an opt-out has been made, the case may be tried as a mandatory EJT if the grounds for an opt-out are no longer applicable.

Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures **(form EJT-004).** This new form is a mandatory form that provides spaces to identify the applicant and date of request; state the ground for the objection, either why the asserted criteria for opting out is not

applicable or why the request was not timely; and, if necessary, the good cause for filing a late objection. This form, too, must be completed under penalty of perjury

Order on Request to Opt Out of Mandatory Expedited Jury Trial Procedures **(form EJT-005).** This new optional order form may be used by a court in acting on the request, to grant, deny, or set a hearing.

Agreement of Parties (Mandatory Expedited Jury Trial Procedures) **(form EJT-018).** This is a new form on which parties can memorialize any agreements they reach to modify procedures or streamline the trial, including limiting number of witnesses, etc. This form may be used on its own or as a cover sheet for an attachment form that lists the several areas that had been previously determined to be ripe for modification in EJTs. (See form EJT-022A, previously form EJT-020A.)

[Proposed] Consent Order for Voluntary Expedited Jury Trial **(form EJT-020).** This form has been amended to clarify that it is for use in voluntary EJTs only, and the references to trial time limits and to various forms have been revised to reflect the amended statutory provisions.

Attachment to [Proposed] Consent Order or Agreement of Parties **(form EJT-022A).** This form, previously numbered EJT-020A as the attachment to the proposed consent order, has been revised and renumbered so that it can also be used by parties in mandatory EJTs as well.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposal was circulated for public comment from December 11, 2015 through January 22, 2016. Comments were received from several attorney groups[7] along with three superior courts[8] and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (Joint Rules Subcommittee). All agreed with the proposal generally, although some modifications were requested. A chart of all the comments received and the committees' responses to each is attached to this report at pages 32-52 The major points addressed in the comments are summarized below.

Rules regarding the timing of opt-out procedures

As originally proposed and circulated, the procedure for requesting to opt out of the mandatory EJT procedures provided the following:

- For cases filed after July 1, 2016, unless good cause is shown, the request was to be served and filed at least 45 days before the date first set for trial.

[7] These commenters were the California Defense Counsel, Consumer Attorneys of California, Orange County Bar Association, and two State Bar groups, the Litigation Section and the Committee on the Administration of Justice.

[8] The courts commenting were the Superior Courts of Los Angeles, Riverside, and San Diego Counties.

- For cases already on file on July 1, the time the rule and the new law become operative, parties were to file any opt-out request at least 10 days before trial.
- Any objection to the request must be served and filed within 15 days after service of the request using a mandatory form.

The invitation to comment asked for specific comments on this proposed timing: was the deadline for opting out appropriate, or should it be at an earlier point in the case? The majority of commenters, agreed with the 45-days-before-trial deadline generally. The Superior Court of Los Angeles County and the Joint Rules Subcommittee both noted that an earlier opt-out deadline might force parties to opt out of mandatory EJTs when they are undecided as to whether to remain within that process, while the same parties might remain in the process if they can wait until most discovery has concluded before making the decision.

Orange County Bar Association did not disagree with having the deadline close to the end of the action, but would have preferred a slightly longer lead time before trial, suggesting that a party should have notice at least 20 to 30 days before trial of whether a traditional jury will be used and longer trial is anticipated; they proposed that a 60-day-before-trial deadline be used. The committee disagrees that the additional two weeks' notice would make much difference, and continues to recommend the 45-day deadline. The committee particularly likes that the deadline is the day on which the parties may first ask for a pretrial exchange of witness and exhibit lists (§ 96), so is set at a time when the parties should be making decisions about the future trial.

That same commenter suggested that another way to assure sufficient notice to the parties was to mandate how quickly the court must act on the request to opt out. The committee disagrees with this suggestion for two reasons. First, most of the criteria for opting out are objective factors, the existence of which by statute permit a party to opt out of the mandatory EJT procedures. (See § 630.20(b)(1)–(8).) Therefore as soon as a party is served with such a request, the party will generally know whether the opt-out will be granted. Second, setting a specific number of days in which the court must act is micromanaging judicial officers, when there has been no indication that such management is required. There is no reason to believe that courts will delay action on any of these requests, even those requiring a judicial finding (the opt-out requests based on a claim of good cause). Further, mandating that the court must act within a certain period or that a request to opt out would be granted by default would not be in keeping with the goal of the Legislature to have more cases tried by EJT. On the other hand, having the result of a court's failure to act within the given time be that the opt out is automatically denied would not conform with the statutory provision that permits parties to opt out so long as certain criteria are met. Since there is no basis at this point for assuming courts will be dilatory in acting on opt-out requests, the committee declines to recommend a rule mandating a specific time in which the court must act.

The State Bar's Committee on Administration of Justice (CAJ) was the one commenter that suggested that opt-outs should take place a longer time before trial, noting that otherwise there is a risk of game-playing. The commenter noted that if a party does not opt out until the 45 days

before trial, there may be an assumption that the case with be tried as an EJT and prepared accordingly, and then surprised at the end of the case when the other side opts out of the EJT process and the case becomes a traditional jury trial. While it is true that with an earlier deadline, the parties would know from earlier in the case whether they were likely to be engaging in an EJT, the committee considered, but rejected, this alternative when it was originally developing the rule, and continues to do so now. The committee noted that the existence of some of the criteria could change over the course of a case, leading it to conclude that a later deadline for opting out would be more useful for both courts and parties. Moreover, pretrial procedures in these limited civil actions, including limitations on discovery, will remain the same whether or not the eventual trial is an EJT. The primary impacts of opting out of the mandatory EJT procedures will be that the regular jury trial will use more jurors at trial and may take somewhat longer to try than the two to three days an EJT will take. In light of these considerations, the committee concludes there was not good reason to limit a party's ability to opt out too early in the case.

Two commenters noted that the rules as originally proposed, with a deadline of only 10 days before trial for requesting an opt-out in cases filed before July 1, 2016, but no shortening of the deadline for objecting to the requests in those cases, could result in the deadline for objections occurring after the trial date. One suggestion was to fix this by increasing the amount of time before trial for making the request in such cases. The committee agrees with that suggestion.

The reason for having different deadlines for cases filed before and after July 1, 2016, was the committee's recognition that, for many cases pending on July 1 (the operative date of the new law mandating EJTs), the proposed deadline of "45 days before the date first set for trial" will already have passed. Those cases may already have been continued past the first or even second trial date. And some will have trial dates occurring within a short time after July 1. The rule as originally circulated, was an attempt to cover as many of those cases as possible. In reviewing the issue, the committee concludes that a better way to deal with this issue is to apply the same 45-day deadline to all cases, counting back from the date first set for trial where possible, and counting back from the next trial date if the first date has already occurred. See proposed rule 3.1546(c)(2). For those cases that have trials set within the first 45 days after the law and rules go into effect, there will clearly be good cause for the court to allow late filing. The committee has noted this issue, and the use of the good cause exemption to address it, in an Advisory Committee Note.

Returning a case to mandatory EJT procedures

In developing the opt-out procedures, the committee considered whether it should develop a rule to clarify that, after a party has opted out of the mandatory EJT procedures based on a case meeting one or more of the conditions in section 630.20(b), a court may return the case to mandatory EJT status should the relevant conditions no longer apply. The committee asked for comments on whether such a rule should be adopted, to clarify that a case may be returned to mandatory EJT status when appropriate, even after an opt-out has been approved by the court.

All commenters[9] who responded on this issue agreed that, while the court clearly has the authority to take such action, a rule clarifying this point would be a good way to remind parties of that. One commenter, California Defense Counsel, also suggested that there should be some mechanism where the party who opts out affirms that the basis for the opt-out still exists before proceeding to trial.
In light of the comments received, the committee modified the rules to include a provision that the court may have a case tried as an mandatory EJT if the criteria supporting an opt-out no long apply, and mandating that the parties inform a court promptly if that occurs. See proposed rule 3.1546(c)(4). At the suggestion of the Orange County Bar Association, the committee also added a new instruction to the opt-out request form, notifying the parties of these provisions. See form EJT-003, Instructions, item 7.

The committee considered placing some kind of deadline or notice requirement on returning a case to mandatory EJT status, in light of suggestions received from several of the bar group commenters, but concluded that such cases will need to be handled by courts on an individual basis, depending on the facts and timing involved, and so has not set any mandatory time frames for the court.

Comments on new EJT forms

In addition to the new instruction added to the request for opt-out forms, several other suggestions for modification of the forms were made by the commenters, all of which were accepted by the committee. The more substantive ones are described here.

- ***Request to Opt Out of Mandatory Expedited Jury Trial*** **(form EJT-003)**
  At the suggestion of Consumer Attorneys of California, item 2 on the form, the item stating grounds for opting out, was divided into two subparts, with the only ground requiring a determination by the court (good cause) set out as separate from the grounds that automatically result in an opt-out upon request. At the same time, the committee added to item 2(b) the statutory language about good cause including situations where a party believes a case needs more time and the other party won't stipulate to that.

  At the suggestion of California Defense Counsel, a further instruction was added to the back of the form, to clarify that no documentary evidence need be submitted with the opt-out request.

- ***Objection to Request to Opt Out of Mandatory Expedited Jury Trial*** **(form EJT-004)**
  At the suggestion of the Litigation Section of the State Bar, the items on the form were reorganized. Because original items 3 and 4 were really just two bases for objecting to the opt-out request, they have been made subparts of a single item. The committee has also added a new item 4 to the form to allow an objector to show good cause for late filing.

[9] California Defense Counsel, State Bar Litigation Section, State Bar Committee on Administration of Justice, Superior Court of San Diego, and Orange County Bar Association (OCBA) provided comments on this point.

- ***Agreement of Parties (Mandatory Expedited Jury Trial Procedures)* (form EJT-018)** The Superior Court of Orange County pointed out that the item for the judge to check if denying the stipulation of the parties referred to a proposed consent order being denied, but that this new form was titled an agreement of the parties, rather than an order. The different title was used to differentiate it from the current *Proposed Consent Order* form for voluntary EJTs. The language in the final item on the form has now been modified.

Voluntary expedited jury trials

The proposal as circulated also made minor amendments to the rules regarding *voluntary* expedited jury trials, and minor revisions to the forms for those cases. No comments were received on those parts of the proposal, and the committee is proceeding with the recommendation as circulated.

In developing the new rules for the mandatory EJTs, the committee also considered whether it should also recommend amendments to simplify the voluntary EJT procedures, which some had complained of as overly complicated and burdensome. The invitation to comment included a request for specific comments on this point; whether those rules should be made simpler. The consensus of those who responded to this request, California Defense Counsel, Orange County Bar Association, and the two state bar committee commenters, was to leave the rules regarding voluntary EJTs as they were.

Potential policy implications of the new statute

Although not raised in the formal comments, a judicial officer has informally raised a question with the committee about the impact of new section 630.020(a)[10] and whether, on its face, it mandates that all trials in limited civil cases be conducted as mandatory EJTs, with bench trials no longer permitted other than in cases in which the parties have opted out or which are not covered by this new law (i.e., unlawful detainer cases).

The committee notes that this interpretation of the statute does not appear to conform with the intent of the authors. The legislative history of the bill does not indicate that there was any intent to eliminate these bench trials in limited civil cases. Discussions of EJTs in the various committee analyses address the benefits of such procedures as compared to regular jury trials, but nowhere compare them to bench trials, or mention bench trials at all. [11] Considering that in fiscal year 2013–2014 there were over 31,000 bench trials in limited civil cases in California, and only 219 jury trials in such cases, bench trials would have been the subject of discussion in legislative analyses if the bill was intended to eliminate such trials.

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[10] 630.20 (a). Except as provided in subdivisions (b) and (c), **an action or special proceeding treated as a limited civil case** pursuant to Article 1 (commencing with Section 85) of Chapter 5.1 of Title 1 of Part 1, including an action or special proceeding initially filed as a limited civil case or remanded as one thereafter, **shall be conducted as a mandatory expedited jury trial pursuant to this chapter** . . ..(emphasis added)

[11] The bill analyses by the various Senate and Assembly committees may be viewed here: *http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB555.*

Moreover, the law regarding waiving jury trials has not been modified by the new law. Article I Section 6 of the California Constitution provides that "[i]n a civil case, a jury may be waived only by consent of the parties expressed as prescribed by statute." Section 631(a) states that a party may waive a jury trials only by the means described in section 631(f). That section prescribes several ways in which such waiver is made, including, among other methods, by failing to announce that a jury is required at the time the case is first set for trial; or by failing to pay a jury fee at the time of the initial case management conference; or, if no case management conference is scheduled, within 165 days after the complaint was filed. Nothing was included in AB 555 to modify this code section so that it would not apply in limited civil proceedings where mandatory EJTs are to become the norm. The lack of any modification to section 631 appears to be yet another indicator that the Legislature did not intend to eliminate bench trials in limited civil cases.

Alternatives considered

Because the Legislature mandated that new rules and procedures be developed to reflect the changes to the voluntary EJT provisions and the enactment of the new mandatory EJT provisions, the committee did not consider *whether* to develop new rules and forms, but merely how to do so.

Pretrial Procedures for Mandatory EJTs

The committee considered making the current rules regarding mandatory pretrial conferences and pretrial submissions for voluntary EJTs (see rule 3.1548) applicable to mandatory EJTs as well. The committee decided, however, that those rules—particularly the mandated pretrial conference shortly before trial—would be overly burdensome if required in all limited civil cases, and declined to do so. The committee decided instead that mandatory EJT cases should comply with the existing statutory pretrial provisions for limited civil cases, which provide for limited discovery in such cases and the potential of a pretrial exchange of witness and exhibit lists. See sections 90–100.

The committee also considered the alternative of requiring that parties make any request to opt out of a mandatory EJT early in the action, tying the deadline to the time for case management review, for example, or to a set number of days after filing. As discussed above, the committee concluded that a deadline later in the case was preferable.

Pretrial Procedures for Voluntary EJTs

As noted above, the committee considered amending the current pretrial rule for voluntary EJTs (rule 3.1548) in light of concerns raised that the early deadlines for pretrial exchanges and the mandatory pretrial conferences were burdensome, particularly in smaller cases, and discouraged parties from agreeing to EJTs. Some members noted that the current rules were often not complied with because many voluntary EJTs were agreed to just before trial, after the time in the rule for exchanges and submissions had already passed. The committee decided to defer proposing any amendments to that provision at this time, focusing instead on the new mandatory

EJTs. In light of the comments received on this issue, the committee is not considering further recommendations in that area at this time. The consensus of all those who responded to this request for comment was that the current rules on pretrial procedures for voluntary EJTs need not be changed, due in part to their currently flexibility, allowing parties to change the provisions on stipulation.

Implementation Requirements, Costs, and Operational Impacts

The statutory changes in AB 555 will require significant education of judicial officers and courtroom personnel in any event, regarding the mandatory EJTs that will be held in many limited civil cases starting in July 2016, as well as the criteria for parties to be able to opt out of that type of trial. The new rules and forms relating to requests to opt out are intended to simplify the process, but they will also result in further training needs for court personnel and judicial officers. Those courts that decide to add the optional order form to their computerized case management system will have the added cost of doing that, but it is recommended as an optional form so that courts can make the decision.

Attachments and Links

1. Cal. Rules of Court, rules 3.1545–3.1553, at pages 13–20
2. Judicial Council forms EJT-001-INFO, EJT-003, EJT-004, EJT-005, EJT-018, EJT-020, and EJT-022A, at pages 21–31
3. Chart of comments, at pages 32–52

Rules 3.1545 and 3.1547–3.1552 of the California Rules of Court are amended, rule 3.1546 is adopted, and rule 3.1553 is renumbered, effective July 1, 2016, to read:

Division 15. Trial

Chapter 4.5. Expedited Jury Trials

Article 1. Applicability

Rule 3.1545. Expedited jury trials

(a) Application

The rules in this chapter apply to civil actions in which the parties either:

(1) Agree to ~~an~~ a voluntary expedited jury trial under chapter 4.5 (commencing with section 630.01) of title 8 of part 2 of the Code of Civil Procedure, or

(2) Are required to take part in an expedited jury trial under chapter 4.6 (commencing with section 630.20) of title 8 of part 2 of the Code of Civil Procedure.

(b) Definitions

As used in this chapter, unless the context or subject matter otherwise requires:

(1) "Consent order" means the consent order granting an expedited jury trial described in Code of Civil Procedure section 630.03.

(2) "Expedited jury trial" is a short jury trial before a reduced jury panel, and may be either a "mandatory expedited jury trial" or a "voluntary expedited jury trial."

(3) "Mandatory expedited jury trial" has the same meaning as stated in Code of Civil Procedure section 630.21.

(4) "Voluntary expedited jury trial" has the same meaning as stated for "expedited jury trial" in Code of Civil Procedure section 630.01.

(5) ~~"Expedited jury trial"~~ "High/low agreement" and "posttrial motions" have the same meanings as stated in Code of Civil Procedure section 630.01.

(c) Other programs

This chapter does not limit the adoption or use of other expedited trial or alternative dispute resolution programs or procedures.

Article 2. Rules Applicable Only to Cases with Mandatory Expedited Jury Trials

Rule 3.1546. Pretrial procedures for mandatory expedited jury trials

(a) Pretrial procedures

The pretrial procedures for limited civil actions set out in Code of Civil Procedure sections 90–100 are applicable to all cases with mandatory expedited jury trials. The statutory procedures include limited discovery, optional case questionnaires, optional requests for pretrial statements identifying trial witnesses and exhibits, and the possibility of presenting testimony in the form of affidavits or declarations.

(b) Case management

The case management rules in chapter 3 of division 7 of these rules, starting at rule 3.720, are applicable to all cases with mandatory expedited jury trials, except to the extent the rules have been modified by local court rules applicable to limited civil cases.

(c) Opting out of mandatory expedited jury trial procedures

(1) Parties seeking to opt out of mandatory expedited jury trial procedures on grounds stated in Code of Civil Procedure section 630.20(b) must file a *Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-003).

(2) Except on a showing of good cause, the request to opt out must be served and filed at least 45 days before the date first set for trial or, in cases in which the date first set for trial occurred before July 1, 2016, 45 days before the first trial date after July 1, 2016.

(3) Except on a showing of good cause, any objection to the request must be served and filed within 15 days after the date of service of the request, on an *Opposition to Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-004).

(4) If the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must promptly inform the court, and the case may be tried as a mandatory expedited jury trial.

(d) Agreements regarding pretrial and trial procedures

Parties are encouraged to agree to procedures or limitations on pretrial procedures and on presentation of information at trial that could streamline the case, including but not limited to those items described in rule 3.1547(b). The parties may use *Agreement of Parties (Mandatory Expedited Jury Trial Procedures)* (form EJT-018) and the attachment (form EJT-022A) to describe such agreements.

Advisory Committee Comment

Because Code of Civil Procedure section 630.20, which becomes operative July 1, 2016, applies to cases already on file and possibly already set for trial, as well as cases filed after the statutory provisions go into effect, the deadlines in rule 3.1546(c) for opt outs and objections may be problematic as applied to cases set for trial within the first couple of months after the rule goes into effect. It is expected that the good cause provisions within the rules regarding deadlines, along with judicious use of continuances as appropriate, will be liberally used to permit courts to manage those cases fairly, appropriately, and efficiently.

Article 3. Rules Applicable Only to Cases with Voluntary Expedited Jury Trials

Rule 3.1547. Consent order for voluntary expedited jury trial

(a) Submitting proposed consent order to the court

(1) Unless the court otherwise allows, to be eligible to participate in ~~an~~ a voluntary expedited jury trial, the parties must submit to the court, no later than 30 days before any assigned trial date, a proposed consent order granting an expedited jury trial.

(2) The parties may enter into written stipulations regarding any high/low agreements or other matters. Only in the following circumstances may a high/low agreement be submitted to the court with the proposed consent order or disclosed later in the action:

(A) Upon agreement of the parties;

(B) In any case involving either

(i) A self-represented litigant, or

(ii) A minor, an incompetent person, or a person for whom a conservator has been appointed; or

(C) If necessary for entry or enforcement of the judgment.

(b) Optional content of proposed consent order

In addition to complying with the provisions of Code of Civil Procedure section 630.03(e), the proposed consent order may include other agreements of the parties, including the following:

(1) Modifications of the requirements or timelines for pretrial submissions required by rule 3.1548;

(2) Limitations on the number of witnesses per party, including expert witnesses;

(3) Modification of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony by such witnesses;

(4) Allocation of the time periods stated in rule 3.1550 including how arguments and cross-examination may be used by each party in the ~~three~~ five-hour time frame;

(5) Any evidentiary matters agreed to by the parties, including any stipulations or admissions regarding factual matters;

(6) Any agreements about what constitutes necessary or relevant evidence for a particular factual determination;

(7) Agreements about admissibility of particular exhibits or demonstrative evidence that are presented without the legally required authentication or foundation;

(8) Agreements about admissibility of video or written depositions and declarations;

(9) Agreements about any other evidentiary issues or the application of any of the rules of evidence;

(10) Agreements to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury;

(11) Agreements concerning the time frame for filing and serving motions in limine; and

(12) Agreements concerning numbers of jurors required for jury verdicts in cases with fewer than eight jurors.

Rule 3.1548. Pretrial submissions for voluntary expedited jury trials

(a) Service

Service under this rule must be by a means consistent with Code of Civil Procedure sections 1010.6, 1011, 1012, and 1013 or rule 2.251 and be reasonably calculated to assure delivery to the other party or parties no later than the close of business on the last allowable day for service as specified below.

(b) Pretrial exchange for voluntary expedited jury trials

Unless otherwise agreed by the parties, no later than 25 days before trial, each party must serve on all other parties the following:

(1) Copies of any documentary evidence that the party intends to introduce at trial (except for documentary evidence to be used solely for impeachment or rebuttal), including, but not limited to, medical bills, medical records, and lost income records;

(2) A list of all witnesses whom the party intends to call at trial, except for witnesses to be used solely for impeachment or rebuttal, and designation of whether the testimony will be in person, by video, or by deposition transcript;

(3) A list of depositions that the party intends to use at trial, except for depositions to be used solely for impeachment or rebuttal;

(4) A copy of any audiotapes, videotapes, digital video discs (DVDs), compact discs (CDs), or other similar recorded materials that the party intends to use at trial for evidentiary purposes, except recorded materials to be used solely for impeachment or rebuttal and recorded material intended to be used solely in closing argument;

(5) A copy of any proposed jury questionnaires (parties are encouraged to agree in advance on a questionnaire);

(6) A list of proposed approved introductory instructions, pre-instructions, and instructions to be read by the judge to the jury;

(7) A copy of any proposed special jury instructions in the form and format described in rule 2.1055;

(8) Any proposed verdict forms;

(9) A special glossary, if the case involves technical or unusual vocabulary; and

(10) Motions in limine.

(c) Supplemental exchange <u>for voluntary expedited jury trials</u>

No later than 20 days before trial, a party may serve on any other party any additional documentary evidence and a list of any additional witnesses whom the party intends to use at trial in light of the exchange of information under (b).

(d) Submissions to court <u>for voluntary expedited jury trials</u>

No later than 20 days before trial, each party must file all motions in limine and must lodge with the court any items served under (b)(2)–(9) and (c).

(e) Preclusionary effect

Unless good cause is shown for any omission, failure to serve documentary evidence as required under this rule will be grounds for preclusion of the evidence at the time of trial.

(f) Pretrial conference <u>for voluntary expedited jury trials</u>

No later than 15 days before trial, unless that period is modified by the consent order, the judicial officer assigned to the case must conduct a pretrial conference, at which time objections to any documentary evidence previously submitted will be ruled on. If there are no objections at that time, counsel must stipulate in writing to the admissibility of the evidence. Matters to be addressed at the pretrial conference, in addition to the evidentiary objections, include the following:

(1) Any evidentiary matters agreed to by the parties, including any stipulations or admissions regarding factual matters;

(2) Any agreement of the parties regarding limitations on necessary or relevant evidence, including any limitations on expert witness testimony;

(3) Any agreements of the parties to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods of presenting information to the jury;

(4) Admissibility of any exhibits or demonstrative evidence without legally required authentication or foundation;

(5) Admissibility of video or written depositions and declarations and objections to any portions of them;

(6) Objections to and admissibility of any recorded materials that a party has designated for use at trial;

(7) Jury questionnaires;

(8) Jury instructions;

(9) Special verdict forms;

(10) Allocation of time for each party's case; ~~and~~

(11) Motions in limine filed before the pretrial conference; <u>and</u>

(<u>12</u>) <u>The parties' intention on how any high/low agreement will affect an award of fees and costs.</u>

(g) Expert witness documents

Any documents produced at the deposition of an expert witness are deemed to have been timely exchanged for the purpose of (c) above.

Article 3. Rules Applicable to All Expedited Jury Trials

Rule 3.1549 Voir dire

~~Approximately one hour will be devoted to voir dire, with 15 minutes allotted to the judicial officer and 15 minutes to each side.~~ Parties are encouraged to submit a joint form questionnaire to be used with prospective jurors to help expedite the voir dire process.

Rule 3.1550. Time limits

~~Excluding~~ Including jury ~~selection~~ voir dire, each side will be allowed ~~three~~ five hours to present its case, including opening statements and closing arguments, unless the court, upon a finding of good cause, allows additional time. The amount of time allotted for each side includes the time that the side spends on cross-examination. The parties are encouraged to streamline the trial process by limiting the number of live witnesses. The goal is to complete an expedited jury trial within ~~one full~~ two trial days.

Rule 3.1551. Case presentation

(a) Methods of presentation

Upon agreement of the parties and with the approval of the judicial officer, the parties may present summaries and may use photographs, diagrams, slides, electronic presentations, overhead projections, individual notebooks of exhibits for submission to the jurors, or other innovative methods of presentation approved at the pretrial conference.

(b) Exchange of items

Anything to be submitted to the jury under (a) as part of the evidentiary presentation of the case in chief must be exchanged 20 days in advance of the trial, unless that period is modified by the consent order or agreement of the parties. This rule does not apply to items to be used solely for closing argument.

(c) Stipulations regarding facts

The parties should stipulate to factual and evidentiary matters to the greatest extent possible.

Rule 3.1552. Presentation of evidence

(a) Stipulations regarding rules of evidence

The parties may offer such evidence as is relevant and material to the dispute. An agreement to modify the rules of evidence for the trial made pursuant to the expedited jury trial statutes commencing with Code of Civil Procedure section 630.01 may be included in

the consent order or agreement of the parties. To the extent feasible, the parties should stipulate to modes and methods of presentation that will expedite the process, either in the consent order or at the pretrial conference.

(b) Objections

Objections to evidence and motions to exclude evidence must be submitted in a timely manner. Except as provided in rule 3.1548(f), failure to raise an objection before trial does not preclude making an objection or motion to exclude at trial.

Rule 3.1553.~~3.1546.~~ Assignment of judicial officers

The presiding judge is responsible for the assignment of a judicial officer to conduct an expedited jury trial. The presiding judge may assign a temporary judge appointed by the court under rules 2.810–2.819 to conduct an expedited jury trial. A temporary judge requested by the parties under rules 2.830–2.835, whether or not privately compensated, may not be appointed to conduct ~~an~~ a voluntary expedited jury trial.

EJT-001-INFO Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*. The rules are at *www.courts.ca.gov/rules.*

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials**. All limited civil cases—cases where the demand for damages or the value of property at issue is $25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in 7 below.
  - **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the mandatory ones do, but have one other important aspect—**all parties must waive their rights to appeal.** In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. 9 These are explained more fully in . .

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and

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pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for $25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to* voluntary *expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in (1), and to waive most appeal rights. The agreements between the parties must be put into writing in a document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial**.

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** **03/10/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES	CASE NUMBER:

See instructions on back.

1. *(Name of party):* requests to opt out of the mandatory expedited jury trial procedures in this case because it meets one of the criteria set forth in Code of Civil Procedure section 630.20(b).
2. The ground for asking to opt out is *(check one or more of the following grounds from Code of Civil Procedure section 630.20(b))*:
   a. Grounds on which a party may choose to opt out of an expedited jury trial.
      (1) ☐ Punitive damages are sought in the case. (§ 630.20(b)(1).)
      (2) ☐ Damages in excess of insurance policy limits are sought in the case. (§ 630.20(b)(2).)
      (3) ☐ A party's insurer is providing a legal defense subject to a reservation of rights. (§ 630.20(b)(3).)
      (4) ☐ The case involves a claim reportable to a governmental entity. (§ 630.20(b)(4).)
      (5) ☐ The case involves a claim of moral turpitude that may affect an individual's professional license. (§ 630.20(b)(5).) *(Identify the individual and the license):*
      (6) ☐ The case involves claims of intentional conduct. (§ 630.20(b)(6).)
      (7) ☐ The case has been reclassified as unlimited pursuant to Code of Civil Procedure section 403.020. (§ 630.20(b)(7).)
      (8) ☐ The complaint contains a demand for attorney's fees other than fees sought under Civil Code section 1717. (§ 630.20(b)(8).) *(A complaint seeking attorney's fees provided for in a contract is not exempt.)*
   b. Ground on which the judge must make a finding. (*Note that good cause includes, but is not limited to, a showing that a party needs more than five hours to present or defend the action and the parties have been unable to stipulate to additional time.)*
      ☐ Good cause exists (other than one of the grounds listed above) for not proceeding as an expedited jury trial (§ 630.20(b)(9)) *(explain below or on attached page or pages):*

3. If the request is not made within the time required under Cal. Rules of Court, rule 3.1546, describe the good cause for late filing:

☐ *Check here if you need more space to describe the good cause for the request, or for delay, and attach a separate page or pages describing it. At the top of each page, write "EJT-003, item 2b" or "EJT-003, item 3," as applicable.*

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 ATTORNEY OR PARTY WITHOUT ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
EJT-003 [New July 1, 2016]

Code of Civil Procedure, § 630.20
Cal. Rules of Court, rule 3.1546
www.courts.ca.gov

—INSTRUCTIONS—

1. This form is to be used by any party in a limited civil action seeking to opt out of the mandatory expedited jury trial procedures set out in Code of Civil Procedure sections 630.20–630.29. Those procedures are also described in the *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).

2. The law provides that mandatory expedited jury trial procedures apply to all limited civil cases (except for unlawful detainer or eviction cases), unless the case meets one of the criteria set out in Code of Civil Procedure section 630.20(b). Those are listed on the front of this form, at items 2a–2i. If a case fits into one of those criteria, either party may ask to opt out of the mandatory expedited jury trial procedures.

3 **If you want to opt out:** If you believe the case meets one of the criteria listed in item 2 and you want to opt out of the expedited jury trial procedures, fill out this form, serve a copy on all other parties in the case, and file the original with the court along with a proof of service (you can use form POS-040 for this). The form should be served and filed at least 45 days before the date first set for trial. If you have good cause for filing it later, explain that in item 3.

4. **Documentation not required:** It is not necessary to submit documentary evidence with this application, which is based on statements being made under penalty of perjury. You may submit such evidence if you believe it to be necessary or appropriate.

5. **If you receive a copy of this form:** If you disagree that the the case meets any of the criteria listed in item 2, you can object. To do that, fill out the *Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-004), serve a copy on all other parties in the case, and file the original with the court along with a proof of service (you can use form POS-040 for this). *You must file the objection within 15 days of the date the request was served on you.*

6. **Court action:** After the court has reviewed the request and any objection that has been filed within 15 days, the court will issue an order that will do one of the following:
   a. grant the request,
   b. deny the request, or
   c. set a hearing to hear further from the parties.

7. **Criteria For Opt-Out No Longer Applicable:** Parties should be aware that they are to promptly inform the court if the ground or grounds which supported the opt out of this case from Mandatory EJT are no longer applicable, and the court may require the case be tried as an expedited jury trial.

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** **03/10/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
OBJECTION TO REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES	CASE NUMBER:

1. *(Name of party)*: objects to the request to opt out of mandatory expedited jury trial procedures.
2. The request to opt out was filed by *(name of applicant)*: and was served on *(date)*:
3. The ground for objection is (*check one or both of the following grounds*):
   a. ☐ The case does not meet the criteria that the applicant has identified in the *Request to Opt Out (identify each ground that was checked in item 2 of the* Request*, and explain below or on attached page why it does not apply to this case)*:

   b. ☐ The request to opt out is not timely under Cal. Rules of Court, rule 3.1546, and there is no good cause for a late request. (*Explain below or on attached page or pages.)*
4. If the objection is not made within the time required under Cal. Rules of Court, rule 3.1546, describe the good cause for late filing:

☐ *Check here if you need more space and attach a separate page or pages. At the top of each page, write "EJT-004, item 3a," "EJT-004, item 3b," or "EJT-004, item 4," as applicable.*

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 ATTORNEY OR PARTY WITHOUT ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
EJT-004 [New July 1, 2016]

OBJECTION TO REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES

Code of Civil Procedure, § 630.20
Cal. Rules of Court, rule 3.1546
www.courts.ca.gov

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** **03/10/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
ORDER ON REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PRODCEDURES	CASE NUMBER:

The court has reviewed the request to opt out, along with any objection thereto, and makes the following orders:

1. ☐ The court **grants** the request. The case will *not* proceed under the mandatory expedited jury procedures.

2. ☐ The court **denies** the request to opt out for the following reason(s):

3. ☐ The court needs more information to decide whether to grant the request. A hearing is set on the date below:

Name and address of court if different from above:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. 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.)

Date: _____

JUDICIAL OFFICER

Clerk's Certificate of Service

I certify that I am not a party to this action and *(check one)*:

☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the applicant listed above, at the court, on the date below.

☐ This order was mailed first class, postage paid, to the applicant at the address listed above, from *(city)*: , California on the date below.

Date: By: _____

DEPUTY CLERK

Form Approved for Optional Use
Judicial Council of California
EJT-005 [New July 1, 2016]

ORDER ON REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES

Code of Civil Procedure, § 630.20
Cal. Rules of Court, rule 3.1546(c)
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** **03/10/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
AGREEMENT OF PARTIES **(MANDATORY EXPEDITED JURY TRIAL PROCEDURES)**	CASE NUMBER:

Under Code of Civil Procedure section 630.23(d), parties are encouraged to agree to modifications or limitations on pretrial procedures and presentation of information at trial that could streamline the case, including but not limited to those items described in form EJT-022A. This form along with form EJT-022A may be used to record any such agreements.

EACH PARTY AGREES AS FOLLOWS:

1. The parties to the action are:
   a. Plaintiff (*name*):
   b. Defendant (*name*):
   c. Other party (*name and party*):
2. The parties have agreed: ☐ as described in attached form EJT-022A. ☐ as described below.

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

☐ It is so **ORDERED**.

☐ The order confirming the proposed agreement is **DENIED** for good cause.

Date:

JUDICIAL OFFICER

Form Approved for Optional Use
Judicial Council of California
EJT-018 [New July 1, 2016]

AGREEMENT OF PARTIES
(MANDATORY EXPEDITED JURY TRIAL PROCEDURES)

Code of Civil Procedure, § 630.23
Cal. Rules of Court, rule 3.1546(d)
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** **03/10/16** **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:	
[PROPOSED] CONSENT ORDER FOR VOLUNTARY EXPEDITED JURY TRIAL	CASE NUMBER:

This form is to be signed by all parties and their attorneys of record consenting to a voluntary expedited jury trial under California Code of Civil Procedure sections 630.01–630.12 and rules 3.1545–3.1553 of the California Rules of Court. Before completing this form, all parties should review *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).

EACH PARTY AGREES AS FOLLOWS:

1. The parties to the action, each of whom has the authority to consent to an expedited jury trial (EJT), are:
   a. Plaintiff (*name*):
   b. Defendant (*name*):
   c. Other party (*name and party*):
2. a. ☐ Plaintiff is represented by an attorney who has advised plaintiff about the EJT procedures and provided plaintiff with an *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).
   b. ☐ Defendant is represented by an attorney who has advised defendant about the EJT procedures and provided defendant with an *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).
   c. ☐ I *(name)*: am representing myself and understand the voluntary expedited jury trial procedures as set forth in Code of Civil Procedure sections 630.01–630.12 and rules 3.1545–3.1553 of the California Rules of Court.
   d. ☐ Insurance carriers responsible for providing coverage or defense for the following parties have been informed of the EJT procedures and provided with an *Expedited Jury Trial Information Sheet* (form EJT-010) and do not object to the procedures:
      (1) ☐ Insurance carrier *(name of carrier)*: for *(name of party)*:
      (2) ☐ Insurance carrier *(name of carrier)*: for *(name of party)*:
      (3) ☐ Additional insurance carriers and parties are listed on attached form MC-025.
3. A party to this action ☐ is ☐ is not a minor, an incompetent person, or a person for whom a conservator has been appointed.
4. Each party understands and agrees to the voluntary expedited jury trial procedures, as follows:
   a. That all parties **waive all rights to appeal,** to move for directed verdict, or to make any posttrial motions, except as provided in Code of Civil Procedure sections 630.08 and 630.09;
   b. That each side will have up to **five hours** in which to complete jury voir dire and present its case;
   c. That the jury will be composed of **eight or fewer jurors** with no alternates;
   d. That each side will be **limited to three peremptory challenges**, unless the court permits an additional challenge in cases with more than two sides as provided in Code of Civil Procedure section 630.04; and
   e. That the trial and pretrial matters will proceed under a–d above and, unless the parties expressly agree otherwise in this agreement or the attachment to it, under all other provisions for voluntary expedited jury trials (Code Civ. Proc., § 630.01 et seq.) and the rules of court for voluntary expedited jury trials (Cal. Rules of Court, rules 3.1545–3.1553).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

5. Each party understands that only three-quarters of the jury need to agree in order to reach a decision, unless otherwise agreed by the parties.
6. Each party understands that the parties may make additional agreements concerning the trial in terms of applicable rules, number of witnesses, types of evidence, or other matters in order to shorten the length of time in which the matter will be tried to the jury. Any such agreements are described in item 9 below or in *Attachment to [Proposed] Consent Order for Voluntary Expedited Jury Trial* (form EJT-022A).
7. Each party understands that the parties may enter a confidential high-low agreement specifying a minimum amount of damages that a plaintiff is guaranteed to receive from defendant and a maximum amount that defendant will be liable for, regardless of the verdict returned by the jury.
8. Each party understands that any award of attorney's fees and costs will be decided by the court.
9. ☐ Other agreements ☐ are described in attached form EJT-022A ☐ are as follows:

10. Total number of pages attached: The consents below apply to all the agreements described in those pages.

After reading the above and any attachments, I hereby consent to the voluntary expedited jury trial procedures for this case as stated in these documents.

PARTIES

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ (SIGNATURE OF PLAINTIFF)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ (SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ (SIGNATURE OF *(describe party)*):

ATTORNEYS

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR DEFENDANT)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR *(describe party)*):

☐ It is so **ORDERED**.

☐ The proposed consent order is **DENIED** for good cause.

Date:

JUDICIAL OFFICER

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

ATTACHMENT TO

☐ ***[PROPOSED] CONSENT ORDER FOR VOLUNTARY EXPEDITED JURY TRIAL***

☐ ***AGREEMENT OF PARTIES (MANDATORY EXPEDITED JURY TRIAL PROCEDURES)***

(This attachment may be used with form EJT-018 OR EJT-020)

The parties have agreed to the following *(check all items on which agreements have been reached and describe the agreements in detail. If more space is needed for any item, use form MC-025 and complete item 15 below):*

1. ☐ *(For voluntary expedited jury trial cases only)* Modifications of the timeline for, or other aspects of, the pretrial submissions required by rule 3.1548 of the California Rules of Court *(describe timeline or other changes)*:

2. ☐ Limitations on the number of witnesses per party, including expert witnesses *(describe):*

3. ☐ Modifications of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony by such witnesses *(describe)*:

4. ☐ Allocation of time periods stated in rule 3.1550 of the California Rules of Court, including how arguments and cross-examination may be used by each party in the five-hour time frame *(describe)*:

5. ☐ Agreement as to any evidentiary matters, including any stipulations or admissions regarding factual matters *(state such matters in detail)*:

6. ☐ Agreement about what constitutes necessary or relevant evidence for a particular factual determination *(describe)*:

Form Approved for Optional Use
Judicial Council of California
EJT-022A [Rev. July 1, 2016]

ATTACHMENT TO
[PROPOSED] CONSENT ORDER or
AGREEMENT OF PARTIES

Code of Civil Procedure, §§ 630.01–630.29;
Cal. Rules of Court, rules 3.1545–3.1553
www.courts.ca.gov

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

7. ☐ Agreement about admissibility of particular exhibits or demonstrative evidence presented without the legally required authentication or foundation *(describe)*:

8. ☐ Agreement about admissibility of video or written depositions and declarations *(describe)*:

9. ☐ Agreement about any other evidentiary issues or the application of any of the rules of evidence *(describe)*:

10. ☐ Agreement to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury *(describe)*:

11. ☐ Agreement concerning the time frame for filing and serving motions in limine *(describe)*:

12. ☐ Agreement that fewer than eight jurors may hear this case *(describe)*:

13. ☐ Agreement concerning the number of jurors required to reach a verdict in this case *(describe, including any agreement regarding loss of juror after trial starts)*:

14. ☐ Other agreements *(describe)*:

15. ☐ Form MC-025 is attached, with further details concerning items *(list items)*:

W16-02

Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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

	Commentator	Position	Comment	Committee Response
1.	California Defense Counsel by Michael Belote	AM	With very minor suggestions for amendments, the California Defense Counsel agrees with the proposed rules and thanks the Judicial Council for the prompt and thorough work in this area. Our comments focus on the four questions propounded on page 7 of the Request for Comments. 1. On balance, the proposed rules appropriately address the stated purposes of the statute relating to mandatory expedited jury trials. In particular, the rules provide simple, easy to understand provisions for requesting expedited jury trials, opting out of "EJT" treatment, objecting to requests to opt-out, etc. The simple approach embodied in the proposed rules benefits litigants, lawyers, and the courts. For example, we believe that the rules appropriately relieve lawyers of any responsibility to provide documentation to the court in support of a request to opt-out, because the lawyer is declaring under penalty of perjury that a ground to opt out exists. It is only when there is an objection to a request to opt out that lawyers should be required to submit any documentation in support of the opt-out request. At that point, the court should schedule a hearing and require the parties to submit evidence in support of the opt-out request or objection. For clarity, we suggest that the instructions for Form EJT-003 should contain language informing parties that	The committee notes the general agreement with the proposal. 1. The committee agrees that the procedure should be a simple one, particularly when the opt-out request is based on a ground on which a party has the right to opt out, with no finding required by the court. The committee agrees with this suggestion and has added a new instruction to form EJT-003 to

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

	Commentator	Position	Comment	Committee Response
			no documentary evidence need be submitted in connection with an opt-out request. 2. With respect to deadlines to opt out of expedited jury trial provisions, we generally believe that requests to opt out should be submitted as early as possible in the litigation. We are concerned about timelines for opting out and objecting to opt-outs for cases filed prior to July 1, 2016. The proposed rules presently provide that parties seeking to opt out of cases filed before July 1, 2016 file and serve the request at least 10 days before trial, with a party opposing the request required to serve the opposition within 15 days after the request to opt out. This will be difficult for requests to opt out submitted very close to trial dates. We suggest that for pre-July cases, requests to opt out be required at least 30 days before trial dates, providing time for any objections to be filed well in advance of trial dates. Some cases set for trial very shortly after the July 1 effective date of the law are simply going to require some special handling by courts. The 45-day timeframe for opting out of EJT provisions for cases filed after July 1, 2016 is appropriate. 3. With respect to the question concerning cases where grounds for opting out no longer exist, we believe that the rules should address this situation. The rules should provide that cases should be returned to mandatory EJT when the	reflect this. 2. The committee understands the concerns about the short amount of notice proposed for opt outs in cases filed before July 1, 2016, and had modified the rule to require that requests for opt outs in those cases, as in the later-filed cases, be filed 45 days before the next date set for trial. Objections are to be filed within 15 days after service of the request. Exceptions to those deadlines are permitted for good cause, in order, among other things, to allow courts to specially handle any cases set for trial shortly after the law goes into operation. 3. The committee has considered this comment and has modified the rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must

W16-02

Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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

	Commentator	Position	Comment	Committee Response
			opt-out grounds no longer exist. We suspect in some cases that parties who opt out may not inform opposing counsel when the grounds for opting out no longer exist, so perhaps a mechanism needs to be created where the party who opts out affirms that the basis for the opt-out still exists. If cases are going to be returned to EJT status, this should be done early enough in the case so that parties have time to reach agreement on items contained in EJT Form 022A. 4. We agree with the provisions relating to the existing voluntary EJT program. Thank you for the opportunity to comment on the proposed EJT rules.	promptly inform the court, and the court will have the discretion to have the case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be handled by courts on an individual basis based on the facts and timing involved, and so has not set any mandatory time frames for the court. 4. The committee notes the agreement with current rules regarding voluntary EJTs'
2.	Consumer Attorneys of California by Saveena K. Takhar, Associate Staff Counsel	AM	I write on behalf of the Consumer Attorneys of California to comment on the Civil and Small Claims Advisory Committee's proposed form EJT-003 for Expedited Jury Trials. We are concerned about the proposed format of the Request to Opt Out of Mandatory Expedited Jury Trial Procedures form. **Problem Language:** Opt out (i), CCP § 630.20(b)(9), "other good cause for not proceeding as an expedited jury trial" should be designated as distinct and	The committee notes the commenter's general agreement with the proposal, and its requested modification of form EJT-003. The committee has modified that form in light of the commenter's suggestion, dividing item 2 on the form into two sections as suggested.

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

	Commentator	Position	Comment	Committee Response
			separate from the other opt out exceptions because "good cause" must be proven to the judge while the other opt outs are objective and thus automatic. **Our Position:** In general, we support the proposed rules, standards, and forms for both Mandatory and Voluntary Expedited Jury Trials. However, with regards to proposed form EJT-003, CAOC believes the good cause opt out should be distinguished from the other automatic opt outs. Opt outs established by CCP § 630.20 subdivisions (b)(1) through (b)(8) are all objectively established due to their nature. For example, either a case involves a claim of intentional conduct or it does not. Thus, a party can merely check a box to allege one of these automatic opt outs. The final opt out is a "good cause" catch all, and is intended for cases where parties require more than five hours to present or defend their action and the parties are unable to stipulate to more time or some other scenario to be argued to the judge as to why the case should not proceed as an Expedited Jury Trial. Thus, while the first eight opt outs will be automatic, the good cause opt out must be proven to the judge. Due to the difference between the automatic opt	

	Commentator	Position	Comment	Committee Response
			outs and the good cause opt out, CAOC recommends that on form EJT-003 opt out "i" be placed under a separate subheading. This subheading would provide clarity regarding the different procedure entailed for the good cause opt out and ensure that a party must both allege why their case should not proceed as an EJT and obtain approval from the court. Thank you for your attention to this matter.	
3.	Orange County Bar Association by Todd G. Friedland, President	AM	Form EJT-003 should be modified to inform the attorney/party that if one of the criteria relied upon initially to opt out of Mandatory EJT under C.C.P. section 630.20(b) is no longer applicable at the time of trial, then the court may require the case to proceed as an expedited jury trial (EJT). This would be a more transparent means of informing the parties they may still be subject to an EJT, even if there was an initial, valid reason to opt out. [Even if a rule is not developed to clarify that a case can be returned to mandatory EJT status when appropriate, even after an opt-out has been approved by the Court, it seems, in the absence of a rule specifying one way or the other as to whether the case can be returned to mandatory EJT status, there is the specter of a court concluding that the case should be returned to mandatory EJT status, perhaps by the court exercising its authority or purported authority	The committee notes the commenter's general agreement with the proposal, and its requested modification of form EJT-003. The committee has modified that form in light of the commenter's suggestion, adding a new paragraph to the instructions.

	Commentator	Position	Comment	Committee Response
			under laws generally allowing it to manage its proceedings in the absence of laws or rules indicating to the contrary (e.g., *Code of Civil Procedure* 187 ("if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code"). In order to carry out this goal of being transparent about the possibility of an opt-out reason vanishing and the matter thereby being required to proceed as an EJT, a suggestion is to add to "Instructions" on p. 2 of EJT-003 (the Request to Opt-out) a number 6: **6. Criteria For Opt Out No Longer Applicable at Time of Trial.** Parties and counsel should be aware that if the criteria which supported the opt out of this case from Mandatory EJT is no longer applicable at the time of trial, the Court may require the case be tried as an expedited jury trial. However, as explained below, if there is going to be specific reference in the forms or rules to this possibility of the court returning the matter to mandatory EJT status, there should be a Rule or provisions added to the existing Rules as to	

	Commentator	Position	Comment	Committee Response
			the procedures involved in returning the matter to mandatory EJT status (e.g., at least a 20 or 30 day continuance of trial after the parties are notified of the return to EJT status, so that counsel may adequately prepare for what is a different type of trial – to wit, one with 8 instead of 12 jurors and an abbreviated time period in which to present the case). **REQUEST FOR SPECIFIC COMMENTS** ***1. Does the proposal appropriately address the stated purpose?*** In part. The stated purpose of the proposal (W 16-02) seems to be to develop procedures for opting out, along with other rules and forms appropriate for mandatory EJTs. While much headway is made via the forms and rules proposed, there is more to be done (as explained further here). Specifically, we consider it important to have rules that promote certainty for the litigants with sufficient time to allow them to prepare for an EJT versus a "full" jury trial. We believe there is different preparation and different strategizing involved for an EJT versus a "full" jury trial and it burdens, possibly prejudices, parties and their counsel to prepare for one versus the other (or, worse, to have to change on very short notice from one to the other). As such, we suggest a specific period be specified in the rules (of at least 20, possibly 30, days before trial) in which the parties should be notified of a change (or	1. The committee has considered the commenter's concerns, and the suggestion that the rule mandate that the court provide 20 or 30 days' notice to the parties before returning a case that has been opted out of mandatory expedited jury trial procedures back to those procedures should the grounds for opting out no longer apply. The committee disagrees that such a specific rule is needed in light of the different circumstances that might apply, and believe the timing of the trial date is best left in the discretion of the court. The committee notes that it has modified the proposed rule to mandate that the parties must inform the court of any such change promptly, which may alleviate some of the commenter's concerns about late notice of a return to the expedited jury trial procedures.

	Commentator	Position	Comment	Committee Response
			return) to EJT after an initial opt out was granted (i.e., if the notice of a return to mandatory EJT is given on the day of trial, the trial should be continued for at least 20 or 30 days). Also, consideration should be given to adding a requirement as to how soon the Court must issue its Order on a Request to Opt Out (proposed form EJT-003). Since the request is to filed and served at least 45 days before trial (in the absence of good cause for a shorter time period), it might make sense to require that the Court issue its Order on Request to Opt Out (proposed EJT-005) at least 20 days before trial (thus giving enough time for any Objection to the opt out to be filed and considered, while allowing some period of time before trial for the parties to know whether they are going through an EJT or non-EJT). We acknowledge the suggestion in the proposal that the only impact of a non-EJT case versus EJT is that it will "use more jurors" and take "somewhat longer" than the two to three days an EJT will take, but we feel that it's a substantially different enough experience and, in some cases, the difference may be more than taking the case just "somewhat longer" to try, justifying significant notice to the parties of what kind of jury trial they will be participating in.	The committee considered this suggestion that the rules mandate how fast a court must act on a request to opt out of the expedited jury trial procedures, but declined to recommend such a rule, at least at this time. Most of the criteria for opting out are objective factors, the existence of which mandate under the statute that a party may opt out of the mandatory expedited jury procedures. (See Code Civ. Proc. § 630.20(b)(1)-(8). Therefore once a party is served with the request, the party will generally know whether the opt out will be granted. In addition, there is no reason to believe that courts will delay action on any of these requests. Should that occur and this delay become a problem, the committee will revisit whether further rules should be recommended on this point. .

	Commentator	Position	Comment	Committee Response
			2. Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case? Proposed rule 3.1546(c) requires that parties seeking to opt out after July 1, 2016 file and serve a "Request to Opt Out of Mandatory Expedited Jury Trial Procedures" "at least 45 days before the date first set for trial" and for "cases filed before July 1, 2016 at least 10 days before trial." Any objection to a party's opt out, must be filed and served within 15 days after service of the request. The deadline to opt out appears to be adequate provided that the Court can quickly rule on the opt out request and any objection without a hearing. The proposal states that hearings will not normally be required and opt-outs will be "routinely granted." Cal. Civil Code section 96 sets forth the timeline for serving the request for witnesses and description of evidence intended to be used at trial in a limited civil case and it seems that the parties could make a well-informed decision regarding the appropriateness of EJT during the preparation of this information demand/exchange. Cal. Civil Code section 96's request for witnesses and the description of evidence is required to be served	The committee agrees that the 45-day deadline to opt out is adequate. In addition, as noted above, most of the criteria for opting out are objective factors, the existence of which mandate under the statute that a party may opt out of the mandatory expedited jury procedures. (See Code Civ. Proc. § 630.20(b)(1)-(8). Therefore once a party is served with the request, the party will generally know whether the opt out will be granted.

	Commentator	Position	Comment	Committee Response
			"no more than 45 days and no less than 30 days prior to the date first set for trial". The timing for opting out appears appropriate if the opt-outs are routinely granted as the proposal intends. At the same time, if the goal were to provide the parties with at least 20 (or 30) days' notice prior to trial of whether the trial will be EJT or non-EJT, expansion of the time periods may be prudent (e.g., Opt out at least 60 days before trial rather than 45; any Objection filed at least 45 days before; Court rules at least 30 days before…thus giving that 30 days notice of what kind of trial it will be and, if it turns out that the opt-out reason disappears and there is to be a return to EJT, then at least a 30-day continuance after the change; or, by way of alternative example, Opt out by no later than 45th day before trial, Object by 30th day, Court required to rule by 20th day). ***3. Should there be a rule to clarify that courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in CCP section 630.20(b) if that ground is no longer applicable at the time of trial?*** Yes and, also, language should be added to the Form EJT-003. Because this is a new Mandatory procedure for limited cases and return to EJT status can be a	The committee considered the suggestion that the rules mandate how fast a court must act on a request to opt out of the expedited jury trial procedures, but declined to recommend such a rule, at least at this time. There is no reason to believe that courts will delay action on any of these requests. Should that occur and this delay become a problem, the committee will revisit whether further rules should be recommended on this point. The committee agrees and has modified the rules to include a provision that a case may be returned to mandatory expedited jury procedures should criteria for the opt out no longer apply. Form

	Commentator	Position	Comment	Committee Response
			significant departure from non-EJT status, this clarification is important for both attorneys and their clients. This reminder/clarification can be *easily added* onto the form requesting opt out so that attorneys will be able to advise their clients and understand what happens if the ground for opt out is no longer applicable *at the time of trial.* Suggestion is to add to Instructions on page 2 of EJT-003 number 6: **"6. Criteria For Opt Out No Longer Applicable at Time of Trial.** Parties and counsel should be aware that if the criteria which supported the opt out of this case from Mandatory EJT is no longer applicable at the time of trial, the Court may require the case be tried as an expedited jury trial." A new rule (as opposed to the above-proposed addition to form EJT-003) should specify the procedures to be followed upon the Court returning a matter to mandatory EJT status (e.g., at least 20 days notice to parties of returning matter to mandatory EJT status and if trial is within 20 days, then trial has to be continued so there is at least a 20 day period between notice and trial date; alternatively, 30 days could be the required period and, whether it is 20 or 30 days, the important part is that there be some	EJT-003 has also been modified in light of this comment. The committee has considered this comment, but disagrees that the proposed timelines be embedded in the rules. The committee has modified the proposed rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must promptly inform the court, and the court will have the discretion to have such a case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be

	Commentator	Position	Comment	Committee Response
			substantial period of time for the parties and attorneys to re-group after the matter is ordered to be returned to mandatory EJT status). There is concern that a party can readily eliminate an opt out ground (e.g., remove a claim for punitive damages) on the day of trial and claim "ready for a Mandatory EJT", to the prejudice of the opposing part which was otherwise prepared for a full trial. It seems best to have it written into the rules what the effect of returning to EJT should be (e.g., assurance of at least a 20 or 30 day period of time in which to prepare for what would then be known to be an EJT).	handled by courts on an individual basis, based on the facts and timing involved, and so has not set any mandatory time frames for the court.
			4. ***Are the current pre-trial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the timeframes be changed? Should other aspects of the rules be changed?*** The rules do not appear to be overly burdensome. First, the parties may agree upon other pre-trial arrangements (other than those described in rule 3.1548). Second, even if the parties did not reach agreement on any modified pre-trial plan, the timeframes seem appropriate to ensure the parties are ready to go to trial on the trial date: - 25 days to exchange information including lists of witnesses, copies of documents and depos; - 20 days to exchange additional	The committee notes that the commentator does not see any need for change to current voluntary EJT rules.

W16-02

Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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

	Commentator	Position	Comment	Committee Response
			information – docs and witnesses in light of first exchange of information; and - 15 days for the court to hold a pre-trial conference.	
4.	State Bar of California, Committee on Administration of Justice San Francisco, CA	A	1. *Does the proposal appropriately address the stated purpose?* Yes. CAJ believes the proposal appropriately addresses the purpose in amending and adopting rules and forms on both mandatory and voluntary EJTs. 2. *Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case?* CAJ believes there is some risk that allowing parties to exercise their right to opt out of an EJT as late as 45 days before the date first set for trial could result in gamesmanship between parties. In many cases, the ground for opting out should be evident from the outset of the case. If a party chooses not to opt out, there may be an assumption that the case will be tried as an EJT, and pre-trial preparation would proceed accordingly. It might then be unfair if, much later in the case and 45 days before trial, the case were to become a traditional jury trial. Accordingly, CAJ believes the deadline for requesting to opt out of an expedited jury trial should be earlier than 45 days before the date first set for trial.	1. The committee notes the commenter's general agreement with the proposal. 2. The committee has considered the commenter's suggestion that the deadline for requesting opt-outs should be earlier in a case, but disagrees. While it is true that with an earlier deadlines, the parties would know from earlier in the case whether they were likely to be engaging in an EJT. The committee noted, however, that some of the criteria could change over the course of a case. Moreover, pretrial procedures in these limited civil actions will remain the same whether or not the eventual trial is an EJT. The primary impacts of opting out of the mandatory EJT procedures will be that the regular jury trial will use more jurors at trial and may take somewhat longer to try than the two to three days an EJT will take. In light of these considerations, the committee concluded there was not good reason to limit a party's ability to opt out to early in the case.

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

	Commentator	Position	Comment	Committee Response
			3. *Should there be a rule to clarify that courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in Code of Civil Procedure section 630.20(b), if that ground is no longer applicable at the time of trial?* CAJ recommends that there be a rule to clarify that courts may require that a limited civil case be tried as an EJT even after an opt-out has been granted, if in fact at the time of trial, that ground is no longer applicable. Although the court generally retains their discretion to do this, CAJ believes there should be a rule to clarify this authority.	3. The committee agrees and the rules have been modified to include such a provision.
			4. *Are the current pretrial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the time frames be changed? Should other aspects of the rule be changed?* CAJ does not have a specific comment as to whether the current pretrial rules for voluntary EJTs are overly burdensome or whether other aspects of the rule should be changed. In general, however, because these pretrial rules are relevant only to voluntary EJTs, CAJ believes the rules provide ample opportunity for the parties to agree to make significant adjustments under the voluntary EJT process.	4. The committee notes the commenter's position that the current voluntary EJT rules are workable as they stand.

W16-02

Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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

	Commentator	Position	Comment	Committee Response
5.	State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Chair San Francisco, CA	AM	a. We believe the pretrial exchange and pretrial conference for voluntary EJT's are beneficial and are not overly burdensome, particularly when the parties can stipulate to change the requirements and the timing. We would not change the current rules regarding these requirements other than as recommended in the proposal. b. We consider the current 45-day deadline to opt out of mandatory EJT appropriate, and we would not favor an earlier deadline. An earlier deadline would force parties to opt out sooner when some parties that could opt out, if allowed more time to consider the benefits of EJT and decide that the case is suitable for EJT, might decide not to opt out. c. We believe the rules should state explicitly that the court may order a mandatory EJT if the grounds for opting out no longer apply. We suggest that the advisory committee consider including in the rules either a deadline for ordering a mandatory EJT or language stating that the length of time before the trial date is a factor for the court to consider.	a. The committee notes the commenter's position that the current voluntary EJT rules are workable as they stand. b. The committee agrees. c. The committee has considered this comment, and agrees with some of it. The committee has modified the proposed rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must promptly inform the court, and the court will have the discretion to have such a case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be handled by courts on an individual basis, based on the facts and timing involved, and so has not set any mandatory time frames for the court.

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

	Commentator	Position	Comment	Committee Response
			d. We suggest inserting a comma after "starting at rule 3.720" in rule 3.1546(b) and inserting "the" before "date of service" in rule 3.1546(c)(3). Although it is beyond the scope of this proposal, we suggest informing the Legislature that the reference in Code of Civil Procedure section 630.02, subdivision (a) to section 630.03, subdivision (e)(1)(E) should be to subdivision (e)(2)(E). e. EJT-001-INFO: In item 2, second bullet point, line 4, the word "trial" should be italicized. In item 6, we would modify the penultimate sentence as follows because the parties ordinarily should present stipulated facts to the jury, but the jury need not decide those facts: "These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need ~~to take to~~ the jury <u>to decide</u>." We note that there is no item 7, so items 8 through 11 should be renumbered, and references in item 2 to items 8 and 10 should be revised. In item 8, second bullet point, we would modify the first sentence as follows to conform to the statute:	d. The grammatical changes have been made to the rule. Neither this committee nor the council has the authority to make changes to current statutes. 3. The committee appreciates these comments and has modified the form to in light of them.

	Commentator	Position	Comment	Committee Response
			"Any party may ask to opt out of the procedures if the case meets <u>any of</u> the criteria set out in Code of Civil Procedure section 630.20(b)." f. EJT-003: In the instructions on page 2, item 4, final sentence, we would change "opposition" to "objection" to be consistent with references elsewhere in the rules and forms to an "objection" (i.e., "Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures"), not an "opposition." g. EJT-004: This form includes items 1, 3, 3, and 4. We suggest renumbering the first item 3 as item 2. The last two items (3 and 4) are alternative grounds for objection. The objecting party should select one or both of these grounds. We suggest combining the two grounds in a new item 3 stating: "The ground for objection is (*check one or both of the following grounds*):" The two alternative grounds would follow, labeled a and b, each with a box beside it as in EJT-003, item 2. The final sentence before the declaration then should be revised to refer to items 3a and 3b.	f. The form has been modified in light of this suggestion. g. The form has been modified in light of this suggestion.

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
6.	Superior Court of Los Angeles County	A	We agree with the proposed changes and in particular agree that the opt-out deadline of Rule 3.1546(c)(2) should remain 45 days, which is consistent with the deadline for document exchange as provided in CCP Sections 90 et seq. An earlier deadline might discourage maintaining the status of the case as subject to mandatory EJT in light of the fact that there is no provision for "opting in" after an opt-out notice is filed.	The committee notes the commenter's agreement with the proposal generally, and with the proposed timeline for opting out.
7.	Superior Court of Orange County by Civil Operations Managers	AM	On proposed form EJT-018, it states 'The proposed consent order is DENIED for good cause.' It appears that it should state 'The proposed agreement of parties is DENIED for good cause.' Otherwise, agree with proposal. In reference to page 3 of the proposal, the below phrase(s) and proposed Rule 3.1546(c)(2) and Rule 3.1546(c)(3): "• For cases already on file at the time the rule (and the new law) becomes operative, and so potentially closer to or past the date first set for trial, parties must file any opt out request at least 10 days before trial. • Any objection to the request must be served and filed within 15 days after service of the request, using a mandatory form. (See proposed form EJT-004.)" The way the above is written (and the proposed Rule 3.1546(c)(2) and Rule 3.1546(c)(3)), there	The form has been modified in light of this suggestion. The committee has modified the rules to eliminate this inconsistency. Parties in cases filed both before and after the July 1 operative date now have similar deadlines.

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	Commentator	Position	Comment	Committee Response
			is only 10 days to opt out of the EJT for cases filed before July 1, 2016 and yet there is a 15 day time limit to file an objection to the opt out). Either make an earlier deadline for the opt out period for existing cases/cases filed before July 1, 2016 or make mandatory EJTs for new cases only.	
8.	Superior Court of Riverside County	A	Bill notates limited civil frequently. Will this pertain to limited civil only?	The committee notes the commenter's general agreement with the proposal. The amended rules are intended to implement the provisions of AB 555, which provides that mandatory EJTs are to be held in limited civil cases except where certain exceptions apply. However, voluntary EJTs are not restricted to limited civil cases, and can be used in any civil cases in which the parties consent to the process.
9.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	In answer to the request for specific responses, our court provides the following: *Q: Would the proposal provide cost savings?* Unknown. *Q: What are implementations requirements for courts?* Develop operational procedures, train staff, and add filings and hearing types to the civil case management system. *Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation*? Yes, that should be enough time to implement.	The committee notes the general agreement with the proposal, if modified as noted below, and appreciates the court's response to the questions regarding impact and cost to the courts.

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
			Q: How well would this proposal work in courts of different sizes? Greater impact on larger courts based on number of staff and filings. *Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs?* Yes. *Q: Does the proposal appropriately address the stated purpose?* Yes. *Q: Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case?* No, the time to object appears appropriate so long as it is brought to the attention of the court that will be handling the trial. *Q: Should there be a rule to clarify that the courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in CCP 630.20(b), if that ground is no longer applicable at the time of trial?* Yes. *Q: Are the current pretrial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the time frames be changed? Should other aspects of the rule be changed?* No comment. **JC Form #EJT-003:**	The committee notes the commenter's agreement with the recommended deadline for filing opt outs. The committee notes that the deadline will be set out in the California Rules of Court, and the form request to opt out will be filed with the court. The committee agrees with the commenter's recommendations for an additional rule to clarify courts may have case tried as an EJT if criteria for opt-out no longer applies, and had modified the proposed rule to reflect this. The form has been amended in light of this

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
			Item 1: the word "in" should be inserted between "set forth" and "Code of Civil Procedure…"	suggestion.
10.	TCPJAC/CEAC Joint Rules Subcommittee on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	A	The Joint Rules Subcommittee agrees with the proposed changes and in particular agrees that the opt-out deadline of Rule 3.1546(c)(2) should remain 45 days, which is consistent with the deadline for document exchange as provided in CCP Sections 90 et seq. An earlier deadline might discourage maintaining the status of the case as subject to mandatory EJT in light of the fact that there is no provision for "opting in" after an opt-out notice is filed	The committee notes the commenter's agreement with the proposal generally, and with the proposed timeline for opting out.

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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: April 14 and 15

Title
Protective Orders: Request to Continue Hearing Date and Extend Temporary Restraining Order

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 5.94 and 5.630; revise forms CH-115, CH-116, DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, DV-505 INFO, EA-115, EA 116, FL-306, JV-251, SV-115, SV-116, WV-115, and WV-116; approve forms CH-115-INFO, EA 115-INFO, SV-115-INFO, and WV-115 INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

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

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 11, 2016

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Executive Summary

To implement the recent changes made by Assembly Bill 1081 to Code of Civil Procedure sections 527.6, 527.8, and 527.85, Family Code section 245, and Welfare and Institutions Code sections 213.5 and 15657.03, the Civil and Small Claims Advisory Committee recommends

revisions to Judicial Council forms relating to a party's request to continue a hearing on a request for a restraining order in a civil harassment, elder and dependent adult abuse, private postsecondary school violence, and workplace violence case and the Family and Juvenile Law Advisory Committee recommends amendments and revisions to Judicial Council rules and forms relating to such requests in a Family or Juvenile Law case.

Recommendation

To implement recent statutory changes:

1. The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise Forms CH-115, CH-116, EA-115, EA 116, SV-115, SV-116, WV-115, and WV-116 and the Family and Juvenile Courts Advisory Committee recommends that the Judicial Council revise forms DV-115, DV-116, FL-306, and JV-251, effective July 1, 2016, to:
   - Modify the form titles and content to refer to requests and orders to continue hearings;
   - Delete references to "reissuance" of the TRO or other temporary order and replace them, where appropriate, with references to "extension" of the order;
   - Allow either party to request and the court to order a continuance of a hearing in a protective order proceeding on the request of either party;
   - Reflect that the responding party is entitled to one continuance;
   - Reflect that if the court grants a continuance, any temporary restraining order that has been issued will remain in effect until the end of the continued hearing, unless otherwise ordered by the court;
   - Make other changes to increase consistency among these forms.

2. The Civil and Small Claims Advisory Committee recommends that the Judicial Council further revise forms CH-116, EA 116, SV-116, and WV-116 and the Family and Juvenile Courts Advisory Committee recommends that the Judicial Council further revise forms DV-116, FL-306, and JV-251, effective July 1, 2016, to:
   - Add an item to allow the court to indicate if the request for the continuance is granted or denied;
   - Add items to allow the court to indicate whether the TRO or temporary emergency order will be extended, modified, or terminated;
   - If the TRO or temporary emergency order is modified, require the new or modified TRO or temporary emergency order be attached;
   - On forms DV-116, CH-116, EA-116, FL-306, SV-116, and WV-116 add an optional item for "Other Orders;" and
   - Expand the section on service of the order to include additional service options, including service on the person who requested the restraining order.
   - Add a new section to forms FL-306 and JV-251 to allow the court to indicate whether a TRO or other temporary emergency order is in effect; and
   - On DV-116 and JV-251, add a new section regarding entry of the order into California Law Enforcement Telecommunications System (CLETS).

3. The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2016, approve new forms CH-115-INFO, EA-115-INFO, SV-115-INFO, and WV-115-INFO and the Family and Juvenile Courts Advisory Committee recommends that the Judicial Council revise form DV-115-INFO, effective July 1, 2016, to provide litigants in protective order proceedings with current information about how to request a new hearing date;

4. The Family and Juvenile Courts Advisory Committee recommends that the Judicial Council, effective July 1, 2016
   - Amend Cal. Rules of Court, rule 5.94 to:
     - Change the rule's title to "Order to shorten time; other filing requirements; request to continue hearing and extend temporary emergency (ex parte) orders";
     - Provide that both parties may ask the court for a continuance;
     - Provide that the court may modify or terminate the temporary restraining order;
     - State that failure to timely serve form FL-300 and any temporary emergency orders granted by the court will result in the expiration of the temporary emergency orders at the end of the continued hearing;
     - Specify that the completed form FL-306 must be attached as the cover page when service on the other party is required; and
     - Make other non-substantive changes, including eliminating references to reissuance and updated references to revised form titles.
   - Amend Cal. Rules of Court, rule 5.630 change the title of subdivision (e) to "*Continuance,"* delete language that restates statutory provisions in paragraphs (e)(1) and (e)(2), and refer to form JV-251 by its recommended new title; and
   - Revise forms DV-200, DV-200-INFO, and DV-505 INFO to delete the term "reissuance" and "reissue" and to reflect the recommended new titles of forms DV-115 and DV-116.

The text of the amended rules and the new and revised forms are attached at pages 15–59.[1]

Previous Council Action

Assembly Bill 1081 was Judicial Council sponsored legislation. The purpose of the bill was to broaden and clarify the grounds for granting a continuance, to excise the concept of "reissuance" of a protective order from the statutes, and to clarify that a temporary restraining order may be extended to a new hearing date without first having to be "dissolved by the court." The bill brings the statutes in this area in line with the actual practice in the courts.

[1] Please note that the recommended revisions to forms CH-115, CH-116, DV-115, DV-116, EA-115, EA 116, FL-306, JV-251, SV-115, SV-116, WV-115, and WV-116 are so extensive that these revisions are not identified on the attached forms using shading, as is the typical practice. The changes are described in the recommendation and in the body of this report.

Effective January 1, 2014, the Judicial Council revised and renumbered form FL-306/JV-251, separating them into two forms FL-306 and JV-251 to clarify what orders are appropriate in family and juvenile law proceedings.

Effective January 1, 2013, the Judicial Council revised forms DV-115-INFO and DV-116 to make technical revisions and improve the forms' clarity by correcting omissions and language that caused confusion about the use of the forms in DVPA cases.

Effective January 1, 2012, the Judicial Council adopted form DV-116 and revised and renumbered forms DV-115, DV-115-INFO, DV-200, DV-200-INFO, and DV-505-INFO to implement Assembly Bill 1596 (Stats. 2010 ch. 572) and Assembly Bill 939 (Stats. 2010, ch. 572) and to coordinate the Domestic Violence Prevention Act forms with other civil restraining order forms relating to civil harassment, private postsecondary school violence prevention, workplace violence, elder and dependent adult abuse, and juvenile law.

Rationale for Recommendation

Overview

California statutes establish procedures for individuals to obtain court orders to protect them from abuse and/or violence in a wide variety of settings. Separate statutory provisions address protective orders in proceedings relating to domestic violence (DV), family law (FL), juvenile law (JV), civil harassment (CH), elder abuse (EA), private postsecondary school violence (SV), and workplace violence (WV). Although these statutory schemes differ from each other in some important ways, the Judicial Council has worked with the Legislature to create consistency in protective order procedures where that is appropriate. The Judicial Council has also adopted sets of forms to assist in implementing the procedures in each of these settings, as well as rules relating to some of these procedures. Judicial Council advisory committees have worked with each other to ensure consistency in these implementing forms where that is appropriate.

Assembly Bill (AB) 1081 (Stats. 2015, ch 411), which took effect January 1, 2016, amended the statutes relating to a party's request to continue a hearing on a request for a restraining order in DV, FL, JV, CH, EA, SV, WV.[2] The new statutory provisions include that:

- Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause;
- The responding party shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition;
- The request may be made in writing before or at the hearing or orally at the hearing;

[2] The legislation is available online at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1081. The relevant amendments were to Family Code section 245 (DV), Code of Civil Procedure sections 527.6 (CH), 527.8 (WV), and 527.85 (SV), and to Welfare and Institutions Code sections 213.5 (JV) and 15657.03 (EA)

- The court may also grant a continuance on its own motion;
- If the court grants a continuance, any temporary restraining order that has been issued shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court;
- In granting a continuance, the court may modify or terminate a temporary restraining order; and
- In domestic violence proceedings, a fee shall not be charged for the extension of the temporary restraining order.

AB 1081 requires changes to the existing Judicial Council protective order forms that include content regarding continuances, as well as to two rules. The committees' specific recommendations are described below; however, generally, they implement the mandate of AB 1081 by conforming the forms and rules to the new statutory provisions.

Additionally, to implement the statutory changes, the Civil and Small Claims Advisory Committee recommends adopting new forms CH-115-INFO, EA-115-INFO, SV-115-INFO, and WV-115-INFO. The forms are modeled after current form DV-115-INFO, to provide parties with the basic information needed to obtain a continuance of a hearing in these proceedings.

These revised and new forms will benefit court users and judicial officers by facilitating the process by which a continuance can be requested, and then either granted or denied. And as addressed below, the revised forms will also benefit law enforcement by placing all enforceable temporary restraining orders (TROs) on a single form should the court elect to modify the TRO in granting a continuance.

Specific recommendations

Requests to Continue Court Hearings (Forms CH-115, DV-115, EA-115, FL-306, JV-251, SV-115, and WV-115)

Forms DV-115, CH-115, EA-115, SV-115, and WV-115, which are all currently entitled "*Request to Continue Court Hearing and Reissue Temporary Restraining Order*" are the existing forms used to request that a hearing in a one of these protective order proceedings be continued and that the expiration date of the TRO be extended, which was previously referred to as the TRO being "reissued." These are all plain language forms that contain similar provisions (the latter four forms are currently the same except for caption information). Form FL-306 and JV-251 are the existing forms used by an applicant to request and for the court to order extension of the expiration date ("reissuance") of the temporary emergency orders issued on a *Request for Order* (form FL-300) in a family law proceeding or a TRO in a juvenile proceeding. The order portion of both these forms includes spaces for the court to reset the hearing date.

The committees recommend a number of revisions to conform these forms to the amended protective order statutes. The recommended changes to forms DV-115, CH-115, EA-115, SV-115, and WV-115 include:

- Revising the forms for use by either party to request a continuance. This includes:
  - Changing the title of the forms to "*Request to Continue Hearing;*"
  - Revising the party identifiers in the caption to "Party Seeking Continuance" and "Other Party;" and
  - Adding the new statutory language, which provides that the restrained party is entitled, as a matter of course, to one continuance for a reasonable period, to respond to the request for a restraining order.
- Deleting all references to the term "reissuance."
- Notifying the party that if the court grants the request to continue the hearing, the temporary restraining order (TRO) issued in the case will be extended and remain in effect until the end of the new hearing.
- Expanding the forms to two pages to include the additional, mandatory content.

The Family and Juvenile Law Advisory Committee is recommending changes to the forms FL-306 and JV-251 that are similar in concept to the changes recommended to forms DV-115, CH-115, EA-115, SV-115, and WV-115, including:

- Changing he titles of the forms: form FL-306 would become *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Order* and form JV-251 would become to *Request and Order to Continue Hearing (Temporary Restraining Order—Juvenile)*;
- Adding an item to allow either side to request a continuance;
- Adding a new section for the applicant to indicate the reason for the continuance and additional grounds;

In addition, the committee recommends reorganizing the form FL-306 to reflect some of the plain-language content in form DV-115. The term "court mediator or family court services" is changed to "child custody mediator or child custody recommending counselor" to reflect current language in the Family Code. The form now also reflects that the court can grant temporary emergency orders using the stand-alone form *Temporary Emergency (Ex Parte) Order* (form FL-305).

As discussed in the comments section, the committee also recommends deleting the items currently on forms DV-115 and FL-306 that ask the party to indicate the number of times the orders were reissued.

Orders on Requests to Continue Hearings (Forms CH-116, DV-116, EA-116, FL-306, JV-251, SV-116, and WV-116)

Forms DV-116, CH-116, EA-116, SV-116, and WV-116, which are all currently entitled "*Notice of New Hearing Date and Order on Reissuance"* are the existing forms that serve as the court order to continue the hearing date on the request for a restraining order in these types of protective order proceedings. These are all plain language forms that contain similar provisions (the four latter forms are currently the same except for caption information). As discussed above, forms FL-306 also JV-251 serve as not only the application, but also the court order regarding

extending the date of temporary emergency orders in Family Law protective order proceedings and TROs in Juvenile Law proceedings.

The committees recommend a number of revisions to all of these forms to conform them to the amended protective order statutes, including:

- Changing the titles of these forms:
  - Forms DV-116, CH-116, EA-116, SV-116, and WV-116 would become "*Order on Request to Continue Hearing*;" and
  - As noted above, form FL-306 would become *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Order* and form JV-251 would become to *Request and Order to Continue Hearing (Temporary Restraining Order—Juvenile).*
- Deleting references to "reissuance" of the TRO or other temporary order and replacing them, where appropriate with references to "extension" of the order;
- On forms DV-116, CH-116, EA-116, SV-116, and WV-116, revising the party identifiers in the caption to "Protected Party" and "Restrained Party;"
- Adding an item to allow the court to indicate if the request for the continuance is granted or denied. If denied, the forms specify that the parties are ordered to appear on the currently scheduled hearing date;
- Adding items to allow the court to indicate whether the TRO or temporary emergency order will be extended, modified, or terminated;
- If the TRO or temporary emergency order is modified:
  - Forms DV-116, CH-116, EA-116, SV-116, and WV-116 require that an new TRO be attached to the order;
  - FL-306 and JV-251 require that the modified TRO or temporary emergency order be attached to the order;

  Having all the orders included in one, instead of having to refer back to the original order, will increase the parties' awareness of the current orders and facilitate enforcement of the correct orders by law enforcement agencies.
- On forms DV-116, CH-116, EA-116, FL-306, SV-116, and WV-116 adding an optional item for "Other Orders" should there be other issues that the court needs to address; and
- Expanding the section on service of the order to include additional service options, including service on the person who requested the restraining order.

The Family and Juvenile Law Advisory Committee is also recommending the following additional changes:

- Adding a new section to FL-306 to allow the court to indicate whether a temporary emergency order was granted on form FL-300 or FL-305 and on JV-251 to allow the court to indicate whether a temporary restraining order is in effect; and
- On DV-116 and JV-251, adding a new section regarding entry of the order into California Law Enforcement Telecommunications System (CLETS).

Information forms and DV Proof of Personal Service forms

There are several current DV forms that include references to the "reissuance" of a temporary restraining order or that refer to form DV-115: *How to Ask for a New Hearing Date* (form DV-115-INFO); *Proof of Personal Service* (form DV-200); *What is "Proof of Personal Service"?* (form DV-200-INFO); and *How Do I Ask for a Temporary Restraining Order?* (form DV-505-INFO). The Family and Juvenile Law Advisory Committee recommends revising these forms to (1) delete the term "reissuance" and "reissue" wherever they appear and replace them with "extend" or "extension," (2) reflect the recommended revised titles of forms DV-115 and DV-116. In addition, the committee recommends revising form DV-115-INFO to include a statement that the court can make orders against the restrained person if he or she does not go to the hearing.

To provide individuals in civil harassment, elder abuse, school violence, and workplace violence prevention proceedings with information about how to request a continuance, the Civil and Small Claims Advisory Committee recommends creating four new information forms, CH-115-INFO, EA-115-INFO, SV-115 INFO, and WV-115 INFO, all titled *How to Ask for a New Hearing Date*. The forms will be virtually identical to the current DV-115-INFO, as it is recommended to be revised.

Rules

The Family and Juvenile Law Advisory Committee is recommending revisions to two existing California Rules of Court that contain provisions relating to continuances to reflect both the recent statutory amendments and the implementing modifications to forms that are also being recommended.

Rule 5.94. Order shortening time; other filing requirements

In response to the statutory changes in Family Code section 245, the committee recommends technical as well as substantive changes to this rule. The technical changes include deleting the words "reissuance" and "reissued order" and replacing them with "extension" and "extended order." The committee also recommends deleting the term "application" and replacing it with "request," and referencing the term "continuance."

The recommended substantives changes include (1) changing the rule's title to "Order to shorten time; other filing requirements; request to continue hearing and extend temporary emergency (ex parte) orders," (2) amending the rule to provide that both parties may ask the court for a continuance and that the court may modify or terminate the temporary restraining order, and (3) stating that failure to timely serve form FL-300 and any temporary emergency orders granted by the court will result in the expiration of the temporary emergency orders at the end of the continued hearing.

The recommendations also include changes to the rule in response to public comments received when the rule previously circulated for comment. Specifically, the rule would be reformatted to

improve reading comprehension and reflect the revised title of form FL-305 to *Temporary Emergency (Ex Parte) Order*. It would also specify that the completed form FL-306 must be attached as the cover page when service on the other party is required.

Rule 5.630
In response to the statutory changes to Welfare and Institutions Code section 213.5, the committee recommends minor changes to rule 5.630, subdivision (e). Specifically, the committee recommends renaming the title of subdivision (e) to *Continuance* rather than *Reissuance*, deleting language that restates statutory provisions in paragraphs (e)(1) and (e)(2), and referring to form JV-251 by its new title, *Request and Order to Continue Hearing.*

Comments, Alternatives Considered, and Policy Implications

Public comments

Drafts of the proposed revised forms, new forms, and amended rules were circulated for public comment from December 11, 2015 through January 22, 2016. Eighteen comments were received, all addressing multiple forms and rules. Eight came from courts or court personnel; six came from attorneys or attorney organizations; one was from an unrepresented litigant assistance organization; and one was from the California Department of Justice. One commentator opposed any changes to the family law rule and form. Otherwise, comments were directed toward specific items in the forms that might be presented differently.

Staff from both the Civil and Small Claims and Family and Juvenile Law Advisory Committees reviewed all comments and prepared proposed responses. The Protective Orders Working Group (POWG)[3] then made recommendations on several key issues (outlined below) for the advisory committees to consider relating to the forms. Each advisory committee reviewed the public comments and POWG's recommendations and made specific recommendations as to the particular rules and forms within their purview.

Request for specific comments: "number of previous continuances"
The Invitation to Comment requested specific comments on whether the forms for requesting a continuance should include an item to indicate the number of times the temporary order has been continued. This issue arose because the two advisory committees' proposals differed on how to revise the forms to implement AB 1081. The Civil and Small Claims Advisory Committee proposed maintaining the question on the civil 115 forms with the revision that the party indicate the number of times the order has been "continued" rather than "reissued." Form FL-306 currently includes a similar item asking the number of times the orders have been reissued, but neither form DV-115 nor form JV-251 currently require the party to provide this information. The Family and Juvenile Law Advisory Committee proposed deleting the item from form FL-

[3] The POWG is a working group comprised of members from three advisory committees; Civil and Small Claims; Family and Juvenile Law; and Criminal Law. The POWG is charged with reviewing all proposals regarding protective orders in all proceedings in which they might be issued. The POWG attempts to harmonize and reach consensus across subject areas, and makes recommendations for approval back to each of the parent committees.

306, as there no longer appeared to be a statutory basis for asking about the number of continuances in family law matters.[4]

Of the public commentators who responded, eight favored keeping the item on the request forms and three opposed it. Those in favor focused on the practical view that the information would be helpful to the courts. Keeping a TRO in effect over long periods of multiple continuances is a significant burden on the respondent's freedom, so the information on the form would quickly let judges know how long it has been since the TRO was issued. Arguments against centered on the likelihood that the requesting party might not have that information at hand and would enter an incorrect number.

This issue was discussed by POWG following the comment period; however, the group did not reach a consensus. The advisory committees then reached different recommendations. The Civil and Small Claims Advisory Committee recommended keeping this item on forms CH-115, EA-115, SV-115 WV-115. The Family and Juvenile Law Advisory Committee further discussed the issue at length. The majority of Family and Juvenile Law Advisory Committee members indicated interest in adding the question about the number of continuances to form DV-115; however, there were significant concerns raised by the minority about asking that question when there is no statutory basis in DVPA cases for requiring parties to provide that information when the information will already be available in the file, and the information provided by self-represented litigants may not be accurate. The chairs agreed with the minority position and recommend that the question not be included on form DV-115 or form FL-306 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.

Request for specific comments: "continuance denied"

The Invitation to Comment requested specific comments on whether the order forms should contain an item for the court to indicate it is denying a continuance. All but three commentators who responded said that the orders in all case types should provide for denial. In response, the committees recommended that all the order forms include an option for the court to deny a continuance.

Continuance granted with modification or termination of temporary restraining order

The amended protective order statutes all permit the court to grant a continuance, and also to modify or terminate the temporary restraining order. One commentator proposed adding items to the continuance request forms for the requesting party to ask the court to modify or terminate the TRO.

POWG and both advisory committees agreed that termination of a TRO on a request for a continuance would be highly unusual at best, and also highly irregular. The court requires some

[4] AB 1081 deleted Family Code section 245(c), which provided that "[n]o fee shall be charged for the reissuance of the order unless the order had been dissolved three times previously."

evidentiary showing before terminating a TRO, and a notice of motion (or request for order)—not a request for a continuance—is the appropriate vehicle for the parties submit their arguments about whether the TRO is justified.

But all viewed modification differently. It seems within the realm of possibilities that either party might request a small change to the TRO while awaiting the new hearing date. An additional protected person might be added; stay-away locations might be added or removed; specific conduct that might have occurred since the original TRO was issued could be addressed.

The committees decided not to add an item to the continuance request forms or rule 5.94 for the requesting party to specifically ask for the TRO to be modified. The statutes do not specifically provide for this process, and the issue was not flagged for specific comments. However, because the statutes do specifically grant the court the power to modify or terminate the TRO, the order forms and rule 5.94 were revised to include items for the court to order either modification or termination of the TRO.

Order Forms: Free service by sheriff

Because AB 1081 permits the court to grant either party's request for a continuance on a showing of good cause, as discussed above, committees are recommending that the Judicial Council revise the forms DV-116, CH-116, EA-116, SV-116, and WV-116 to allow them to be used to issue an order regarding a continuance request from either side. All of these forms DV-116 currently include an item titled "No Fee to Serve (Notify) Restrained Person," which provides that the sheriff or marshal will serve the order for free. This prompted a commentator to ask if this section needs to be revised to apply to both parties.

Although the Family and Juvenile Law Advisory Committee believes it is important to keep this item on form DV-116 to remind the parties, the court, and law enforcement agencies about free service of the form and order, the committee considered whether statutes permit the "No fee" provision to be applied to both parties, or whether it should be deleted. It also considered the potential fiscal impact of expanding free service on behalf of the restrained party.

The statutory authority on this issue is Government Code section 6103.2(b)(4). The statute does not restrict law enforcement to service of documents for a protected party (on the restrained party). Neither does it require individuals to "prepay" for service by the sheriff. Instead, it allows the sheriff to seek reimbursement from the court for the service. The Judicial Council then reimburses courts for this expense. In 2006, the legislature passed AB 2695 (Stats. 2006, ch. 476), which continued the right to free service in domestic violence restraining orders and some other restraining orders indefinitely.[5]

The committee noted that Judicial Council staff monitor the amount of money available to reimburse courts for free service of restraining orders. Since 2007, sufficient funds have been

[5] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB2695

available for the Judicial Council to reimburse courts for this expense. To date, the request for reimbursement has never exceeded available funds. Based on this information, the committee believes that there may be some fiscal impact from changing the forms to specifically state that either party may use the sheriff or marshal to serve form DV-116 and/or a modified *Temporary Restraining Order* (form DV-110). The Judicial Council may use a larger percent of the money allotted to reimburse courts under Government Code section 6103. However, if necessary, the Judicial Council could seek additional funding. Ultimately, the Family and Juvenile Law Advisory Committee decided to recommend that the section on DV-116 regarding the availability of free service by the sheriff be retained on the form and be revised to apply to both parties.

The CH, SV, and WV statutes also provide for free service of process by a sheriff or marshal of a *protective or restraining order* to be issued, if the order is based on stalking, violence, or a credible threat of violence.[6] The Civil and Small Claims Committee concluded that free service of the CH-116, SV-116, and WV-116 continuance orders by law enforcement is not authorized under these statutes because these forms are not protective or restraining orders that meet the statutory conditions. If the TRO is modified on new TRO attached to the CH-116, SV-116, and WV-116 as recommenced, then the new TRO is entitled to free service if the statutory conditions are met, and the CH-116, SV-116, and WV-116 order would be served for free along with the new TRO. The Civil and Small Claims Committee therefore recommends deleting the item regarding the availability of free service by the sheriff from forms CH-116, SV-116, and WV-116. On the other hand, the Elder and Dependent Adult Abuse (EA) statute does not have these conditional limitations. Any order in the proceeding is entitled to free service by law enforcement.[7] Therefore, the committee recommends retaining an item for free service by law enforcement on form EA-116.

Family law rule and forms

One commentator suggested that neither rule 5.94 nor form FL-306 should be revised because AB 1081 requires revisions only to domestic violence restraining orders, not to temporary emergency orders issued in family law matters. The Family and Juvenile Law Advisory Committee do not agree with the commentator's position. Although the text of AB 1081 is focused on domestic violence cases, it amended statutes under Part 4 of the Family Code (Ex Parte Temporary Restraining Orders) [240-246]. Part 4 does not apply only to temporary restraining orders under the Domestic Violence Prevention Act, but includes those orders. There is no language in amended Family Code section 245 which limits its application to temporary restraining orders involving violence. Thus, it must be interpreted as applying to all temporary restraining orders listed in Section 240.

[6] Code Civ. Proc., §§ 527.6(y), 527.8(x), 527.85(x).

[7] Welf. & Inst. Code, § 15657.03(s).

Alternatives considered

As noted above, AB 1081 amended the statutes relating to requesting and ordering the continuation of a hearing in a protective order proceeding effective January 1, 2016. Neither the continuance forms nor rules currently conform to the amended statutes. Because the forms and rules must conform to statute, the committees did not consider alternatives to revising these forms.

The Family and Juvenile Law Advisory Committee considered making technical changes to rule 5.94 and forms DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, DV-505-INFO to conform to the statutory amendments, and FL-306 and including the revised forms in the report to the Judicial Council for SPR15-16 title *Domestic Violence—Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law—Changes to Request for Order Rules and Forms*. After further review of the broader impact of AB 1081 on Judicial Council rules and forms, the committee decided not to take this action.

The Civil and Small Claims Advisory Committee considered, but rejected, the option of temporarily revoking forms CH-115, CH-116, EA-115, EA-116, SV-115, SV-116, WV-115, and WV-116 and replacing them with revised forms effective July 1. The committee also considered asking for immediate approval of the forms for January 1, 2016, with circulation for comment to follow.

Ultimately, the committees recognized efforts should be made to harmonize the domestic violence, civil harassment, family, juvenile, elder abuse, and workplace violence forms affected by the legislation and therefore decided to propose circulating the rules and forms affected by AB 1081 in the winter 2016 cycle, with a July 1, 2016 proposed effective date for all the new and revised forms.

Implementation Requirements, Costs, and Operational Impacts

Specific comments were requested on the implementation requirements for courts. Implementation needs noted by commentators included training of judicial officers and staff; changes to the case management system; changes to e-filing process, and changes to document assembly systems. These consequences are modest and unavoidable given the rule and form changes are needed to implement the recent statutory amendments. However, the committees expect that the changes will ultimately save resources for the courts by clarifying and streamlining procedures.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in the report support the policies underlying Goal I, Access, Fairness, and Diversity, because they help remove barriers to the courts for all parties—not only the protected party—who seek to continue the hearing on a temporary restraining order or seek information about related court procedures.

These recommendations also serve Goal III, Modernization of Management and Administration, by adopting streamlined practices for when the court modifies a temporary restraining order before the hearing in DV, CH, EA, SV, and WV cases. The recommendations also facilitate enforcement of the TRO in those cases by enabling law enforcement agencies to see all of the operable orders on a single form, instead of having to refer back to the original TRO 110 and also the attached modifications on form 116.

Attachments and links

1. Cal. Rules of Court, rules 5.94 and 5.630, at pages 15-18
2. Judicial Council forms CH-115, CH-115-INFO, CH-116, DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, DV 505 INFO, EA-115, EA-115-INFO, EA 116, FL-306, JV-251, SV-115, SV-115-INFO, SV-116, WV-115, WV-115-INFO, and WV-116; at pages 19–59
3. Chart of comments, at pages 60–106
4. AB 1081 is available online at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1081
5. The Invitation to Comment is available online at http://www.courts.ca.gov/documents/W16-04.pdf

Rules 5.94 and 5.630 of the California Rules of Court are amended, effective July 1, 2016, to read:

Rule 5.94. Order shortening time; other filing requirements; request to continue hearing date and extend temporary emergency (ex parte) orders

(a) Order shortening time

* * *

(b) Time for filing proof of service

* * *

(c) ~~(d)~~ Filing of late papers

No ~~moving or responding~~ papers relating to a request for order or responsive declaration to the request may be rejected for filing on the ground that ~~it was~~ they were untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.

(d) ~~(e) Computation of~~ Timely submission to court clerk

~~Moving~~ The papers requesting an order or responding to the request ~~papers~~ are deemed timely filed if they are submitted: ~~before the close of the clerk's office to the public on the day that the paper is due is deemed timely filed.~~

(1) Before the close of the court clerk's office to the public; and

(2) On or before the day the papers are due.

(e) ~~(c)~~ Failure to timely serve ~~moving papers~~ request for order and temporary emergency (ex parte) orders

~~If a *Request for Order* (FL-300) is not timely served on the opposing party, the moving party must notify the court as soon as possible before the date assigned for the court hearing and request a new hearing date to allow additional time to serve the *Request for Order* (FL-300) and supporting documents.~~

~~The moving party must also request that the court reissue the *Request for Order* (FL-300) and any temporary orders. To do so, the moving party must complete and submit to the court an *Application and Order for Reissuance of Request for Order* (form FL-306).~~

The *Request for Order* (form FL-300) and *Temporary Emergency (Ex Parte) Orders* (form FL-305) will expire on the date and time of the scheduled hearing if the requesting party fails to:

(1) Have the other party timely served before the hearing with the *Request for Order* (form FL-300), supporting documents, and any orders issued on *Temporary Emergency (Ex Parte) Orders* (form FL-305); or

(2) Obtain a court order to continue the hearing.

(f) Procedures to request continued hearing date and extension of temporary emergency (ex parte) orders

(1) If a *Request for Order* (form FL-300) that includes temporary emergency orders is not timely served on the other party before the date of the hearing, and the party granted the temporary emergency (ex parte) order wishes to proceed with the request, he or she must ask the court to continue the hearing date. On a showing of good cause, or on its own motion, the court may:

(A) Continue the hearing and extend the expiration date of the temporary emergency order until the end of the continued hearing or to another date ordered by the court.

(B) Modify the temporary emergency (ex parte) order.

(C) Terminate the temporary emergency (ex parte) order.

(2) The party served with a *Request for Order* (form FL-300) that includes a temporary emergency (ex parte) order:

(A) Is entitled to one continuance for a reasonable period of time to respond and, thereafter, to a continuance based on a showing of good cause.

(B) Must file and serve a *Responsive Declaration to Request for Order* (form FL-320) as required by the court order.

(3) The following procedures apply to either party's request to continue the hearing:

(A) The party asking for the continuance must complete and submit an original *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Order* (form FL-306) with two copies for the court to review, as follows:

(i) The form should be submitted to the court no later than five court days before the hearing date originally set on the *Request for Order*.

(ii) The party may present the form to the court at the hearing of the *Request for Order*.

(iii) The party who makes an oral request to the court on the date of the hearing is also required to complete and submit form FL-306 if the court grants the request.

(B) After the court signs and files form FL-306, a filed copy must be served on the other party, unless the court orders otherwise. If the continuance is granted:

(i) Before the other party is served with notice of the hearing and temporary emergency (ex parte) order, then form FL-306 must be attached as the cover page and served along with the *Request for Order* (form FL-300), the original or modified temporary emergency (ex parte) order, and supporting documents.

(ii) To the responding party, and the party who asked for the temporary emergency order was absent when the continuance was granted, then form FL-306 must be attached as the cover page to any documents the court orders served on that party.

(iii) Service must be in the manner required by rule 5.92 or as ordered by the court.

(C) If the *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Order* (form FL-306), *Request for Order* (FL-300), original or modified temporary emergency order, and supporting documents are not timely served on the other party, and the requesting party wishes to proceed with the hearing, he or she must repeat the procedures in this rule.

Rule 5.630. Restraining orders

(a)–(d) * * *

(e) ~~Reissuance~~Continuance

(1) ~~The court may, on its own motion or the filing of a declaration by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by the law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained.~~ The court may grant a continuance under Welfare and Institutions Code section 213.5.

~~(2) The reissued order must state on its face the date of expiration of the order.~~

(~~3~~2) Either ~~*Application*~~ *Request and Order* ~~*for Reissuance of*~~ *to Continue Hearing Date (Temporary Restraining Order—Juvenile*) (form JV-251) or a new *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) must be used for this purpose.

(f)–(k) * * *

CH-115 Request to Continue Court Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to ask the court to change the hearing date listed on form CH-109, *Notice of Court Hearing*. Read CH-115-INFO, *How to Ask for a New Hearing Date*, for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Continuance

a. Full Name:

_____

I am the ☐ party seeking protection.
☐ party from whom protection is sought.

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 Other Party

Full Name: _____

3 Request to Continue Hearing

a. I ask the court to continue the hearing currently scheduled for *(date):* _____

b. I request that the hearing be continued because *(check any that apply)*:

(1) ☐ The party from whom protection is sought could not be served before the hearing date.

(2) ☐ I am the party from whom protection is sought and this is my first request to continue the hearing date.

(3) ☐ I need more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 3b(4)

_____
_____
_____
_____
_____

c. (1) ☐ This is my first request for a continuance.
(2) ☐ The hearing has previously been continued ____ times.

This is not a Court Order.

4 Extension of Temporary Restraining Order

a. ☐ A *Temporary Restraining Order* (Form CH-110) was issued on *(date):* _____
Please attach a copy of the order if you have one.

b. **Notice: If the hearing date is continued, the *Temporary Restraining Order* will remain in effect until the end of the new hearing unless otherwise ordered by the court.**

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 of
☐ Attorney ☐ Party Without Attorney

▶ _____
Signature

CH-115-INFO How to Ask for a New Hearing Date

You may need to ask for a new hearing date if:

- You are the **Person Asking for Protection** and are unable to have Form CH-109, *Notice of Court Hearing*, and other papers served in time before the hearing date.
- You are the **Person to be Restrained** making your first request for continuance, and you need time to hire an attorney or prepare a response.
- You have a good reason for needing a new hearing date. (The court may grant a request to continue the hearing on a showing of "good cause.")

What does Form CH-115 do?

Use Form CH-115 to ask the court to "continue" the hearing. If the court continues the hearing and a *Temporary Restraining Order* (TRO; Form CH-110) was issued, the TRO will be extended until the end of the new hearing unless the court decides to modify or terminate it.

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of Form CH-115.
- Fill out items (1) through (3) on Form CH-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to continue the hearing.
- If the judge signs Form CH-116, the court will give you a new hearing date. If the judge did NOT sign the form, you should go to the hearing at the date, time, and location that is shown on Form CH-109.
- Next, file both Forms CH-115 and CH-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- The other party must be served a copy of the court papers as described in item (7) on Form CH-116.
- Ask the person who serves the papers to complete a Proof of Service form and give it to you. If service was in person, use Form CH-200, *Proof of Personal Service*. If service was by mail, use Form POS-040, *Proof of Service--Civil*. Make two copies of the completed forms.
- File the completed and signed Proof of Service form with the clerk's office before the hearing.
- If the court continues the hearing date and extends the TRO to the date of the new hearing, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

Go to the hearing.

- Take at least two copies of your documents and filed forms to the hearing. Include a filed Proof of Service form." "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the Person Seeking Protection and you do not go to the hearing, the Temporary Restraining Order will expire on the date and time of the hearing. If you are the Person to Be Restrained and you do not go to the hearing, the court can still make orders against you that can last for up to five years.

Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

CH-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Complete items (1), (2), and (3) only.

(1) Protected Party

Full Name: _____

(2) Restrained Party

Full Name: _____

(3) Party Seeking Continuance

I am the ☐ Protected Party ☐ Restrained Party

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will complete the rest of this form.

(4) Order on Request for Continuance

a. The hearing in this matter is currently scheduled for *(date):* _____ at *(time)* _____

b. ☐ The request for a continuance is DENIED for the reasons set forth ☐ below ☐ on Attachment 4b

_____

_____

_____

The hearing shall be held as currently scheduled in a, above. The *Temporary Restraining Order* (Form CH-110) issued on *(date):* _____ remains in full force and effect until the hearing date.

c. ☐ The request for a continuance is GRANTED as set forth below.

(5) Order Granting Continuance and Notice of New Hearing

The court hearing on the *Request for Civil Harassment Restraining Orders* (Form CH-100) is continued and rescheduled as follows:

New Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

The extended *Temporary Restraining Order* (Form CH-110) expires at the end of this hearing.

This is a Court Order.

6 Reason for the Continuance

a. The continuance is needed because:

(1) ☐ The person in 2 was not served before the current hearing date.
(2) ☐ The person in 2 asked for a first continuance of the hearing.
(3) ☐ The person in 2 asked for more time to hire a lawyer or prepare a response.
(4) ☐ Other good cause as stated

_____
_____
_____

b. ☐ The court finds good cause and orders a continuance in its discretion.

7 Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ Extension of the *Temporary Restraining Order* (TRO; Form CH-110) issued on *(date):* _____ until the new hearing date is:

(1) ☐ GRANTED. There are no changes to the TRO except for the expiration date. The TRO remains in effect until the end of the hearing in 5.

(2) ☐ GRANTED AS MODIFIED. The Temporary Restraining Order is modified. See the attached amended Form CH-110, *Temporary Restraining Order*. All orders on the attached Order remain in effect until the end of the hearing in 5.

(3) ☐ DENIED and the Temporary Restraining Order is TERMINATED for the reasons stated:
☐ below ☐ on Attachment 7b(3)

_____
_____
_____
_____
_____

Warning and Notice to the Person in 2

If 7 b(1) or b(2) is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 5.

8 ☐ Other Orders *(specify):*

_____
_____
_____

☐ Other orders are attached at the end of this Order on Attachment 8.

This is a Court Order. _____

Case Number:

9 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the initial hearing date in item 4a, and both were given a signed copy of this Order.

b. ☐ The court granted the person in (1)'s request to continue the hearing date. A copy of this Order must be served on the person in (2) at least ____ days before the hearing in (5).

(1) ☐ All other documents requesting civil harassment restraining orders as shown in Form CH-109, *Notice of Court Hearing,* item (5) must be personally served on the person in (2).

(2) ☐ The *Temporary Restraining Order* (Form CH-110) has been modified and must be personally served on the person in (2).

(3) ☐ A copy of the *Temporary Restraining Order* must NOT be served because extension of the order is denied in item 7b(3).

c. ☐ The court granted the person in (2)'s request to continue the hearing date. A copy of this Order must be served on the person in (1) at least ____ days before the hearing in (5). A copy of the *Temporary Restraining Order* (Form CH-110) must be personally served if it was modified by the court in item 7b(2).

d. ☐ All documents must be personally served unless otherwise specified below.

10 Mandatory Entry of Order Into CARPOS Through CLETS

If a continuance is granted, the court or its designee will transmit this form within one business day to law enforcement personnel for entry into the California Restraining and Protective Order System (CARPOS) via the California Law Enforcement Telecommunications System (CLETS).

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *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 *Order on Request to Continue Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-115 Request to Continue Hearing

Use this form to ask the court to change the hearing date listed on form DV-109, *Notice of Court Hearing*. (Read DV-115-INFO, *How to Ask for a New Hearing Date* for more information).

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

Fill in case number:

Case Number:

1 Party Seeking Continuance

a. Full Name:

I am the: ☐ Party seeking protection.
☐ Restrained Party.

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 Other Party

Full Name: _____

3 Request to Continue Hearing

a. I ask the court to continue the hearing currently scheduled for *(date):* _____

b. I request that the hearing be continued because *(check any that apply)*:

(1) ☐ I could not get the papers served before the hearing date.

(2) ☐ I am the restrained party and this is my first request to continue the hearing.

(3) ☐ I need more time to hire a lawyer or prepare for the hearing or trial.

(4) ☐ Other good cause as stated: ☐ below ☐ on Attachment 3b(4)

This is not a Court Order.

4 Extension of Temporary Restraining Order

a. ☐ A *Temporary Restraining Order* (Form DV-110) was issued on *(date):* _____
Please attach a copy of the order if you have one.

b. **Notice: If the hearing date is continued, the *Temporary Restraining Order* (Form DV-110) will remain in effect until the end of the new hearing, unless otherwise ordered by the court.**

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

Date: _____

_____
Type or print name of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

DV-115-INFO How to Ask for a New Hearing Date

You may need to ask for a new hearing date if:

- You are the **protected party** and are unable to have form DV-109, *Notice of Court Hearing*, and other papers served in time before the hearing date.
- You are the **restrained party** and it is your first time asking the court to continue the hearing and you need time to hire a lawyer to prepare a response.
- You have a good reason for needing a new hearing date (the court may grant a request to continue the hearing on a showing of "good cause").

What does form DV-115 do?

Use form DV-115 to ask the court to "continue" the hearing. If the court continues the hearing and a *Temporary Restraining Order* (Form DV-110) was issued, that order will be extended until the end of the new hearing date, unless the court decides to modify or terminate it.

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of form DV-115.
- Fill out items (1) through (3) on form DV-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to continue the hearing.
- If the judge signed form DV-116, the court will give you a new hearing date. If the judge did NOT sign the form, you should go to the hearing at the date, time, and location that is shown on form DV-109.
- Next, file both forms DV-115 and DV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- The other party must be served a copy of the court papers as described in item (7) on form DV-116.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use form DV-200, *Proof of Personal Service*. If service was by mail, use form DV-250, *Proof of Service by Mail*. Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before the hearing.
- If the court continues the hearing date and extends the expiration date of the temporary restraining order to the date of the new hearing, the clerk will send the restraining order to law enforcement or CLETS for you. CLETS is a statewide computer system that lets police know about the order.

Go to the hearing

- Take at least two copies of your documents and filed forms to the hearing. Include a copy of the filed *Proof of Service.* "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If the protected party does not go to the hearing, the temporary domestic violence restraining orders will expire on the date and time of the hearing. If the restrained party does not go to the hearing, the court can still make orders against him or her that can last for up to five years.

Need help?

Ask the court clerk about free or low-cost legal help. 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.

DV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

NOT APPROVED BY THE JUDICIAL COUNCIL

Complete items (1), (2), and (3).

(1) Protected Party:

_____

(2) Restrained Party:

_____

(3) Party Seeking Continuance

I am the: ☐ Protected Party ☐ Restrained Party

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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:

The court will complete the rest of this form.

(4) Order on Request for Continuance

a. The hearing in this matter is currently scheduled for *(date):* _____

b. ☐ The request for a continuance is DENIED for the reasons set forth ☐ below ☐ on Attachment 4b

_____

_____

_____

The hearing shall be held as currently scheduled above. The *Temporary Restraining Order* (Form DV-110) issued on *(date):* _____ remains in full force and effect until the hearing date.

c. ☐ The request for a continuance is GRANTED as set forth below.

(5) Order Granting Continuance and Notice of New Hearing

The court hearing on the *Request for Domestic Violence Restraining Order* (Form DV-100) is continued to the date, time, and location shown below:

New Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

The extended *Temporary Restraining Order* (form DV-110) expires at the end of this hearing.

This is a Court Order.

Case Number:

6 Reason for the Continuance

a. The continuance is needed because:

(1) ☐ The person in 2 was not served before the current hearing date.

(2) ☐ The parties were referred to child custody mediation or child custody recommending counseling.

(3) ☐ The person in 2 asked for a first continuance of the hearing.

(4) ☐ The person in 3 asked for more time to hire a lawyer or prepare for the hearing or trial.

(5) ☐ Other good cause as stated: ☐ below ☐ on Attachment 6a(5)

b. ☐ The court finds good cause and orders a continuance in its discretion.

7 Extension of Temporary Restraining Order

a. ☐ No temporary restraining orders were issued in this case.

b. ☐ By granting the request to continue the hearing, the orders listed in *Temporary Restraining Order* (form DV-110), issued on *(date):* _____, remain in effect until the end of the hearing in 5.

c. ☐ The Temporary Restraining Order is MODIFIED. A new *Temporary Restraining Order* (Form DV-110) is issued as of this date. The orders remain in effect until the end of the hearing in 5.

d. ☐ The Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 7d

e. Other *(specify):* _____

Warning and Notice to the Party in 2

If 7 b or c is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 5.

8 ☐ Other Orders *(specify):*

☐ Additional orders are included at the end of this Order on Attachment 8.

This is a Court Order.

Case Number:

9 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the hearing when the new hearing date was ordered.

b. ☐ The court granted the protected party's request to continue the hearing date. A copy of this Order must be served on the restrained party at least ____ days before the hearing in 5 .

(1) ☐ All other documents requesting domestic violence restraining orders as shown in Form DV-109, *Notice of Court Hearing* (at item 6) must also be personally served on the restrained party.

(2) ☐ The *Temporary Restraining Order* (Form DV-110) has been modified and must be personally served on the restrained party.

(3) ☐ A copy of the *Temporary Restraining Order* must NOT be served because the order was terminated in 7d.

c. ☐ The court granted the restrained party's request to continue the hearing date. A copy of this Order must be served on the protected party at least ____ days before the hearing in 5 . A copy of the *Temporary Restraining Order* (Form DV-110) must be served if it was modified by the court in item 7 .

d. ☐ All documents must be personally served unless otherwise specified below.

e. ☐ Other *(specify):*

10 No Fee to Serve

If the sheriff or marshal serves this order, he or she will do it for free.

11 CLETS Entry

If the hearing is continued, the court or its designee will transmit this form within one business day to law enforcement personnel for entry into the California Restraining and Protective Order System (CARPOS) via the California Law Enforcement Telecommunications System (CLETS).

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *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 *Order On Request to Continue Hearing (Temporary Restraining Order)*(CLETS-TRO) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-200 Proof of Personal Service

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 clerk fills in case number when form is filed.

Case Number:

1 Name of Party Asking for Protection:

2 Name of Party to Be Restrained:

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be listed in items 1 or 3 of form DV-100, *Request for Domestic Violence Restraining Order*.
- Give a copy of all documents checked in 4 to the restrained party in 2. (You cannot send them by mail.) Then complete and sign this form, and give or mail it to the party in 1.

4 I gave the party in 2 a copy of all the documents checked:

a. ☐ DV-109 with DV-100 and a blank DV-120 *(Notice of Court Hearing; Request for Domestic Violence Restraining Order;* blank *Response to Request for Domestic Violence Restraining Order)*
b. ☐ DV-110 *(Temporary Restraining Order)*
c. ☐ DV-105 and DV-140 *(Request for Child Custody and Visitation Orders, Child Custody and Visitation Order)*
d. ☐ FL-150 with a blank FL-150 *(Income and Expense Declaration)*
e. ☐ FL-155 with a blank FL-155 *(Financial Statement (Simplified))*
f. ☐ DV-115 *(Request to Continue Hearing)*
g. ☐ DV-116 *(Order on Request to Continue Hearing)*
h. ☐ DV-130 *(Restraining Order After Hearing)*
i. ☐ Other *(specify):*

5 I personally gave copies of the documents checked above to the party in 2 on:

a. Date: _____ b. 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: _____

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

Date: _____

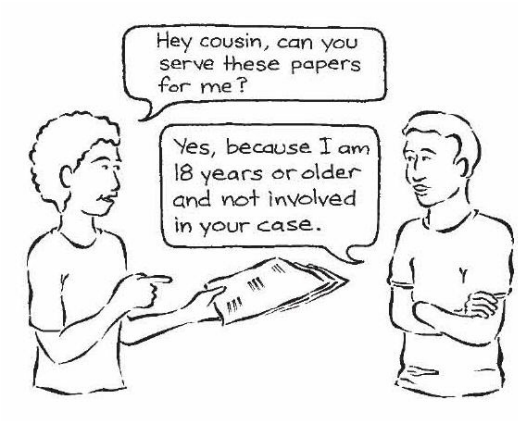
_____ ▶ _____

Type or print server's name *Server to sign here*

DV-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your legal papers to the other party in the case. There are many kinds of service—in person, by mail, and others. This form is about personal or "in-person" service. The *Notice of Court Hearing* (form DV-109), *Request for Domestic Violence Restraining Order* (form DV-100), and *Temporary Restraining Order* (form DV-110) must be served "in person." That means someone—not you or anyone else protected by the order—must personally "serve" (give) the party to be restrained a copy of the forms. You cannot send them by mail. Service lets the other party know:



- What orders you are asking for
- 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*** the restrained party knows about the order.
- The ***judge cannot make the orders permanent*** unless the restrained party was served.

Don't serve it by mail!

Who can serve?

Ask someone you know, a process server, or a law enforcement agency (for example, a sheriff) to personally serve (give) a copy of the orders to the party to be restrained. You ***cannot*** send the forms to that person by mail.
The server must:

- Be 18 years of age or over
- Not be you or anyone to be protected by the orders

A sheriff can serve the order at no cost to you.
A "registered process server" is a business you pay to deliver court forms. Look for "Process Serving" in the Yellow Pages or on the Internet.
(Note: If a law enforcement agency or the process server uses a different proof of service form, make sure it lists the forms served.)

How does the server "serve" the legal papers?

Ask the server to:

- Walk up to the person to be served.
- Make sure it's the right person. Ask the person's name.
- Give the person copies of all papers checked on form DV-200, *Proof of Personal Service*.
- Fill out and sign form DV-200.
- Give the signed form DV-200 to you.

What if the person won't take the papers or tears them up?

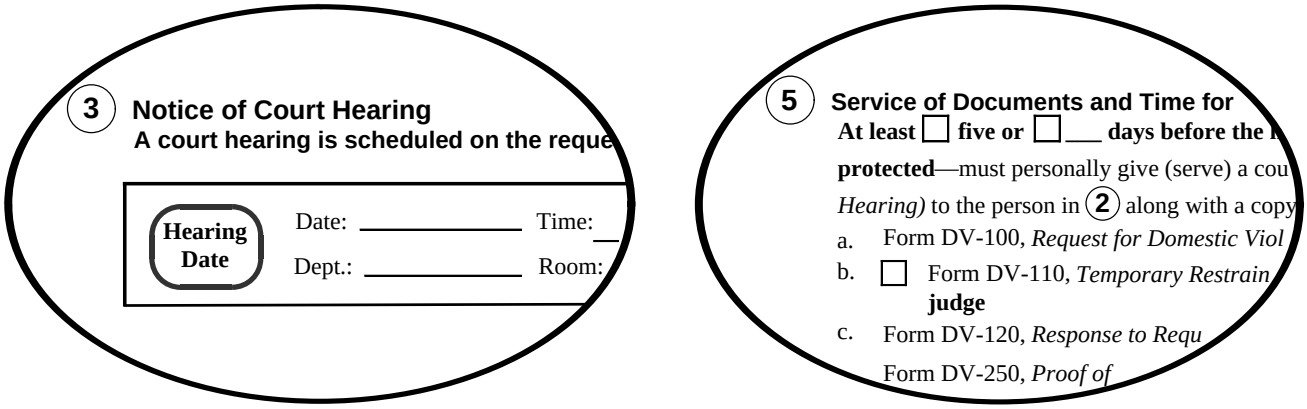
- If the person won't take the papers, just leave them near him or her.
- It doesn't matter if the person tears them up.

DV-200-INFO What Is "Proof of Personal Service"?

When do the orders have to be served?

It depends. To know the exact date, you have to look at two things on form DV-109:

First, look at the hearing date on page 1 of form DV-109. Next, look at the number of days written in item 5 on page 2.



Look at a calendar. Subtract the number of days in item 5 from the hearing date. That's the final date to have the orders served. It's always OK to serve earlier than that date.

If nothing is written in item 5 you must have the papers served at least five (5) days before the hearing.

Who signs the *Proof of Personal Service*?

Only the person who serves the orders can sign the *Proof of Personal Service* (form DV-200). You do not sign it. The person to be restrained does not sign it.

What happens if I cannot get the papers served before the hearing date?

Forms DV-100, DV-109, DV-110 must be personally served before the hearing. If not, before your hearing, fill out and file a *Request to Continue Hearing* (form DV-115) and *Order on Request to Continue Hearing* (form DV-116). These forms ask the judge for a new hearing date and make any temporary orders last until the end of the new hearing. Ask the clerk for the forms or go to www.courts.ca.gov.

You ***must*** attach a copy of form DV-115 and DV-116 to a copy of your original order. That way, the police will know your orders are still in effect. And the restrained party will be served with notice of the new hearing date. For more information on getting a new hearing date, read form DV-115-INFO, *How to Ask for a New Hearing Date.*

What do I do with the completed *Proof of Personal Service*?

Bring a copy of the original *Proof of Personal Service* (form DV-200) to your hearing.

If the sheriff serves the orders, he or she will send the *Proof of Personal Service* to the court and CLETS (California Law Enforcement Telecommunications System), a statewide computer system that lets police know about your order, for you.

If someone other than the sheriff serves the orders, you should:

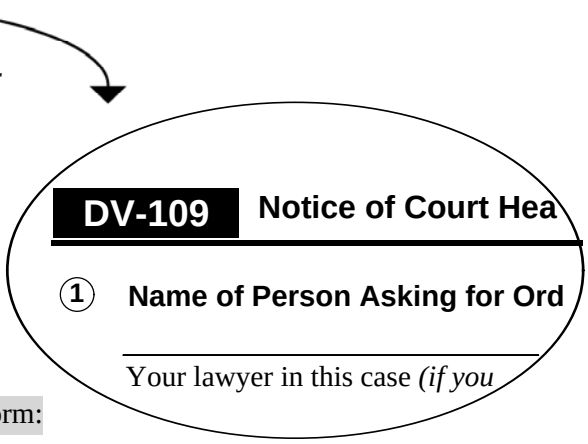
- If possible, file the original *Proof of Personal Service* (form DV-200) with the court at least two (2) days before your hearing. If you were unable to do this, bring the original *Proof of Personal Service* to your hearing.
- The clerk will send it to CLETS.
- Always keep an extra copy of the restraining orders with you for your safety.

DV-505-INFO How Do I Ask For a Temporary Restraining Order?

1 **Use this form as a checklist.**
(Look at the numbers at the top of your forms.)

a. For a restraining order you need these forms:

- ☐ DV-100 *Request for Domestic Violence Restraining Order*
- ☐ CLETS-001 *(Confidential CLETS Information)*
- ☐ DV-109 *Notice of Court Hearing*
- ☐ DV-110 *Temporary Restraining Order*



b. If you have children with the person you want protection from, you also need these forms:

- ☐ DV-105 *Request for Child Custody and Visitation Orders*
- ☐ DV-140 *Child Custody and Visitation Order*

c. If you want child support or spousal support, you also need form:

- ☐ FL-150* *Income and Expense Declaration* or
- ☐ FL-155* *Financial Statement (Simplified)*

* Read *Which Financial Form—FL-155 or FL-150?* (form DV-570) to know which one is right for you.

d. Ask the clerk if your county has special forms or rules.

e. There are other forms you will need later *(do not fill them out now):*

- ☐ DV-120 *Response to Request for Domestic Violence Restraining Order*
- ☐ DV-130 *Restraining Order After Hearing (Order of Protection)*
- ☐ DV-200 *Proof of Personal Service*

2 **Fill out the forms you need and take them to the court clerk.** The clerk will give your forms to the judge. The judge will look at them and decide whether to make ("grant") the temporary orders. Sometimes the judge will want to talk to you. If so, the clerk will tell you.

3 **Find out if the judge made the temporary restraining orders.** Ask the clerk when to come back to see if the judge signed the order (**Form DV-110**). The judge must decide by the next business day. If the judge grants a temporary restraining order, check it carefully to see what the orders are. The judge might not order everything you requested. The court will set a hearing date on **Form DV-109** whether or not the judge grants any temporary orders.

4 **"File" the judge's order.** The clerk will keep the original forms for the court and will file-stamp up to three copies for you. If you need more, you may make them yourself.

What to do with your copies:

- Keep one copy with you, always. You may need to show it to the police.
- Keep another copy in a safe place.
- Give a copy to anyone else protected by the order.
- Take copies to places where the restrained party is ordered not to go (school, work, child care, etc.)
- Give a copy to the security officers in your apartment building and workplace.

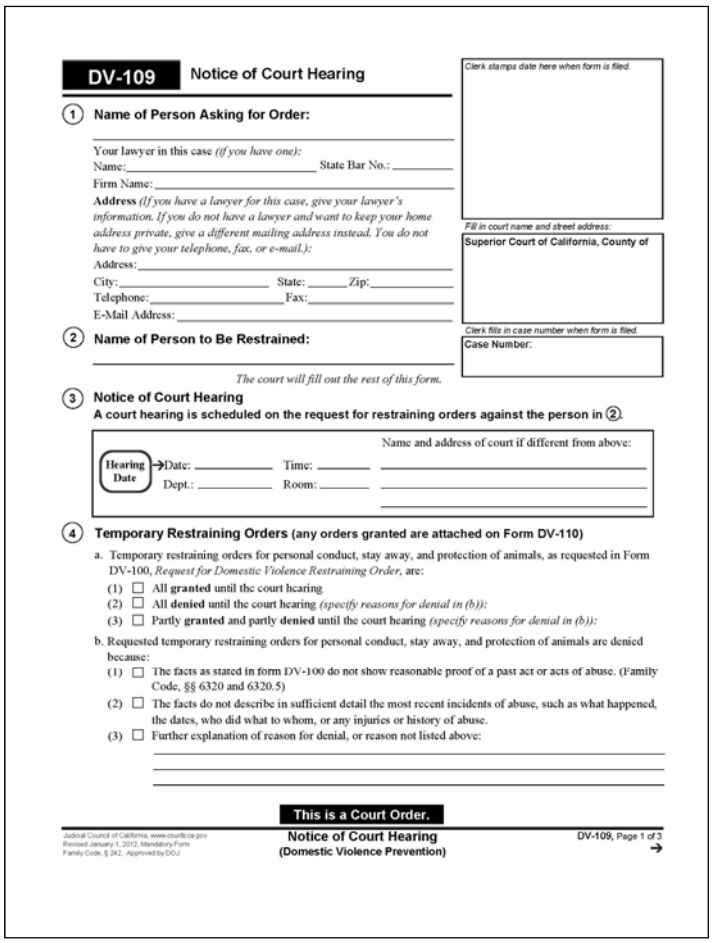
Restraining orders get entered into CLETS, a statewide computer system that lets police know about your order. The court will send the order to law enforcement or CLETS for you.

5 Know your hearing date: Form DV-109

Look at Form DV-109 for the date and time of your hearing. You ***must*** go to your hearing to get a permanent order.

The order you have now only lasts for about three weeks. Any orders made on Form DV-110 *(Temporary Restraining Order)* will end on the hearing date.

You have the right to cancel the hearing. Read page 2 of Form DV-109 for information.



DV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Name of Person Asking for Order:

Your lawyer in this case *(if you have one)*:
Name: State Bar No.:
Firm Name:
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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

2 Name of Person to Be Restrained:

Clerk fills in case number when form is filed.
Case Number:

The court will fill out the rest of this form.

3 Notice of Court Hearing
A court hearing is scheduled on the request for restraining orders against the person in 2.

Hearing Date → Date: Time: Dept.: Room:
Name and address of court if different from above:

4 Temporary Restraining Orders (any orders granted are attached on Form DV-110)

a. Temporary restraining orders for personal conduct, stay away, and protection of animals, as requested in Form DV-100, *Request for Domestic Violence Restraining Order*, are:
(1) ☐ All **granted** until the court hearing
(2) ☐ All **denied** until the court hearing *(specify reasons for denial in (b))*:
(3) ☐ Partly **granted** and partly **denied** until the court hearing *(specify reasons for denial in (b))*:

b. Requested temporary restraining orders for personal conduct, stay away, and protection of animals are denied because:
(1) ☐ The facts as stated in form DV-100 do not show reasonable proof of a past act or acts of abuse. (Family Code, §§ 6320 and 6320.5)
(2) ☐ The facts do not describe in sufficient detail the most recent incidents of abuse, such as what happened, the dates, who did what to whom, or any injuries or history of abuse.
(3) ☐ Further explanation of reason for denial, or reason not listed above:

This is a Court Order.

Judicial Council of California, www.courts.ca.gov
Revised January 1, 2012, Mandatory Form
Family Code, § 242, Approved by DOJ

Notice of Court Hearing
(Domestic Violence Prevention)

DV-109, Page 1 of 3

6 "Serve" the restrained party.

Ask someone you know, a process server, or law enforcement to personally "serve" (give) the restrained party a copy of the notice of hearing, the order, and other papers. You **cannot** serve the papers yourself. They **cannot** be sent by mail. The server must:

- Be 18 years of age or older
- Not be listed in item 1 or 3 of Form DV-100, *Request for Domestic Violence Restraining Order*.

Law enforcement will serve the orders for **free**, but you have to ask.

A "process server" is a business you pay to deliver court forms. Look in the Yellow Pages under "Process Serving."

If law enforcement or the process server uses a different Proof of Service form, make sure the form lists all the forms served.

Don't serve it by mail!

7 File the *Proof of Personal Service* (Form DV-200).

The *Proof of Personal Service* shows the judge and police that the restrained person got a copy of the request for orders. Make three copies of the completed *Proof of Personal Service*. Take the original and copies to the court clerk as soon as possible **before your hearing.** The clerk will keep the original and give you back the copies stamped "Filed." Bring a copy to your hearing.

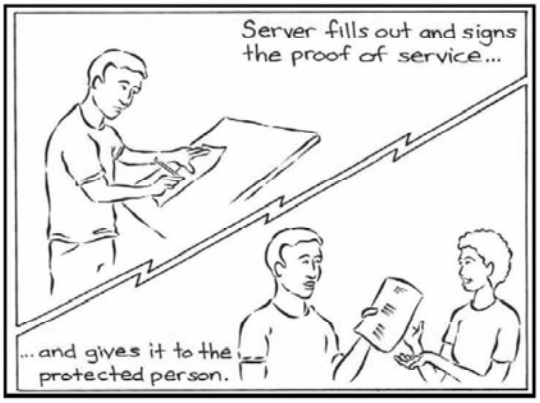
Keep one copy with you and another in a safe place in case you need to show it to the police. Give the other copies out as you did in 4. The court will send your completed *Proof of Personal Service* to law enforcement or CLETS for you. CLETS is a statewide computer system that lets police know about your order.

If the sheriff serves your order, he or she will send the *Proof of Personal Service* to the court and to CLETS for you.

8 If the restrained party wasn't served . . .

The restrained party **must** be served before the hearing. If the restrained party wasn't served, fill out Form DV-115 (*Request to Continue Hearing)* and the top of Form DV-116 *(Order on Request to Continue Hearing*) to ask the judge for a new hearing date. Do this **before** or **at** your hearing. (If you wait until after the hearing, you have to start from the beginning and complete all of the forms again.)

If the judge signs Form DV-116, any restraining orders will last until the end of the new hearing.



- File the signed order (Form DV-116) with the clerk. The clerk will send it to law enforcement or CLETS for you.
- Attach Form DV-115 and Form DV-116 to your other court papers and have the restrained party personally served.
- After serving the orders, the server fills out and signs Form DV-200, *Proof of Personal Service,* and gives it to you.
- File the original Form DV-200, *Proof of Personal Service,* and bring a copy to your hearing.
- Bring a copy of Form DV-115 and Form DV-116 to your hearing.

9 Need help?

The clerk has information sheets that can help you. Or you can get them at *www.courts.ca.gov/forms*.

- *Can a Domestic Violence Restraining Order Help Me?* (Form DV-500-INFO)
- *What Is "Proof of Personal Service"?* (Form DV-200-INFO)
- *Get Ready for the Court Hearing* (Form DV-520-INFO)
- *How to Enforce Your Restraining Order* (Form DV-530-INFO)
- *How Can I Respond to a Request for Domestic Violence Restraining Order?* (Form DV-120-INFO)
- *How Do I Ask the Court to Renew My Restraining Order?* (Form DV-700-INFO)
- *Which Financial Form—FL-155 or FL-150?* (Form DV-570)

10 Need more help?

- Ask the court clerk about free or low-cost legal help.
- 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.

EA-115 Request to Continue Court Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to ask the court to change the hearing date listed on form EA-109, *Notice of Court Hearing*. Read EA-115-INFO, *How to Ask for a New Hearing Date*, for more information.

1 Party Seeking Continuance

a. Full Name:

_____

I am the
- ☐ Elder or dependent adult seeking protection.
- ☐ Person requesting protection for the elder or dependent adult *(person named in item 3 of form EA-100)*:
- ☐ Party from whom protection is sought.

Lawyer for person named above *(if any for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or 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 Request to Continue Hearing

a. I ask the court to continue the hearing currently scheduled for *(date):* _____

b. I request that the hearing be continued because *(check any that apply)*:

(1) ☐ The party from whom protection is sought could not be served before the hearing date.

(2) ☐ I am the party from whom protection is sought, and this is my first request to continue the hearing date.

(3) ☐ I need more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 3b(4)

_____
_____
_____
_____
_____
_____
_____
_____

This is not a Court Order.

c. (1) ☐ This is my first request for a continuance.
(2) ☐ The hearing has previously been continued ____ times.

4 Extension of Temporary Restraining Order

a. ☐ A *Temporary Restraining Order* (Form EA-110) was issued on *(date):* _____
Please attach a copy of the order if you have one.

b. **Notice: If the hearing date is continued, the *Temporary Restraining Order* will remain in effect until the end of the new hearing unless otherwise ordered by the court.**

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 of *Signature*

☐ Attorney ☐ Party Without Attorney

EA-115-INFO How to Ask for a New Hearing Date

You may need to ask for a new hearing date if:

- You are the **Person Seeking Protection** and are unable to have Form EA-109, *Notice of Court Hearing*, and other papers served in time before the hearing date.
- You are the **Person to be Restrained** making your first request for continuance, and you need time to hire an attorney or prepare a response.
- You have a good reason for needing a new hearing date. (The court may grant a request to continue the hearing on a showing of "good cause.")

What does Form EA-115 do?

Use Form EA-115 to ask the court to "continue" the hearing. If the court continues the hearing and a *Temporary Restraining Order* (TRO; Form EA-110) was issued, the TRO will be extended until the end of the new hearing unless the court decides to modify or terminate it.

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of Form EA-115.
- Fill out items (1) through (3) on Form EA-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to continue the hearing.
- If the judge signs Form EA-116, the court will give you a new hearing date. If the judge did NOT sign the form, you should go to the hearing at the date, time, and location that is shown on Form EA-109.
- Next, file both Forms EA-115 and EA-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- The other party must be served a copy of the court papers as described in item (7) on Form EA-116.
- Ask the person who serves the papers to complete a Proof of Service form and give it to you. If service was in person, use Form EA-200, *Proof of Personal Service*. If service was by mail, use Form POS-040, *Proof of Service--Civil*. Make two copies of the completed forms.
- File the completed and signed Proof of Service form with the clerk's office before the hearing.
- If the court continues the hearing date and extends the TRO to the date of the new hearing, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

Go to the hearing.

- Take at least two copies of your documents and filed forms to the hearing. Include a filed Proof of Service form." "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the Person Seeking Protection and you do not go to the hearing, the Temporary Restraining Order will expire on the date and time of the hearing. If you are the Person to Be Restrained and you do not go to the hearing, the court can still make orders against you that can last for up to five years.

Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

EA-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Complete items (1), (2), and (3) only.

(1) Protected Person

Full Name: _____

(2) Restrained Person

Full Name: _____

(3) Person Seeking Continuance

I am the ☐ person in (1) ☐ person in (2)

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(4) Order on Request for Continuance

a. The hearing in this matter is currently scheduled for *(date):* _____ at *(time)* _____

b. ☐ The request for a continuance is DENIED for the reasons set forth ☐ below ☐ on Attachment 4b

_____

_____

_____

The hearing shall be held as currently scheduled in a, above. The *Temporary Restraining Order* (Form EA-110) issued on *(date):* _____ remains in full force and effect until the hearing date.

c. ☐ The request for a continuance is GRANTED as set forth below.

(5) Order for Continuance and Notice of New Hearing

The court hearing on the *Request for Elder or Dependent Adult Abuse Restraining Orders* (Form EA-100) is continued and rescheduled as follows:

New Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

The extended *Temporary Restraining Order* (Form EA-110) expires at the end of this hearing.

This is a Court Order.

6 Reason for the Continuance

a. The hearing currently set for *(date):* _____ is rescheduled to the date, time, and location in 5.

b. The continuance is needed because:

(1) ☐ The person in 2 was not served before the current hearing date.
(2) ☐ The person in 2 asked for a first continuance of the hearing.
(3) ☐ The person in 2 asked for more time to hire a lawyer or prepare a response.
(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 6b(4)

_____
_____
_____

c. ☐ The court finds good cause and orders a continuance in its discretion.

7 Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ Extension of the *Temporary Restraining Order* (TRO; Form EA-110) issued on *(date):* _____ until the new hearing date is:

(1) ☐ GRANTED. There are no changes to the TRO except for the expiration date. The TRO remains in effect until the end of the hearing in 5.

(2) ☐ GRANTED AS MODIFIED. The Temporary Restraining Order is modified. See the attached modified order. Any orders on the attached form remain in effect until the end of the hearing in 5.

(3) ☐ DENIED and the Temporary Restraining Order is TERMINATED for the reasons stated
☐ below ☐ on Attachment 6c(3)

_____
_____
_____
_____
_____

Warning and Notice to the Person in 2

If 7 b(1) or b(2) is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 5.

8 ☐ Other Orders *(specify):*

_____
_____
_____

☐ Other orders are attached at the end of this Order on Attachment 8.

This is a Court Order.

9 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the initial hearing date in item 4a, and both were given a signed copy of this Order.

b. ☐ The court granted the person in (1)'s request to continue the hearing date. A copy of this Order must be served on the person in (2) at least ____ days before the hearing in (5)

(1) ☐ All other documents requesting elder and dependent adult abuse restraining orders as shown in Form EA-109, *Notice of Court Hearing*, item (5) must be personally served on the person in (2).

(2) ☐ The *Temporary Restraining Order* (Form EA-110) has been modified and must be personally served on the person in (2).

(3) ☐ A copy of the *Temporary Restraining Order* must NOT be served because extension of the order is denied in item 7b(3).

c. ☐ The court granted the person in (2)'s request to continue the hearing date. A copy of this Order must be served on the person in (1) at least ____ days before the hearing in (5). A copy of the *Temporary Restraining Order* (Form CH-110) must be personally served if it was modified by the court in item 7b(2).

d. ☐ All documents must be personally served unless otherwise specified below.

10 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do it for free.

11 Mandatory Entry of Order Into CARPOS Through CLETS

If a continuance is granted, the court or its designee will transmit this form within one business day to law enforcement personnel for entry into the California Restraining and Protective Order System (CARPOS) via the California Law Enforcement Telecommunications System (CLETS).

Date: _____

_____
Judicial Officer

This is a Court Order.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm 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 *Order on Request to Continue Hearing* is a true and correct copy of the original on file in the court.

Date:_____ Clerk, by_____, Deputy

This is a Court Order.

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(optional)*: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
REQUEST AND ORDER TO CONTINUE HEARING AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER	CASE NUMBER:

REQUEST

1. Name of person making the request:
2. The court issued temporary emergency (ex parte) orders on my *Request for Order* (form FL-300) on *(date):*
3. I request that the court continue the hearing date of the *Request for Order* (form FL-300).
4. I request the continuance because *(check all boxes that apply):*
   a. ☐ The papers could not be served as required before the hearing date on *(specify):* ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*
   b. ☐ The parties were ordered to meet with a child custody mediator or child custody recommending counselor.
   c. ☐ I am the responding party and this is my first request to continue the hearing.
   d. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
   e. ☐ Other good cause *(specify):*

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

Date:

(TYPE OR PRINT NAME)

SIGNATURE

COURT ORDER

FOR COURT USE ONLY

5. The request to continue the hearing is:
   a. ☐ DENIED for the reasons set forth ☐ below ☐ on Attachment 5a

   The hearing shall be held as currently scheduled on *(date):* _____. The temporary emergency (ex parte) orders remain in force and effect until the end of the currently scheduled hearing.

   b. ☐ GRANTED.The hearing on the *Request for Order* and temporary emergency (ex parte) orders is continued as follows:

Date:	Time:	Dept.:	Room:
at the street address of the court shown above.			

6. The temporary emergency orders expire *(check one):* ☐ at the end of the new hearing in 5b ☐ on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
FL-306 [Rev. July 1, 2016]

REQUEST AND ORDER TO CONTINUE HEARING AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Family Code, § 245
Cal. Rules of Court, rule 5.94
www.courts.ca.gov

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

7. **Temporary emergency (ex parte) orders**

a. ☐ The orders issued in *Request for Order* (form FL-300) on *(date):* are *(check one):*

(1) ☐ modified as specfied ☐ below ☐ on Attachment 7a(2)

(2) ☐ terminated for the reasons stated ☐ below ☐ on Attachment 7a(2)

b. ☐ The orders issued in *Temporary Emergency (Ex Parte) Order* (form FL-305) on *(date):* are *(check one)*

(1) ☐ modified. See attached modified form FL-305 order issued as of this date.

(2) ☐ terminated for the reasons stated ☐ below ☐ on Attachment 7b(2)

c. ☐ Other *(specify):*

8. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*

9. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date):*

10. **Orders regarding service**

a. ☐ No further service is required. Both parties were present at the hearing when the court granted this order.

b. ☐ The ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*
must be served the following documents *(specify):*

(1) A filed copy of this order (form FL-306) as the cover page to any other documents served on the party.

(2) ☐ A copy of the filed *Request for Order* (form FL-300)

(3) ☐ A copy of the filed *Temporary Emergency (Ex Parte) Order* (form FL-305)

(4) ☐ A copy of the modified temporary emergency (ex parte) order

(5) ☐ Other *(specify):*

c. The documents must be served by (specify):

(1) ☐ Personal service.

(2) ☐ Mail.

d. ☐ Other orders regarding service *(specify):*

11. **Other orders**

Date:

▶ _____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	**DRAFT B NOT APPROVED BY THE JUDICIAL COUNCIL**
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:	
REQUEST AND ORDER TO CONTINUE HEARING	CASE NUMBER:

REQUEST

1. Name of applicant:
2. I ask the court to continue the hearing currently scheduled on *(date):*
3. I ask the court to continue the hearing date because
   a. ☐ I could not get the papers served before the hearing date.
   b. ☐ I am the restrained person and this is my first request to continue the hearing date.
   c. ☐ I need more time to hire a lawyer or prepare for the hearing or trial.
   d. ☐ Other good cause *(specify):*

4. ☐ A *Temporary Restraining Order* (form JV-250) was issued on *(date):*
   Notice: If the hearing date is continued, the *Temporary Restraining Order* (Form JV-250) will remain in effect until the end of the new hearing, unless otherwise ordered by the court.

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

(The court will complete the section below)

ORDER

5. The request to continue the hearing is:
   a. ☐ DENIED for the reasons set forth ☐ below ☐ on Attachment 5a.

   The hearing shall be held as currently scheduled above. The Temporary Restraining Order (Form JV-250) issued on *(date):* _____ remains in force and effect until the hearing date.

   b. ☐ GRANTED.The hearing is continued as follows:

New Hearing Date:	Time:	Dept.:	Room:
Name and address of court if different from above:			
Any orders granted in item 6 remain in effect until the end of the new hearing.			

Form Approved for Optional Use
Judicial Council of California
JV-251 [Rev. July 1, 2016]

REQUEST AND ORDER TO CONTINUE HEARING
(TEMPORARY RESTRAINING ORDER—JUVENILE)(CLETS—JUV)

Welfare and Institutions Code, § 213.5
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

6. **TEMPORARY RESTRAINING ORDER**

a. ☐ No temporary restraining orders were issued in this case and therefore no orders are extended.

b. ☐ The *Temporary Restraining Order* (form JV-250) issued on *(date):* remains in effect until the end of the hearing in item 5b.

c. ☐ The *Temporary Restraining Order* is MODIFIED. See the attached modified order. The orders on the attached form remain in effect until the end of the hearing in item 5b.

d. ☐ The *Temporary Restraining Order* (form JV-250) issued on *(date):* is TERMINATED for the reasons stated ☐ below ☐ on Attachment 6d.

e. ☐ Other *(specify):*

7. **Service of Order**

a. ☐ No further service of this Order is required. Both parties were present at the hearing.

b. ☐ Applicant's request to continue the hearing is granted. A copy of this Order must be served on the restrained person at least _____ days before the hearing in item 5b.

(1) ☐ In addition, a copy of the *Request for Restraining Order* (form JV-245) and *Temporary Restraining Order* (form JV-250) must be personally served on the restrained person.

c. ☐ Restrained person's request to continue the hearing is granted. A copy of this Order must be served at least _____ days before the hearing in item 5b on the: ☐ Petitioner (Person who requested restraining order)
☐ Other:

d. ☐ Other *(specify):*

8. **Transmittal Order.** The data in this order must be transmitted within one business day to law enforcement personnel. This order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CARPOS through CLETS directly.

b. ☐ The court or its designee will transmit a copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CARPOS through CLETS.
If designee, insert name:

9. All orders will end at the end of the hearing scheduled for the date and time shown in item 4 unless otherwise ordered.

Date:

_____
JUDICIAL OFFICER

SV-115 Request to Continue Court Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to ask the court to change the hearing date listed on form EA-109, *Notice of Court Hearing*. Read EA-115-INFO, *How to Ask for a New Hearing Date*, for more information.

1 Party Seeking Continuance

a. Full Name:

_____

I am the ☐ Petitioner
☐ Respondent

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or 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 Request to Continue Hearing

a. I ask the court to continue the hearing currently scheduled for *(date):* _____

b. I request that the hearing be continued because *(check any that apply)*:

(1) ☐ The Respondent could not be served before the hearing date.

(2) ☐ I am the Respondent, and this is my first request to continue the hearing date.

(3) ☐ I need more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 3b(4)

_____
_____
_____
_____
_____
_____
_____

This is not a Court Order.

c. (1) ☐ This is my first request for a continuance.
(2) ☐ The hearing has previously been continued ____ times.

4 Extension of Temporary Restraining Order

a. ☐ A *Temporary Restraining Order* (Form SV-110) was issued on *(date):* _____
Please attach a copy of the order if you have one.

b. **Notice: If the hearing date is continued, the *Temporary Restraining Order* will remain in effect until the end of the new hearing unless otherwise ordered by the court.**

Date: _____

_____ ▶ _____
Type or print your name of *Signature*

☐ Attorney ☐ Party Without Attorney

SV-115-INFO How to Ask for a New Hearing Date

DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL

You may need to ask for a new hearing date if:

- You are the **Petitioner** and are unable to have Form SV-109, *Notice of Court Hearing*, and other papers served in time before the hearing date.
- You are the **Respondent** making your first request for continuance, and you need time to hire an attorney or prepare a response.
- You have a good reason for needing a new hearing date. (The court may grant a request to continue the hearing on a showing of "good cause.")

What does Form SV-115 do?

Use Form SV-115 to ask the court to "continue" the hearing. If the court continues the hearing and a *Temporary Restraining Order* (TRO; Form SV-110) was issued, the TRO will be extended until the end of the new hearing unless the court decides to modify or terminate it.

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of Form SV-115.
- Fill out items (1) through (3) on Form SV-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to continue the hearing.
- If the judge signs Form SV-116, the court will give you a new hearing date. If the judge did NOT sign the form, you should go to the hearing at the date, time, and location that is shown on form SV-109.
- Next, file both Forms SV-115 and SV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- The other party must be served with a copy of the court papers as described in item (7) on Form SV-116.
- Ask the person who serves the papers to complete a Proof of Service form and give it to you. If service was in person, use Form SV-200, *Proof of Personal Service*. If service was by mail, use Form POS-040, *Proof of Service--Civil*. Make two copies of the completed forms.
- File the completed and signed Proof of Service form with the clerk's office before the hearing.
- If the court continues the hearing date and extends the TRO to the date of the new hearing, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

Go to the hearing.

- Take at least two copies of your documents and filed forms to the hearing. Include a filed Proof of Service form. "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the Petitioner and you do not go to the hearing, the Temporary Restraining Order will expire at the end of the hearing. If you are the Respondent and you do not go to the hearing, the court can still make orders against you that can last for up to three years.

Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

SV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Petitioner (Educational Institution or Officer)

Full Name: _____

2 Respondent

Full Name: _____

3 Person Seeking Continuance

I am the ☐ Petitioner ☐ Respondent

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will complete the rest of this form.

4 Order on Request for Continuance

a. The hearing in this matter is currently scheduled for *(date):* _____ at *(time)* _____

b. ☐ The request for a continuance is DENIED for the reasons set forth ☐ below ☐ on Attachment 4b

_____

_____

_____

The hearing shall be held as currently scheduled in a, above. The *Temporary Restraining Order* (Form SV-110) issued on *(date):* _____ remains in full force and effect until the hearing date.

c. ☐ The request for a continuance is GRANTED as set forth below.

5 Order for Continuance and Notice of New Hearing

The court hearing on the *Petition for Private Postsecondary School Violence Restraining Orders* (Form SV-100) is continued and rescheduled as follows:

New Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

The extended *Temporary Restraining Order* (Form SV-110) expires at the end of this hearing.

This is a Court Order.

Case Number:

6 Reason for the Continuance

a. The continuance is needed because:

(1) ☐ The Respondent was not served before the current hearing date.

(2) ☐ The Respondent asked for a first continuance of the hearing.

(3) ☐ The Respondent asked for more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 6b(4)

b. ☐ The court finds good cause and orders a continuance in its discretion.

7 Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ Extension of the *Temporary Restraining Order* (TRO; Form SV-110) issued on *(date):* _____ until the new hearing date is:

(1) ☐ GRANTED. There are no changes to the TRO except for the expiration date. The TRO remains in effect until the end of the hearing in 5.

(2) ☐ GRANTED AS MODIFIED. The Temporary Restraining Order is modified. See the attached amended Form SV-110, *Temporary Restraining Order*. All orders on the attached Order remain in effect until the end of the hearing in 5.

(3) ☐ DENIED and the Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 7b(3)

Warning and Notice to the Respondent

If 7 b(1) or b(2) is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 5.

8 ☐ Other Orders *(specify):*

☐ Other orders are attached at the end of this Order on Attachment 8.

This is a Court Order.

Case Number:

9 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the initial hearing date in item 4a, and both were given a signed copy of this Order.

b. ☐ The court granted the Petitioner's request to continue the hearing date. A copy of this Order must be served on the Respondent at least ____ days before the hearing in 5.

(1) ☐ All other documents requesting private postsecondary school violence restraining orders as shown in form SV-109, *Notice of Court Hearing*, item 5 must be personally served on the Respondent.

(2) ☐ The *Temporary Restraining Order* (Form SV-110) has been modified and must be personally served on the Respondent.

(3) ☐ A copy of the *Temporary Restraining Order* must NOT be served because extension of the order is denied in item 6b(3).

c. ☐ The court granted the Respondent's request to continue the hearing date. A copy of this Order must be served on the Petitioner at least ____ days before the hearing in 5. A copy of the *Temporary Restraining Order* (form SV-110) must be personally served if it was modified by the court in item 6b(2).

d. ☐ All documents must be personally served unless otherwise specified below.

10 Mandatory Entry of Order Into CARPOS Through CLETS

If a continuance is granted, the court or its designee will transmit this form within one business day to law enforcement personnel for entry into the California Restraining and Protective Order System (CARPOS) via the California Law Enforcement Telecommunications System (CLETS).

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *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 *Order on Request to Continue Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

WV-115 Request to Continue Court Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to ask the court to change the hearing date listed on form WV-109, *Notice of Court Hearing*. Read WV-115-INFO, *How to Ask for a New Hearing Date,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Continuance

a. Full Name:

_____

I am the ☐ Petitioner
☐ Respondent

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*

Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Other Party

Full Name: _____

3 Request to Continue Hearing

a. I ask the court to continue the hearing currently scheduled for *(date):* _____

b. I request that the hearing be continued because *(check any that apply)*:

(1) ☐ The Respondent could not be served before the hearing date.

(2) ☐ I am the Respondent, and this is my first request to continue the hearing date.

(3) ☐ I need more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment 3b(4)

_____
_____
_____
_____
_____
_____
_____

This is not a Court Order.

c. (1) ☐ This is my first request for a continuance.
(2) ☐ The hearing has previously been continued ____ times.

4 Extension of Temporary Restraining Order

a. ☐ A *Temporary Restraining Order* (Form WV-110) was issued on *(date):* _____
Please attach a copy of the order if you have one.

b. **Notice: If the hearing date is continued, the *Temporary Restraining Order* will remain in effect until the end of the new hearing unless otherwise ordered by the court.**

Date: _____

_____ ▶ _____
Type or print your name of *Signature*

☐ Attorney ☐ Party Without Attorney

You may need to ask for a new hearing date if:

- You are the **Petitioner** and are unable to have Form WV-109, *Notice of Court Hearing*, and other papers served in time before the hearing date.
- You are the **Respondent** making your first request for continuance, and you need time to hire an attorney or prepare a response.
- You have a good reason for needing a new hearing date. (The court may grant a request to continue the hearing on a showing of "good cause.")

What does Form WV-115 do?

Use Form WV-115 to ask the court to "continue" the hearing. If the court continues the hearing and a *Temporary Restraining Order* (TRO; Form WV-110) was issued, the TRO will be extended until the end of the new hearing unless the court decides to modify or terminate it.

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of Form WV-115.
- Fill out items (1) through (3) on Form WV-116, *Order on Request to Continue Hearing.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to continue the hearing.
- If the judge signs Form WV-116, the court will give you a new hearing date. If the judge did NOT sign the form, you should go to the hearing at the date, time, and location that is shown on Form WV-109.
- Next, file both Forms WV-115 and WV-116 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- The other party must be served a copy of the court papers as described in item (7) on Form WV-116.
- Ask the person who serves the papers to complete a Proof of Service form and give it to you. If service was in person, use Form WV-200, *Proof of Personal Service*. If service was by mail, use Form POS-040, *Proof of Service--Civil*. Make two copies of the completed forms.
- File the completed and signed Proof of Service form with the clerk's office before the hearing.
- If the court continues the hearing date and extends the TRO to the date of the new hearing, the clerk will send the TRO to law enforcement. It will be entered into a statewide computer system that lets police know about the order so that it can be enforced.

Go to the hearing.

- Take at least two copies of your documents and filed forms to the hearing. Include a filed Proof of Service form." "Documents" may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion.
- If you are the Petitioner and you do not go to the hearing, the Temporary Restraining Order will expire at the end of the hearing. If you are the Respondent and you do not go to the hearing, the court can still make orders against you that can last for up to three years.

Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

WV-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Complete items (1), (2), and (3) only.

(1) Petitioner (Employer)

Full Name: _____

(2) Respondent

Full Name: _____

(3) Person Seeking Continuance

I am the ☐ Petitioner ☐ Respondent

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(4) Order on Request for Continuance

a. The hearing in this matter is currently scheduled for *(date):* _____ at *(time)* _____

b. ☐ The request for a continuance is DENIED for the reasons set forth ☐ below ☐ on Attachment 4b

_____

_____

_____

The hearing shall be held as currently scheduled in a, above. The *Temporary Restraining Order* (Form WV-110) issued on *(date):* _____ remains in full force and effect until the hearing date.

c. ☐ The request for a continuance is GRANTED as set forth below.

(5) Order for Continuance and Notice of New Hearing

The court hearing on the *Petition for Workplace Violence Restraining Orders* (Form WV-100) is continued and rescheduled as follows:

New Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

The extended *Temporary Restraining Order* (Form WV-110) expires at the end of this hearing.

This is a Court Order.

6 Reason for the Continuance

a. The hearing currently set for *(date):* _____ is rescheduled to the date, time, and location in 5.

b. The continuance is needed because:

(1) ☐ The Respondent was not served before the current hearing date.

(2) ☐ The Respondent asked for a first continuance of the hearing.

(3) ☐ The Respondent asked for more time to hire a lawyer or prepare a response.

(4) ☐ Other good cause as stated ☐ below ☐ on Attachment b(4)

_____

_____

_____

c. ☐ The court finds good cause and orders a continuance in its discretion.

7 Extension of Temporary Restraining Order

a. ☐ No Temporary Restraining Order was issued in this case.

b. ☐ Extension of the *Temporary Restraining Order* (TRO; Form WV-110) issued on *(date):* _____ until the new hearing date is:

(1) ☐ GRANTED. There are no changes to the TRO except for the expiration date. The TRO remains in effect until the end of the hearing in 5 .

(2) ☐ GRANTED AS MODIFIED. The Temporary Restraining Order is modified. See the attached amended Form WV-110, *Temporary Restraining Order*. All orders on the attached Order remain in effect until the end of the hearing in 5.

(3) ☐ DENIED and the Temporary Restraining Order is TERMINATED for the reasons stated ☐ below ☐ on Attachment 7b(3)

_____

_____

_____

_____

_____

_____

Warning and Notice to the Respondent

If 7 b(1) or b(2) is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 5 .

8 ☐ Other Orders *(specify):*

_____

_____

_____

☐ Other orders are attached at the end of this Order on Attachment 8.

This is a Court Order.

Case Number:

9 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the initial hearing date in item 4a, and both were given a signed copy of this Order.

b. ☐ The court granted the Petitioner's request to continue the hearing date. A copy of this Order must be served on the Respondent at least ____ days before the hearing in (5).

(1) ☐ All other documents requesting workplace violence restraining orders as shown in Form WV-109, *Notice of Court Hearing*, item (5) must be personally served on the Respondent.

(2) ☐ The *Temporary Restraining Order* (Form WV-110) has been modified and must be personally served on the Respondent.

(3) ☐ A copy of the *Temporary Restraining Order* must NOT be served because extension of the order is denied in item 7b(3).

c. ☐ The court granted the Respondent's request to continue the hearing date. A copy of this Order must be served on the Petitioner at least ____ days before the hearing in (5). A copy of the *Temporary Restraining Order* (Form WV-110) must be served if it was modified by the court in item 6b(2).

d. ☐ All documents must be personally served unless otherwise specified below.

_____

_____

10 Mandatory Entry of Order Into CARPOS Through CLETS

If a continuance is granted, the court or its designee will transmit this form within one business day to law enforcement personnel for entry into the California Restraining and Protective Order System (CARPOS) via the California Law Enforcement Telecommunications System (CLETS).

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *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 *Order on Request to Continue Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	N/I	All comments are included under specific headings below.	See responses to specific provisions below.
2.	Judy L. Hitchcock, Attorney at Law, San Francisco	N/I	Her comment is included under comments on the Request (115) forms, below.	See responses to specific provisions below.
3.	Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	N/I	Comments to specific provisions are included below.	See responses to specific provisions below.
4.	Legal Aid Foundation of Los Angeles, by Jimena S. Vasquez, Attorney	AM	All comments are included under specific headings below.	See responses to specific provisions below.
5.	Los Angeles County Bar Association, Family Law Section	N/I	All comments are included under specific headings below.	See responses to specific provisions below.
6.	Orange County Bar Association, by Todd G. Friedland, President	AM	All comments are included under specific headings below.	See responses to specific provisions below.
7.	State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	N/I	All comments are included under specific headings below.	See responses to specific provisions below.
8.	State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	AM	All comments are included under specific headings below.	See responses to specific provisions below.
9.	State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	AM	Does the proposal appropriately address the stated purpose? Yes. The intent of this proposal is to update existing forms to comply with changes made by AB 1081 to Family Code section 245 and Welfare and Institutions Code section 213.5, as well as changes to Civil Code sections 527.6,	No response required.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			527.8, and 527.85, and Welfare and Institutions Code section 15657.03, relating to a party's request to continue a hearing on a request for a restraining order in a family or juvenile law, civil harassment, elder abuse, private post-secondary school violence, or workplace violence case. Other comments are included under specific headings below.	See responses to specific provisions below.
10.	Superior Court of Los Angeles County	AM	All comments are included under specific headings below.	See responses to specific provisions below.
11.	Superior Court of Orange County, Civil Operations Managers	A	All comments are included under specific headings below.	See responses to specific provisions below.
12.	Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	AM	All comments are included under specific headings below.	See responses to specific provisions below.
13.	Superior Cout of Riverside County	A	All comments are included under specific headings below.	See responses to specific provisions below.
14.	Superior Court of Sacramento Cournty, Court Family Law Staff, by Rebecca Reddish, Business Analyst	AM	All comments are included under specific headings below.	See responses to specific provisions below.
15.	Superior Court of San Diego County, by Mike Roddy, Executive Officer	AM	All comments are included under specific headings below.	See responses to specific provisions below.
16.	TCPJAC/CEAC Joint Rules Subcommittee (JRS)	AM	All comments are included under specific headings below.	See responses to specific provisions below.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL FORMS		
Commentator	**Comment**	**Committee Response**
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	Decide whether the people involved are a "person" or a "party" and be consistent. "Party" would seem to be the more appropriate.	The committees recommend that the forms be conformed to use the term "party" wherever possible.
	Wherever possible, use the terms "protected party" and restrained party" instead of "the person in ②." This avoids the parties, the court, and law enforcement from having to flip back to pages and eliminate any confusion as which party is required to do what.	The committees recommend that the forms be conformed to use the terms "protected party" and "restrained party," with exceptions, as noted in the forms.
Superior Court of Los Angeles County	All forms at item 1 indicate that the restrained party may give an address other than his/her home address. There does not appear to be statutory authority for this as to the restrained party.	Because there is no statute or rule that requires that a party provide a home address, only an address suitable for service of process, the committees do not recommend revising the forms to require the restrained party to provide his or her actual address.

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

W16-04
Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL REQUEST FOR CONTINUANCE FORMS (DV-115, CH-115, EA-115, SV-115, WV-115)		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	(Item 4) A concern is: "Please attach a copy of the order if you have one." When law enforcement agencies (LEAs) enter and modify entries in CARPOS, they need to have a copy of the most recent order. Although the request forms will not be used for entry, it may save the court time to have the order attached. We suggest that the language be changed to: "Please attach a copy of the order."	The committees do not recommend revising the 115 forms to require a party to attach a copy of the temporary restraining order to the request to continue the hearing. The requirement could cause undue delay or cost for the party when the court has access to the filed order. To address the issue raised by this commentator, the committees recommend specific revisions to the 116 *Order* forms so that modified temporary restraining orders are submitted with the Order when it is entered into CARPOS.
Judy L. Hitchcock, Attorney at Law, San Francisco	The proposed Forms all have a line for the signature of both the person asking to continue the hearing date and that person's attorney. Generally, an attorney may request a continuance on behalf of a client. Should there be something on the form clarifying that only one signature is required - i.e., if the person asking to continue the hearing is represented by an attorney, the attorney's signature is sufficient to make the request? I am concerned that some clerks seeing the lines for both signatures may require the client's signature as well as that of his or her attorney. Particularly with elderly clients, it can sometimes be difficult to get a client to the office and to court, and we try to minimize any unnecessary trips if possible. Why not use a signature line like that on the Request for Dismissal form (CIV-110) where either the attorney or the party signs, so it is clear you only need one signature.	The committees agree with the commentator's suggestion and recommend revising the form's signature line to be consistent with other Judicial Council forms such as *Request for Dismissal* (form (CIV-110) that are procedural in nature and do not require the signature of both the party and his or her attorney. Same as above response. Same as above response.
Virginia S. Johnson, Staff Attorney	She has submitted a marked up form showing all of the changes	See specific responses below.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL REQUEST FOR CONTINUANCE FORMS (DV-115, CH-115, EA-115, SV-115, WV-115)		
Commentator	**Comment**	**Committee Response**
for the San Diego Family Court, strictly as an individual	that she proposes in the comments below. The marked up forms are included as Attachment 1 and are summarized below to facilitate a response.	
	DV-115 only: Title should be: "Request to Continue Hearing Date (*Domestic Violence* Temporary Restraining Order) (*DVTRO*)." Use the heading to make it clear that this is a "Domestic Violence" TRO. Also, if the acronym is added to the heading and footer, it can be used throughout the form.	The committees do not recommend this change. The form's prefix ("DV-") and the footer ("Domestic Violence Prevention") make it clear that this form is used in Domestic Violence Prevention Act cases.
	Item 3b(3) "I need more time to hire a lawyer or prepare a response." Why should the protected party (PP) be granted a continuance to hire a lawyer? Because the restrained party (RP) has a lawyer? Because the PP now realizes having a lawyer is a good idea?	The court has the discretion to grant a protected party or a restrained party a continuance based on the facts of the case.
	It is my understanding that the "three times no fee" language was carried over from CCP § 527 and civil injunctions without any real thought as to how or why it was applicable to family law restraining orders. Ironically, it would now be advantageous to have information in the form indicating the number of times the hearing had been continued, which party had asked for the continuance and whether there were temporary custody, visitation or support orders. This information will help guide the court on whether to grant an additional continuance and/or whether to modify any prior orders and avoid a protected party from using a DVTRO as a semi-permanent custody/visitation/support order. Example: ☐ The hearing has been previously continued by: a. ☐ The protected party (# of times)_____. b. ☐ The restrained party (# of times) _____. ☐ The DVTRO includes temporary custody and visitation orders of a minor child. ☐ The DVTRO includes temporary support orders.□	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL REQUEST FOR CONTINUANCE FORMS (DV-115, CH-115, EA-115, SV-115, WV-115)		
Commentator	**Comment**	**Committee Response**
	Include options to request modification or termination of the DVTRO pending the new hearing date. The request should include the reason for the modification or termination possibly with some standard check box reasons. If the PP is requesting termination of DVTRO, include option to waive right to hearing and cancel hearing date. Generally and logically, if the PP wants the DVTRO terminated before the hearing, the PP also does not want the DVRO hearing. (Examples below) ④ **Modification of DVTRO** ☐ I ask the court to modify the DVTRO issued on *(date)*_____as follows: *(state briefly each proposed modification requested and the reason for the request)*: a. ☐ To allow for exchange of minor child. b. ☐ To attend family event. c. ☐ Other *(specify)*: ⑤ **Termination of DVTRO** a. ☐ I ask the court to terminate the DVTRO issued on *(date)* _____for the following reasons:_____ _____ _____ b. ☐ I am the Protected Party. If the court grants my request to terminate the DVTRO, I understand that I still have a right to a hearing. I ask the court to cancel the hearing listed on form DV-109 *Notice of Court Hearing.* I understand that all orders already made on the DVTRO will end on the date the court signs the order terminating the DVTRO (form DV-116). c. ☐ The parties stipulate to terminate the DVTRO issued on	The committees do not recommend revising the 115 forms to include provisions for a party to request the modification or termination of a temporary restraining order as suggested by the commentator. The committees prefer to revise the forms to the extent necessary to implement the statutes amended by AB 1081. The changes proposed by the commentator are not required to implement the AB 1081. They are also substantive in nature and would require public comment. Further, the committees recognize that local courts have developed local processes for a party to request a change in temporary restraining orders. The committees do not recommend developing a statewide rules and forms that would supersede local court procedures. Same as above response.

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL REQUEST FOR CONTINUANCE FORMS (DV-115, CH-115, EA-115, SV-115, WV-115)		
Commentator	**Comment**	**Committee Response**
	*(date)*_____ and further stipulate to cancel the hearing listed on form DV-109.	
	If one or more continuance have been granted, there could be modified orders on DV-110 and/or DV-116 in which case the form should probably indicate that the most recent modified orders, whether in an Amended DV-110 and/or DV-116 as well as all original orders in DV-110 that are not in conflict with the modified orders remain in effect.	The committees considered recommending (1) the use of any form to record the modification (current language) or (2) that the court to produce a new 110 (TRO). After discussion, the committees recommend option 2. This would make it clear to the parties and law enforcement that all of the orders are included in one form. Law enforcement would rather see all of the orders on a single form than have to look back and forth between the original 110 and the attachment to the 116 to figure out what the enforceable orders are.
	Change the footer in DV-115 and DV-116 to Family Code §245.	The committees recommend revising the forms as suggested by the commentator.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	The number of times that any temporary restraining order has been reissued may be of interest to the court, even if no fee is involved. We suggest keeping a prompt to the user to identify the number of times that any temporary restraining order has been reissued.	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.
Superior Court of Los Angeles County	Item #1a (under "I am the")- the boxes should say either "Protected Person" or "Restrained Person.	The committees recommend revising items 1a to state "Protected Party" or "Restrained Party."
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	Item #3 – recommend adding, "(check all boxes that apply)"	To be consistent with the other -115 forms, the committees recommend revising form DV-115 (3.b) to state *"(check all boxes that apply)."*

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL REQUEST FOR CONTINUANCE FORMS (DV-115, CH-115, EA-115, SV-115, WV-115)		
Commentator	**Comment**	**Committee Response**
Superior Cout of Riverside County	Number 1, the 'p' should be capitalized on 'Protected Person'.	The committees agree to make this change to the DV-115 form.
Superior Court of Sacramento Cournty, Court Family Law Staff, by Rebecca Reddish, Business Analyst	Item 3: Expand the information regarding the hearing date to: Date, Time and Department.	The committees recommend expanding the information in item 3 only as to the Civil 115 forms.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	For consistency "How to Ask for a New Hearing Date" (line 2 under form title) should be italicized.	The committees recommend reformatting the text as suggested by the commentator.
	The check boxes for items 3a and 3b should be removed, as they make it appears as though they are optional. The check boxes for item 3b(1-4) should remain.	The committees recommend removing the check boxes from DV-115 at items 3a and 3b. to be consistent with the other forms in the -115 series.

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL CONTINUANCE INFORMATION SHEETS (DV-115-INFO, CH-115-INFO, EA-115-INFO, SV-115-INFO, WV-115-INFO)		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	All of the "INFO" forms are very helpful. The Department of Justice Field Representative uses these forms for self-training, and mentions them in training classes to help LEAs better understand the various processes.	No response required.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	The commentator submitted a marked up form showing many proposed changes as a means of commenting on the proposal. The marked up forms are included as Attachment 1, and summarized below to facilitate a response. Change "person" to "party" throughout.	The committees recommend revising the form as suggested by the commentator, with some exceptions, as noted in the forms.
	*Change "restrained person" to "party being restrained under a DVTRO."	The committee does not recommend extending the party description as suggested by the commentator. The context of the information sheet makes it clear that the party is involved in a DVPA case.
	Under "What does form DV-115 do?" delete "You may also to "extend" any Temporary Restraining Orders using Form DV-110." Not needed as extension is automatic.	The committee recommends using the same language as CH-115-INFO for this form, so that it states "If the court continues the hearing and a *Temporary Restraining Order* (Form DV-100) was issued, the TRO will be extended until the end of the new hearing date, unless the court decides to modify or terminate it."

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COMMENTS APPLICABLE TO ALL CONTINUANCE INFORMATION SHEETS
(DV-115-INFO, CH-115-INFO, EA-115-INFO, SV-115-INFO, WV-115-INFO)

Commentator	Comment	Committee Response
	If the form is going to include a party's request to modify or terminate the DVTRO pending the new hearing, revise form DV-115 under "What does form DV-115 do?" to add the following: • Either party may ask the court to modify the orders in DV-110 pending the new hearing. • Either party may ask the court to terminate the orders in DV-110 pending the new hearing. • Both parties can stipulate to terminate the orders in DV-110 and ask to cancel the hearing date in DV-109. She suggests filing a modified 110 if modification is sought and additional language under, "Follow these steps," about modifications or terminations of the TRO: • If the judge continued the hearing date and **modified** the existing orders pending the new hearing, you will need to immediately prepare a *Modified* DV-110. • If the judge **terminated** the existing orders pending the new hearing date, you should go to the hearing at the date, time, and location that is shown on form DV-109. • If the judge **terminated** the existing orders and cancelled the hearing date on DV-109, you do **not** go to court on the previously scheduled hearing date. • Next, file both forms DV-115 and DV-116 and a proposed *Modified* DV-110, if applicable to your request, with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.	Because the committees do not recommend revising the 115 to include a party's request to modify or terminate the temporary restraining, the committees do not recommend the revisions suggested by the commentator. Same as above response.

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL CONTINUANCE INFORMATION SHEETS (DV-115-INFO, CH-115-INFO, EA-115-INFO, SV-115-INFO, WV-115-INFO)		
Commentator	**Comment**	**Committee Response**
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	The second heading, "What does form DV-115 do?" states "you may also ask to 'extend' any temporary restraining orders using form DV-110, Temporary Restraining Order. … 'Extend means to keep any temporary orders in effect until the new hearing date.'" Comment: A request to "extend" does not appear to be in form DV-110.	The committees recommend revising form DV-115 to be consistent with language in other 115-INFO forms. Same as above comment.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	We would change the third bullet point under the heading "You may need to ask for a new hearing date if:" to "You have a good reason for needing a new hearing date . . . ." A party is more likely to request a new hearing date based on his or her own good reason, rather than the opposing party's good reason.	The committees recommend revising the forms as suggested by the commentator.
	We would change the heading "What does Form __-115 do?" to "How to Request a New Hearing Date." We believe the latter language is more descriptive and offers more guidance.	The committees prefer to maintain the current plain language heading on the form instead of repeating the form's title as a subheading
State Bar – SCDLS	Self-represented litigants seem to do better with "numbering" protocols instead of bullet points. SCDLS suggests replacing bullets with "1. 2. 3." However, under the subsection "Follow these steps:," use of check boxes is better than bullets or numbers because they give a litigant the chance to check off what they have accomplished.	The committees prefer no change to the current formatting in the subsection without additional input from other commentators.
	Also at the second bullet point under "Follow these steps," it is better to list the number of each item so for example, DV-115-INFO would read, "Fill out items 1, 2 and 3…" and CH-115-INFO, EA-115-INFO, SV-115-INFO, and WV-115-INFO would read, "Fill out items 1, 2, 3 and 4..." In our experience, people tend to skip #2 when the directions state "Complete 1 through 3" or "Complete 1 through 4."	Because the DV-116 forms specify in the instructions that party must complete items 1, 2, and 3, the committees do not recommend changing the 115-INFO forms as suggested by the commentator.
	Under the section entitled "Go to the hearing.," SCDLS	The committees recommend revising the text to state

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COMMENTS APPLICABLE TO ALL CONTINUANCE INFORMATION SHEETS (DV-115-INFO, CH-115-INFO, EA-115-INFO, SV-115-INFO, WV-115-INFO)		
Commentator	**Comment**	**Committee Response**
	suggests that the first bullet point read as follows, "Take with you to the court hearing a copy of all of your previously filed papers, and a copy of the original Proof of Service." Adding "filed" is recommended because self-represented litigants often try and bring all sorts of new evidence, declarations, etc. to the hearing without realizing these documents should be filed.	"Take at least two copies of your documents and filed forms to the hearing. 'Documents' may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion."
	Also, use of the words "original Proof of Service" may be misleading and confusing, since the original Proof of Service is usually filed with the court clerk before a hearing. Whatever encourages the parties to file the documents prior to the hearing will help the court prepare for the hearings that will go forward that day.	The committees recommend revising the forms to refer to a "filed" Proof of Service, not an "original" form.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	2nd paragraph references the DV-110 to extend the restraining order. However, the DV-110 has no "extension" wording or option. This could be confusing to the public.	The committees recommend revising the second sentence to state "If the court continues the hearing and a *Temporary Restraining Order* (Form DV-110) was issued, the temporary restraining order will be extended until the end of the new hearing date, unless the court decides to modify or terminate it."
	3rd paragraph (Follow these steps) directs parties to only complete items 1 through 3 when completing DV-116. However, it appears as though item #4 (Reason for Continuance) should be completed by the requesting party.	The committee recommends revising DV-115-INFO to state that the party has to fill out items 1 through 3 on form DV-116. This will require the court to complete the currently scheduled hearing date.
	Also, the bullets appear to be out of sequence. In our court the forms are typically given to the clerk, who forwards them to the judge for review. Once signed, the judge gives them to the clerk who will file-stamp the forms.	The committee believes that the form sufficiently addresses the possibility of varying court procedures. For example, the third bullet says: "The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers." Therefore, the committees do not recommend revising this section.
Superior Court of San Diego	**"You may need to ask for a new hearing date if":** The	The committees recommend revising the information

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL CONTINUANCE INFORMATION SHEETS (DV-115-INFO, CH-115-INFO, EA-115-INFO, SV-115-INFO, WV-115-INFO)		
Commentator	**Comment**	**Committee Response**
County, by Mike Roddy, Executive Officer	second bullet is confusing. The current wording makes it seem that the restrained party needs to ask for a new hearing just because it's his or her first time asking to continue the hearing. Proposal to use the following: "You are the restrained person making your first request for continuance and you need time to hire an attorney or prepare a response."	sheets to state "You are the restrained person making your first request for continuance and you need time to hire an attorney or prepare a response."
	"What does form DV-115 do": Delete second sentence. The current sentence implies that the party would prepare a new DV-110. However, DV-116 (item 6b) clearly provides that the orders issued on the date specified remain in effect.	The committees recommends revising the second sentence to state "If the court continues the hearing and a *Temporary Restraining Order* (Form DV-110) was issued, the temporary restraining order will be extended until the end of the new hearing date, unless the court decides to modify or terminate it."
	"Go to the Hearing": The first bullet instructs the party to bring the original proof of service to the hearing, however the ninth bullet in the previous section instructs the party to file the proof with clerk prior to the hearing.	The committees recommend revising the text to state "Take at least two copies of your documents and filed forms to the hearing. 'Documents' may include exhibits, declarations, and financial statements, which the court may enter into evidence at its discretion."

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL ORDER GRANTING CONTINUANCE FORMS (DV-116, CH-116, EA-116, SV-116, WV-116)		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Item 6 *(now item 7)* for Order to Continue forms: If any box (b –e) is checked, it would be helpful to change the statement to: "A copy of the order **must** or **should** be attached." LEAs will use the form and the attached order for an entry into the California Restraining and Protection Order System (CARPOS) via CLETS. LEAs must see the actual order before they modify information in CARPOS. It is currently a common problem reported by LEAs to DOJ, that the order is not attached on orders of reissuance. It saves the LEA time when the order is attached.	The committees have confirmed with the California Department of Justice that law enforcement agencies only need to receive a copy of the order if it is modified. Therefore, the committees recommend revising the forms to specify that modified orders be submitted with form 116 for entry into CLETS.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	The commentator submitted a marked up form showing many proposed changes as a means of commenting on the proposal. The marked up forms are included as Attachment 1, and summarized below to facilitate a response. Title of form should be: Order to Continue Hearing Date (*Domestic Violence* Temporary Restraining Order)	Responses to the proposed changes are noted below. The committees recommend revising the title of the forms to Order on Request to Continue Hearing, deleting the parenthetical in the form's header, but retaining it in the footer title. The committees do not believe that it is necessary to expand the title in the footer as suggested by the commentator.
	At item 1, When requesting a continuance, the DVTRO has already been issued, so the headings should be "Name of Protected Party" or "Name of party being protected under DVTRO/Protected Party." Same for the Restrained Party.	The form seeks to address that the court might not have issued a TRO. In this case, a party designation would technically be "Party asking for protection" or "Protected Party." However, although the compound party identifier is technically most accurate, the committees believe that it may be unnecessarily complex when the purpose of the headings is to simply get the

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL ORDER GRANTING CONTINUANCE FORMS (DV-116, CH-116, EA-116, SV-116, WV-116)		
Commentator	**Comment**	**Committee Response**
		names of the parties on the form even if the TRO has not been served. Therefore, the committees recommend that items 1 and 2 on form DV-116 be consistent with the other Civil 116 forms.
	In the "New Hearing Date" box in item 5, stating, "The extended Temporary Restraining Order (form DV-110) expires at the end of the new hearing". Again, if there has been a previous continuance, it may be the orders in an Amended DV-110 and/or DV-116 that are extended.	To avoid confusion, the committees recommend clarifying that the court needs to issue a new form DV-110 if the orders are modified as part of the request to continue the hearing.
	Change the footer in DV-116 to Family Code §245.	The committees recommend this change.
Legal Aid Foundation of Los Angeles, by Jimena S. Vasquez, Attorney	Item 5 the notice at the bottom is misleading as it presumes that the Temporary Restraining Order was extended. The notice should simply indicate that any Temporary Restraining Order expires at the end of the new hearing.	The committees recommend revising the form as suggested by the commentator.
	There is a check box, Item 6(d) *(now item 7(d))*, indicating that the Temporary Restraining Order is terminated. While the court has discretion to grant or deny continuances it is hard to imagine a situation where a court would grant a continuance but deny the extension of a temporary restraining order. Previously the court would just deny the continuance and thereby dismiss the case on the day of the hearing. We are concerned that allowing the court to continue matters while terminating existing orders will cause much confusion with litigants about the existence of protection orders and if they actually understood the ramifications of seeking a continuance. We would instead suggest that the box indicating that the temporary order is terminated be removed. The Court will still have a place to write the order was terminated in the "other" section and it will help ensure that litigants are properly informed that by seeking a continuance the court terminated the temporary orders.	The committees agree that the court's granting a continuance, but terminating the TRO is highly unlikely. However, because Family Code section 245 permits the court to terminate the temporary restraining order, the committees believe that the language should remain on the form to implement the statute.
	DV-116 should also be required to be personally served when	Item 9d allows the court to require personal service. The

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COMMENTS APPLICABLE TO ALL ORDER GRANTING CONTINUANCE FORMS (DV-116, CH-116, EA-116, SV-116, WV-116)		
Commentator	**Comment**	**Committee Response**
	the other party is not present. Given the short timelines that exist in restraining order cases it is easy to imagine an attorney and victim appearing for a hearing only to discover that the case was continued and the notice was sent in the mail. Requiring personal service will help ensure that litigants are being notified in a timely manner and that the service rules as consistent with many of the other domestic violence forms that must be serve personally.	committee recommends revising item 9(b)(1) to require personal service when the party to be restrained was not served with the *Notice of Court Hearing* (Form DV-109).
	We also suggest adding that a conformed copy must be served, not just any copy. Our recommendation is to remove box 7(d) *(now item 9(d))* and instead the language of 7(b) *(now item 9(b))* and 7(c) *(now item 9(c))* should be as follows:	The committee prefers that the form remain consistent with the current set of -116 forms, which do not specify that a stamped or conformed copy of the order is required for service.
	b. [ ] The court granted the protected person's request to continue the hearing date. A stamped copy of this order must be personally served on the restrained person at least days before the hearing in (5).	Same as above response.
	c. [ ] The court granted the restrained person's request to continue the hearing date. A stamped copy of this order must be personally served on the protected person at least ___ days before the hearing in (5). A copy of the Temporary Restraining Order must be served if it was modified by the court in item (6).	Same as above response.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	We believe the requesting party should complete items 1, 2, and 3 only, and the court should complete all of item 4 to ensure that the stated date of the currently scheduled hearing is accurate.	The committees recommend revising the form as suggested by the commentator.
	We would delete item 4(c) *(now item 6(c))* because it seems to suggest that the court has discretion to order a continuance absent good cause. We believe the court cannot order a	The committee recommends revising the form to specify that the court must find good cause to continue the hearing and provide space for the court to describe why

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

COMMENTS APPLICABLE TO ALL ORDER GRANTING CONTINUANCE FORMS (DV-116, CH-116, EA-116, SV-116, WV-116)		
Commentator	**Comment**	**Committee Response**
	continuance without a showing of good cause, and the court should briefly describe the good cause in item 4(b)(4).	it finds good cause to continue the hearing.
	Item 6 *(now item 7)* in form CH-116 (and some others) refers to the granting or denial of a TRO extension, but the extension itself is automatic if the court grants a continuance. We suggest revising the language in item 6(b) in form CH-116 to match the language in item 6(b) in form DV-116.	The committees recommend alternate revisions to item 7 to apply to all of the 116 forms.
Superior Court of Los Angeles County	Item #1 should say "Protected Person" and Item #2 "Restrained Person"	The committees recommend changing items 1 and 2 to say "Protected Party" and "Restrained Party" to distinguish between the actual parties who have standing in the case and the others who are named as "Additional Protected Persons" in the temporary restraining order.
	Item #6 *(now item 7)* - leave as is "Temporary Restraining Order", not "Extended/Extension Temporary Restraining Order."	The committees recommend revising item 7 of the 116 forms to state "Extension of Temporary Restraining Order."
	Item #7 *(Now item 9)* too much wording under Item (b) needs to be simplified.	The committees recommends simplifying item 9 to the extent possible.
	DV-116, item 8 *(now item 10)* indicates that there is fee to serve the restrained person. Is the same true if the restrained person serves the protected party?	The Family and Juvenile Law Advisory Committee recommends revising the DV-116 form to reflect that either party may have the order served by a sheriff or marshal at no cost. This item will be removed from the CH, SV, and WV forms because free service is only available in those proceedings for a *protective order* on conditions. The Civil and Small Claims committee does not consider the 116 to be a protective order. The item for EA will remain on the form as applicable to both parties because the EA statute provides for free service of any order. Further information on this issue is included in the committees' report.
Superior Court of Orange County, Family Law and Juvenile Court	The top of the form instructs parties to complete items 1-3 only. It appears as though parties should also complete item #4.	The committees recommend that the instructions require a party to complete items 1, 2, and 3.

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COMMENTS APPLICABLE TO ALL ORDER GRANTING CONTINUANCE FORMS (DV-116, CH-116, EA-116, SV-116, WV-116)		
Commentator	**Comment**	**Committee Response**
Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	We would also recommend moving item #7(b)(3) *(now 9(b)((3))* to item 6(d) *(now item 7(d))* so it does not get easily missed, or perhaps have this addressed in both places.	The committee prefers that the form provide information about service under the "Service of Order" heading.
Superior Court of Sacramento Cournty, Court Family Law Staff, by Rebecca Reddish, Business Analyst	item 4a: Expand the information regarding the current hearing date to: Date, Time and Department.	The Civil and Small Claims committee recommends expanding the information, with modifications. The Family and Juvenile Law Committee does not recommend this change to the DV and FL forms.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Item 4 should be completed by the requesting party.	The committees recommend that the instructions require a party to complete items 1, 2, and 3, and that the current hearing information be included under the "Order on Request for Continuance" section of the forms.

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

FORM FL-306: REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER		
Commentator	**Comment**	**Committee Response**
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	DO NOT REVISE FL-306. See General Comments (below). Do not amend rule 5.94 to apply FC §245 to a TEO other than adding language to clearly differentiate between a DVTRO and a TEO and the separate procedures and rules for each. FC §245 should be read and interpreted as applying only to domestic violence temporary restraining orders even though that interpretation creates a conflict with FC §240. Because a TEO must always accompany an RFO, any request to continue an RFO should be based on the standard continuance procedure. The law should not single out and advantage parties who happen to have a TEO with the RFO from those with just an RFO Petitioners' who have an RFO without a TEO do not typically get a continuance just because they did not get their case prepared on time. Respondents' do not get one free continuance and must timely file their opposition papers based on the original filing date regardless if the hearing is continued. Neither party gets a continuance without an ex parte fee. Please retain the rule 5.94 adopted on 10/27/15 with one minor change – delete (e)(3). **General Comments** The legislative history of AB 1081 is focused on, if not actually limited to, domestic violence temporary restraining order (DVTRO). It does not discuss a Temporary Emergency Order (TEO). There is no apparent concern with TEOs as set forth in form FL-306. If it was the intent of the JC in sponsoring the legislation to include a TEO or any other type of non-violent,	The Family and Juvenile Law Advisory Committee recommends revising form FL-306 and rule 5.94 as required by AB 1081. Although the text of AB 1081 is focused on domestic violence cases, it amended statutes under Part 4 of the Family Code (Ex Parte Temporary Restraining Orders) [240-246]. Part 4 does not apply only to temporary restraining orders under the Domestic Violence Prevention Act, but includes those orders. The changes to Family Code section 243 and 245 that were officially enrolled do not pertain exclusively to protective orders under the Domestic Violence Prevention Act. There is no language in Family Code section 245 which limits its application to temporary restraining orders involving violence. Thus, it must be interpreted as applying to all temporary restraining orders listed in Section 240. The Judicial Council did not adopt amendments to rule 5.94 on October 27, 2015. Although the bill focused on protective orders, the changes to Family Code section 243 and 245, as they were enrolled, do not pertain exclusively to protective orders under the Domestic Violence Prevention Act. There is no language in Family Code section 245 which limits its application to temporary restraining orders

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

FORM FL-306: REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER

Commentator	Comment	Committee Response
	non-abusive temporary restraining order under the Family Code, then there should have been [and there needs to be] completely separate statutes and rules of court. The problem is that there is no differentiation or separation between a DVTRO, a TEO, and other types of nonviolent, non-abusive TROs. This has been an on-going legislative dilemma for years when CCP §527[now FC §245], dealing with civil injunctions, was incorporated as the procedure for restraining orders. The language of FC §240 basically applies to any order that could be construed as an "ex parte temporary restraining order" including a TEO and any nonviolent TRO. AB 1081 seemingly has both compounded and clarified [inferentially] the problem by limiting FC §245 to temporary restraining orders involving violence, abuse and harassment. Arguably, FC §240 is now in conflict with FC §245. The JC is further frustrating the conflict by proposing to re-amend Rule 5.94 and form FL-306 from what was approved on 10/27/15. The approved amendments to Rule 5.92 and Rule 5.94, subdivisions (a) through (d) and the adoption of the new and revised forms FL-300, FL-303, FL-305, effective 7/1/16, already properly address procedures for TEOs. Rule 5.94 should be re-amended only to include the existing subdivision (c). If the RFO with a TEO is not timely served or a continuance is sought for any reason, a party can request a continuance and have the TEO reissued using the standard procedure for continuing an RFO.	involving violence. Thus, it must be interpreted as applying to all temporary restraining orders listed in Section 240. Same as above response. This is an incorrect statement regarding rule 5.94 and form FL-306. The Judicial Council took no action on these items in October 2015. As noted in the Invitation to Comment associated with this report (at page 2), rule 5.94 and form FL-306 circulated for comment as part of a previous proposal titled "SPR15-16, Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms." However, when AB 1081 was signed into law in October 2015, the Family and Juvenile Law Advisory Committee refrained from including any recommendations about rule 5.94 and form FL-306 in the Judicial Council report for SPR15-16. Instead, the form and rule were circulated to

FORM FL-306: REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER		
Commentator	**Comment**	**Committee Response**
	A new and separate Rule should be written that sets forth the procedures for continuing a DVTRO in accordance with FC §245 effective 1/1/16 and refers to the DV forms (115, 115-INFO, 116, 200, 200-INFO, 505-INFO) still in the process of revision. The new rule could logically be included in Chp. 11 "Domestic Violence Cases."	reflect the requirements of amended Family Code section 245. The committee may consider a new rule in a future cycle. In the meantime, the domestic violence forms themselves will serve as rules of court under rule 5.7 of the California Rules of Court, which provides that "All forms adopted by the Judicial Council for use in any proceeding under the Family Code… are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law."
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	The Invitation to Comment states: "Under Family Code section 245, if the court grants a continuance, any temporary restraining order that has been issued shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. Because the extension is automatic under the amended statute, the committee does not propose including check boxes for a party to ask for the extension." (emphasis added). Comment: The extension is not automatic (in the sense of being guaranteed) because the court can order otherwise. FLEXCOM therefore believes there should be a box ensuring an extension so there is no confusion.	In response to the comment, the committee recommends revising the form to provide a notice in the Request section to provide that "If the hearing date is continued, the temporary emergency orders will remain in effect until the end of the new hearing in item 6, unless otherwise ordered by the court." This language will implement Family Code section 245(c).
	The Invitation to Comment notes that the number of times that any temporary restraining order has been reissued will be of interest to the court, even if no fee is involved. FLEXCOM suggests keeping a prompt to the user to identify the number of times that any temporary restraining order has	The Family and Juvenile Law Advisory Committee recommends revising the DV, FL, and JV form to remove this language from the form as there is no longer a statutory basis for requiring the party to provide this information and because the court is in the best position to have accurate information about the number of

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

FORM FL-306: REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDER		
Commentator	**Comment**	**Committee Response**
	been reissued.	continuances and extensions of the temporary order.
Superior Court of Los Angeles County	The Current FL-306 Application and Order for Reissuance of Request for Order or Temporary Emergency Orders can be used to reissue/continuance of an RFO without Temporary Emergency Orders. The revised FL-306 Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Order appears to only reissue and continue Temporary Emergency Orders. If this is the intent, there will be a need for an additional form to request a new hearing of an RFO without temporary orders if the moving party was unable to serve the other party. If that is not the intent, the form will need to clearly state that the form can be used with or without temporary emergency orders. An example might be to include the word "ANY" in the title of the form before the word Temporary, and add a checkbox to item 3.a "the temporary emergency orders were originally issued on…"	As specified in the committee's recommended amendments to rule 5.94, this form is intended to be used if the court granted temporary emergency orders on either a *Request for Order* (form FL-300) or *Temporary Emergency (Ex Parte) Orders* (form FL-305). A reference to rule 5.94 is included on the form for this purpose. The committee does not recommend a new form for a party to request a new hearing date on a *Request for Order* (form FL-300) without temporary emergency orders. This form is not needed in such an instance. Instead, the party may seek to continue the hearing by stipulation or by filing a request to continue the hearing using form FL-300.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	We respectfully request the form not be retitled. This form is also used as a Request for Order and Other filings, such as Notice of Motion.	The Family and Juvenile Law Advisory Committee recommends revising the title of the form to implement the requirements of Family Code section 245.
	We also recommend removing from item 4(b) reference to child custody recommending counselor. This gives the impression that child custody mediators are counselors.	The committee does not recommend this change since the language reflects current Family Code statutes relating to child custody recommending counselors.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

FORM JV-251: APPLICATION AND ORDER TO CONTINUE HEARING DATE (TEMPORARY RESTRAINING ORDER—JUVENILE)		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Item 5: If any box (b. – e.) is checked, it would be helpful to change the statement to: "A copy of the order **must** or **should** be attached" LEAs will use the form and the attached order for an entry into the California Restraining and Protection Order System (CARPOS) via CLETS. LEAs must see the actual order before they modify information in CARPOS. It is currently a common problem reported by LEAs to DOJ, that the order is not attached on orders of reissuance. It saves the LEA time when the order is attached.	The Family and Juvenile Law Advisory Committee has confirmed with the California Department of Justice that law enforcement agencies only need to receive a copy of the order if it is modified. The committees recommend that a copy of the modified TRO be submitted with a copy of the order when it is entered into CARPOS via CLETS.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

FORMS DV-200 AND DV-200-INFO: PROOF OF SERVICE		
Commentator	**Comment**	**Committee Response**
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	DV-200-INFO, page 2, 3rd paragraph (What happens if I cannot...) should reflect the completion of the DV-100 form (as referenced in other forms).	The committee recommend revising the form to state "Forms DV-100, DV-109, and DV-110 must be personally served before the hearing. If not, before the hearing, fill out and file…."

FORM DV-505-INFO: HOW DO I ASK FOR ATEMPORARY RESTRAINING ORDER?		
Commentator	**Comment**	**Committee Response**
Superior Court of San Diego County	Additionally, DV-505-INFO (bullet four) instructs the party to file the original proof and bring a copy to the hearing." These instructions are inconsistent and must be revised to comply with the Rules of Court for the filing of proofs of service.	The committee recommend revising the form as suggested by the commentator.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

RULE 5.94: ORDER SHORTENING TIME		
Commentator	**Comment**	**Committee Response**

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

RULE 5.94: ORDER SHORTENING TIME		
Commentator	**Comment**	**Committee Response**
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	*Do not amend rule 5.94. The legislative history of AB 1081 is focused on, if not actually limited to, domestic violence temporary restraining order (DVTRO). It does not discuss a Temporary Emergency Order (TEO). There is no apparent concern with TEOs as set forth in form FL-306. If it was the intent of the JC in sponsoring the legislation to include a TEO or any other type of non-violent, non-abusive temporary restraining order under the Family Code, then there should have been [and there needs to be] completely separate statutes and rules of court. The problem is that there is no differentiation or separation between a DVTRO, a TEO, and other types of nonviolent, non-abusive TROs. This has been an on-going legislative dilemma for years when CCP §527[now FC §245], dealing with civil injunctions, was incorporated as the procedure for restraining orders. The language of FC §240 basically applies to any order that could be construed as an "ex parte temporary restraining order" including a TEO and any nonviolent TRO. AB 1081 seemingly has both compounded and clarified [inferentially] the problem by limiting FC §245 to temporary restraining orders involving violence, abuse and harassment. Arguably, FC §240 is now in conflict with FC §245.	The Family and Juvenile Law Advisory Committee recommends amending rule 5.94 to implement the requirements of AB 1081. Although the text of AB 1081 is focused on domestic violence cases, it amended statutes under Part 4 of the Family Code (Ex Parte Temporary Restraining Orders) [240-246]. Part 4 does not apply only to temporary restraining orders under the Domestic Violence Prevention Act, but includes those orders. As officially enrolled, amended Family Code sections 243 and 245 do not pertain exclusively to protective orders under the Domestic Violence Prevention Act. There is no language in Family Code section 245 which limits its application to temporary restraining orders involving violence. Thus, it must be interpreted as applying to all temporary restraining orders listed in Section 240.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

RULE 5.94: ORDER SHORTENING TIME		
Commentator	**Comment**	**Committee Response**
	The JC is further frustrating the conflict by proposing to re-amend Rule 5.94 and form FL-306 from what was approved on 10/27/15. The approved amendments to Rule 5.92 and Rule 5.94, subdivisions (a) through (d) and the adoption of the new and revised forms FL-300, FL-303, FL-305, effective 7/1/16, already properly address procedures for TEOs.	This is an incorrect statement regarding rule 5.94 and form FL-306. The Judicial Council took no action on these items in October 2015. As noted in the Invitation to Comment associated with this report (at page 2), rule 5.94 and form FL-306 circulated for comment as part of a previous proposal titled "SPR15-16, Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms." However, when AB 1081 was signed into law in October 2015, the Family and Juvenile Law Advisory Committee refrained from including any recommendations about rule 5.94 and form FL-306 in the Judicial Council report for SPR15-16. Instead, the form and rule were circulated to reflect the requirements of amended Family Code section 245.
	Rule 5.94 should be re-amended only to include the existing subdivision (c). If the RFO with a TEO is not timely served or a continuance is sought for any reason, a party can request a continuance and have the TEO reissued using the standard procedure for continuing an RFO. A new and separate Rule should be written that sets forth the procedures for continuing a DVTRO in accordance with FC §245 effective 1/1/16 and refers to the DV forms (115, 115-INFO, 116, 200, 200-INFO, 505-INFO) still in the process of revision. The new rule could logically be included in Chp. 11 "Domestic Violence Cases."	The committees recommend that the Judicial Council amend the rule as required by AB 1081. The committees may consider a new rule in a future cycle. In the meantime, the domestic violence forms themselves will serve as rules of court under rule 5.7 of the California Rules of Court, which provides that "All forms adopted by the Judicial Council for use in any proceeding under the Family Code… are adopted as rules of court under the authority of Family Code section 211; article VI, section 6 of the California Constitution; and other applicable law.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

RULE 5.94: ORDER SHORTENING TIME		
Commentator	**Comment**	**Response**
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	My colleague and I have questioned the language of FC §245 and its intent as to whether one or both parties can request the DVTRO be modified or terminated pending the new hearing. The proposed revisions to DV-115 and DV-116 suggests that neither party can request a modification or termination because that option is not in DV-115. But that the court, in its discretion, can modify or terminate the orders pending the hearing date because those options are in DV-116. As a practical matter, if a party does not request a termination or modification of the orders pending the hearing, the court will not be inclined to use its valuable time to review the existing orders to determine on its own whether a modification or termination if warranted. While it seems somewhat illogical given the short 21 day hearing time frame, our court does have parties request an ex parte modification of a DVTRO pending the hearing. The modifications generally relate to the restraining orders that affect the parents' ability to comply with custody and visitation orders. Family Code §6345 is limited to terminating or modifying the permanent DVRO. I believe the language in FC §245 is broad enough to be read and interpreted as allowing a party to request a modification or termination of a DVTRO pending the new hearing date. The issue will then be brought directly to the court's attention to make such orders in its discretion. If you agree, the DV-115 would need to include this optional request.	Family Code section 245 was drafted to permit the court to modify or terminate a temporary restraining order. The statute does not limit the modification or termination to orders made on the court's own motion. At this time, the committees do not recommend that the Judicial Council adopt statewide forms for parties to request a modification or termination of a temporary restraining order. This will allow local courts to continue using the local process they have adopted to handle these requests. Same as above response.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

RULE 5.94: ORDER SHORTENING TIME		
Commentator	**Comment**	**Committee Response**
	Additionally, and as a practical application, termination of a DVTRO pending a new hearing date does not occur. A request by a restrained party to terminate a DVTRO is highly suspect and a request by the protected party is typically to end the entire DV matter. Consider a completely separate form for termination of a DVTRO. As an example, below is a proposed local form which I drafted. It is limited to terminating a DVTRO on an ex parte basis.	Although termination of a DVTRO pending a new hearing is highly unlikely in practice, the court is authorized to terminate the temporary order under Family Code section 245. At this time, the committees do not recommend that the Judicial Council adopt statewide forms for parties to request a modification or termination of a temporary restraining order. This will allow local courts to continue using the local process they have adopted to handle these requests.
Superior Court of Orange County.	The proposed rule directs parties to complete an FL-306, but makes no reference to the Order to Continue a Hearing for TRO's (DV-116).	The rule relates to the continuance of a temporary emergency order issued on form FL-305 or form FL-300. The rule does not cover temporary restraining order under the DVPA.
TCPJAC/CEAC Joint Rules Subcommittee (JRS)	To help make CRC 5.94 more understandable to self-represented litigants, it would be helpful to replace the words "move" and "moving" with "request" and "requesting".	The committees recommend revising the rule as suggested.

RULE 5.630 Restraining Orders		
Commentator	**Comment**	**Committee Response**
No comments received.	None.	No response required.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: •	**Is there reason why forms FL-306, DV-115. CH-115, EA-115, SV-115, and WV-115 should maintain an item for a party to indicate the number of times the hearing has been continued?**	
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Not relevant for the CARPOS entry for LEA's.	No response required.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	Yes.	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.
Legal Aid Foundation of Los Angeles, by Jimena S. Vasquez, Attorney	We suggest maintaining the current item in DV -115 indicating the number of continuances. The item will be useful and a quick shorthand for the court to know how many times the matter has been continued. All too often in domestic violence cases, abusers use the legal system to continue the abuse. We have seen cases where litigants seek multiple continuances to continue to harass and annoy victims. If the court can easily see that several continuances have already been granted, they are in a better position to deny continuances that are meritless.	Same as above response.
Los Angeles County Bar Association, Family Law Section	Yes.	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: •	**Is there reason why forms FL-306, DV-115. CH-115, EA-115, SV-115, and WV-115 should maintain an item for a party to indicate the number of times the hearing has been continued?**	
Commentator	**Comment**	**Committee Response**
		Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.
Orange County Bar Association, by Todd G. Friedland, President	THE COURT WILL LIKELY HAVE BETTER INFORMATION THAN THE LITIGANT, SO NO NEED.	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	Forms FL-306 and DV-115 should maintain an item for a party to indicate the number of times the hearing has been continued because this fact will be of interest to the court.	Same as above response.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	We believe that the Request to Continue Court Hearing/Request to Continue Hearing Date forms should include a place for the requesting party to indicate the number of times the hearing has been continued. This is a useful item of information for the court to consider in ruling on the request.	Same as above response.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	No. Self-represented litigants are unlikely to have accurate information for completing such a line item. Typically, a court clerk will have the information and can more accurately complete said information. It may be more effective to include such an item for completion by court clerk staff only.	See above response to the Orange County Bar Association.
Superior Court of Los Angeles County	Yes, all of the forms should include an item for a party to indicate the number of times the hearing has been continued. Having this information on the form will save time reviewing	Same as above response

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: •	**Is there reason why forms FL-306, DV-115. CH-115, EA-115, SV-115, and WV-115 should maintain an item for a party to indicate the number of times the hearing has been continued?**	
Commentator	**Comment**	**Committee Response**
	files and/or the CMS to obtain the information.	
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	We do not believe forms FL-306 or DV-115 should have fields to identify the number of continuances. Most parties would not have that information easily available.	Same as above response.
Superior Cout of Riverside County	It would be helpful if the FL-306, DV-115, CH-15, EA-115, SV-115 and WV-115 maintained an item for party to indicate the number of times the hearing has been continued.	The Civil and Small Claims Advisory Committee recommends that the Civil 115 forms maintain an item to indicate the number of times the court has continued the hearing and extended the temporary restraining order. The Family and Juvenile Law Advisory Committee recommends that the question not be added to form DV-115 given that the information can be accessed by the judicial officer in the file, is more likely to be accurate, and avoids placing an additional burden on self-represented litigants completing the form.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes, this is useful to judicial officers in reviewing the case history.	See above response.
TCPJAC/CEAC Joint Rules Subcommittee (JRS)	It would be helpful if the FL-306, DV-115, CH-15, EA-115, SV-115 and WV-115 maintained an item for a party to indicate the number of times the hearing has been continued.	See above response to the Superior Court of Orange County.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Is there a reason why the forms should maintain an item for a party to specify the date of the last hearing?		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Not relevant for the CARPOS record. LEAs primarily concerned with the issue (ISS) and the expiration (EXP) date of orders.	No response required.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	Yes.	Currently, only form FL-306 includes an item for the party to provide the date of the last hearing. As to this form, the committees recommend deleting the item since the courts will have the most reliable information on the hearings in the case management system, if the judicial officer requires this information. The committees do not recommend revising the 116 series of forms to include this information.
Legal Aid Foundation of Los Angeles, by Jimena S. Vasquez, Attorney	The date of the last hearing is not necessary. The forms indicate the date of the current hearing and the continuance date. The addition of another date is misleading and confusing.	Same as above response.
Los Angeles County Bar Association, Family Law Section	Yes.	Same as above response to Virginia S. Johnson.
Orange County Bar Association, by Todd G. Friedland, President	THE COURT WILL LIKELY HAVE BETTER INFORMATION THAN THE LITIGANT, SO NO NEED.	The committees agree with the commentator and recommend deleting this item from form FL-306.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	The forms should maintain an item for a party to specify the date of the last hearing because this fact will be of interest to the court.	Same as above response to Virginia S. Johnson.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	We believe that the Request to Continue Court Hearing/Request to Continue Hearing Date forms should include place to specify the date of the last hearing. This is a useful item of information for the court to consider in ruling on the request.	Same as above response to Virginia S. Johnson.
State Bar of California, Standing Committee on the Delivery of Legal	No. Again, the litigant may not have accurate information. It seems more appropriate for a court clerk to provide this	Same as above response to Virginia S. Johnson.

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

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Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Is there a reason why the forms should maintain an item for a party to specify the date of the last hearing?		
Commentator	**Comment**	**Committee Response**
Services, by Phong S. Wong, chair	information, if an item is going to be included on the form for this purpose.	
Superior Court of Los Angeles County	Yes, all of the forms should maintain an item to identify the last hearing date. Having this information on the form will save time reviewing files and/or the CMS to obtain the information.	Currently, only form FL-306 includes an item for the party to provide the date of the last hearing. As to this form, the committees recommend deleting the item since the courts will have the most reliable information on the hearings in the case management system, if the judicial officer requires this information. The committees do not recommend revising the 116 series of forms to include this information.
Superior Court of Orange County, Civil Operations Managers	The forms should maintain an item for a party to specify the date of the last hearing. This will aid court staff in the processing of documents.	Same as above response.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	We do not believe forms FL-306 or DV-115 should have fields to identify the last hearing date. Most parties would not have that information easily available.	Same as above response to Superior Court of Los Angeles County.
Superior Cout of Riverside County	It would be helpful if the forms maintained an item for party to specify the date of the last hearing date.	Same as above response to Superior Court of Los Angeles County.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes, this is useful to judicial officers in reviewing the case history.	Same as above response to Superior Court of Los Angeles County.
TCPJAC/CEAC Joint Rules Subcommittee (JRS)	It would be helpful if the forms maintained an item for a party to specify the date of the last hearing date.	Same as above response to Superior Court of Los Angeles County.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Are there ways to further harmonize the domestic violence and juvenile law forms in this proposal with the changes proposed to the civil harassment, elder abuse, and workplace violence forms?		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Form consistency is always a concern. It is helpful for DOJ and LEAs, as much as possible, for forms, item numbers, and similar information to be placed on each form. This makes it easier for entry and easier for the DOJ Field Representative (FR) for training purposes.	The committees recommend further harmonizing the forms to the extent possible.
	Judicial Council's effort to improve form consistency is greatly appreciated. Since there are multiple codes and statutes, the verbiage differs for the various order types; it is a challenge trying to achieve total form consistency. In many instances, with new or revised forms, it is difficult to anticipate issues that may come to light, until the LEAs start to receive the orders for entry into the CARPOS.	The committees recommend further harmonizing the forms to the extent possible.
Orange County Bar Association, by Todd G. Friedland, President	THE FL-306 & JV-251 HAS MORE/BETTER INFORMATION REGARDING THE CONTINUANCE THAN THE DV-116. THE INFORMATION CONTAINED IN CH, EA, SV & WV-116 ITEM 6 (ABOUT WHETHER THE TRO WAS EXTENDED, AND UNDER WHAT TERMS) SHOULD BE INCORPORATED INTO DV-116.	The committees recommend further harmonizing the forms to the extent possible.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	SCDLS has no suggestions at this time.	No response required.
Superior Court of Los Angeles County	Yes, the forms should have consistent titles and consistent language used to phrase questions asking for the same information. Litigants completing civil harassment and domestic violence forms may be confused with inconsistent language used to request the same information. For example: □ "Application" is used in the title of JV-251 while other forms use "Request."	The committee recommends revising form JV-251 to use "Request" in the title instead of "Application."

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Are there ways to further harmonize the domestic violence and juvenile law forms in this proposal with the changes proposed to the civil harassment, elder abuse, and workplace violence forms?		
Commentator	**Comment**	**Committee Response**
	□ The language on the DV-115 and CH-115 is inconsistent. One states, "Name of Person Asking to Continue the Hearing Date" and the other form states "Party Seeking Continuance." In comparing the language used in both the DV-115 and the CH-115, it appears that the CH-115 uses language that is easier for SRLs to understand.	The committees recommend revising form DV-116 to state "Party Seeking Continuance."
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes, the forms should be titled consistently across case categories. A CHTRO is just as likely to be filed by a pro per litigant as a DVTRO.	The committees recommend further harmonizing the title of the forms to the extent possible.

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

W16-04
Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Should the 116 forms for the court's order include an option to deny a continuance?		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	May be useful for the court but may not be relevant in the CARPOS record for officers.	The committees recommend revising the 116 forms to include a new section for the court to indicate that the request for a continuance is either granted or denied. For denials, the committees recommend revising the forms to allow the court to specify (1) the reasons for the denial, (2) the date of the hearing, and (3) that the temporary restraining order issued on a certain date remains in full force and effect until the end of the new hearing.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	Absolutely "yes," there should be a "Continuance Denied" on the form.	Same as above response.
Legal Aid Foundation of Los Angeles, by Jimena S. Vasquez, Attorney	The issue of whether or not to deny continuances of domestic violence cases is a really a larger discussion about the ability of litigants to request continuances prior to the hearings. If they request the continuance at the hearing there would be no need for an option to deny the continuance as the case would either go forward or be dismissed. However, allowing for continuances prior to the hearings on the protective orders, allows a court to deny a continuance and let the matter proceed on its originally scheduled date. In this situation, an option indicating that the continuance was denied and the originally scheduled hearing date remains would be beneficial. It would be clear to the litigant that they must appear on the hearing date or orders will be made against them (or dismissed) if they fail to appear. It would also assist in making sure that litigants have notice of what is being filed in court by the other side and that there are no ex parte communications with the court.	In response to the comment, the committees recommend revising the 116 forms to include a new section for the court to indicate that the request for a continuance is either granted or denied. For denials, the committees recommend revising the forms to allow the court to specify (1) the reasons for the denial, (2) the date of the hearing, and (3) that the temporary restraining order issued on a certain date remains in full force and effect until the end of the new hearing.
Los Angeles County Bar Association, Family Law Section	Yes for the Petitioner only. Respondent has an automatic right to a continuance.	Under Family Code section 245, Respondent's (Restrained Party's) automatic right to a continuance applies only to the first hearing. The committee

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Should the 116 forms for the court's order include an option to deny a continuance?		
Commentator	**Comment**	**Committee Response**
		recommends revising the 116 forms to clarify this point in the section titled "Reason for the Continuance."
Orange County Bar Association, by Todd G. Friedland, President	NO, BECAUSE IF THERE IS NO CONTINUANCE THEN THERE WILL BE A MINUTE ORDER REFLECTING THE OUTCOME (i.e., THE DENIAL OF THE PROTECTIVE ORDER) OR A PROTECTIVE ORDER ISSUED.	The committees acknowledge that some courts do not use the 116 forms if the request for continuance is denied. For courts that do use the 116, instead of a minute order, the committees recommend revising the form to include a new section to reflect the outcome of the request.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	"Continuance Denied" should not be part of the form because, if the continuance is not granted, this form will not be created (i.e., there will be no "Order to Continue Hearing Date.")	Same as above response.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	We believe item 5 should include an option for denying the request in case the court decides to deny the request.	The committees recommend revising the 116 forms to include a section to reflect whether the court granted or denied the request to continue the hearing.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	Yes. Adding the "denial" provides the litigant with clear guidance as to whether or not the continuance was granted. Instruction forms will need to reflect this change.	The committees recommend revising the 116 forms to include a section to reflect whether the court granted or denied the request to continue the hearing.
Superior Court of Los Angeles County	Yes for the benefit of the SRL but it may create more work for staff. These type of requests are usually done in person without having to complete (and mail) a separate order.	The committees recommend revising the 116 forms to include a section to reflect whether the court granted or denied the request to continue the hearing.
Superior Court of Orange County, Civil Operations Managers	116 forms for the court's order should not include an option to deny a continuance. This ruling would be more efficiently and effectively issued via a minute order. The 116 forms may be cumbersome for the court to complete, and difficult for litigants to understand, if they had an option to deny a continuance.	The committees acknowledge that some courts do not use the 116 forms if the request for continuance is denied. For courts that do use the 116, instead of a minute order, the committees recommend revising the form to include a new section to reflect the outcome of the request.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	We believe the 116 forms should have a denial option to reflect the court's decision when a party requests a continuance	The committees recommend revising the 116 forms to include a section to reflect whether the court granted or denied the request to continue the hearing.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Should the 116 forms for the court's order include an option to deny a continuance?		
Commentator	**Comment**	**Committee Response**
Superior Cout of Riverside County	Would be helpful if the DV-116 form included an option to deny a continuance.	The committees recommend revising the 116 forms to include a section to reflect whether the court granted or denied the request to continue the hearing.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes.	Same as above response.
TCPJAC/CEAC Joint Rules Subcommittee (JRS)	It would be helpful if the DV-116 included an option to deny a continuance.	Same as above response.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Is there reason why the title of Form DV-116 should be made the same as the other civil 116 forms? Is there another title that would be more suitable for these forms in light of the requirements of AB 1081? Is there a term that is more understandable for self-represented litigants than "continuance"?		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	No. The title of DV-116 should remain as is on the revised (July 1, 2016) form. "Continuance" is fine, and the explanations on the "INFO" forms for "Continue" and "Extend" are well defined on each form.	After discussion, the committees recommend changing the title of the DV-116 "Order on Request to Continue Hearing." This change will harmonize the DV-116 forms with that of the other Civil -116 forms. No response required.
Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual	The majority of people understand the common meaning of "continuance" and have likely heard the term used on television. Any other word would cause more confusion than clarification.	No response required.
	Litigants should be able to quickly and easily differentiate between the DV and Civil forms so they use the correct form for their situation.	The committees agree that litigants should be able to quickly and easily differentiate between the DV and Civil forms so they use the correct form for their situation.
Los Angeles County Bar Association, Family Law Section	No. The forms should be separate as between civil and family law.	The forms are separate between civil and family law. The committees are not recommending that they be combined, but that the content of the family law and civil law forms resemble each other with respect to formatting and content.
	As to a more suitable title: Yes. There may be a statement in the form saying if you an undocumented individual, ICE will not be contacted by filing a DV petition.	The committees do not recommend adding this content to these forms. The committees may consider adding similar content to information sheets or the California Courts online site in a future cycle.
	"Continuance" is clearly understandable to pro pers.	No response required.
Orange County Bar Association, by Todd G. Friedland, President	Should the title of form DV-116 be made the same as that on the other civil forms? THE INFORMATION CONTAINED IN THE CH, EA, SV & WV-116 FORMS (AND EVEN THE JV-	The committees recommend revising the title of DV-116 to be the same as the other civil 116 forms.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Is there reason why the title of Form DV-116 should be made the same as the other civil 116 forms? Is there another title that would be more suitable for these forms in light of the requirements of AB 1081? Is there a term that is more understandable for self-represented litigants than "continuance"?

Commentator	Comment	Committee Response
	116 FORM) HAS BETTER INFORMATION FOR THE CONTINUANCE THAN THE PROPOSED DV-116. Is there another title that would be more suitable for these forms in light of the requirements of AB 1081? NO Is there a term that is more understandable for self-represented litigants than "continuance"? NO	No response required. No response required.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	"As to this form, the committee welcomes suggestions on terms that would be more understandable for self-represented litigants than 'continuance.' " In response, FLEXCOM suggests using the phrase "person seeking that the hearing be continued to a later date."	The committees prefer to use the phrase "Party Seeking Continuance" as a more concise way of identifying the party in the form.
State Bar of California, Litigation Section, Rules and Legislation Committee, by Reuben Ginsburg, chair	Regarding use of the term "continuance," we believe the explanation in the 115-INFO forms that "continue" means to give you a new hearing date sufficiently explains the meaning of a "continuance."	No response required.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	Should the title of form DV-116 be made the same as the other civil forms? Yes. Titling should be more uniform.	The committees recommend that the title of form DV-116 be the same as the other civil forms.
	Is there another title that might be more suitable for these forms in light of the requirements of AB 1081? Uniformity with the titling could be achieved by a naming protocol such as, "Order on Request to Continue Hearing (Civil Harassment Prevention)", "Order on Request to Continue Hearing (Domestic Violence Prevention)", etc.	The committees recommend that the title of form DV-116 be the same as the other civil forms. The title "Order on Request to Continue Hearing (Domestic Violence Prevention)" is recommended as the title in the footer.
	Is there a term that is more understandable for self-represented litigants than "continuance"? Continuance is a term of art that can be explained by clerks and self-help center staff. There does not seem to be a better term.	No response required.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • Is there reason why the title of Form DV-116 should be made the same as the other civil 116 forms? Is there another title that would be more suitable for these forms in light of the requirements of AB 1081? Is there a term that is more understandable for self-represented litigants than "continuance"?		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	Yes, the DV-116 form should have the same title as the civil forms. Consistent titles help court staff and SRLs alike. The title "Order on Request to Continue Hearing" is the best option. Including the word "Date" following the word "Hearing" in the title of the DV-115 provides clarification and conforms to the titles on forms CH-115, SV-115, WV-115, and EA-115.	The committees recommend that the title of form DV-116 be the same as the other civil forms.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes, the forms should be consistent.	The committees recommend that the title of form DV-116 be the same as the other civil forms.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: • How would this proposal affect low or moderate-income members of the public?		
Commentator	**Comment**	**Committee Response**
California Department of Justice, Bureau of Criminal Identification and Investigative Services, Law Enforcement Support Program, California Restraining and Protective Order System	Not sure.	No response required.
Los Angeles County Bar Association, Family Law Section	It would affect all members of the public the same, no matter what their income level is.	No response required.
Orange County Bar Association, by Todd G. Friedland, President	ANOTHER FORM TO COMPLETE, AND OFTEN SRP DO NOT KNOW ALL OF THE FORMS, ESPECIALLY IF THEY ARE MANDATORY/REQUIRED FORMS. THIS MAY RESULT IN THE RE-FILING OF THE TRO REQUEST DUE TO A PARTY NOT HAVING THE PROPER FORM TO REQUEST THE CONTINUANCE.	The committees are not recommending the adoption of any new forms in the report. The recommended revisions to existing forms are required to implement the mandate of AB 1081.
State Bar of California, Family Law Section, by Saul Bercovitch, Legislative Counsel	FLEXCOM believes this proposal will benefit low- and moderate-income members of the public.	No response required.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong, chair	The proposed changes impact low- and moderate-income people since many of the litigants navigating these forms are unrepresented and are already in a crisis-mode situation. It is important that forms are written in plain language and include simple explanations.	No response required.
Superior Court of Los Angeles County	Consistent form titles and use of language would cause less confusion.	The committees recommend consistent titles and language for the forms where feasible.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Unknown/No comment.	No response required.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

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**	**Committee Response**
Superior Court of Los Angeles County	We don't believe there would be any cost savings.	No response required.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	No.	No response required.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: The advisory committee also seeks comments from *courts* on the following cost and implementation matters: 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.		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	It is expected that the need for training would be minimal. Approximately 30 minutes would be required to train on procedural changes and to go over changes on forms. New CMS codes would be required if new forms are created.	No response required.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	Implementation requirements for this proposal include training of judicial officers and staff; changes to the case management system; and changes to our e-filing solution.	No response required.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Training staff on revised forms, updating packets, and updating case management system.	No response required.
TCPJAC/CEAC Joint Rules Subcommittee (JRS)	Courts may have to modify existing case management programming relating to action codes. Courts utilizing automated form completion programs, e.g., automated form packets, will be required make more significant changes to those programs. Courts may be required to amend local rules, which would be done in the normal course of local rule review. Courts will be required to commit staff and associated court resources to train courtroom staff, clerical staff, and self-help staff on the new forms and procedures.	No response required. No response required. No response required.

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

W16-04
Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

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**
Superior Court of Los Angeles County	Yes.	No response required.
Superior Court of Orange County, Family Law and Juvenile Court Operations Managers, by Blanca Escobedo, Principal Administrative Analyst	Two months might not be enough time to implement this change. We are an Odyssey court and would need to coordinate this change with the CATUG workgroup. We request courts be given flexibility as it pertains to the implementation of this change.	Changes to statutes affected by AB 1081 became effective January 1, 2016. Having the revised forms take effect on July 1, 2016 is already a significant delay in implementing the mandate of AB 1081. The committees do not recommend further delays in implementing the revisions to the forms.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes.	No response required.

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**
Superior Court of Los Angeles County	The proposal will work the same for courts of different size.	No response required.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Greater impact on larger courts based on number of staff and filings.	No response required.

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

W16-04

Request to Continue Hearing Date and Extend Temporary Restraining Order in Domestic Violence, Family Law, Juvenile Law, Civil Harassment, Elder Abuse, Private Postsecondary School Violence, and Workplace Violence Cases

Request for Specific Comment: - The advisory committee also seeks comments from *courts* on the following cost and implementation matters: • Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including self-represented litigants?		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	No, the notices are confusing and may be simplified. (Specific suggestions listed under 115 and 116 forms.)	The committees has recommend additional changes to simplify the 115 and 116 forms in response to the comments received from this and other commentators.
Superior Court of Orange County, Civil Operations Managers	The notice provided in plain language is written in a way that should be accessible to a broad range of litigants.	No response required.
Superior Court of San Diego County, by Mike Roddy, Executive Officer	Yes.	No response required.

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

Item number: 04

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Forms: Disability Access Litigation

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

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: Approved by RUPRO on October 22, 2015 as amended annual agenda item
Project description from annual agenda: This bill, some of which is effective immediately as emergency legislation, makes several changes to the construction-related disability access statutes, which need to be reflected in several of the current Disability Access litigation (DAL) forms. There are also some changes to the law that will be operative July 1, 2016 that require the council to adopt a new answer form by that date.

If requesting July 1 or out of cycle, explain:
Forms are required by legislation to be effective January 1, 2016 and July 1, 2016.

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: April 14–15, 2016

Title
Forms: Disability Access Litigation

Rules, Forms, Standards, or Statutes Affected
Approve form DAL-002; revise forms DAL-001, DAL-005, and DAL-010

Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 10, 2016

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends that certain statutorily mandated Disability Access Litigation forms used in construction-related accessibility claims be revised and that a verified answer form be approved for optional use. The forms are used for parties to apply for, and the court to grant, stays and mandatory evaluation conferences in this type of litigation. The forms must be changed to reflect the amendments to the Civil Code made by Assembly Bill 1521 (Assem. Comm. on Judiciary; Stats. 2015, ch.755), enacted on October 10, 2015, as urgency legislation—and thus operative on enactment—to (1) add a new category of defendants that may request a stay and early evaluation conference, (2) allow defendants to request a joint inspection, (3) provide certain information in the statutory advisory form for building owners and tenants, and (4) provide a verified answer form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Approve *Answer—Disability Access* (form DAL-002) to provide a statutorily mandated, verified answer that includes certain affirmative defenses, whether the defendant has made a request for an early evaluation conference and to meet in person at the subject premises, and whether the defendant qualifies for reduced damages;

2. Revise *Important Advisory Information for Building Owners and Tenants* (DAL-001) to provide verbatim, additional statutorily mandated information;

3. Revise *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) to add a check box in the form name for a defendant to indicate whether a joint inspection is requested and in the body of the form to provide information about the plaintiff's status as a high-frequency litigant; and

4. Revise *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010) to add a check box in the form name to indicate whether the notice includes a joint inspection and in the body of the form to provide related information.

The new and revised forms are attached at pages 6–13.

Previous Council Action

The Judicial Council revised *Important Advisory Information for Building Owners and Tenants* (DAL-001), effective July 1, 2013, in response to legislation, to change the information attorneys are required to send to building owners and tenants with a demand letter or complaint concerning construction-related accessibility claims. The council also revised *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010), effective January 1, 2016, without prior circulation for comment, in response to urgency legislation enacted on October 10, 2015.

Rationale for Recommendation

The revisions to existing forms and the new verified answer form for use in construction-related accessibility claims respond to recent changes in the law. As noted above, the new law on construction-related disability access claims became effective October 10, 2015. To comply with this law, the council revised forms DAL-005 and DAL-010, effective January 1, 2016, without prior circulation for comment because without the revisions the forms would be incomplete or inaccurate. Comments were invited on these revisions as part of the winter comment cycle. The two additional forms, DAL-001 and DAL-002, circulated for comment in the winter cycle with a proposed effective date of July 1, 2016.

Forms DAL-005 and DAL-010

Certain categories of defendants in construction-related disability access cases have the right to a 90-day stay upon request, and to an early evaluation conference held by the court during the stay

period. The new law adds an additional category of defendants to those with the right to a stay—business defendants in cases filed by high-frequency litigants. (Civ. Code, § 55.54(b)(2)(D).) *Defendant's Application for Stay and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (current form DAL-005) is the form mandated for use by defendants to make such a request. The form contains the statutorily mandated facts that the various categories of defendants must state under penalty of perjury to receive a stay and early evaluation conference.

The proposed revisions to form DAL-005 would add item 3d for the new category of defendants that can seek a stay and include all statements a defendant must declare under the statute, i.e., that it is a business and was served with a complaint by a high-frequency litigant as defined by Code of Civil Procedure section 425.55(b). (Civ. Code, § 55.54(c)(7).) Under the new law, each complaint in these cases must state whether it is filed by a high-frequency litigant and the complaint caption must state whether the action is subject to the supplemental fee for high-frequency litigants set by Government Code section 70616.5. (Code Civ. Proc., § 425.50(a)(4).) The new item 3d includes a statement for the defendant to check indicating that the complaint included this information.

The new law also provides that when issuing the stay and setting the early evaluation conference, the court should, if a defendant requests it, direct the parties to meet in person at the subject premises, no later than 30 days after the issuance of the order, for a joint inspection of the property. (Civ. Code, § 55.54(d)(6).) The application form has been revised to include this optional request, at item 4e. (See revised form DAL-005.) The *Notice of Stay of Proceedings and Early Evaluation Conference* (current form DAL-010) has also been revised, with a new section "Notice of Joint Inspection," and new items 8, 9, and 10. Because the court is to direct a joint inspection only if specifically requested to do so, items 8 and 9 on form DAL-010 have check boxes in front of them, which can be checked by the clerk if the request has been made on form DAL-005.

The legislation provides that the court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or, for good cause, to participate by telephone or other alternative means. (Civ. Code, § 55.54(d)(6).) It does not provide for a specific means to ask the court to be excused or participate remotely. *(Ibid.)* New item 10 on revised form DAL-010 therefore informs any plaintiff who is unable to meet at the site that he or she may move the court or apply for leave to be excused.

The titles of forms DAL-005 and DAL-010 have also been revised, effective January 1, 2016, to include the term "*Joint Inspection*." The revised forms are titled *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010).

Forms DAL-001 and DAL-002

The new law requires the council to revise *Important Advisory Information for Building Owners and Tenants* (DAL-001), the form used by an attorney to provide mandated information about the defendant's legal obligations and rights with the initial demand letter or complaint. The exact language to be added is contained in the legislation. (Civ. Code, § 55.3(b)(1)(A).) The form would be revised to add this information, which concerns attorney conduct, reducing damages, and information for commercial tenants.

The new law also requires the council to develop a verified answer form that could also be used as an informal response to a demand letter or for settlement discussion purposes, and to notify the defendant that the answer can be used in this way. (Civ. Code, § 55.3(b)(2).) Specifically, the answer form must include the following possible affirmative defense: that the defendant's landlord is responsible for ensuring that the property leased by the defendant is accessible to the public and facts supporting that assertion. (Civ. Code, § 55.3(b)(2).) It also requires a space for the defendant to indicate whether the defendant qualifies for reduced damages under Civil Code section 55.56(f)(1) or (f)(2). These and other required elements of the verified answer form are included in proposed, new *Answer—Disability Access* (form DAL-002). One item in the legislation concerning the answer has been modified. Civil Code section 55.3(b)(2)(A)(iii) provides that the answer should include a request to meet in person at the subject premises, if the defendant qualifies for an early evaluation conference pursuant to section 55.54. Because the stay and early evaluation conference and inspection at the subject premises would have already taken place before an answer is filed, the option to request to meet for an inspection has been modified to include a check box to indicate whether such a meeting has been requested. (See form DAL-002, item 5.)

Comments, Alternatives Considered, and Policy Implications

The proposal circulated during the winter comment cycle, from December 11, 2015, to January 22, 2016. Seven commentators submitted comments; four agreed with the proposal, two agreed if modifications were made, and one did not state a position.[1] Commentators included three superior courts, operations managers from a different superior court, a county bar association, the California Chamber of Commerce, and a deputy attorney general. The most significant comments are discussed below.

The Chamber of Commerce commented on *Answer—Disability Access* (form DAL-002), noting that the check box for a defendant to indicate entitlement to reduced damages under Civil Code section 55.56(f)(1) and (2) did not properly belong as an affirmative defense. The committee agrees and has moved this statement to new item number 6.

Concerning *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010), a deputy attorney general in the civil rights enforcement section of the Office of the Attorney General suggested a modification to the statement advising the plaintiff, if he or

[1] A chart containing the full text of the comments and the committee response is attached at pages 15–23.

she is unable to meet in person for the site inspection, how to be excused from the in-person meeting. Civil Code section 550.54(d)(6) does not specify how the plaintiff should request to be excused. The form circulated with the statement that the plaintiff "may *move the court for leave* to be excused or to appear telephonically or by other means." (Emphasis added.) The commentator stated correctly that the statute does not require a formal motion and suggested that "move the court for leave" be replaced with "request that the court allow plaintiff" where the sentence appears in item 10. The committee agrees that Civil Code section 55.54(d)(6) does not specifically require a motion and notes that it does not set out *any* procedure for seeking to be excused from the in-person site visit. It provides, in relevant part, "The court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or to participate by telephone or other alternative means for good cause." To provide a way for the plaintiff to seek to be excused from an in-person site visit, the committee recommends that form DAL-010, item 10, state that a plaintiff may "move the court or apply for leave" to be excused from the site inspection or to appear telephonically or by another means.

Comments from the Superior Court of Riverside County asked a number of questions about defining and tracking high frequency litigants and the procedures for issuing notice of the early evaluation conference and joint inspection. "High frequency litigant" is defined in Code of Civil Procedure section 425.55 and includes both plaintiffs and attorneys who have represented high-frequency litigant plaintiffs. Determining whether an attorney is a high-frequency litigant "shall be made solely on the basis of the verified complaint and any other publicly available documents." (Code of Civ. Proc., § 425.50(f).) Code of Civil Procedure section 425.50 requires a plaintiff who meets the definition of "high frequency litigant" to self-identify in the complaint. The committee is unaware of any plan to track self-represented high frequency litigants. Concerning procedures for issuance of the notice when a defendant requests an early evaluation conference and joint inspection—which the commentator asked about—the legislation does not include procedures for this, and the committee believes it should be left to local court practice. Courts presumably have procedures in place for this, as the option for an early evaluation conference has been in effect since July 1, 2013.

Implementation Requirements, Costs, and Operational Impacts

The legislative changes to the disability access litigation procedures will require courts to implement some training in the new procedures for considering requests for a joint inspection and to add the new answer form to their case management systems. Adding "*Joint Inspection*" to the titles of forms DAL-005 and DAL-010—which was done when these forms became effective on January 1, 2016, and is not proposed to be changed—with a check box to indicate whether it applies, should assist courts in quickly determining if a joint inspection has been requested or granted. For cases that proceed to the answer stage, *Answer—Disability Access* (form DAL-002) may improve the adequacy and quality of answers. Courts that maintain supplies of forms will incur the costs of replacing old forms with the revised forms.

Attachments and Links

5. Judicial Council forms DAL-001, DAL-002, DAL-005, and DAL-010, at pages 7–14
6. Chart of comments, at pages 15–23
7. Assembly Bill 1521, available at: *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1521*

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. People with visual impairments can get assistance in viewing this form through the judicial branch website, at *www.courts.ca.gov.*

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of people with disabilities to access public places.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect, at *www.dgs.ca.gov/dsa.* Information is also available from the California Commission on Disability Access at *www.ccda.ca.guide.htm.*

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING. You will have the right if you are later sued to fully present an explanation of why you believe you have not in fact violated disability access laws or have corrected the violation or violations giving rise to the claim.

You have the right to seek assistance or advice about this demand letter or court complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

ADDITIONAL THINGS YOU SHOULD KNOW: ATTORNEY MISCONDUCT. Except for limited circumstances, state law generally requires that a prelitigation demand letter from an attorney MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Moreover, a demand letter from an attorney MUST INCLUDE THE ATTORNEY'S STATE BAR LICENSE NUMBER.

If you believe the attorney who provided you with this notice and prelitigation demand letter is not complying with state law, you may send a copy of the demand letter you received from the attorney to the State Bar of California by facsimile transmission to 1-415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, CA 94105, Attention: Professional Competence.

Form Adopted for Mandatory Use
Judicial Council of California
DAL-001 [Rev. July 1, 2016]

Civil Code, § 55.3
www.courts.ca.gov

REDUCING YOUR DAMAGES. If you are a small business owner and correct all of the construction-related violations that are the basis of the complaint against you within 30 days of being served with the complaint, you may qualify for reduced damages. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional information about the rights and obligations of business owners.

COMMERCIAL TENANT. If you are a commercial tenant, you may not be responsible for ensuring that some or all portions of the premises you lease for your business, including common areas such as parking lots, are accessible to the public because those areas may be the responsibility of your landlord. You may want to refer to your lease agreement and consult with an attorney or contact your landlord, to determine if your landlord is responsible for maintaining and improving some or all of the areas you lease.

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** **03/08/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
ANSWER—DISABILITY ACCESS	CASE NUMBER:

This form may be filed with the court and served on the plaintiff as an answer to the complaint, or it may be used as an informal response to a demand letter or for settlement discussion purposes.

1. Defendant(s) *(Each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):*

answers the complaint as follows:

2. ***Check ONLY ONE of the next three boxes, a, b, or c*:**
   a. ☐ Defendant generally denies each statement of the complaint.
   b. ☐ Defendant denies that plaintiff has demonstrated that he or she was denied full and equal access to the place of public accommodation on a particular occasion. *(See Civ. Code, § 55.56.)*
   c. ☐ Defendant admits that all of the statements of the complaint are true EXCEPT:
      (1) Defendant claims the following statements of the complaint are false. *(State paragraph numbers from the complaint or explain below.)* ☐ Explanation is on Attachment 2c(1). *(You may use form MC-025 for this purpose.)*

      (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them. *(State paragraph numbers from the complaint or explain below.)*
      ☐ Explanation is on Attachment 2c(2). *(You may use form MC-025 for this purpose.)*

3. AFFIRMATIVE DEFENSES (***NOTE:*** *For each box checked below, you must state brief facts to support it in item 4.)*
   a. ☐ Defendant is not liable because the facility is not open to the public.
   b. ☐ Defendant is not liable because defendant's landlord is responsible for ensuring that some or all of the property leased by the defendant, including the areas at issue in the complaint, are accessible to the public. *(Give the name and contact information of defendant's landlord in item 4.)*
   c. ☐ Other affirmative defenses. *(Specify and state facts in support in item 4.)*

PLAINTIFF: DEFENDANT:	CASE NUMBER:

4. FACTS SUPPORTING AFFIRMATIVE DEFENSES (***NOTE:*** *For each box checked in item 3, you must state brief facts to support the defense. Include letters a, b, c, and d from item 3 to make clear which affirmative defense(s) you are supporting.)*

   ☐ Supporting facts are on Attachment 4. *(You may use form MC-025 for this purpose.)*

5. ☐ A request for an early evaluation conference and to meet in person with plaintiff at the subject premises has been filed or is being filed concurrently with this answer, on *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005).

6. ☐ Defendant qualifies for reduced damages. *(See Civ. Code, § 55.56(f)(1) or (2).)*

7. Number of pages attached: _____

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT OR ATTORNEY)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)

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** **02/02/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
DEFENDANT'S APPLICATION PURSUANT TO CIVIL CODE SECTION 55.54 FOR ☐ STAY AND EARLY EVALUATION CONFERENCE ☐ JOINT INSPECTION	CASE NUMBER:

(Information about this application and filing instructions may be obtained at www.courts.ca.gov/selfhelp.htm.*)*

1. Defendant *(name):* requests a stay of proceedings and early evaluation conference pursuant to Civil Code section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code section 55.52(a)(1).
3. The claim concerns a site that meets one of the following sets of requirements *(All items in one of a, b, c, or d must be checked for the court to order a stay and early evaluation conference. Check a box if the statement is true.)*

   a. ☐ **CASp-Inspected Site**

      (1) ☐ Site has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending, and if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and

      (2) ☐ An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.

   b. ☐ **New Construction**

      (1) ☐ Site has had new construction or improvements on or after January 1, 2008, approved pursuant to the local building permit and inspection process;

      (2) ☐ To the best of defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and

      (3) ☐ All violations have been corrected, or will be corrected within **60** days of defendant's being served with the complaint.

   c. ☐ **Small Business**

      (1) ☐ Site is owned or occupied by a defendant that is a small business that has employed an average of 25 or fewer employees over the past three years and meets the gross receipts eligibility criteria provided in Civil Code section 55.56(2)(f);

      (2) ☐ All violations have been corrected, or will be corrected within **30** days of being served with the complaint; and

      (3) ☐ Evidence showing that all violations have been corrected *(check one)* ☐ is attached ☐ will be filed with the court within **10** days of the court order setting an early evaluation conference.

      (4) I am filing the following with the court along with this application: *(The documents should be filed separately attached to a* Confidential Cover Sheet and Declaration *(form DAL-006).)*

      ☐ Proof of the number of defendant's employees as shown by wage reports forms filed with the Employment Development Department over the past three years or for existence of the business if less than three years; and

      ☐ Proof of defendant's average gross receipts as shown by federal or state tax documents for the three years before this application or for existence of the business if less than three years.

PLAINTIFF: DEFENDANT:	CASE NUMBER:

3. d. ☐ **Case Filed by High-Frequency Litigant**
   (1) ☐ Site is owned or occupied by a defendant that is a business.
   (2) ☐ The complaint was filed by, or on behalf of, a "high-frequency litigant," as defined in Code of Civil Procedure section 425.55(b), asserting a construction-related accessibility claim including, but not limited to, a claim brought under Civil Code section 51, 54, 54.1, or 55.
   (3) ☐ The complaint includes a statement that it was filed by or on behalf of a high-frequency litigant, or a statement in the caption that "action subject to the supplemental fee in Government Code section 70616.5."

4. Defendant requests that the court:
   a. Stay the proceedings relating to the construction-related accessibility claim.
   b. Schedule an early evaluation conference.
   c. Order defendant to:
      (1) File a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the plaintiff at least **15** days before the date of the early evaluation conference, which shall be kept confidential as set forth in Civil Code section 55.54(d)(4); or
      (2) File with the court and serve on plaintiff evidence showing correction of all violations within **10** days of completion of the correction or, if seeking relief as a small business, within **10** days after issuance of a court order granting a stay.
   d. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.54(d)(6) at least **15** days before the date of the early evaluation conference.
   e. ☐ Order plaintiff and plaintiff's counsel, if any, to meet in person with defendant within 30 days, at the site that is the subject of this action, for a joint inspection to review any issues that plaintiff claims are a violation of construction-related accessibility standards.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

DECLARATION OF DEFENDANT

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)

ATTORNEY *(Name, State Bar number, and address):* 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** **03/08/16** **NOT APPROVED BY JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF ☐ STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE ☐ JOINT INSPECTION (Disability Access Litigation)	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

1. This action includes a construction-related accessibility claim under Civil Code section 55.52(a)(1) or other provision of law.

Notice of Early Evaluation Conference

2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code section 55.54.
3. The early evaluation conference is scheduled as follows:

   a. Date: Time: Dept.: Room:

   b. The conference will be held at ☐ the court address shown above ☐ the following address:

4. The plaintiff and defendant must attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant who requested the conference and stay of proceedings must serve on all parties and file with the court the following:
   a. *(For a defendant applying under **CASp-Inspected Site** section)* A copy of the CASp report for the site that is the subject of the construction-related accessibility claim. Defendant must serve and file the report at least **15** days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code section 55.54(d)(4).
   b. *(For a defendant applying under **New Construction** section)* Evidence showing the correction of all violations giving rise to the construction-related accessibility claim within **60** days of the service of the complaint. Defendant must serve and file the evidence within **10** days following completion of the corrections.
   c. *(For a defendant applying under **Small Business** section)* Evidence, if not previously served and filed, showing the correction within **30** days of the service of the complaint of all violations giving rise to the construction-related accessibility claims. Defendant must serve and file the evidence within **10** days of issuance of this order.
6. The CASp report must be marked "CONFIDENTIAL" and may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case. *(File the court's copy attached to* Confidential Cover Sheet and Declaration *(form DAL-006).)*

PLAINTIFF: DEFENDANT:	CASE NUMBER:

7. The plaintiff must at least 15 days before the date set for the early evaluation conference serve and file a statement of, to the extent known, all of the following:
   a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
   b. The amount of damages claimed;
   c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
   d. Any demand for settlement of the case in its entirety.

Notice of Joint Inspection
(only applies if boxes are checked)

8. ☐ A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility claim.

9. ☐ Plaintiff and plaintiff's counsel, if any, must, within 30 days of the date this notice is issued, meet in person with defendant at the site to jointly inspect the premises and review any programmatic or policy issues that are claimed to constitute a violation of a construction-related accessibility standard. (See Civ. Code, § 55.54(d)(6).)

10. If plaintiff is unable to meet in person at the site, he or she may move the court or apply for leave to be excused or to appear telephonically or by other means. (See Civ. Code, § 55.54(d)(6).)

Service of Notice

11. A copy of this notice and defendant's application must be served on the plaintiff by hand-delivering it or mailing it to the address listed on the complaint of plaintiff's attorney or plaintiff, if without an attorney, within 10 days of date that the court issues the *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection.* Defendant must file proof of service with the court at least 15 days before the date of the conference. *Proof of Service–Disability Access Litigation* (form DAL-012) may be used to show service of the documents.

Date: Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at www.courts.ca.gov/selfhelp.

Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. 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.)

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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

	Commentator	Position	Comment	Committee Response
1.	California Chamber of Commerce By Jennifer Barrera Policy Advocate California Chamber of Commerce and Civil Justice Association of California Sacramento, CA	NI	**Answer-Disability Access (form DAL-002) re: Reduction of Damages:** Pursuant to AB 1521 that was enacted on October 10, 2015, the Judicial Council has proposed to revise form DAL-002 to list affirmative defenses, including that "the defendant qualifies for reduced damages under Civil Code section 55.56(f)(1) or (f)(2)." We disagree with the Judicial Council's proposal to characterize the opportunity for reduced damages as an "affirmative defense." Moreover, such a characterization is not supported by the actual language of the statute. The term "affirmative defense" has specific meaning within the legal context. Specifically, aside from subject matter jurisdiction or failure to state facts sufficient for a cause of action, a party that fails to plead an affirmative defense in a demurrer or answer risks waiver of that defense. *See* Code of Civil Procedure Section 430.80; *Vitkievicz v. Valverde*, 202 Cal.App.4th 1306, 1314 (2012); *Mission Housing Development v. City and County of San Francisco*, 59 Cal.App.4th 55, 75 (1998). Nowhere within AB 1521 is the opportunity for reduced damages, as provided by Civil Code Section 55.56 (f)(1)-(f)(2) referenced, labeled, or identified as an "affirmative defense." In fact, the amended language of AB 1521 on August 17, 2015, demonstrates that the legislation actually intended for the reduction of damages to **not be** an affirmative defense. Specifically, in the version of AB 1521 prior to August 17,	The committee agrees with the commentator and has moved the statement concerning reduced damages, which is required by AB 1521, to a separate item, as suggested.

	Commentator	Position	Comment	Committee Response
			2015 (section 55.3(b)(2)(A)(ii)(I)), the bill included reduction of damages under the list of potential affirmative defenses a defendant could plead in the form answer. However, on August 17, 2015, the reduction of damages was specifically stricken from that section of AB 1521 identifying affirmative defenses, and moved to section 55.3(b)(2)(A)(iv), regarding pertinent information regarding damages. The reduction of damages is simply a separate category of information on the form answer, similar to the request for an inspection on the property as set forth in section 55.3(b)(2)(A)(iii). It is not an affirmative defense. NotabIy, the Senate Judiciary Committee Analysis dated August 24, 2015, supports this position, as it identifies that the form answer provides an opportunity for a defendant to list affirmative defenses **and** set forth information regarding reduction of damages. Neither the actual language of AB 1521 nor the legislative analysis of this bill identifies or includes reduction of damages as an affirmative defense, and neither should form DAL-002. CalChamber and the other associations respectfully request the Judicial Council to revise DAL-002 to remove "Defendant qualifies for reduced damages," from "Section 3. AFFIRMATIVE DEFENSES," and simply create a new section for this category, similar to Section 5 of the form answer, regarding a	

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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

	Commentator	Position	Comment	Committee Response
			request for an early evaluation conference/in-person inspection.	
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	The JRS would like to note that the Civil and Small Claims Advisory Committee did exceptional work in amending the existing forms and creating the optional verified answer form. This proposal will require some training for court staff, but because the number of these case types is minimal, it is not expected that there will be a significant impact on trial court operations.	The committee appreciates the comment.
3.	Orange County Bar Association By Todd G. Friedland President Newport Beach, CA	AM	The Proposal adequately addresses the stated purpose. No additional affirmative defenses should be added to the new form answer (DAL-002). One modification proposed is to the footer of DAL-002: correct DAL-002 so that it references the correct form number at the bottom left of the form (the footer currently suggests the form is DAL-013 but the form is actually DAL-002).	This correction has been made.
4.	Anthony Seferian Deputy Attorney General Civil Rights Enforcement Section California Office of the Attorney General	AM	Summary: The commenter agrees with the proposed revisions but suggests two modifications for consistency with the relevant statutory provisions: (1) In form DAL-005, paragraph 3(d) (on page 2), the Code of Civil Procedure citation next to box 2 should be "425.55(b)" (rather than "425.55(6)"). (2) In form DAL-010, paragraph 10 (on page 2) the phrase "move the court for" should be	This change has been made. The committee discussed the suggestion and decided to change the language to "move the court

	Commentator	Position	Comment	Committee Response
			changed to "request that the court allow plaintiff." Comments and Alternative Language: **1. Proposed Form DAL-005** In form DAL-005, paragraph 3(d) (on page 2), the Code of Civil Procedure citation next to box 2 should be "425.55(b)" (rather than "425.55(6)"). **Proposed Alternative Language:** 3. The claim concerns a site that meets one of the following sets of requirements *(All items in one of a, b, c or d must be checked for the court to order a stay and early evaluation conference. Check a box if the statement is true.)* *** d. □ Case Filed by High-Frequency Litigant (1) □ Site is owned or occupied by a defendant that is a business. (2) □ The complaint was filed by, or on behalf of a "high-frequency litigant," as defined in Code of Civil Procedure section 425.55(~~6~~b), asserting a construction-related accessibility claim including, but not limited to a claim brought under Civil Code sections 51, 54, 54.1 or 55. (3) □ The complaint includes a statement that it	or apply for." As noted above, this change has been made. The reference to Code of Civil Procedure section 425.55, subsection (6), has been corrected to subsection (b).

	Commentator	Position	Comment	Committee Response
			was filed by or on behalf of a high-frequency litigant, or a statement in the caption that "action subject to the supplemental fee in Government Code section 70616.5." **2. Proposed Form DAL-010** As amended by AB 1521, the relevant statute states: "The court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or to participate by telephone or other alternative means for good cause." (Civ. Code, § 55.54, subd. (d)(6).) The proposed form revision states that the plaintiff has to "move" the court, implying that a formal motion is required. The statute does not require a formal motion for plaintiff to be excused. For that reason, the commenter suggests that "move the court for leave" in paragraph 10 (on page 2) of form DAL-010 be modified to "request that the court allow plaintiff," as below. **Proposed Alternative Language:** **Notice of Joint Inspection** ***(only applies if boxes are checked)*** 8. □ A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility	The committee agrees that Civil Code section 55.54(d)(6) does not specifically require a motion, but notes that the statute does not set out *any* procedure for seeking to be excused from the in-person site visit. It provides, in relevant part, "The court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or to participate by telephone or other alternative means for good cause." To provide a way for the plaintiff to seek to be excused from an in-person site visit, the committee recommends the following language for DAL-010: "move the court or apply for leave."

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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

	Commentator	Position	Comment	Committee Response
			claim. 9. □ Plaintiff and plaintiff's counsel, if any, must, within 30 days of the date this notice is issued, meet in person with defendant at the site to jointly inspect the premises and review any programmatic or policy issues that are claimed to constitute a violation of a construction-related accessibility standard. (See Civil Code, section 55.54(d)(6).) 10. If plaintiff is unable to meet in person at the site, he or she may ~~move the court for leave~~ request that the court allow plaintiff to be excused or to appear telephonically or by other means. (See Civil Code, section 55.54(d)(6).)	
5.	Superior Court of Los Angeles County	A	As to Form DAL-002 we suggest that the third box (3.c) include not only the affirmative defense of reduced damages under Civil Code Section 55.56(f)(1), but also add the affirmative defense of reduced damages under Civil Code Section 55.56(f)(2). We suggest that the citation should be changed to read "See Civil Code Sections 55.56(f)(1) and 55.56(f)(2)." Additionally, there appears a proofreading problem in that the bottom left margin of the form identifies it as "DAL-013" instead of "DAL-002."	In response to a comment from the California Chamber of Commerce, the committee determined that a statement that defendant qualifies for reduced damages does not belong as an affirmative defense. This item, therefore, has been moved. The reference to reduced damages on form DAL-002 was intended to include Civil Code section 55.56(f)(2), as well as (f)(1); it was inadvertently omitted and has been added.
6.	Superior Court of Orange County Civil Operations Managers	A	No specific comment	No response required.
7.	Superior Court of Riverside County By Marita Ford	A	• High frequency litigants – will a list be initiated and tracked similar to the vexatious	• Code of Civil Procedure section 425.50(f) provides that "The determination whether an

	Commentator	Position	Comment	Committee Response
	Senior Management Analyst		litigants?	attorney is a high-frequency litigant shall be made solely on the basis of the verified complaint and any other publicly available documents." The committee is unaware of any plan to track self-represented high frequency litigants.
			• How will high frequency litigants be determined?	• "High frequency litigant" is defined in Code of Civil Procedure section 425.55; section 425.50 requires a plaintiff who meets the definition of "high frequency litigant" to self-identify in the complaint.
			• What is the time frame for establishing a list?	• The committee is unaware of any plan to establish a list.
			• Early evaluation conference – will this be received and forwarded to the judicial officer then returned for issuance?	• This appears to be a matter of local court procedures, presumably based on ones already in place to handle the process, which has been in effect since July 1, 2013.
			• Will these on-site visitation of the premises require the issuance of a subpoena?	• Civil Code section 55.54 provides that upon the filing of a request for a stay and early evaluation conference, the court shall issue an order that, among other things, if the defendant requests, orders the parties to meet in person for a joint inspection. (See 55.54(d)(6).) Therefore the existing order developed to implement section 55.54 has been amended to include an order to appear at the site inspection.
			• Development of action/minute codes along	• The committee notes the expected training

	Commentator	Position	Comment	Committee Response
			with staff training. Proposed 2 months appears too short.	time, but has no option to change the recommended time frame for adoption of the new and amended forms. AB 1521 made the additional provisions relating to claims for violation of construction-related accessibility standards effective January 1 and July 1, 2016.
			• Where will these be heard?	• There is no requirement in the statute for a hearing on the request for stay and early evaluation conference. The committee is not aware of any need to change the process that the court has used in handling these requests in the past.
			• Limited and unlimited?	• The statute regarding to claims for violation of construction-related accessibility standards, Civil Code section 55.51 et seq., does not distinguish between limited and unlimited cases.
			• What about claims filed in small claims. Will this eliminate or restrict those filings?	• AB 1521 only amends existing law to add a new category of defendants who may seek a stay and early evaluation conference, the potential for a site inspection, and some new and revised forms. It does not change the statute otherwise, so should have no impact on whether or not such claims are filed in small claims court of how they should be handled if they are.
8.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	In answer to the request for specific responses, our court provides the following:	The committee thanks the commentator for the responses to specific questions.

W16-03

Civil Forms: Disability Access Litigation (Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012)

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

	Commentator	Position	Comment	Committee Response
			Q: Would the proposal provide cost savings? No. Q: What are implementations requirements for courts? Training staff and adding filings to case management system. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? Greater impact on larger courts based on number of staff and filings. Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? Yes. Q: Does the proposal appropriately address the state purpose? Yes. Q: Should Answer – Disability Access (DAL-002) include additional affirmative defenses? (There is a check box for additional defenses not listed.) Item 3d “Other affirmative defenses” appears to be sufficient.	

Item number: 05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Domestic Violence Restraining Orders: New and Updated Forms to Reflect Recent Legislative Changes

Adopt Forms DV-900, DV-901, and DV-805; approve form DV-815 and revise Forms DV-100, DV-110, DV-120, DV-120-INFO and DV-130

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Frances Ho, 415-865-7662, frances.ho@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: This project falls under Item 1 of the approved agenda.

Project description from annual agenda: Provide subject matter expertise to the council by reviewing recent legislative changes directing Judicial Council action or as compiled by the Office of Governmental Affairs, and developing rules or form proposals as appropriate.

If requesting July 1 or out of cycle, explain:
Changes in the law resulting from the passage AB 536, AB 439 and AB 1407 require the Judicial Council to develop forms and rules necessary to effectuate the changes no later than July 1, 2016.

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: April 15, 2016

Title
Domestic Violence Restraining Orders: New and Updated Forms to Reflect Recent Legislative Changes

Rules, Forms, Standards, or Statutes Affected
Adopt forms DV-805, DV-900, DV-901; approve form DV-815; revise forms DV-100, DV-110, DV-120, DV-120-INFO, DV-130

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
July 1, 2016

Date of Report
March 11, 2016

Contact
Frances Ho, Attorney, (415) 865-7662
frances.ho@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt, approve or revise nine forms to implement legislative changes made to the Domestic Violence Prevention Act. Family Code sections 6305(a)(1), 6347(f) and 6343(b)(2) require the Judicial Council to develop or modify rules and forms to implement (1) a new remedy which will provide the court with the authority to transfer a wireless phone number from the restrained person to the protected person; (2) additional requirements when the court orders the restrained person to complete a batterer intervention program; and (3) notice of a new requirement in matters involving mutual restraining orders. These changes must be implemented by July 1, 2016.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Adopt and revise forms used to request and order the transfer of wireless telephone numbers(s):
    a. Adopt form DV-900 as the court order directed at the wireless service provider to transfer wireless telephone number(s);
    b. Adopt form DV-901 as a mandatory form for use by protected persons to provide contact information to the wireless service provider;
    c. Revise form DV-100 to include a request to transfer wireless telephone number(s) and make technical and minor substantive changes in response to suggestions received during the public comment period and suggestions made by the committee;
    d. Revise form DV-120 to include a response to a request to transfer wireless telephone number(s); and
    e. Revise forms DV-110 and DV-130 to include the court order to transfer wireless telephone number(s) and make technical and minor substantive changes in response to suggestions received during the public comment period and suggestions made by the committee.

2. Adopt, approve and revise forms used to order and report compliance with court's order to complete a batterer intervention program:
    a. Adopt form DV-805 as a mandatory form for use by restrained persons ordered to complete a batterers intervention program;
    b. Approve form DV-815 as an optional form for use by restrained persons ordered to report to the court on progress; and
    c. Revise form DV-130 to include all orders statutorily mandated by Family Code section 6343.

3. Revise forms to provide notice required under Family Code section 6305:
    a. Revise form DV-120 and DV-120-INFO to reference other forms for more information on how to seek a domestic violence restraining order; and
    b. Revise form DV-120-INFO to make substantive changes in response to suggestions received during the public comment period.

The proposed new and revised forms are available at pages 63 through 94.

Previous Council Action

Under the Domestic Violence Prevention Act (DVPA), the Judicial Council must provide forms and instructions for use in domestic violence restraining order matters. The forms have been revised when changes to the law required revisions and to respond to suggestions made by the

public, judicial officers and court professionals. In 2014, forms DV-100, DV-110, DV-120, DV-120-INFO and DV-130 were revised to reflect several changes to the law. In October of 2015, the Judicial Council approved revisions to form DV-130 which take effect on July 1, 2016. To implement recent changes to the law, this proposal includes additional revisions to form DV-130 which, if approved, would also take effect on July 1, 2016.

Rationale for Recommendation

The recommendation adopts, approves or revises forms used in DVPA matters to implement recent changes to the law which require revisions to some of the same forms. A summary of the legislation is provided below. For the forms requiring revisions, the committee also recommends making technical and minor substantive changes including changes suggested during the comment process.

Rights to Wireless Telephone Number

Assembly Bill 1407 (Stats. 2015, ch. 415) added section 6347 to the Family Code effective January 1, 2016, with a delayed implementation date of July 1, 2016. This code section establishes a new remedy which allows the person seeking protection to ask the court to transfer the rights to a wireless telephone number to him or her and the rights to wireless telephone numbers of any children in the requesting person's care. If granted, the court would issue an order directing the wireless telephone service provider (provider) to transfer all billing responsibilities and rights associated with the telephone numbers to the protected person. The protected person would also have to provide his or her contact information to the provider, which the court must ensure is not provided to the account holder (restrained person) in these proceedings.

To implement Family Code section 6347 the committee recommends adding a new item (see form DV-100, item 18(c)) to allow the person seeking protection to seek transfer of an existing wireless telephone account used by the requesting party or by a child in the requesting party's care. In addition, the committee recommends adding items 18(a) and 18(b) to form DV-100, to provide the requesting party with the ability to seek temporary property control of a mobile device(s) and telephone number(s); and/or request that the other party continue to make payments on the telephone account. Requests for property control and debt payment are remedies that are already available in DVPA matters under Family Code section 6324 (see items 14 and 15 on form DV-100). Because it may not be obvious to self-represented litigants that these other remedies could relate to a request to transfer of a wireless telephone account, the committee recommends including these under item 18.

Consistent with other items on the DV forms, this new item is also numbered as item 18 on form DV-110, *Temporary Restraining Order*, form DV-120, *Response to Request for Domestic Violence Restraining Order*, and form DV-130, *Restraining Order After Hearing*.

Family Code section 6347(b)(1) requires that the order transferring responsibility for the telephone account be a separate order that is directed at the provider. Because the statute requires

a separate order directed at the provider, there is no other domestic violence order form that could be used for this purpose. Therefore, the committee recommends adopting form DV-900, *Order Transferring Wireless Phone Account*, for mandatory use.

Family Code section 6347(b)(1) requires that the order transferring responsibility include the new account holder's (protected person's) contact information and requires the court to ensure that the information is not provided to the restrained person in these proceedings. To implement this requirement, the committee recommends the adoption of form DV-901, *Attachment to Order Transferring Wireless Phone Account*. Form DV-901 would not be filed with the court. Once the order transferring responsibility (form DV-900) is issued by the court, the protected person would complete form DV-901, attach it to form DV-900 and serve it on the provider.

Batterer Intervention Program

Assembly Bill 439 (Stats. 2015, ch. 72) amended section 6343 of the Family Code effective January 1, 2016, with a delayed implementation date of July 1, 2016. Under the new provisions of section 6343, a restrained person ordered to complete a batterer intervention program will also have to 1) enroll with a provider by a deadline ordered by the court or within 30 days of the court order if no specific deadline is ordered; 2) sign all necessary forms with the program to allow the court and protected person access to proof of enrollment, attendance records and completion and termination reports; and, 3) provide the court and protected person with the name, address and telephone number of the program.

The committee recommends adopting and approving two new forms to implement the new provisions of the law. Form DV-805, *Proof of Enrollment for Batterer Intervention Program*, will be completed by restrained persons ordered to complete a batterer's program. By completing the form, the restrained person is declaring that he or she has enrolled in an approved program, signed all necessary release forms and provided the court with the program's name, address and telephone number. The form also provides the restrained person notice of the requirement to serve information regarding the program on the protected person. To promote uniformity, the committee recommends that this form be adopted for mandatory use.

The committee also recommends approving form DV-815, *Batterer Intervention Program Progress Report*, as an optional form for use by restrained persons ordered by the court to report on progress in a batterer's program. Although Family Code section 6343 does not require the restrained person to report on his or her progress in a program with the court, it is the practice of some courts to hold review hearings to review progress, especially when child custody is at issue. If custody is at issue, Family Code section 3044 creates a rebuttable presumption that the restrained person must not have sole or joint custody of the child(ren). Section 3044 requires the court to consider whether the restrained person has successfully completed a batterer's program. Prior to completion of a program, the court may also issue visitation orders. Participation in the program may be a factor that the court considers in deciding what visitation schedule would be in the best interests of the child.

Mutual Restraining Orders

Assembly Bill 536 (Stats. 2015, ch. 73) amended section 6305 of the Family Code effective January 1, 2016 to require that both parties submit an application for a restraining order as one of the requirements necessary before a court can issue mutual restraining orders. The Judicial Council is required to modify the forms as necessary to provide notice of this new requirement.

The committee recommends revising form DV-120 and DV-120-INFO to provide notice to the responding party that the responsive pleading should not be used to apply for a restraining order and directs the person to other information forms that provide information on how to apply for a restraining order.

Other Changes

In addition to the changes necessitated by recent legislation the committee recommends the following changes based on suggestions received during the comment period and from committee review during this cycle:

Form DV-100

- At item 4(g), correct an error on the form. At this item, the applicant is directed to attach a separate sheet of paper if more children need to be listed and title the page "Additional Protected People." This is incorrect; the title should be "Additional Children."
- At item 5, change this item to require the applicant to also provide information on any restraining order that has expired in the last six months, date of issuance and expiration of any restraining order listed, and adds an emergency restraining order as an example of a restraining order that should be reported to the court. Also change the title of the item to include both sub-items.
- In response to a public comment, the committee recommends renumbering the sub-items in item 27.

Form DV-110

- At item 7(a), list persons and places to be protected in the same order as form DV-100

Form DV-120

- At item 4, provide space for the responding party to explain the relationship between him or her and the applicant, when the relationship is disputed.
- At items 5 through 11 and 14 through 23, provide the responding party with the option of listing orders that he or she would agree to.
- At item 9, remove checkbox that precedes the title. Firearms and ammunition restrictions must be made in every case unless the court grants an exemption under Family Code section 6389.

Form DV-120-INFO

- Change format to two columns to improve readability and to be consistent with other 120-INFO forms used in civil restraining order proceedings.
- Remove section entitled "Can I bring a witness or other document to the court hearing?" but instead, include reference to form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing*.
- Remove section entitled "What if I do not have a Green Card or U.S. Citizenship?" and include this information under section entitled "What if I don't obey the order?"
- Remove sections "What if the person seeking protection contacts me?" and "If we agree, can the person seeking protection and I cancel the order?" These sections are unnecessary because the information contained on this form makes clear that any temporary orders made remain in effect until the end of the hearing; must be followed; and can result consequences if not obeyed.

Form DV-130

- At item 7(a), list persons and places to be protected in the same order as forms DV-100 and DV-110.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated to the standard mailing lists for family and juvenile law proposals during the regular winter comment cycle from December 11, 2015 through January 22, 2016. The proposal was also sent to legal aid attorneys and attorneys working for domestic violence victim support agencies in the greater San Francisco Bay Area, the California Department of Justice (DOJ), immigration attorneys and wireless service providers. Fifteen individuals or organizations submitted comments on the proposal. Two agreed with the proposal, eight agreed with the proposal if modified, five did not indicate a position and none did not agree with the proposal. A chart presenting the comments and the committee's responses is attached at pages 11 through 62. The Family and Juvenile Law Advisory Committee discussed this proposal and key issues raised by commentators on February 18, 2016 and February 25, 2016.

Comments on Rights to Wireless Telephone Number Proposal

Under Family Code section 6347, the court will have the authority to transfer the rights to wireless telephone numbers from one party to another. The new law does not specify the details of the transfer but states that the new account holder assumes all financial responsibility for the number(s) and costs for any mobile device associated with the number(s). Commentators raised concerns over the fees and costs that the new account holder may be responsible for. Some commentators recommend specifying in the order that the new account holder is only responsible for future charges. Two commentators recommend providing the new account holder with the right to request a statement of rights and responsibilities and the right to cancel the order for transfer. One commentator recommended including an information section at the end of the order that advises the provider how to respond and the time frame to respond.

Because this remedy is new and requires actions by a third-party (provider), the committee understands that the process may be challenging for litigants to navigate, especially self-represented litigants. As information becomes available that can help litigants through this process, the committee recommends providing information on the Self-Help section of the Judicial Council website and may recommend the adoption of an information sheet in the future, if needed. However, commentators' suggestions to include the ability of the requesting party to 1) cancel an order after it is issued; 2) demand a statement of rights and responsibility from the provider; and 3) limit the new account holder's financial liability to future costs are outside the scope of this proposal as they are not provided for under the new law. Additionally, the committee does not recommend advising providers on how to respond or the time frame in which to respond as they are not provided for under the statute. The statutory requirements applicable to service providers are provided on page 2 of form DV-900.

Comments on Batterer Intervention Program Proposal

The proposal to implement the new requirements under 6343 included the adoption of forms DV-805 and DV-815. The committee sought specific comment on whether the forms, if adopted, be optional or mandatory.

Form DV-805

If adopted, nine commentators recommended that the form DV-805 be a mandatory form, one commentator recommended that the form be optional, four did not indicate a position and one believed that a form that include the mandates of AB 439 should be mandatory, noting that two items included in form DV-805 are not required under the new statute (date of first class and compliance with other orders made by the court). The Legal Aid Foundation of Los Angeles noted that providing a form "would restrict the information the restrained party would legitimately be able to send to Petitioner. Otherwise, the Respondent would be able to send any type of correspondence to the Petitioner under the guise of notice of enrollment."

The committee agrees with the majority of commentators and recommends the adoption of form DV-805 as a mandatory form. The new requirements under Family Code section 6343 requires the restrained person to provide information to the court and protected person at a future point in time. Providing a form will allow the restrained person to comply with the requirements while providing notice to the court and protected person in a uniform way. The committee recommends including the two items on the form (date of first class and compliance with other orders made by the court) that are not required by the statute but notes that these items are preceded by a checkbox and responding to the questions is optional.

Form DV-815

If adopted, seven commentators indicated that form DV-815 be a mandatory form. One commentator recommended form DV-815, if adopted, be an optional form. Two commentators believe that there should not be a form created for the purpose of reporting a restrained person's progress to the court. One of these commentators was FLEXCOM, the sponsor of the bill.

FLEXCOM states that bill was not intended to create an affirmative obligation on the restrained party to seek a report from the program.

While Family Code section 6343 does not create an affirmative obligation on the part of the restrained person to report on compliance, the committee recognizes that restrained persons may be ordered by courts to report on compliance and for this reason, recommends form DV-815 be adopted and available for optional use. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity.

Comments on Mutual Restraining Orders Proposal

In the Invitation to Comment, the committee proposed to include language regarding the specific findings and requirements needed for a court to issue mutual restraining orders. One commentator indicates that providing the legal requirements for mutual restraining orders is unnecessary and too complicated and recommends a simple admonishment to use the application form if the person wants to request a restraining order. Another commentator noted that providing information on mutual restraining orders may increase the number of restraining orders requested by responding parties.

The committee agrees with the issues raised by commentators noted above and recommends revising form DV-120-INFO to include a simple admonishment to not use the responsive pleading, form DV-120, to request a restraining order. The language and formatting has also been revised to be more consistent with other 120-INFO forms (civil harassment, elder abuse).

Comments on Proposed Advisal on Potential Immigration Consequences

In response to suggestions made by judicial officers with experience in domestic violence cases the committee proposed to include a notice to the restrained person that violation of a protective order may result in immigration consequences. The concept was that notice of this kind would help preserve the integrity of court orders by properly notifying the restrained person of the possible consequences of violating domestic violence restraining orders. In the proposal circulated for comment, this notice was included on the "Warnings and Notices to the Restrained Person" section of form DV-110 and DV-130.

The committee sought specific comment on whether the proposed language was accurate. Two commentators stated that the language was not accurate because the use of the phrase "the court" suggests that the state court would be responsible for imposing immigration consequences. These commentators recommended revising the language to clarify that the state court does not have jurisdiction over immigration matters.

One commentator cautioned that the language must be carefully balanced because while the information could help deter violations it could also deter immigrant survivors from coming forward and requesting a restraining order. Another commentator indicated that the court does

not have expertise or jurisdiction over immigration issues and therefore should not include an advisal regarding immigration consequences.

Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order on forms DV-110 and DV-130. The committee agrees that including an advisal of this kind should be carefully weighed against the unintended negative consequence of "chilling" a domestic violence victim from seeking protection.

Alternatives Considered

Rights to Wireless Telephone Number
The committee discussed the challenges that could arise in granting an order of this kind. The statute does not provide a timeframe within which service providers must transfer the account once it has received the order. Because the court will not have control over when the transfer will occur, one concern raised is the possibility of the old account holder misusing the account and incurring costs on the account that the new account holder will be responsible for. The committee considered the following possibilities:

- Option 1: Include a place for the court to indicate a date by which the new account holder becomes financially responsible.
- Option 2: Include the following language, "The person in 2b (protected person) will be financially responsible for the accounts listed in 3 on the date the account is transferred by the service provider."

A majority voted in favor of option 1. A minority found option 1 problematic because service providers may not be able to comply with the account transfer by the date ordered and indicated that the language in option 2 would avoid problems with enforcement of the order. The minority also emphasized that the court does not have jurisdiction over the service provider and therefore does not have the power to compel compliance; the service provider is not a party to the action. Because the points on both sides are valid, the committee recommends providing both options on the form and allowing courts to decide.

Batterer Intervention Program
The committee considered not recommending approval of form DV-815, however, the committee believes that the form will provide access and uniformity to the court process for courts that review compliance.

Mutual restraining orders
As stated above, the committee considered providing information regarding the specific legal requirements unique to mutual restraining order requests but agreed with commentators that this language is unnecessary.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to replace existing forms; make changes to case management systems and document assembly programs; and to train court staff on new forms and requirements. The committee also anticipates that the new and revised forms will save resources for the courts in the long term by providing litigants and third party service providers with accurate information and orders. These remedies are newly mandated by statute and will be extremely difficult to comply with absent court forms setting out the requests and process.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in the report support the policies underlying Goal I, Access, Fairness, and Diversity, because providing forms and orders that can be used statewide promotes uniformity and access to the court process, especially for self-represented litigants.

Attachments and Links

1. Judicial Council forms DV-100, DV-110, DV-120, DV-120-INFO, DV-130, DV-805, DV-815, DV-900 and DV-901, at pages 11-41.
2. Chart of comments, at pages 43-93.
3. AB 1407 is available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1407
4. AB 439 is available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB439
5. AB 536 is available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB536
6. The Invitation to Comment is available online at http://www.courts.ca.gov/documents/W16-05.pdf

DV-100 Request for Domestic Violence Restraining Order

You must also complete form CLETS-001, Confidential CLETS Information, *and give it to the clerk when you file this Request.*

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 Name of Person Asking for Protection:

_____ Age: _____

Your lawyer in this case *(if you have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Name of Person You Want Protection From:

_____

Description of person you want protection from:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

3 Do you want an order to protect family or household members? ☐ Yes ☐ No

If yes, list them:

Full name	Sex	Age	Lives with you?	Relationship to you
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Protected People" for a title.*

4 What is your relationship to the person in 2 ? *(Check all that apply):*

If you do not have one of these relationships, the court may not be able to consider your request. Read form DV-500-INFO for help.

a. ☐ We are now married or registered domestic partners.
b. ☐ We used to be married or registered domestic partners.
c. ☐ We live together.
d. ☐ We used to live together.
e. ☐ We are related by blood, marriage, or adoption *(specify relationship):* _____
f. ☐ We are dating or used to date, or we are or used to be engaged to be married.
g. ☐ We are the parents together of a child or children under 18:
   Child's Name: _____ Date of Birth: _____
   Child's Name: _____ Date of Birth: _____
   Child's Name: _____ Date of Birth: _____
   ☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Additional Children" for a title.*
h. ☐ We have signed a Voluntary Declaration of Paternity for our child or children. *(Attach a copy if you have one).*

This is not a Court Order.

5 Other Restraining Orders and Court Cases

a. Are there any restraining/protective orders currently in place OR that have expired in the last six months (emergency protective orders, criminal, juvenile, family)?

☐ No ☐ Yes *(date of order):* and *(expiration date):* *(Attach a copy if you have one).*

b. Have you or any other person named in (3) been involved in another court case with the person in (2)?

☐ No ☐ Yes *If yes, check each kind of case and indicate where and when each was filed:*

Kind of Case	County or Tribe Where Filed	Year Filed	Case Number *(if known)*
☐ Divorce, Nullity, Legal Separation			
☐ Civil Harassment			
☐ Domestic Violence			
☐ Criminal			
☐ Juvenile, Dependency, Guardianship			
☐ Child Support			
☐ Parentage, Paternity			
☐ Other *(specify):*			

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Other Court Cases" for a title.*

Check the orders you want. ☑

6 ☐ Personal Conduct Orders

I ask the court to order the person in (2) not to do the following things to me or anyone listed in (3):

a. ☐ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements

b. ☐ Contact, either directly or indirectly, in any way, including but not limited to, by telephone, mail or e-mail or other electronic means

The person in (2) will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

7 ☐ Stay-Away Order

a. I ask the court to order the person in (2) to stay at least _____ yards away from *(check all that apply):*

☐ Me
☐ My home
☐ My job or workplace
☐ My vehicle
☐ My school
☐ Each person listed in (3)
☐ The child(ren)'s school or child care
☐ Other *(specify):* _____

b. If the person listed in (2) is ordered to stay away from all the places listed above, will he or she still be able to get to his or her home, school, job, workplace, or vehicle? ☐ Yes ☐ No *(If no, explain):*

_____

_____

8 ☐ Move-Out Order

(If the person in (2) lives with you and you want that person to stay away from your home, you must ask for this move-out order.)

I ask the court to order the person in (2) to move out from and not return to *(address):*

_____

_____

I have the right to live at the above address because (explain):

_____

_____

This is not a Court Order.

9 Guns or Other Firearms or Ammunition

I believe the person in (2) owns or possesses guns, firearms, or ammunition. ☐ Yes ☐ No ☐ I don't know

If the judge approves the order, the person in (2) will be ordered not to own, possess, purchase, or receive a firearm or ammunition. The person will be ordered to sell to, or store with, a licensed gun dealer, or turn in to law enforcement, any guns or firearms that he or she owns or possesses.

10 ☐ Record Unlawful Communications

I ask for the right to record communications made to me by the person in (2) that violate the judge's orders.

11 ☐ Care of Animals

I ask for the sole possession, care, and control of the animals listed below. I ask the court to order the person in (2) to stay at least _____ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals:

_____

_____

I ask for the animals to be with me because:

_____

_____

12 ☐ Child Custody and Visitation

a. ☐ I do not have a child custody or visitation order and I want one.
b. ☐ I have a child custody or visitation order and I want it changed.

If you ask for orders, you must fill out and attach form DV-105, Request for Child Custody and Visitation Orders.

You and the other parent may tell the court that you want to be legal parents of the children (use form DV-180, Agreement and Judgment of Parentage).

13 ☐ Child Support *(Check all that apply):*

a. ☐ I do not have a child support order and I want one.
b. ☐ I have a child support order and I want it changed.
c. ☐ I now receive or have applied for TANF, Welfare, CalWORKS, or Medi-Cal.

If you ask for child support orders, you must fill out and attach form FL-150, Income and Expense Declaration or *form FL-155,* Financial Statement (Simplified).

14 ☐ Property Control

I ask the court to give ***only*** me temporary use, possession, and control of the property listed here:

_____

_____

15 ☐ Debt Payment

I ask the court to order the person in (2) to make these payments while the order is in effect:

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Debt Payment" for a title.*

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

16 ☐ Property Restraint

I am married to or have a registered domestic partnership with the person in (2) . I ask the judge to order that the person in (2) not borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the person in (2) to notify me of any new or big expenses and to explain them to the court.

17 ☐ Spousal Support

I am married to or have a registered domestic partnership with the person in (2) and no spousal support order exists. I ask the court to order the person in (2) to pay spousal support. *(You must complete, file, and serve form FL-150,* Income and Expense Declaration, *before your hearing).*

This is not a Court Order.

18 ☐ Rights to Mobile Device and Wireless Phone Account

a. ☐ Property control of mobile device and wireless phone account

I ask the court to give **only** me temporary use, possession and control of the following mobile devices: _____ and the wireless phone account for the following wireless phone numbers because the account currently belongs to the person in (2) :

(including area code): _____ ☐ my number ☐ number of child in my care

(including area code): _____ ☐ my number ☐ number of child in my care

(including area code): _____ ☐ my number ☐ number of child in my care

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Rights to Mobile Device and Wireless Phone Account" for a title.*

b. ☐ Debt Payment

I ask the court to order the person in (2) to make the payments for the wireless phone accounts listed in 18a because: _____

Name of the wireless service provider is: _____ Amount: $ _____ Due Date: _____

If you are requesting this order, you must complete, file and serve Form FL-150, Income and Expense Declaration, *before your hearing.*

c. ☐ Transfer of Wireless Phone Account

I ask the court to order the wireless service provider to transfer the billing responsibility and rights to the wireless phone numbers listed in 18a to me because the account currently belongs to the person in (2) .

If the judge makes this order, you will be financially responsible for these accounts, including monthly service fees and costs of any mobile devices connected to these phone numbers. You may be responsible for other fees. You must contact the wireless service provider to find out what fees you will be responsible for and whether you are eligible for an account.

19 ☐ Insurance

I ask the court to order the person in (2) NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of me or the person in (2), or our child(ren), for whom support may be ordered, or both.

20 ☐ Lawyer's Fees and Costs

I ask that the person in (2) pay some or all of my lawyer's fees and costs.
You must complete, file, and serve form FL-150, Income and Expense Declaration, *before your hearing.*

21 ☐ Payments for Costs and Services

I ask the court to order the person in (2) to pay the following:

You can ask for lost earnings or your costs for services caused directly by the person in (2) (damaged property, medical care, counseling, temporary housing, etc.). You must bring proof of these expenses to your hearing.

Pay to: _____ For: _____ Amount: $ _____

Pay to: _____ For: _____ Amount: $ _____

22 ☐ Batterer Intervention Program

I ask the court to order the person listed in (2) to go to a 52-week batterer intervention program and show proof of completion to the court.

23 ☐ Other Orders

What other orders are you asking for? _____

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Other Orders" for a title.*

This is not a Court Order.

24 ☐ Time for Service (Notice)

The papers must be personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. If you want there to be fewer than five days between service and the hearing, explain why below. For help, read form DV-200-INFO, "What Is Proof of Personal Service"?

25 No Fee to Serve (Notify) Restrained Person

If you want the sheriff or marshal to serve (notify) the restrained person about the orders for free, ask the court clerk what you need to do.

26 Court Hearing

The court will schedule a hearing on your request. If the judge does not make the orders effective right away ("temporary restraining orders"), the judge may still make the orders after the hearing. If the judge does not make the orders effective right away, you can ask the court to cancel the hearing. Read form DV-112, *Waiver of Hearing on Denied Request for Temporary Restraining Order,* for more information.

27 Describe Abuse

Describe how the person in (2) abused you. Abuse means to intentionally or recklessly cause or attempt to cause bodily injury to you; or to place you or another person in reasonable fear of imminent serious bodily injury; or to harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, keep you under surveillance, impersonate (on the Internet, electronically or otherwise), batter, telephone, or contact you; or to disturb your peace; or to destroy your personal property. (For a complete definition, see Fam. Code, §§ 6203, 6320.)

a. Date of most recent abuse: _____

1. Who was there? _____

2. Describe how the person in (2) abused you or your child(ren):

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Recent Abuse" for a title.*

3. Did the person in (2) use or threaten to use a gun or any other weapon? ☐ No ☐ Yes *(If yes, describe):*

4. Describe any injuries: _____

5. Did the police come? ☐ No ☐ Yes
If yes, did they give you or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No ☐ I don't know
Attach a copy if you have one.
The order protects ☐ you or ☐ the person in (2)

This is not a Court Order.

Case Number:

27 Describe Abuse (continued)

Has the person in (2) abused you (or your child(ren)) other times?

b. Date of abuse: _____

1. Who was there? _____

2. Describe how the person in (2) abused you or your child(ren):

_____

_____

_____

_____

_____

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-100, Recent Abuse" for a title.*

3. Did the person in (2) use or threaten to use a gun or any other weapon? ☐ No ☐ Yes *(If yes, describe):*

_____

4. Describe any injuries: _____

_____

5. Did the police come? ☐ No ☐ Yes

If yes, did they give you or the person in (2) an Emergency Protective Order?

☐ Yes ☐ No ☐ I don't know *Attach a copy if you have one.*

The order protects ☐ you or ☐ the person in (2)

If the person in (2) abused you other times, check here ☐ *and use form DV-101*, Description of Abuse *or describe any previous abuse on an attached sheet of paper and write* "DV-100, Previous Abuse" *for a title.*

28 Other Persons to Be Protected

The persons listed in item (3) need an order for protection because *(describe):* _____

_____

_____

_____

_____

_____

_____

29 Number of pages attached to this form, if any: _____

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

This is not a Court Order.

DV-110 Temporary Restraining Order

Person in (1) must complete items (1), (2), and (3) only.

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

(1) Name of Protected Person:

Your lawyer in this case *(if you have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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) Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

Relationship to protected person: _____

(3) ☐ Additional Protected Persons

In addition to the person named in (1), the following persons are protected by temporary orders as indicated in items (6) and (7) *(family or household members):*

Full name	Relationship to person in (1)	Sex	Age

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-110, Additional Protected Persons" as a title.*

The court will complete the rest of this form.

(4) Court Hearing

This order expires at the end of the hearing stated below:

Hearing Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

5 ☐ Criminal Protective Order

a. ☐ A criminal protective order on form CR-160, *Criminal Protective Order—Domestic Violence,* is in effect.
Case Number: _____ County: _____ Expiration Date: _____

b. ☐ No information has been provided to the judge about a criminal protective order.

To the person in 2

The court has granted the temporary orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 Personal Conduct Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You must **not** do the following things to the person in 1 and ☐ persons in 3:

- ☐ Harass, attack, strike, threaten, assault *(sexually or otherwise),* hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate *(on the Internet, electronically or otherwise),* or block movements
- ☐ Contact, either directly or indirectly, in any way, including but not limited to, by telephone, mail, e-mail or other electronic means
- ☐ Take any action, directly or through others, to obtain the addresses or locations of the persons in 1 *and* 3. *(If this item is not checked, the court has found good cause not to make this order.)*

b. Peaceful written contact through a lawyer or process server or another person for service of form DV-120 *(Response to Request for Domestic Violence Restraining Order)* or other legal papers related to a court case is allowed and does not violate this order.

c. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 Stay-Away Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You **must** stay at least *(specify):* _____ yards away from *(check all that apply):*

- ☐ The person in 1
- ☐ Home of person in 1
- ☐ The job or workplace of person in 1
- ☐ Vehicle of person in 1
- ☐ School of person in 1
- ☐ The persons in 3
- ☐ The child(ren)'s school or child care
- ☐ Other *(specify):* _____

b. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 Move-Out Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must take only personal clothing and belongings needed until the hearing and move out immediately from *(address):* _____

This is a Court Order.

9 No Guns or Other Firearms or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. You must:

- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms within your immediate possession or control. Do so within 24 hours of being served with this order.
- Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, stored, or sold. (You may use form DV-800, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.) Bring a court filed copy to the hearing.

c. ☐ The court has received information that you own or possess a firearm.

10 Record Unlawful Communications

☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

The person in (1) can record communications made by you that violate the judge's orders.

11 Care of Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (1) is given the sole possession, care, and control of the animals listed below. The person in (2) must stay at least yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals:

12 Child Custody and Visitation ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Child custody and visitation are ordered on the attached form DV-140, *Child Custody and Visitation Order* or *(specify other form)*: _____ . The parent with temporary custody of the child must not remove the child from California unless the court allows it after a noticed hearing (Fam. Code, § 3063).

13 Child Support

Not ordered now but may be ordered after a noticed hearing.

14 Property Control ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, ***only*** the person in (1) can use, control, and possess the following property:

15 Debt Payment ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (2) must make these payments until this order ends:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

16 Property Restraint ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

If the people in (1) and (2) are married to each other or are registered domestic partners, ☐ the person in (1) ☐ the person in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. *(The person in (2) cannot contact the person in (1) if the court has made a "no contact" order.)*

Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

17 Spousal Support

Not ordered now but may be ordered after a noticed hearing.

18 Rights to Mobile Device and Wireless Phone Account

a. Property control of mobile device & wireless phone account

☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, only the person in (1) can use, control and possess the following property:

Mobile device *(describe)* _____ and account *(phone number):* _____

Mobile device *(describe)* _____ and account *(phone number):* _____

Mobile device *(describe)* _____ and account *(phone number):* _____

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-110 Rights to Mobile Device and Wireless Phone Account" as a title.*

b. Debt Payment ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (2) must make these payments until this order ends:

Pay to *(wireless service provider):* _____ Amount: $_____ Due date: _____

c. Transfer of Wireless Phone Account

Not ordered now but may be ordered after a noticed hearing.

19 Insurance

☐ The person in (1) ☐ the person in (2) is ordered NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their child(ren), if any, for whom support may be ordered, or both.

20 Lawyer's Fees and Costs

Not ordered now but may be ordered after a noticed hearing.

21 Payments for Costs and Services

Not ordered now but may be ordered after a noticed hearing.

22 Batterer Intervention Program

Not ordered now but may be ordered after a noticed hearing.

23 Other Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

☐ *Check here if there are additional orders. List them on an attached sheet of paper and write "DV-110, Other Orders" as a title.*

24 No Fee to Serve (Notify) Restrained Person

If the sheriff serves this order, he or she will do so for free.

Date: _____

_____
Judge (or Judicial Officer)

This is a Court Order.

Warnings and Notices to the Restrained Person in (2)

If You Do Not Obey This Order, You Can Be Arrested And Charged With a Crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

You Cannot Have Guns, Firearms, And/Or Ammunition.

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

Service of Order by Mail

If the judge makes a restraining order at the hearing, which has the same orders as in this form, you will get a copy of that order by mail at your last known address, which is written in (2). If this address is incorrect, or to find out if the orders were made permanent, contact the court.

Child Custody, Visitation, and Support

- **Child custody and visitation:** If you do not go to the hearing, the judge can make custody and visitation orders for your children without hearing from you.
- **Child support:** The judge can order child support based on the income of both parents. The judge can also have that support taken directly from a parent's paycheck. Child support can be a lot of money, and usually you have to pay until the child is age 18. File and serve a *Financial Statement (Simplified)* (form FL-155) or an *Income and Expense Declaration* (form FL-150) if you want the judge to have information about your finances. Otherwise, the court may make support orders without hearing from you.
- **Spousal support:** File and serve an *Income and Expense Declaration* (form FL-150) so the judge will have information about your finances. Otherwise, the court may make support orders without hearing from you.

Instructions for Law Enforcement

This order is effective when made. It is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

This is a Court Order.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, §13710(b).)

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 according to the following priorities (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h), 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.

Child Custody and Visitation

- The custody and visitation orders are on form DV-140, items (3) and (4). They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.
- **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

Certificate of Compliance With VAWA

This temporary protective order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA), upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

DV-120 Response to Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Name of Person Asking for Protection:
(See Form DV-100, item 1):

2 Your Name:

Your lawyer in this case *(if you have one):*
Name: _____ State Bar No.: _____
Firm Name: _____
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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 Use this form to respond to the *Request for Domestic Violence Restraining Order* (Form DV-100).

- Fill out this form and take it to the court clerk.
- Have the person in 1 served by mail with a copy of this form and any attached pages. (See Form DV-250, *Proof of Service by Mail.)*
- For more information, read Form DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*
- This form is for a response to a restraining order request. For more information about how to request your own restraining order, read Form DV-505-INFO and Form DV-120-INFO (see the section called *"What if I want a restraining order against the other person?"*)

The judge will consider your Response at the hearing.
Write your hearing date, time, and place from Form DV-109, *Notice of Court Hearing,* item 3, here:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

You must obey the orders in Form DV-110, *Temporary Restraining Order,* until the hearing. At the hearing, the court may make restraining orders against you that could last up to five years and could be renewed.

4 ☐ Relationship to Person Asking for Protection
a. ☐ I agree to the relationship listed in item 4 on Form DV-100.
b. ☐ I do not agree that the other party and I have or had the relationship listed in item 4 on Form DV-100 because: _____

5 ☐ Other Protected People
a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

This is not a Court Order.

6 ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

7 ☐ Stay-Away Order

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

8 ☐ Move-Out Order

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

9 Guns or Other Firearms or Ammunition

If you were served with Form DV-110, Temporary Restraining Order, *you must turn in any guns or firearms in your immediate possession or control. You must file a receipt with the court from a law enforcement agency or a licensed gun dealer within 48 hours after you received Form DV-110.*

a. ☐ I do not own or have any guns or firearms.
b. ☐ I ask for an exemption from the firearms prohibition under Family Code section 6389(h) because *(specify):* _____
c. ☐ I have turned in my guns and firearms to law enforcement or sold them to, or stored them with, a licensed gun dealer. A copy of the receipt showing that I turned in, sold, or stored my firearms *(check all that apply):*
   ☐ is attached ☐ has already been filed with the court.

10 ☐ Record Unlawful Communications

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

11 ☐ Care of Animals

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

This is not a Court Order.

12 ☐ Child Custody and Visitation

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested. *(Specify your reasons in item 25, page 4, of this form.)*
c. ☐ I am not the parent of the child listed in Form DV-105, *Request for Child Custody and Visitation Orders.*
d. ☐ I ask for the following custody order *(specify):* _____

e. ☐ I do ☐ I do not agree to the orders requested to limit the child's travel as listed in Form DV-108, *Request for Order: No Travel with Children.*

You and the other parent may tell the court that you want to be legal parents of the children (use Form DV-180, Agreement and Judgment of Parentage).

13 ☐ Child Support *(Check all that apply):*

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested. *(Specify your reasons in item 25, page 4, of this form.)*
c. ☐ I agree to pay guideline child support.

Whether or not you agree to pay support, you must fill out, serve, and file Form FL-150, Income and Expense Declaration, *or FL-155,* Financial Statement (Simplified).

14 ☐ Property Control

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

15 ☐ Debt Payment

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

16 ☐ Property Restraint

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

17 ☐ Spousal Support

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

(Specify your reasons in item 25, page 5, of this form.)

Whether or not you agree, you must fill out, serve, and file Form FL-150, Income and Expense Declaration.

This is not a Court Order.

18 ☐ **Rights to Mobile Device and Wireless Phone Account**

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

19 ☐ **Insurance**

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

20 ☐ **Lawyer's Fees and Costs**

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

c. ☐ I request the court to order payment of my lawyer's fees and costs.

Whether or not you agree, you must fill out, serve, and file Form FL-150, Income and Expense Declaration.

21 ☐ **Payments for Costs and Services**

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

22 ☐ **Batterer Intervention Program**

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

23 ☐ **Other Orders** *(see item 22 on Form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested, ☐ but I would agree to: _____

_____

(Specify your reasons in item 25, page 5, of this form.)

24 ☐ **Out-of-Pocket Expenses**

I ask the court to order payment of my out-of-pocket expenses because the temporary restraining order was issued without enough supporting facts. The expenses are:

Item: _____ Amount: $ _____ Item: _____ Amount: $ _____

You must fill out, serve, and file Form FL-150, Income and Expense Declaration.

This is not a Court Order.

25 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each of the orders requested *(give specific facts and reasons):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write,* "DV-120, Reasons I Do Not Agree" *as a title.*

26 Number of pages attached to this form, if any: _____

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

Date: _____

_____
Type or print your name

▶ _____
Sign your name

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

This is not a Court Order.

DV-120-INFO How Can I Respond to a Request for Domestic Violence Restraining Order?

What is a Domestic Violence Restraining Order?

It is a court order that can help protect people who have been abused or threatened with abuse.

Abuse can be physical or emotional. It can be spoken or written.

What does the order do?

The court can order you to:

- Not contact or harm the protected person, including children or others listed as protected people
- Stay away from all protected people
- Not have any guns or ammunition
- Move out of the place that you share with the protected person
- Follow custody and visitation orders
- Pay child support
- Pay spousal support
- Obey property orders
- Follow other types of orders (listed on *Form DV-100*)

Who can ask for a domestic violence restraining order?

The person requesting the order must have a relationship with you:

- Someone you date or used to date
- Married, registered domestic partners, separated, engaged or divorced
- Someone you live or lived with (more than just a roommate)
- A parent, grandparent, sibling, child or grandchild, related by blood, marriage or adoption

I've been served with a request for domestic violence restraining order. What do I do now?

Read the papers very carefully. You must follow all the orders the judge made. The *Notice of Court Hearing* tells you when to appear in court. You should go to the hearing, if you do not agree to the orders requested. If you do not go to the hearing, the judge can make orders against you without hearing from you.

What if I don't obey the order?

The police can arrest you. You can go to jail and pay a fine. You must still follow the orders even if you are not a U.S. citizen. If you are worried about your immigration status, talk to an immigration lawyer.

How long does the order last?

If there is a *Temporary Restraining Order* in effect, it will last until the hearing date. At the hearing, the judge will decide whether to extend the order or cancel the order. The judge can extend the order for up to five years. Custody, visitation, child support and spousal support orders can last longer than five years and they do not end when the restraining order ends.

What if I don't agree with what the order says?

You still must obey the orders until the hearing. If you do NOT agree with the orders the person is asking for, fill out Form DV-120, *Response to Request for Domestic Violence Restraining Order*. After you fill out the form, file it with the court clerk and "serve" the form on the person asking for the restraining order. "Serve" means to have someone 18 years or older **-not you-** mail a copy to the other party. The person who serves your form must fill out Form DV-250, *Proof of Service by Mail*. After Form DV-250 is completed, make sure it is filed with the court clerk. You will also have a chance at the hearing to tell your side of the story. For more information on how to prepare for the hearing, read Form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing.*

Is there a cost to file my Response (Form DV-120)?

No.

What if I also have criminal charges against me?

See a lawyer. Anything you say or write, including in this case, can be used against you in your criminal case.

DV-120-INFO How Can I Respond to a Request for Domestic Violence Restraining Order?

What if I have a gun or ammunition?

If a restraining order is issued, you cannot own, possess, or have a gun, other firearm, or ammunition while the order is in effect. If you have a gun or other firearm in your immediate possession or control, you must sell it to, or store it with, a licensed gun dealer, or turn it in to a law enforcement agency. You must also prove to the court that you turned in or sold your gun. Read Form DV-800-INFO, *How Do I Turn In, Sell, or Store My Firearms?,* for more information.

Do I need a lawyer?

You are not entitled to a free court-appointed lawyer for this case but having a lawyer represent you or getting legal advice from a lawyer is a good idea, especially if you have children. If you cannot afford a lawyer, you can represent yourself. There is free or low-cost help available in every county. For help, ask the court clerk how to find free or low-cost legal services and self-help centers in your area. You can also get free help with child support at your local Family Law Facilitator's Office.

What if I do not speak English?

When you file Form DV-120, ask the court clerk if a court interpreter is available for your hearing. If an interpreter is not available, bring someone to interpret for you. Do NOT ask a child, a witness or anyone to be protected by the order 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 proceeding. Contact the clerks' 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.)

Can I use the restraining order to get divorced or terminate a domestic partnership?

No. These forms will not end your marriage or registered domestic partnership. You must file other forms to end your marriage or registered domestic partnership.

What if I have children with the other person?

The judge can make temporary orders for child custody and visitation. If the judge makes a temporary order for child custody, the parent with custody may not remove the child from California before notice to the other parent and a court hearing. Read the order for any other restrictions. There may be some exceptions. Ask a lawyer for more information.

What if I want to leave the county or state?

You must still comply with the restraining order, including custody and visitation orders. The restraining order is valid anywhere in the United States.

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. Do not talk to him or her unless the judge or that person's attorney says that you can. Any temporary restraining order made by the court is in effect until the end of the hearing.

What if I need a restraining order against the other person?

Do not use this form to request a domestic violence restraining order. For information on how to file your own restraining order, read Form DV-505-INFO. You can also ask the court clerk about free or low-cost legal help.

What if I am a victim of domestic violence?

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.

For help in your area, contact:

[Local information may be inserted]

DV-130 Restraining Order After Hearing (Order of Protection)

☐ **Original Order** ☐ ____ **Amended Order**

Clerk stamps date here when form is filed.

DRAFT -

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Name of Protected Person:

Your lawyer in this case *(if you have one):*
Name: _____ State Bar No.: _____
Firm Name: _____
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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

Clerk fills in case number when form is filed.

Case Number:

2 Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
Race: _____ Age: _____ Date of Birth: _____
Mailing Address *(if known):* _____
City: _____ State: _____ Zip: _____
Relationship to protected person: _____

3 ☐ Additional Protected Persons

In addition to the person named in 1, the following persons are protected by orders as indicated in items 6 and 7 *(family or household members):*

Full name	Relationship to person in 1	Sex	Age

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write,* "DV-130, Additional Protected Persons," *as a title.*

4 Expiration Date

The orders, except as noted below, end on

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

- *If no date is written, the restraining order ends three years after the date of the hearing in item 5 (a).*
- *If no time is written, the restraining order ends at midnight on the expiration date.*
- *Note: Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.*
- ***The court orders are on pages 2, 3, 4, and 5 and attachment pages (if any).***

This order complies with VAWA and shall be enforced throughout the United States. See page 5.

This is a Court Order.

5 Hearings

a. The hearing was on *(date):* _____ with *(name of judicial officer):* _____

b. These people were at the hearing *(check all that apply):*

☐ The person in 1 ☐ The lawyer for the person in 1 *(name):* _____

☐ The person in 2 ☐ The lawyer for the person in 2 *(name):* _____

c. The people in 1 and 2 must **return to Dept.** _____ **of the court** on (date): _____

at *(time):* _____ ☐ a.m. ☐ p.m. to review *(specify issues):* _____

To the person in 2 :

The court has granted the orders checked below. Item 9 is also an order. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. The person in 2 must **not** do the following things to the protected people in 1 and 3 :

☐ Harass, attack, strike, threaten, assault *(sexually or otherwise)*, hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate *(on the Internet, electronically or otherwise)*, or block movements.

☐ Contact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means.

☐ Take any action, directly or through others, to obtain the addresses or locations of any protected persons. *(If this item is not checked, the court has found good cause not to make this order.)*

b. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

c. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 ☐ Stay-Away Order

a. The person in 2 **must** stay at least *(specify):* _____ yards away from *(check all that apply):*

☐ The person in 1 ☐ School of person in 1

☐ Home of person in 1 ☐ The persons in 3

☐ The job or workplace of person in 1 ☐ The child(ren)'s school or child care

☐ Vehicle of person in 1 ☐ Other *(specify):* _____

b. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 ☐ Move-Out Order

The person in 2 must move out immediately from *(address):* _____

9 No Guns or Other Firearms or Ammunition

a. The person in 2 cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

This is a Court Order.

9 b. The person in 2 must:
- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
- Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. *(*Form DV-800*, Proof of Firearms Turned In, Sold, or Stored*, may be used for the receipt.*)* Bring a court filed copy to the hearing.

c. ☐ The court has received information that the person in 2 owns or possesses a firearm.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Family Code section 6389(h). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____
The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

10 ☐ **Record Unlawful Communications**

The person in 1 has the right to record communications made by the person in 2 that violate the judge's orders.

11 ☐ **Care of Animals**

The person in 1 is given the sole possession, care, and control of the animals listed below. The person in 2 must stay at least _____ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals: _____

_____

12 ☐ **Child Custody and Visitation**

Child custody and visitation are ordered on the attached Form DV-140, *Child Custody and Visitation Order* or *(specify other form):* _____

13 ☐ **Child Support**

Child support is ordered on the attached Form FL-342, *Child Support Information and Order Attachment* or *(specify other form):* _____

14 ☐ **Property Control**

Only the person in 1 can use, control, and possess the following property: _____

_____

15 ☐ **Debt Payment**

The person in 2 must make these payments until this order ends:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

☐ *Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Debt Payments" *as a title.*

16 ☐ **Property Restraint**

The ☐ person in 1 ☐ person in 2 must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, the person must notify the other of any new or big expenses and explain them to the court. *(The person in 2 cannot contact the person in 1 if the court has made a "No-Contact" order.)*
Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

17 ☐ Spousal Support

Spousal support is ordered on the attached Form FL-343, *Spousal, Partner, or Family Support Order Attachment* or *(specify other form):* _____

18 ☐ Rights to Mobile Device and Wireless Phone Account

a. ☐ Property Control of Mobile Device and Wireless Phone Account

Only the person in (1) can use, control, and possess the following property:

Mobile device *(describe)* _____ and account *(phone number):* _____

Mobile device *(describe)* _____ and account *(phone number):* _____

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-130 Rights to Mobile Device and Wireless Phone Account" as a title.*

b. ☐ Debt Payment

The person in (2) must make these payments until this order ends:

Pay to *(wireless service provider):* _____ Amount: $ _____ Due date: _____

c. ☐ Transfer of Wireless Phone Account

The court has made an order transferring one or more wireless service accounts from the person in (2) to the person in (1). These orders are contained in a separate order (Form DV-900).

19 ☐ Insurance

☐ The person in (1) ☐ the person in (2) is ordered NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their child(ren), if any, for whom support may be ordered, or both.

20 ☐ Lawyer's Fees and Costs

The person in (2) must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

21 ☐ Payments for Costs and Services

The person in (2) must pay the following:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

☐ *Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Payments for Costs and Services" *as a title.*

22 ☐ Batterer Intervention Program

The person in (2) must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department under Penal Code § 1203.097. The person in (2) must enroll by *(date):* or if no date is listed, must enroll within 30 days after the order is made. The person in (2) must complete, file and serve Form 805, Proof of Enrollment for Batterer Intervention Program.

23 ☐ Other Orders

Other orders *(specify):* _____

24 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this order, he or she will do it for free.

This is a Court Order.

25 Service

a. ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

b. ☐ The person in (1) was at the hearing on the request for original orders. The person in (2) was not present.

(1) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are the same as in Form DV-110 except for the end date. The person in (2) must be served. This order can be served by mail.

(2) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are different from the orders in Form DV-110, or Form DV-110 was not issued. The person in (2) must be personally "served" (given) a copy of this order.

c. ☐ Proof of service of Form FL-300 to modify the orders in Form DV-130 was presented to the court.

(1) ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

(2) ☐ The person in ☐ (1) ☐ (2) was not at the hearing and must be personally "served" (given) a copy of this amended order.

26 ☐ Criminal Protective Order

a. ☐ Form CR-160, *Criminal Protective Order—Domestic Violence*, is in effect.
Case Number: _____ County: _____ Expiration Date: _____

b. ☐ Other Criminal Protective Order in effect *(specify):* _____
Case Number: _____ County: _____ Expiration Date: _____

(List other orders on an attached sheet of paper. Write "DV-130, Other Criminal Protective Orders" *as a title.)*

c. ☐ No information has been provided to the judge about a criminal protective order.

27 ☐ Attached pages are orders.

- Number of pages attached to this seven-page form: _____
- All of the attached pages are part of this order.
- Attachments include *(check all that apply):*
  ☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ FL-342 ☐ FL-343 ☐ DV-900
  ☐ Other *(specify):* _____

Date: _____

_____
Judge (or Judicial Officer)

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

This is a Court Order.

Warnings and Notices to the Restrained Person in (2)

If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

You cannot have guns, firearms, and/or ammunition.

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a $1,000 fine. Unless the court grants an exemption, you must sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

Instructions for Law Enforcement

Start Date and End Date of Orders

The orders *start* on the earlier of the following dates:

- The hearing date in item (5) (a) on page 2, or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item (4) on page 1. If no date is listed, they end three years from the hearing date.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Order System (DVROS). (Fam. Code, § 6381(b)-(c).)

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Child Custody and Visitation

The custody and visitation orders are on Form DV-140, items ③ and ④. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *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.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-805 Proof of Enrollment for Batterer Intervention Program

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Protected Person

Name: _____

2 Restrained Person

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. 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 your 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:

3 To the Restrained Person:

If the court has ordered you to complete a 52-week batterer intervention program, you must complete and file this form to prove to the court that you have obeyed its orders. After the order is made, you must enroll in a program by the date ordered by the judge. If the judge did not order you to enroll by a certain date, then you must enroll no later than 30 days after the judge made the order.

I, _____, declare as follows:
Type or print your name

a. I have enrolled in a batterer intervention program that is approved by the probation department under Penal Code § 1203.097.
Name of provider: _____
Address: _____
Telephone number: _____

b. I have signed all necessary forms with the program, allowing the program to release proof of enrollment, attendance records, and completion or termination reports to the court and the protected party, or his or her attorney.

c. ☐ My first class is/was on *(date):*

d. ☐ Other *(list any other order made by the court that you have completed):*

_____

_____

4

You must provide the protected party with the information listed in 3a. Have someone else mail a copy of this form to the protected person. The person who mails it must complete Form DV-250. File Form DV-250 with the clerk and keep a copy for yourself.

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

Date: _____

▶ _____
Sign your name

DV-815 Batterer Intervention Program Progress Report

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

(1) **Name of Protected Person:** _____

(2) **Name of Restrained Person:** _____

Lawyer for Restrained Person *(if you have one for this case):*
Name: _____ State Bar No.: _____
Address *(Address of lawyer or address of restrained person. Do not provide an address that should be kept private.):*

_____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Items (3) through (5) must be completed by the program

(3) Batterer Intervention Program

a. Name of Program: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____
Report date: _____ Intake date: _____ Class start date: _____

Court fills in case number when form is filed.

Case Number:

b. This 52-week program is approved by the probation department under Penal Code section 1203.097.

TO PROGRAM STAFF: If you choose to provide another report that contains all the information in (4), skip to (5) and attach your report. Do not forget to provide your name, title, signature and date at the end of this form.

(4) Program Attendance and Progress

a. Number of sessions completed: _____ Number of sessions missed: _____
Of the sessions missed, how many excused? _____

b. ☐ The person in (2) is participating and expected to finish by *(date):* _____

c. ☐ The person in (2) successfully completed the program on *(date):* _____

d. ☐ The person in (2) was terminated from the program on *(date):* _____, for the following reason *(explain):* _____

_____

(5) Optional Report

☐ The attached report includes all information required under California Family code section 6343.

NOTICE TO PROGRAM PROVIDER

This form should NOT be used to disclose information (example: medical or health information) that is protected under state and federal laws without appropriate written authorization from the person in (2).

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct to the best of my knowledge.

Date: _____

_____
(TYPE OR PRINT NAME AND TITLE)

▶ _____
(Signature of program staff)

DV-900 Order Transferring Wireless Phone Account

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

TO THE WIRELESS SERVICE PROVIDER: This order is made under California Family Code section 6347.

THE ORDER APPLIES TO:

1 Wireless service provider *(name):* _____

2 Current account holder *(name):* _____

Billing telephone number: _____

3 New account holder *(name):* _____

4 Transfer of the following wireless phone number(s):

Telephone number *(include area code):* _____
Telephone number *(include area code):* _____
Telephone number *(include area code):* _____
Telephone number *(include area code):* _____
Telephone number *(include area code):* _____

☐ Check box to include attachment with additional telephone number(s).

Fill in court name and street address:

Superior Court of California, County of

Fills in case number:

Case Number:

5 TRANSFER OF RIGHTS AND RESPONSIBILITIES

All rights and responsibilities for the accounts listed in 4, including all financial responsibility for the telephone numbers, monthly service costs, and costs for any mobile device associated with the telephone numbers, must be immediately transferred to the new account holder (person in 3).

The person in 3 will be financially responsible for the accounts listed in 4 starting:

☐ the date the account is transferred by the wireless service provider

☐ *(specify date)* _____

6 The person in 3 must send this order and a completed copy of Form DV-901 to the wireless service provider listed in 1. For information on where to send this form, and Form DV-901 go to the following website *http://www.sos.ca.gov/registries/safe-home/domestic-violence-wireless-plans*. Form DV-901 is a confidential form and must NOT be filed with the court.

Date: _____

_____
Judicial Officer

ATTENTION WIRELESS SERVICE PROVIDER

The new account holder's (person in 3) contact information, including information on Form DV-901, must NOT be disclosed to the current account holder (person in 2).

This order is made under California's Domestic Violence Prevention Act.

This is a Court Order.

INSTRUCTIONS FOR WIRELESS SERVICE PROVIDER

The orders contained on page 1 of this form must be followed unless the wireless service provider cannot operationally or technically effectuate the order due to certain circumstances, including, but not limited to, any of the following:

- When the current account holder has already terminated the account
- When differences in network technology prevent the functionality of a device on the network
- When there are geographic or other limitations on network or service availability

If the provider determines that transfer CANNOT occur, then the provider MUST notify the person in (3) within 72 hours of receipt of this order (California Family Code section 6347).

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this order is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

DV-901

Your name: _____

Case Number:

ATTACHMENT TO *ORDER TRANSFERRING WIRELESS PHONE ACCOUNT* (Form DV-900)

Confidential Information

DO NOT FILE THIS FORM WITH THE COURT
DO NOT PLACE IN THE COURT FILE

ATTENTION PROTECTED PERSON: This form should not be filed with the court. Complete this form and send it to the wireless service provider *(service provider)*, along with a copy of the order (Form DV-900).

To be completed by Protected Person:

1. The service provider is *(name of company):* _____
2. The current account holder *(name of restrained person):* _____
3. The new account holder *(your name):* _____

   Your contact information *(This information will be used by the service provider only. The service provider will use this information to contact you to set up your account):*

   a. The best phone number to reach you at is *(list a phone number that is not controlled by the restrained person):* _____

   b. Another phone number to reach you at is *(list a phone number that is not controlled by the restrained person):* _____

   c. Email address: _____

   d. Mailing address: _____

WHERE SHOULD I SEND FORM DV-900 AND THIS FORM (DV-901)?

To find out where to send these forms, go to the California Secretary of State's website at *http://www.sos.ca.gov/registries/safe-home/domestic-violence-wireless-plans* OR check at *http://www.courts.ca.gov/selfhelp-domesticviolence.htm* and search for your service provider. You will be able to send the forms by mail, email or fax, depending on the service provider. The account(s) CANNOT be transferred to you if you do not send these forms to the service provider.

ATTENTION WIRELESS SERVICE PROVIDER

Under the Domestic Violence Prevention Act, California Family Code section 6347, the information contained on this form is **CONFIDENTIAL** and must not be disclosed to the Restrained Person *(listed in 2).*

ITC W16-05
Domestic Violence Restraining Orders: New and Updated Forms to Reflect Recent Legislative Changes
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	NI	**Mutual Restraining Orders** 1. On page 3 of the DV-120-INFO, the proposed added language states that mutual restraining orders can only be issued if: "(1) Both people are in court at the hearing; (2) Each person gives the court written evidence of abuse or domestic violence on Form DV-100; and (3) The judge finds that neither party acted primarily in self-defense and both acted as "primary aggressors." The "primary aggressor" language can be challenging because it can lead to misconceptions about what constitutes aggression and abuse in domestic violence cases. The mutual restraining order law (Family Code 6305) states the court has to find that "both parties acted primarily as aggressors and that neither party acted primarily in self-defense." Saying that a person had to primarily be acting as an aggressor is not the same as saying they were a "primary aggressor." We therefore propose that the new language should mirror the statutory language by stating, "The judge finds that both parties acted primarily as aggressors and neither party acted primarily in self-defense." **Rights to Wireless Telephone Number** 2. Does the proposed language in DV-100, item 15, adequately provide the requesting person with notice of the financial responsibilities involved in an order of this kind**?** We believe it is important to advise the person asking for this order that they could also potentially be responsible for past due charges	1.In response to this comment and another commentator's observation that this information is complex the committee does not recommend including the requirements provided under Family Code section 6305(a)(1) but instead recommends including a simple admonishment to not use form DV-120 to request a restraining order 2. The committee believes that the current language sufficiently notifies the requesting party that he/she may be responsible for other fees. The committee does not recommend providing examples of fees or costs that are not provided under the statute.

	Commentator	Position	Comment	Committee Response
			and fees because these could be significant. We recommend that the language in this section should be changed to: *If the judge makes this order, you will be financially responsible for these accounts, including monthly service fees and costs . . . . There may be other fees that you will be responsible for, including past due charges and fees.*	
			3. We further recommend including language advising the protected person that they may have to take additional safety precautions with regards to the restrained party's ability to monitor and/or track via the electronic device's GPS, and that a change in billing alone may not resolve this.	3. The committee proposes to provide this information on the Judicial Council's website, in the Self-Help section.
			4. Should form DV-900, if approved, be a mandatory or optional form? If approved, this should be a mandatory form. We believe that one of the implementation challenges of AB 1407 is that it enables a court to issue an order against a third party cell phone service provider without requiring that the provider be joined as a party to the case or giving the provider any notice whatsoever. In the absence of such due process protections, there should, at a minimum, be mandatory forms that ensure that third party cell phone service providers be given adequate notice of and information regarding the order that they are now being asked to comply with, including information about what they can do if they cannot comply with the order. As written, the	4. The committee agrees and is recommending that form DV-900 be adopted for mandatory use.

	Commentator	Position	Comment	Committee Response
			proposed form appears to include all of the information required by the new law. As this new law is implemented, we may need to re-visit this form to determine if any additional changes are needed to enhance the process. 5. Should the form DV-901, if approved, be a mandatory or optional form? If approved, this should be a mandatory form for the reasons stated above. As written, the proposed form instructs the service provider to keep the information confidential, but does not provide specific details about this obligation and what this entails. We wonder if there is additional clarifying information that should be included for the service providers. As with the DV-900, we recognize that this form may need to be re-visited to determine if any additional changes are needed as implementation begins. **Batterers Intervention Program** 6. Should form DV-805, if approved, be a mandatory or optional form? If approved, this should be a mandatory form. AB 439 was passed to address the problem that a person ordered to complete a 52-week batterer intervention program (BIP) was not required to submit any proof of enrollment or participation in a BIP and that, in such cases, the court and protected party should be provided with some basic information. Making DV-805 a mandatory form reinforces to the person subject to the order that s/he is now required to submit proof of enrollment, participation and/or completion	5. To promote uniformity and ensure that adequate information is provided to cell phone service providers, the committee recommends adopting form DV-901 as a mandatory form. 6. The committee agrees and is recommending that form DV-805 be adopted for mandatory use.

	Commentator	Position	Comment	Committee Response
			in a BIP and ensures that the court and protected party are provided with the information specified under the law. Otherwise, the person subject to the order may end up submitting information that is inadequate or incomplete, which would not be a productive use of time, and would fail to meet the goals of this legislation.	
			7. We would also recommend adding language to the form advising the person subject to the order that the failure to abide by the court's order constitutes a violation of the restraining order for which there may be potential consequences.	7. The committee believes that the existing advisal on form DV-130 regarding a failure to obey the court's orders is sufficient.
			8. Should form DV-815, if approved, be a mandatory or optional form? If approved, this should be a mandatory form, for the same reasons stated above.	8. The committee recommends that form DV-815 be approved as an optional form because section 6343 does not create an affirmative obligation on the restrained person to report to the court. This form could be used when the court orders the restrained person to report on compliance. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity.
			9. Does form DV-815, as proposed, meet the statutory requirements without requiring restrained parties or programs to release private	9. No response required.

	Commentator	Position	Comment	Committee Response
			or confidential medical or health information otherwise protected by law or not required to be provided under this statute? Yes. We believe that the "Notice to Program Provider" above the signature line clearly states that no confidential information should be released without the restrained party's written consent. 10. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? We think that the language is clear and accurate. However, we would caution that this language must be carefully balanced. Including information about potential immigration consequences can help deter some restrained persons from violating the restraining order. The language may also deter some immigrant survivors from coming forward and requesting a restraining order out of fear of the potential immigration consequences for themselves or the restrained party. We raise this as a caution, so that we all will continue to be mindful of the unintended consequences.	10. The committee agrees that including an advisal of this kind should be carefully weighed against the unintended negative consequence of deterring individuals from seeking protection from the court. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
2.	Fariba Soroosh, Supervising Attorney Self-Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County		**Batterers Intervention Program** DV-130 1. Item 22: I suggest that brief instructions be included here re actions and forms mandated by AB439. This is the most likely place that the restrained person will look at first for details about the order to attend a BIP (batterer	1. The committee agrees to revise the text in item 22 to provide notice of the legal mandates of Family Code section 6343 and refer to form DV-805, *Proof of Enrollment for Batterer Intervention Program.*

	Commentator	Position	Comment	Committee Response
			intervention program). DV-805 and 815 2. As one of the persons involved in drafting AB439, the intent of the legislation is different than reflected in these forms. We did not intend to create more work for the Court or the BIP's. The burden to report is on the restrained party (RP) and the burden to follow up on any violations of the order is on the protected party once he/she has received the mandated information from the RP. I agree that there should be a mandatory form based on AB439 to help the restrained persons with the reporting requirements. Making it mandatory will help the courts and protected parties because the information provided will be consistent and easy to locate on the form rather than individually prepared declarations/letters submitted to the court. DV-805 3. Item 3: If the form is mandatory, the RP should not be told that they "may use this form . . .". I suggest that the mandates in AB439 be stated in this item. 4. Item 4: I would change the title of this item to, for example, "Restrained party declares that:" Items "d" and "e" are not required and may confuse the RP.	2. The committee agrees that there should be a mandatory form to help restrained persons comply with the requirements set forth in Family Code section 6343. The committee recommends that form DV-805 be adopted as a mandatory form. The committee recommends that form DV-815 be approved as an optional form to help litigants, especially self-represented litigants, provide information to the court when the court orders the restrained person to provide the court with progress. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. 3. The committee recommends that form DV-805 be adopted as a mandatory form. The language in item 3 has been changed to reflect this. 4. The committee has incorporated this suggestion, with some alterations. The committee has revised the form so that any item not required by the law is preceded by a check box and any item required by law is not preceded by a check box.

	Commentator	Position	Comment	Committee Response
			5. Item "f" should require RP to provide the information to the court as well as the other party. It also erroneously refers to "information listed in 1" rather than "3".	5. The restrained person will provide notice to the court by filing the form therefore this language is not necessary and could be confusing to litigants. The committee has corrected the typographical error referring to 1 rather than 3.
			6. DV-815- As I previously stated, the new legislation was not intended to obligate the program to do anything at all. Further, RP is not required to obtain a report from the BIP. Once the RP has done what is mandated in AB439 (register, sign release forms, and identify the specific BIP), then it is up to the PP to follow up with the program and come to court if the RP has not complied with those orders. I believe that each provider has a progress report template and should be allowed to use those if the PP and RP request one for submission to the court. Therefore, I recommend that this form be omitted.	6. As stated above in response to comment number 2, the committee recommends that form DV-815 be approved as an optional form. Programs can still use their own report template and can attach a copy of their report to this form and check item 5. Without a form available for this purpose, restrained persons submitting their progress report for filing with the court would still need to attach the provider's report to another approved form or pleading.
			Mutual Restraining Orders 7. DV-120-INFO- As one of the persons involved in drafting AB536, I think the new segment in this form corresponding to that change in the law is far too complicated. I suggest that the language be a simple admonishment about using the DV application forms to apply for a restraining order. I don't think there is a need to inform respondent about the standard the court uses to grant a restraining	7. The committee agrees and has made the suggested revision.

	Commentator	Position	Comment	Committee Response
			order. I also think the use of "mutual restraining orders" here makes it look like a specific kind of order rather than just a description of the situation where each party to a case has their own restraining order against the other party. I propose that in this section, responding party simply be referred to DV-505 to find out what forms to use if they think the meet the requirements for filing an application for a restraining order against the other party. **Other Comments** 8. DV-100- Starting with item 6: Although nothing is being changed in this item, I have been asking for an inquiry about how long the applicant wants the order to last (up to five years). I have seen the opposing party and/or judicial officer asking for the order to be for less than the maximum of 5 years and taking the applicant by surprise. After all the judicial officer does have discretion to set the duration less than the maximum even sua sponte. This type of an inquiry gives the applicant time to consider her options and be ready to defend her choice at hearing in case opposing or judicial officer brings it up. DV-120-Starting with item 6: If you add an inquiry about duration of the RO, please include the same item on this form to solicit a response. 10. DV-100, Item 27: I find the current format confusing. I suggest Indent "b" through "f" and renumber them another way. Then current	8. The committee would like to receive public comment on this suggestion before recommending this revision. The committee will consider this suggestion for a future proposal. 10. The committee has corrected the formatting in item 27, as suggested by the commentator.

	Commentator	Position	Comment	Committee Response
			inquiry "g" can be "b' and the date of another incident with the same inquiries as current "b" through "f' renumbered the same way.	
3.	Legal Aid Fondation of Los Angeles By Jimena S Vasquez, Attorney	NI	**Rights to Wireless Telephone Number** 1. Transfer of Cell Phone Account is misleading The heading of Item 15 in DV-100 "Transfer of Cell Phone Account" is misleading. The legislation as passed is to transfer the phone and billing responsibilities. In most cases, the protected party will need to open a new account with the wireless provider but will be able to maintain the cell phone and phone number. It should be made clearer by eliminating the word account and leaving it as Transfer of Cell Phone Rights. 2. Additionally, the notice of billing responsibilities should add that account balances and new account charges may apply. 3. The title of Item 15 in DV-110, DV-120, and DV-130 should be changed to "Transfer of Cell Phone Rights" as well. 4. DV 901 should be a mandatory form. As with most of the other domestic violence forms, this form should be mandatory. It assists the pro per litigants with knowing what to send to the wireless providers to benefit from their order. Making this form mandatory will also assist wireless providers who will become familiar with the form and know how to process them.	1. The title of this item is now "Rights to Mobile Device and Wireless Phone Account." The committee notes that the cell phone or other mobile device is not necessarily associated with the telephone number. A separate request for property control of the device may be needed. The title "Transfer of Cell Phone Rights" may be misleading as it can be read to only include rights associated to a cell phone device, not the telephone number. 2. The committee believes that the current language sufficiently notifies the requesting party that he/she may be responsible for other fees. 3. Same response to comment number 1 above. 4. To promote uniformity and ensure that adequate information is provided to wireless service providers, the committee recommends adopting form DV-901 as a mandatory form.

	Commentator	Position	Comment	Committee Response
			5. A confidentiality notice should also be placed in DV-900 similar to the notice in DV-901 further underscoring that the information of the protected party is confidential.	5. The committee agrees and has included a similar notice regarding confidentiality on form DV-900.
			6. DV 805 should be a mandatory form. Again, the form must be mandatory to remain in line with other domestic violence forms. It creates uniformity and easy accessibility for pro per litigants. Furthermore, it would restrict the information the restrained party would legitimately be able to send to Petitioner. Otherwise, the Respondent's would be able to send any type of correspondence to the Petitioner under the guise of notice of enrollment.	6. The committee recommends adopting form DV-805 as a mandatory form.
			7. Additionally with this form, we suggest not making most of Item 4 mandatory not check boxes except Item 4(e).	7. The committee agrees. Only items that are not mandatory under 6343 will be preceded by a check box.
			8. Additionally, item 4(f) should be a notice sentence that the protected party in must be provided with the information listed. It should also allow for no notice being sent if the address of the protected party is listed as confidential. We suggest the following: "You must provide the protected party in (1) with the information listed here. You can do so my mailing the protected party a copy of this form consistent with the guidelines set forth I Paragraph 6(b) of the DV-130. If confidential is listed as the mailing address, no mailing is	8. The committee recommends providing more information on how service can be accomplished by the restrained person. However, courts will have to decide how service can be accomplished in these situations on a case-by-case basis. Without the consent of the protected person, the court cannot waive the requirement for service on the protected person.

	Commentator	Position	Comment	Committee Response
			required." 9. We also suggest including on form DV-130, a place for the court to write an enrollment deadline date for the batterer intervention program. We suggest that one be added to the DV-130 at section 22 with the additional sentence stating if no date is written then within 30 days of the date of this order. 10. DV 815 should be a mandatory form. Making this form mandatory will help ensure that the intervention programs chosen by the restrained party are approved program. In Los Angeles, there has been an increase in unqualified providers of batterer's intervention programs. As batterer's contend they cannot afford the mandatory fee associated with the approved programs, untrained, unqualified providers have begun to offer low or no cost programs. By making the form mandatory and requiring the programs to check the box that they are an approved program, the court as well as protected party's can make sure the restrained person is getting the proper, needed, intervention. 11. We would also suggest adding a box requesting whether or not a fee has been charged to stem the growth and use of unauthorized intervention programs.	9. The committee agrees with these suggestions and has incorporated them, with minor alterations. 10. The committee recommends that form DV-815 be approved as an optional form because section 6343 does not create an affirmative obligation on the restrained person to report to the court. This form may be used when the court orders the restrained person to report on compliance. Under Family Code section 6343, programs must be approved by the probation department under Penal Code section 1203.097. This requirement is clearly stated on the order, form DV-130, and form DV-805. 11. The committee does not recommend adding a check box and believes that the forms reflect what is required under the law; that programs, including their fee structure, must be approved by the probation department under Penal Code section 1203.097. This requirement is stated on the order, form DV-130, and form DV-805.

	Commentator	Position	Comment	Committee Response
			12. The proposed language regarding immigration consequences is NOT accurate. The use of the phrasing "If the court" suggests that the family law court itself would be responsible for immigration consequences. This sends the message to litigants and the immigrant community that civil courts are working with Immigration and Customs Enforcement. This is the wrong message to send to litigants and the immigrant community. The ability to deport, deny entry, or deny citizenship is beyond the powers of a civil state court and is under the purview of the Federal Government. It should be clarified that under Federal law restraining order violations may result in immigration consequences. This distinction should help ease fears about obtaining restraining orders and any collusion between the state civil court and Immigration and Customs Enforcement. The language should be as follows: If you (the restrained party) violate this order and you are NOT a U.S. Citizen you MAY face immigration consequences. • Under Federal law, a finding in civil or criminal court that a non US Citizen violated a domestic violence protection order by engaging in prohibited conduct described in Family Code Sec. 6320 and 6389, is a basis for deportation,	12. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.

	Commentator	Position	Comment	Committee Response
			wherefore ICE may initiate deportation/removal proceedings against you; • order is a basis for deportation, wherefore ICE may initiate deportation/removal proceedings against you; • You may not be able to lawfully return to the U.S. after departing the USA for any reason; • You may not be able to become a U.S. citizen. 13. In discussing alternatives considered for Assembly Bill 536, the committee stated that it considered simply stating not to use this form to request a restraining order but felt it was wrong because of the court's ability to issue a restraining order without notice under 6300. However, you would have the same due process and notice issues if the court granted a respondent a restraining order solely based on testimony provided to the court on the day of the hearing. This relief would not be available to respondents, as it would exceed the court's power. The courts cannot grant unrequested relief against a party who appears without affording that party notice and an opportunity to defend. This is a fundamental concept of due process.	13. Family Code section 6300 and 240 et seq., gives the court authority to issue ex parte orders on a temporary basis pending a hearing. The committee agrees that any party requesting a domestic violence restraining order is afforded the right to proper notice and opportunity to be heard before permanent orders can be made.
4.	Los Angeles Center for Law and Justice	NI	**Rights to Wireless Telephone Number** 1. Item 15 in DV-100 is titled "Transfer of Cell	1. The title of this item is now “Rights to Mobile

	Commentator	Position	Comment	Committee Response
	By Carmen McDonald, Supervising Attorney		Phone Account." The legislation as passed is to transfer the phone and billing responsibilities. In most cases, the protected party will need to open a new account with the wireless provider but will be able to maintain the cell phone and phone number. It should be made clearer by eliminating the word account and leaving it as Transfer of Cell Phone Rights. Alternately, this can be titled "Transfer of Telephone Rights" to include land lines in addition to cell phone lines and reference the provider as a "telephone" provider rather than a "wireless" provider.	Device and Wireless Phone Account." The committee notes that the cell phone or other mobile device is not necessarily associated with the account. A separate request for property control of the device may be needed. The title "Transfer of Cell Phone Rights" may be misleading as it can be read to only include rights associated to a cell phone device, not the telephone number. The title "Transfer of Telephone Rights" could be interpreted to go beyond the scope of the legislation which is limited to wireless telephone numbers.
			2. Additionally, the notice of billing responsibilities should add that new account charges might apply.	2. The committee believes that the current language sufficiently notifies the requesting party that he/she may be responsible for other fees. The committee does not recommend providing examples of charges that are not listed in the statute.
			3. We are also concerned that the requesting party will rely that this process will work. The court should warn the person that while this is a court order, the court does not control the wireless provider and the requesting party may need to open another account, and if so, the requesting party may need to qualify for the provider's eligibility for a new account.	3. The committee recognizes that this process may be challenging for litigants to navigate, especially self-represented litigants. The committee proposes to provide information on the Judicial Council's website, in the Self-Help section, as information becomes available. The committee will consider developing an information sheet in the future, if the need arises.
			4. We are also concerned that the telephone provider cannot or will not release any information to the requesting party without a	4. The committee does not recommend including the proposed information because the statute does not provide the requesting party with the ability to

	Commentator	Position	Comment	Committee Response
			court order or subpoena. The order should reflect the requesting party's ability to request and review a statement of rights and responsibilities before the provider completes the transfer or at least gives the requesting party the ability to rescind her/his request to transfer. 5. The title of item 15 in DV-110, DV-120, and DV-130 should be changed to "Transfer of Cell Phone Rights" or "Transfer of Telephone Rights" as well. The DV-900 and DV-901 should be changed accordingly. 6. DV-100: Page 3, Item 15: Remove "financially" as the protected person would be responsible for the entire account, not just the financial part. 7. DV-100: Page 3, Item 15: "There may be other fees that you will be responsible for" should be changed to "You may also be responsible for other fees." 8. DV-100: Page 3, Item 15: Clarify that you will be financially responsible for "any future charges or costs on" these accounts.	rescind his or her request once the order has been made. Form DV-100, item 18, directs applicants to contact the wireless provider for information about fees, costs and eligibility. Additional information may also be provided on the Self-Help section of the Judicial Council's website. 5. Same response as comment number 1 above. 6. The language in this section is meant to stress the financial responsibilities that come with an order of this kind. The sentence before reflects what the statute authorizes: the transfer of billing responsibilities and rights to wireless phone numbers. 7. The committee has made this revision. 8. The committee does not recommend adding this language because the court will not know what costs are associated with a transfer.

	Commentator	Position	Comment	Committee Response
			Immigration Consequences 9. DV-110 and DV-130 Warnings and notices to the restrained person, top of page 5. Change "may or will be" to "may be" (may or will be does not make sense - if it is will, then it can't be may . . .)	9. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
			Batterers Intervention Program 10. Form DV-130 should be modified to include a place for the court to write an enrollment deadline date for the batterer intervention program. We suggest that one be added to the DV-130 at section 22 with the additional sentence stating if no date is written then within 30 days of the date of the order.	10. The committee agrees and has made the suggested revisions.
			11. DV-130: Page 4, Item 22: We are concerned that this section needs to be more detailed and thorough to be enforceable and to give everyone the appropriate notices.	11. The committee agrees to revise the text in item 22 to provide notice of the legal mandates of Family Code section 6343.
			12. The DV-805 as well as the restrained party's release of program information should be mandatory. We suggest something similar to the following language: "The person in (2) must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. The person in (2) must sign and submit form DV-805, *Proof of Enrollment for Batterer Intervention Program*, to the court, declaring	12. The committee agrees with these suggestions and has incorporated them, with minor alterations.

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			that s/he has enrolled in an approved program and signed all necessary forms with the program to allow the program to release limited information to the court and protected party. This program must be approved by the probation department *(contact your local probation department or go to probation.lacounty.gov for more information).* The person in (2) must enroll in an approved program by *(due date)* or if no date is listed, enrollment must occur within 30 calendar days of this order." **Rights to Wireless Telephone Number**	
			13. DV-900, Page 1: Address of provider: Change "Address (see service provider's . . .) to "Address (use service provider's . . ." and "Secretary of State" should be changed to "California Secretary of State". The term should be uniformly California Secretary of State.	13. The form will no longer require the listing of an address for the service provider because some providers intend to accept service by email or fax. The committee agrees with the suggestion that any reference to the Secretary of State should be "the California Secretary of State."
			14. Since there is no means for the requesting party to get info on the account before any order is issued, we would suggest adding another section allowing that. Suggested language for the new Item 2 section (inserted after Item 1): "The requesting party must receive a statement of rights and responsibilities, including all financial costs associated with the transfer or new account(s) in writing within 72 hours of the provider's receipt of this order. The requesting party may cancel this Order Transferring Cell	14. The committee does not recommend including the proposed information because the statute does not provide the requesting party with the ability to rescind his or her request once the order has been made. Form DV-100, item 18, directs applicants to contact the wireless provider for information about fees, costs and eligibility. Additional information may also be provided on the Self-Help section of the Judicial Council's website.

	Commentator	Position	Comment	Committee Response
			Phone Rights, without any penalty to the requesting party by the provider, within 30 days of receipt of this statement by submitting a written request to cancel this order to the provider. Requesting party must serve a copy of the request to cancel to the restrained party and to the court." Alternately, we could call this a Request for Rescission of Telephone Transfer Rights. 15. New Item 3 (formerly Item 2): We are gravely concerned that the requesting party will be liable for any back-due charges incurred before the court's issuance of an Order Transferring Telephone Rights. As a matter of public policy and providing access to the judicial system to low-income litigants, the protected party should not be liable for any debt, charges, fees, or missed payments incurred by the restrained party prior to the effective date of this order. We suggest the following language to clarify that the requesting party is only liable for charges incurred from the effective date of the order, including possible new account charges: "... associated with the telephone numbers incurred from the effective date until closure of the account(s) or until rescission of this order, must be transferred to:" The end of Page 1 should an INFO section that advises the requesting party how to cancel the order. A new form may need to be created to simplify the requesting party's process of	15. Family Code section 6347 does not give the court the authority to limit the protected person's liability for past fees or charges incurred on the account, other than the authority it has under section 6324 and 6340.

	Commentator	Position	Comment	Committee Response
			requesting a cancelation of the transfer of telephone rights.	
			16. DV-900, Page 2: "Provider must notify" box: this does not specify how notification must be made. The manner of notification is vague. We suggest it say, "The provider must notify the person in (2), in writing .,"	16. The committee cannot implement requirements that are not provided by statute. Family Code section 6347 provides that "Where the wireless service provider cannot operationally or technically effectuate the order due to certain circumstances, including, but not limited to, any of the following, the wireless service provider shall notify the requesting party within 72 hours of receipt of the order." The statute does not require that notice be in writing.
			17. A confidentiality notice should also be placed in DV-900 similar to the notice in DV-901 further underscoring that the information of the protected party is confidential.	17. The committee agrees and has revised DV-900 to incorporate the suggestion.
			18. We are concerned whether the provider may deny transfer of the account because the requesting party does not qualify for a new account. This may become a barrier for low income/undocumented protected parties who have no proof of ability to pay and/or no or bad credit.	18. Under Family Code section 6347(b)(3), unless the service provider "cannot operationally or technically effectuate the order" the transfer must occur. Once transferred, section 6347(c)(2) "does not preclude the service provider preclude a wireless service provider from applying any routine and customary requirements for account establishment." If the new account holder does not qualify for an account then possible options may include canceling the account or transferring the phone number to another service provider.
			19. We suggest adding an INFO section at the end that advises the provider how to respond,	19. The committee does not recommend providing information for service providers that goes beyond

	Commentator	Position	Comment	Committee Response
			the time frame to respond, and what to do if the requesting party submits a request to cancel the account transfer.	the scope of the statute. The language on the form will reflect the statutory requirements applicable to providers under section 6347(b)(3).
			DV-901 20. As with most of the other domestic violence forms, this form should be mandatory. It assists the pro per litigants with knowing what to send to the wireless providers to benefit from their order. Making this form mandatory will also assist wireless providers who will become familiar with the form and know how to process them.	20. To promote uniformity and ensure that adequate information is provided to wireless service providers, the committee recommends adopting form DV-901 as a mandatory form.
			21. There should be a line(s) added where the protected person writes the name (and address) of the service provider. Then "(service provider)" can be removed from the first paragraph.	21. The committee has added a place to list the name of the service provider. An address for the service provider may not be needed as some providers will accept orders by email or fax.
			22. Item 2: If there is going to be a parenthetical informing the protected person "(list a phone number that is no controlled by the restrained person)" it should be after both "the best phone number" and "Another phone number"	22. The committee agrees and has reformatted this section.
			23. The requesting party's address should be required instead of making both email and mailing address optional. Since the provider is likely to require a billing address and because the provider's notice of inability to transfer the account should be made in writing, the requesting party will need to provide some means of receiving written statements, whether	23. The committee agrees to remove the word “optional.”

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			electronically or by mail. If the protected party does not want a mailing address, then they should provide an email address and the account will automatically enrolled in e-statements.	
			24. The "Where should I send" section: "Secretary of State" should be changed to "California Secretary of State". The term should be uniformly California Secretary of State. "depending on who the provider is" should be changed to "depending on the provider." In addition, "The account(s) will NOT be transferred" should be changed to "The account(s) can NOT . . ."	24. The committee agrees and has made the suggested revisions.
			25. "Attention Cell Phone Service Provider" box has an extra space after "(listed in 3)."	25. The committee has corrected this typographical error.
			26. The end of the form also should include an INFO section that advises the requesting party how to cancel the order. A new form may need to be created to simplify the requesting party's process of requesting a cancelation of the transfer of telephone rights.	26. Same response as comment number 14 above.
			Batterers Intervention Program **DV-805** 27. This form should be mandatory. It will clarify what is sufficient proof of enrollment of the Batterer Intervention Program.	27. The committee agrees and recommends adopting form DV-805 as a mandatory form.
			28. Item 3: Add the "You must sign all necessary forms with the program, allowing the program to release proof of enrollment,	28. The committee has reformatted this section to combine items 3 and 4 and has removed check boxes for items that are required under Family

	Commentator	Position	Comment	Committee Response
			attendance records, and completion or termination reports to the court and the protected party, or his or her attorney." from #4 to #3 instead to make this mandatory.	Code section 6343.
			29. DV-805 Item 4.f: This provision is unclear as there is no "information listed in 1."	29. This has been corrected; the provision should refer to item 4.
			30. If the provision is notice on enrollment, then 4(f) should not be an optional check box. It should require that notice be sent to the Petitioner, unless their address is confidential. Possible language can be "You must serve the protected party with a signed copy of this form."	30. The committee recommends removing the check box, as suggested by the commentator. This item is meant to provide the restrained person with notice of the requirement to provide the protected person with the name, address and phone number of the provider.
			DV-815 31. DV 815 should be a mandatory form Making this form mandatory will help ensure that the intervention programs chosen by the restrained party are approved programs. By making the form mandatory and requiring the programs to check the box that they are an approved program, the court as well as protected litigants can make sure the restrained person is getting the proper, needed, intervention. We would also suggest adding a box requesting whether or not a fee has been or will be charged.	31. The committee recommends that form DV-815 be approved as an optional form because section 6343 does not create an affirmative obligation on the restrained person to report to the court. This form may be used when the court orders the restrained person to report on compliance. The committee does not recommend adding a check box and believes that the forms reflect what is required under the law; that programs, including their fee structure, must be approved by the probation department under Penal Code section 1203.097. This requirement is stated on the order, form DV-130, and form DV-805.

	Commentator	Position	Comment	Committee Response
			32. Item 3b: Remove the check box to make it mandatory.	32. The committee agrees and has made the suggested revision.
			33. Item 3 TO PROGRAM STAFF: "attach you report" should be changed to "attach your report" "provide your name, signature :. ." should be changed to provide your name, title, signature . . ." Add a check box with "See attached report: pages." NOTICE TO PROGRAM PROVIDER: The parenthetical (example: medical information) should be edited and moved to be more clear: "This form should NOT be used to disclose Information (such as medical information) that is protected under state and federal laws . . ."	33. The committee agrees with these recommendations and has incorporated them into the proposal, with some alterations.
			34. DV-815: Item 5: Instead of "The above information is true and correct ..." Make the provider swear under penalty of perjury. "I declare under penalty of perjury under the laws of the state of California that the information above is true and correct to the best of my knowledge."	34. The committee has made this suggested revision.
			35. Making separate lines for the provider's "name" and "title" may make it clearer that the provider submitting the report must fill in both.	35. Due to space limitations on the form, the committee does not recommend adding a separate line for “title.”
			36. The proposed language regarding immigration consequences is NOT accurate	36. Based on the public comments received and the lack of statutory authority requiring this type

	Commentator	Position	Comment	Committee Response
			The use of the phrasing "If the court" suggests that the family law court itself would be responsible for immigration consequences. This sends the message to litigants and the immigrant community that civil courts are working with Immigration and Customs Enforcement. This is the wrong message to send to litigants and the immigrant community. The ability to deport, deny entry, or deny citizenship is beyond the powers of a civil state court and is under the purview of the Federal Government. It should be clarified that under Federal law restraining order violations may result in immigration consequences. This distinction should help ease fears about obtaining restraining orders and any collusion between the state civil court and Immigration and Customs Enforcement. The language should be as follows: "If you (the restrained party) violate this order and you are NOT a U.S. Citizen you MAY face immigration consequences. • Under Federal law, a finding in civil or criminal court that a non US Citizen violated a domestic violence protection order is a basis for deportation, wherefore ICE may initiate deportation/removal proceedings against you; • You may not be able to lawfully return to the U.S. after departing the USA for any reason; • You may not be able to become a U.S. citizen."	of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.

	Commentator	Position	Comment	Committee Response
			DV-120 37. Item 3- We are concerned that referring litigants for information on mutual orders could create an increase in Respondents filing for restraining orders. While it is important for litigants to obtain this information, often these cross filings are retaliatory.	37. The committee has simplified and reformatted form DV-120-INFO and has removed the language regarding mutual restraining orders.
5.	Los Angeles County Bar Association (LACBA), Famly Law Section		1. Does the proposal appropriately address the stated purpose? LACBA response: Yes **Rights to Wireless Telephone Number** 2. Does the proposed language in DV-100, Item 15, adequately provide the requesting person with notice of financial responsibilities involved in an order of this kind? LACBA response: Yes 3. Should DV-900 include instructions for cell phone service providers, as reflected on Page 2 of DV-900? LACBA response: Yes 4. Should forms DV-901, DV-805; DV-815, if approved, be mandatory or optional or not required to be provided under this statute? LACBA response: Mandatory	1. No response required. 2. No response required. 3. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to transfer the account for technical or operational reasons. 4. The committee proposes that form DV-901 and DV-805 be adopted for mandatory use. While Family Code section 6343 does not require an affirmative obligation on the part of the restrained person to report on compliance, the committee recognizes that restrained persons may be ordered by courts to report on compliance and for this reason, recommends form DV-815 be approved and available for optional use.

	Commentator	Position	Comment	Committee Response
			5. Does DV-815, as proposed, meet the statutory requirements without requiring restrained parties or programs to release private or confidential medical or health insurance information otherwise protected by law? LACBA response: Yes 6. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? LACBA response: Yes	5. No response required. 6. The committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
6.	Monica Clark Johnson, Paralegal WEAVE, Inc.	A	1. If approved, forms DV-805 and DV815 should be mandatory. 2. A report from the provider should be optional and voluntary on the part of the abuser. 3. The form does include language that covers rights to privacy. If a Batterer's Intervention Program is deemed to be "counseling", then there may be HIPAA laws that apply. 4. If approved, forms DV-900 and DV-901	1. The committee recommends both forms be adopted for mandatory use. 2. The committee recommends that form DV-815 be approved as an optional form to help litigants, especially self-represented litigants, provide information to the court when the court orders the restrained person to provide the court with progress. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity. 3. No response required. 4. The committee agrees and recommends that

	Commentator	Position	Comment	Committee Response
			should be mandatory. 5. The cell phone providers may be slow to respond to the order, since the forms are to be served on the agent for the company through the Secretary of State. (The separation of phone numbers will most likely incur a cost for new established service and contract agreements with certain providers. Although, the form mentions the potential financial costs, the real problem will be when the fees are calculated and presented to the requester, who had no idea how expensive it is to break up the plan). 6. The language regarding immigration consequences on DV-110 and DV-130 is clear enough to let the abuser know that he or she may wish to seek legal advice to determine what consequences they could be subjected to.	both forms be adopted for mandatory use. 5. No response required. 6. Based on other comments received and the lack of statutory authority requiring a notice of this kind the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
7.	Orange County Bar Association By Todd G. Friedland	AM	**Mutual Restraining Orders** 1. The proposed added language at page 3 of DV-120-INFO misstates the law. The Responding Party must file and service its own DV Application to be able to get a restraining order (not just give the court "written evidence") against the moving party. **Rights to Wireless Telephone Number** 2. Does the proposed language in DV-100, item 15, adequately provide the requesting person with notice of the financial responsibilities	1. The proposed language in the Invitation to Comment reflects the requirements under Family Code section 6305(a)(1). The committee no longer proposes to include this language because it agrees with another commentator that the information is complex and a simple admonishment not to use form DV-120 is sufficient. 2. No response required.

	Commentator	Position	Comment	Committee Response
			involved in an order of this kind? Yes.	
			3. Should form DV-900, if approved, include instructions for cell phone service providers, as reflected on page 2 of DV-900? Yes.	3. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to transfer the account for technical or operational reasons.
			4. Should form DV-901, if approved, be a mandatory or optional form? Mandatory	4. The committee recommends adopting form DV-901 for mandatory use.
			Batterers Intervention Program 5. Should form DV-805, if approved, be a mandatory or optional form? Mandatory	5. The committee recommends adopting form DV-805 for mandatory use.
			6. Should form DV-815, if approved, be a mandatory or optional form? Mandatory	6. The committee recommends that form DV-815 be approved as an optional form because section 6343 does not create an affirmative obligation on the restrained person to report to the court. This form may be used when the court orders the restrained person to report on compliance.
			7. Does form DV-815, as proposed, meet the statutory requirements without requiring restrained parties or programs to release private or confidential medical or health information otherwise protected by law or not required to be provided under this statute? Mostly. The "Notice to Program Provider" should include "(example: health or medical information)" since these forms are often taken literally.	7. The committee agrees and will include health information as an example of information that may be protected under state and federal law.

	Commentator	Position	Comment	Committee Response
			Immigration Consequences 8. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? Yes.	8. The committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
8.	The State Bar of California The Executive Committee of the Family Law Section (FLEXCOM)	AM	1. FLEXCOM generally approves the amended and new forms as appropriately addressing the stated purposes, subject to the following comments and exceptions. FLEXCOM believes all forms should be mandatory except for DV-815, which FLEXCOM believes should not be adopted at all. **Batterers Intervention Program** 2. **DV-815:** FLEXCOM believes this form should not be adopted. FLEXCOM was the sponsor of Assembly Bill 439 (Stats. 2015, ch. 72). The proposed form goes beyond the intent of the legislation and what is required under AB 439's amendments to the Family Code. That legislation, commencing July 1, 2016, requires the restrained party ordered to participate in a batterer's intervention program to 1) register for	1. The committee proposes that form DV-901 and DV-805 be adopted for mandatory use. While Family Code section 6343 does not require an affirmative obligation on the part of the restrained person to report on compliance, the committee recognizes that restrained persons may be ordered by courts to report on compliance and for this reason, recommends form DV-815 be approved and available for optional use. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity. 2. See response to comment number 1 above.

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			the program by a specified deadline; 2) at the time of enrollment, sign all necessary program consent forms for the program to release specified documents, including proof of enrollment, to the court and the protected party or his or her attorney; and 3) provide the court and the protected party with the name, address, and telephone number of the program. AB 439 was not intended to obligate the batterer's intervention program to take any affirmative steps on its own. There was also no intention to impose an affirmative obligation on the restrained party to seek out a report from the batterer's intervention program. DV-815 appears to require (or at least suggest) both that the batterer seek out a report and that the program provide the specified information, even without a request. That was not the intent of the legislation. Once the restrained party has done what is mandated, it is up to the protected party to follow up with the program and come to court if there are any issues regarding compliance. The court could also request information from the program on its own. But in either event, the program would be responding to a request for information instead of supplying the information, without any request, on a Judicial Council form. 3. In regards to the new section 22, FLEXCOM recommends that all language contained in Family Code Section 6343(b) be included to effectuate notice.	3. The committee agrees and has added space for the judge to indicate a start date, if desired, and references form DV-805, which must be completed by the restrained person.

	Commentator	Position	Comment	Committee Response
			Mutual Restraining Orders 4. **DV-120-INFO-** FLEXCOM recommends modifying the second heading "What are the legal Requirements?" as it may be considered misleading (there are many more legal requirements than those listed) and changing the heading to what is now the next line: "A Domestic Violence Order is Available if:" In regards to the added section, appearing at the bottom of page 3, FLEXCOM recommends removing the first sentence "In order for the court . . . " as it is vague and possibly misleading (see comment above). 5. FLEXCOM recommends moving the added section on page 3 to page 1, between "What is abuse?" and "What if the legal requirements are not met?" The distinction and advisement is important, especially for those who believe they are in need of a restraining order, and should be displayed prominently or early in the information form.	4. The committee has removed the section "What are the Legal Requirements?" and provides some simple explanations of what abuse is under "What is a Domestic Violence Restraining Order" and what relationships qualify for a domestic violence restraining order under the section "Who can ask for a domestic violence restraining order?" The committee has also made additional revisions to make this form more consistent with other restraining order 120-INFO forms. The "added section" will not appear on the form as the committee no longer proposes to include language regarding the specific legal requirements of a mutual restraining order. The committee agrees with another public commentator that including this language is complex and a simple admonishment to not use form DV-120 to request a restraining order is sufficient. 5. In response to another public comment, the committee has removed the language regarding mutual restraining orders and believes a simple admonishment that form DV-120 should not be used to ask for a domestic violence restraining order is clear and provides sufficient notice of the requirement under Family Code section 6305(a)(1).

	Commentator	Position	Comment	Committee Response
			Rights to Wireless Telephone Number	
			6. DV-130: In regards to the new section 15, FLEXCOM recommends identifying the account being transferred to assist law enforcement who may be viewing DV-130 but not DV-900.	6. The committee has added this information to the order forms under item 18(a), *Property Control of Cell Phone and Wireless Phone Account*.
			7. DV-100, Paragraph 15: The first sentence as written states: "I ask the court to transfer the billing responsibility and rights to the following cell phone numbers to me because the account currently belongs to the person in 2." FLEXCOM recommends modifying that sentence as follows: "I ask the court to transfer the billing responsibility and rights to the following cell phone numbers to me because the account currently belongs to the person in 2 but the telephone numbers are used primarily by me or the persons listed in 3." This makes it clear to the requesting party that the requesting party or the child must have the primary use of the cell phone and not that it is just an account in the restrained party's name.	7. The committee does not recommend adopting this suggestion. Family Code section 6347 does not require that the requesting party prove that the number be "primarily used by" the requesting party or any children under his or her care.
			8. FLEXCOM is concerned that it is not clear if the intent is to make the recipient financially responsible as of the date of transfer and not as of the date of the order.	8. The committee recommends that the order form allow the court to indicate a start date for which the protected person would be financially liable for the account.
			9. In the italicized portion FLEXCOM recommends moving the "(examples: cell phones, tablets)" to the end of the sentence. Notice is sufficient to advise the requesting	9. The committee agrees and has made this revision.

	Commentator	Position	Comment	Committee Response
			party of his/her financial obligations associated with the transfer of the cell phone. 10. DV-900: On page two, under the second bullet point, FLEXCOM recommends that "and" at the end of the sentence be removed, because any of the bullet points suffice and the "and" is potentially confusing. 11. FLEXCOM recommends adding language stating enforceability of the order does not depend on service of DV-901. **Other comments** 12. In regards to the new section 26b, FLEXCOM recommends creation of a new form DV-130 "Other Criminal Protective Orders." This will ensure the case number, county and expiration date are included in the order after hearing. Failure to include the specific information may result in the other orders being overlooked or unenforced.	10. The committee has made this revision. 11. An order for transfer must include the contact information for the requesting party therefore DV-901 must be served on the service provider. There may be other ways of providing the information to the service provider, which in practice, would result in the transfer being effectuated. The committee will consider adding information to the Self-Help section of the Judicial Council website to help litigants with this process. 12. The committee does not recommend creating a new form for this purpose. Criminal protective orders are generally one page, double-sided. A better practice would be to obtain a copy of the criminal protective order and advise protected persons to carry a copy of all orders.
9.	State of California, Department of Justice Bureau of Criminal Identification and Investigative Services Law Enforcement Support Program		1. Law Enforcement Agencies (LEAs) are often confused as to why the courts issue mutual restraining orders. It can also cause confusion with enforcement of orders. Hopefully the passage of AB 536, and additional collection of	1. No response required.

	Commentator	Position	Comment	Committee Response
	California Restraining and Protective Order System		abuse on DV-100, can help to alleviate this issue. 2. The transfer of cell phone account and batterer intervention program is important, however, it is not information that is required for a CARPOS entry. When batterer intervention is checked on orders, we do advise agencies to enter the information in the Other Order (OTO) field, as this information could be helpful with sentence enhancement. 3. The warnings and notices to the restrained person regarding U.S. citizenship may not be a concern for LEAs relative to the CARPOS entry. 4. All of the "INFO" forms are very helpful. The FR uses these forms for self-training, and mentions them in classes to help LEAs to better understand the processes. 5. Does the proposed language in DV-100, item 15, adequately provide the requesting person with notice of the financial responsibilities involved in an order of this kind? Yes. 6. Should form DV-900, if approved, include instructions for cell phone service providers, as reflected on page 2 of DV-900? This would be helpful.	2. No response required. 3. No response required. 4. No response required. 5. No response required. 6. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to transfer the account for technical or operational

	Commentator	Position	Comment	Committee Response
				reasons.
			7. Should form DV-901, if approved, be a mandatory or optional form? The DV-901 form would only be mandatory if item 15 of the DV-130 is checked	7. To promote uniformity and ensure that adequate information is provided to cell phone service providers, the committee recommends adopting form DV-901 as a mandatory form. This form would only be used if an order transferring a wireless phone account was made.
			8. Should form DV-805, if approved, be a mandatory or optional form? For CARPOS entry, the DV-805 information would be optional.	8. No response required.
			9. Should form DV-815, if approved, be a mandatory or optional form? For CARPOS entry, the DV-815 information would be optional.	9. No response required.
			10. Does form DV-815, as proposed, meet the statutory requirements without requiring restrained parties or programs to release private or confidential medical or health information otherwise protected by law or not required to be provided under this statute? All forms submitted to LEAs for entry into CARPOS are considered confidential, and will only be shared with law enforcement. An example is the CLETS-001 form, which is a mandatory form, but is only shared with law enforcement to help in the identification and protection of the parties involved in restraining	10. No response required.

	Commentator	Position	Comment	Committee Response
			or protective orders. 11. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? Yes. 12. Typos Found: Page 2 of form DV-200-Info. The next to the last statement says the clerk will send it to CLETS. A better statement would be the clerk will enter the information into CARPOS or will send to a law enforcement agency for entry via CLETS. Note- CLETS is not a database, it is a mode of transport for transmitting data to a certain location or system. Page 2 of EA-116, item 6b, references CH-110. It should reference EA-110. Page 2 of WV-116 item 6b, references SV-110. It should reference WV-110.	11. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order. 12. Form DV-200 is not included in this proposal but the committee will make this revision in a future proposal. The Civil and Small Claims Advisory Committee has oversight responsibility for Elder Abuse and Work Place Violence forms and these revisions have been incorporated into a current proposal, which, if approved, will be effective July 1, 2016.
10	The State Bar of California Standing Committee on the Delivery of Legal Services By Phong S. Wong	AM	**Batterers Intervention Program** 1. Does the proposal appropriately address the stated purpose? Yes, except for proposed form DV-815 which is not necessary. AB 439 does not include a	1. While Family Code section 6343 does not require an affirmative obligation on the part of the restrained person to report on compliance, the committee recognizes that restrained persons may be ordered by courts to report on compliance and

	Commentator	Position	Comment	Committee Response
			requirement for a restrained person to provide a progress report from the batterer intervention program. The only requirement is proof of enrollment, and information regarding the details of the program and access to information (covered by DV-805). There is no affirmative requirement for restrained persons to seek out a report from the batterer intervention program.	for this reason, recommends form DV-815 be approved and available for optional use. For example, courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity.
			Rights to Wireless Telephone Number 2. Does the proposed language in DV-100, item 15, adequately provide the requesting person with notice of the financial responsibilities involved in an order of this kind? Yes.	2. No response required.
			3. Should form DV-900, if approved, include instructions for cell phone service providers, as reflected on page 2 of DV-900?	3. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to transfer the account for technical or operational reasons.
			4. Yes. In addition, DV-900 provides an order for the transfer of cell phone accounts. The parenthetical language in the "address" section for the cell phone provider may be confusing for protected persons. Including information about the Secretary of State's website or the Judicial Council's website, similar to the language proposed in DV-901 under "*Where should I*	4. Because some carriers may accept service by email or fax, the "address" section has been removed from the form. The committee has added a link to the appropriate website, as suggested by the commentator. Because the court will not have accurate information as to the length of time it will take

	Commentator	Position	Comment	Committee Response
			send Form DV-900 and this Form (DV-901)?" would be helpful. Additionally, there should be information for protected persons as to the length of time needed for a cell phone account to be transferred to their name. The only information says that a cell phone company has 72 hours to object, but a DV survivor will be eager to know when the account is transferred, and whether it is safe to use the phone. 5. Should form DV-901, if approved, be a mandatory or optional form? The form should be optional in order to allow protected victims to inform cell phone carriers by an alternate means. 6. Should form DV-805, if approved, be a mandatory or optional form? The form should be mandatory. The form addresses all of the requirements of AB 439. Providing a mandatory, consistent form will effectuate the intent of the law. With a mandatory form, the information is either provided or it is not. There is less room to debate the format and completeness of the submission with a mandatory form. 7. Should form DV-815, if approved, be a mandatory or optional form? The purpose of DV-815 is confusing. There is no legal obligation for restrained persons to	service providers to process transfers specifying this information is not included on the form. Major service providers are working on implementation of this bill. Committee staff will be in communication with these carriers to provide feedback on the process. 5. To promote uniformity and ensure that adequate information is provided to cell phone service providers, the committee recommends adopting form DV-901 for mandatory use. 6. The committee recommends adopting form DV-805 for mandatory use. 7. Same response as comment number 1

	Commentator	Position	Comment	Committee Response
			provide progress reports for their batterer intervention program. Rather, they simply need to provide the contact information, and the court or others may seek out a report from the program. If a restrained person were given this form, the inference would likely be that they are required to submit it to their program, and return a report to the court. If that is not the intention, it should be made clear in the instructions, or directly on the form. 8. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? Yes.	8. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.
11	Superior Court of Los Angeles County	AM	**Rights to Wireless Telephone Number** 1. Does the proposed language in DV-100, item 15, adequately provide the requesting person with notice of the financial responsibilities involved in an order of this kind? Yes, the language in item 15 provides adequate language regarding the financial responsibilities of this order being granted. 2. Should form DV-900, if approved, include instructions for cell phone service providers, as reflected on page 2 of DV-900?	1. No response required. 2. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to

	Commentator	Position	Comment	Committee Response
			Yes, the DV-900 should include instructions for cell phone service providers to insure compliance with this court order	transfer the account for technical or operational reasons.
			3. Should form DV-901, if approved, be a mandatory or optional form? This form should be mandatory. Cell phone service providers will be receiving orders from courts in more than 50 counties. To alleviate confusion and avoid delay in interpreting each order, there should be consistency in the format of the orders coming out of each courtroom and county across the state.	3. To promote uniformity and ensure that adequate information is provided to cell phone service providers, the committee recommends adopting form DV-901 as a mandatory form.
			4. DV 100: Section 15: Transfer of Cell Phone Account Add after the word "because": "this is my or a child in my care's cell phone number but control of " Reasoning: The amendment to Family Code section 6347 indicates that the intent of the Legislature was that the party requesting the order be able to "maintain an existing wireless telephone number, and the wireless numbers of any minor children in the care of the requesting party." The suggested language assures the bench officer that the cell phone number sought to be maintained is that used by the petitioner and/or the minor children.	4. The requester must indicate whether the number is his or hers or a child in their care. The committee believes this accurately addresses the requirement under Family Code section 6343.

	Commentator	Position	Comment	Committee Response
			5. Comment: The narrative under Assembly Bill 1407 on page 2 of the Invitation to Comment indicates that shelters report that 85% of the victims they served are tracked by the abusers via GPS and 75% are eavesdropped on phone calls using hidden mobile applications. If this is accurate, does transferring the phone accounts to the protected parties really protect them, if the restrained party has already installed hidden tracking applications? Or does it create a false sense of security for the protected party? In addition to the warning language about the financial responsibility, would it be helpful to include some warning language about the ability to track? Suggested language could be "Warning: If the restrained party has installed hidden tracking applications on your cell phone or tablet, it may still be possible for him or her to track your movements and conversations, even if you transfer the cell phone account to your name."	5. The committee proposes to include additional information, including resources for safety planning, in the Self-Help section of the Judicial Council website.
			6. DV-901: The attachment does not require the party to give an address. Unless the service provider has an alternate means of getting an address for billing purposes an address should be required.	6. The committee has made this revision.
			7. On the DV-901 in the box at the bottom of the page entitled ATTENTION CELL PHONE SERVICE PROVIDER, in addition to the language about not disclosing confidential information to the Restrained Party, would it be possible to add "or any other third party". The	7. Under Family Code section 6347 "The court shall ensure that the contact information of the requesting party is not provided to the accountholder in proceedings held pursuant to Division 10 (commencing with Section 6200)." The notice to providers is consistent with

	Commentator	Position	Comment	Committee Response
			restrained party may use a third party to try to gain access to information about the protected party. The language of the form as is, does not protect against that happening.	this requirement.
			Batterers Intervention Program 8. Should form DV-805 and DV-815, if approved, be a mandatory or optional forms? These forms should be mandatory. There are multiple court approved Batterer Intervention Programs in any given county, and some who provide services in multiple counties. Without a mandatory form, each approved agency could generate their own reporting document, requiring additional court time and resources to read and interpret the form to determine what the report means. In addition, an agency generated form may not include the protected party's name or case number, resulting in mis-filed or unfiled documents, or additional court time and resources in indexing the restrained party's name in order to properly file the document.	8. The committee recommends that form DV-805 be adopted for mandatory use and form DV-815 be approved for optional use. Commentators have raised concerns over adopting form DV-815 when Family Code section 6343 does not require the restrained person to affirmatively report on progress. The committee recognizes that some courts may set regular review hearings to monitor compliance and/or review compliance for purposes of overcoming the presumption against custody under Family Code section 3044. Having an optional form available to litigants and courts will promote access to the court process and uniformity, as suggested by the commentator.
			9. Does form DV-815, as proposed, meet the statutory requirements without requiring restrained parties or programs to release private or confidential medical or health information otherwise protected by law or not required to be provided under this statute? Yes, the form meets the requirements without	9. Some courts already have a practice of receiving progress reports from batterer intervention programs. For those courts, providing the option of attaching a separate report allows them to continue their local practice.

	Commentator	Position	Comment	Committee Response
			requiring release of any private or confidential information. However, item #5, which allows the attachment of an optional report, could open the door for an agency to inadvertently release information that should not be disclosed and is not needed by the court. If the agency completes items 1-4, the court will get the information it needs. If the agency doesn't complete the items, and just attaches the optional report, the court is in the situation of needing to read and interpret the report to determine if the restrained party has completed their requirements. Item #5 some not appear to add anything substantively, but unnecessarily opens the door for the possible inadvertent inclusion of private or confidential information. 10. DV 805: Item 2 B: This section advises that the restrained person may maintain a confidential address. There does not appear to be authority for this as to a restrained party. DV 815 at the same section gives conflicting information that the address will not be confidential. **Immigration Consequences** 11. Is the proposed language regarding immigration consequences on DV-110 and DV-130 clear and accurate? The proposed language reads: "If the court finds that you violated this order and you are NOT a U. S. citizen, you may or will be:"	10. This language is consistent with other DV forms which only require that a mailing address be provided. 11. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.

	Commentator	Position	Comment	Committee Response
			"You may or will be" is legally correct, but may not be clear to a self-represented litigant. As an alternate, "you can be" is cleaner and clearer for a litigant to understand. DV 110: Add at page 2, in the bold print below "To the person in 2": "and you may also have immigration consequences if you are not a U.S. citizen" Reasoning: This mirrors the language added at page 5. **Other comments** 12. DV-130, item #27 Change: "Number of pages attached to this six page form" to "seven page form" to reflect the new length of the form.	12. The committee has made this revision.
12	Superior Court of Orange County By the Family Law and Juvenile Court Managers		**Batterers Intervention Program** 1. We recommend DV-805 be an optional form. Many of our judges set review hearings Re: proof of enrollment. We would also like to recommend the following form changes: 2. Remove item #4(b); the majority of the time parties will not know if a program was approved by the probation department.	1. To promote uniformity, the committee recommends adopting form DV-805 for mandatory use. The committee notes that the majority of commentators indicated that form DV-805, if adopted, should be mandatory. 2. Approval of the program by the probation department is a statutory requirement. Restrained persons have notice of this requirement on form DV-130 and should only enroll in a program approved by the probation department. This form would be completed upon enrollment in an

	Commentator	Position	Comment	Committee Response
				approved program.
			3. Item 4(f) deals with service, so we recommend renumbering it; it should be its own section (item 5). We also recommend adding instructions when the protected parties address is confidential.	3. The committee agrees and has separated the section on service from the other requirements under 6343. The committee recommends providing more information on how service can be accomplished by the restrained person. However, courts will have to decide how service can be accomplished in situations when the protected parties address is confidential on a case-by-case basis.
			4. We believe DV-815 should not be mandatory. Many of our judges set review hearings Re: progress report. We recommend adding a separator line after item #2 to make it clearer to parties that the programs are to complete items 3, 4, and 5.	4. The committee recommends form DV-815 be approved for optional use. The language "Items 3 through 5 must be completed by the program" now follows item 2 and should be more prominent.
			Rights to Wireless Telephone Number	
			5. We recommend DV-900 be an optional form. Some courts may opt to use minute orders for this purpose.	5. The committee recommends adopting form DV-900 for mandatory use. The statute requires the court to send a separate order to the service provider. A minute order that is not a court order would not be sufficient. Additionally, having a standard order may assist service providers in efficiently processing these types of orders.
			6. DV-901, we recommend adding clarification to the DO NOT FILE... box to reflect this is a confidential form and should not be part of the	6. The committee has added language to clarify that the form should not be filed or placed in the court file. This form should not be retained by

	Commentator	Position	Comment	Committee Response
			public court file.	courts either in the public portion of the court file or in a confidential folder.
13	Superior Court of Riverside County	AM	1. The Proposal appropriately addresses the stated purpose. **Rights to Wireless Telephone Number** 2. We would suggest the proposed language in DV-100, item 15 read as follows: *"By making this request, and if the judicial officer makes this order, I understand that I am legally responsible for all rights, responsibilities, including all financial responsibility, for these telephone numbers, monthly service costs, and costs for any mobile devices (i.e. cell phones, tablets, etc.) associated with the telephone numbers listed in the final order".* 3. The DV-900 should include instructions for cell phone service providers if approved. 4. In addition, we would suggest changing *Name:* to *Name of Provider:*. Since the DV-900 is a court order, we would recommend that the form include a clerk's certificate to certify that it is a true and correct copy. Cell Providers may not accept unless the order is certified. 5. The DV-901 should be a mandatory form.	1. No response required. 2. The committee prefers the current language, as reflected in the *Invitation to Comment*, because it emphasizes the financial responsibilities associated with this type of order. . 3. The committee agrees and recommends including this information for service providers to ensure that requesting parties receive proper notice when a service provider is unable to transfer the account for technical or operational reasons. 4. The committee has made these revisions. 5. To promote uniformity and ensure that adequate information is provided to cell phone

	Commentator	Position	Comment	Committee Response
				service providers, the committee recommends adopting form DV-901 as a mandatory form.
			Batterers Intervention Program	
			6. Our preference is that the DV-805 and DV-815 would be optional forms.	6. The committee recommends that form DV-805 be adopted for mandatory use to help restrained persons comply with the legal requirements set forth in Family Code section 6343. The committee agrees that form DV-815 should be approved as an optional form. While Family Code section 6343 does not create an affirmative obligation on the part of the restrained person to report on compliance, the court may require the restrained person to report on compliance especially in cases involving children where there is a presumption against custody under Family Code section 3044.
			Other Comments	
			7. On the DV-110, we did not see a place/section for the judicial officer to indicate their order on the applicant request to shorten the time for service (notice).	7. An order shortening time is provided on form DV-109.
			8. On the DV-110, please remove the statement *Person in ① must complete items ①, ②, and ③ only.* at the top of the form. Generally it is the judicial officer's preference that the applicants complete the request and mirror their request across the DV-110 and the DV-130. If changes need to be	8. Because this change impacts court practice, the committee does not recommend this revision without public comment.

	Commentator	Position	Comment	Committee Response
			made, the judicial officer makes interlineations to the document.	
14	Superior Court of Sacramento County By the Family Law staff	AM	**Rights to Wireless Phone Number** 1. Page 4, NEW DV-901 form: This form does not come to the court, the phone service providers should design their own form. Form DV-901 – This not Judicial Council form to create. The requirement for the form is the responsibility of the Secretary of State. This form should be removed. 2. Page 4, Revise DV-100 form: Excerpt – "…add language to notify the requesting party of some of the financial responsibilities…". This language is unnecessary, the court currently does not point out all situations that may result in a change of financial responsibility. Form DV-100, page 3 of 6, item 15 – remove language "billing responsibility" this goes without saying. 3. Form DV-130, Page 3 of 7 – Remove item 15. It refers to the court making a separate order on form DV-900. If the order is on a separate order, there is no need to include the reference in DV-130. **Immigration Consequences** 4. Page 1, Excerpt: "The committee also	1. To promote uniformity and ensure that adequate information is provided to cell phone service providers, the committee recommends adopting form DV-901 as a mandatory form. 2. The committee prefers to notify requesting parties of the financial and billing responsibilities associated with an order of this kind. This remedy is new and the process may be challenging for litigants to navigate, especially self-represented litigants. 3. The committee prefers to keep this information on form DV-130 so litigants know which form the order is contained in. 4. Based on the public comments received and the

	Commentator	Position	Comment	Committee Response
			recommends including an additional advisement on the restraining order forms to notify the restrained party of the possible immigration consequences for violating a restraining order." The court does not see this as the court's role; the court has no expertise or jurisdiction with regards to immigration. Page 5, Advisement of Potential Immigration Consequences: The State Branch should not get involved in Federal Law. Recommend removing language regarding "immigration consequences." Form DV-110, Page 5 of 6, opening statement – Remove reference "…And You May Also Have Immigration Consequences if You Are Not a U.S. Citizen." Also, fourth bullet "If the court finds that you violated this order and you are NOT a U.S. citizen, you may or will be:…" Remove this section as it implies that the court will report them to ICE. This language will discourage participation in Family Court. **Other Comments** 8. Page 4, Excerpt – "Item 27, expand Description of Abuse", "Item 23 Other Orders and Item 28 Other Persons to be Protected", unnecessary to change form as it is unrelated to legislation.	lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order. 8. Implementation of AB 1407 requires the committee to make changes to form DV-100. The changes resulting from implementation of AB 1407 required adding another page to form DV-100 which created more space on the form. Expanding these sections should help court-users.

	Commentator	Position	Comment	Committee Response
			9. All forms, Global Comment – in the phrase "Attach a sheet of paper and write…" replace the word "write" with "type or print". 10. Form DV-120, Global Comment – Adding the phrase "Specify your reasons in item 25, page 4 of this form" is confusing and will result in less clear explanation. Add lines for so respondent can provide details after each question where necessary.	9. The forms use "write" for plain language. 10. The form would have to be significantly lengthened to provide space under each item. The committee will consider this suggestion for a future proposal. The form would have to be significantly lengthened to provide space under each item and for some litigants may still not leave sufficient space necessitating attachments. The committee must balance the need to ensure an opportunity for litigants to provide information with the impact of longer forms for file storage and environmental considerations.
15	Superior Court of San Diego County By Mike Roddy, Court Executive Officer		**Batterers Intervention Program** 1. DV-805: • "To the Restrained Person": This section informs the restrained party that he or she "may" use this form for proof, however the form is a mandatory form. • "Batterer Intervention Program": The check boxes should be removed from items a-d and f. • Remove item 4f and replace with a notice at the bottom of the form with the following: "You must provide the protected party with the information listed in (4)." The current language in item 4f, instructs the restrained party to provide the protected person with the	1. The committee has made most of these suggestions. A check box precedes items that are not required under 6343.

	Commentator	Position	Comment	Committee Response
			protected person's name (item 1). 2. DV-815: • Move sentence in item 3a that states "Report date: Intake date: Class start date:" to Item 4. • Remove check box from item 3b. • At Item 4, retitle to "Program Attendance and Progress of Person in (2)"Report date: Intake date: Class start date: • renumber items a-d to b-e. **Rights to Wireless Telephone Number** 3. DV-900: • Page 2: replace "performed" with "followed" in the first sentence. • Replace the word "and" at the end of the second bullet with "or" [since it can be any of those circumstances]. DV-901: 4. "ATTENTION PROTECTED PERSON": The second sentence includes "service provider" as the shortened version of cell phone service provider. However, DV-900 (page 2) lists the shortened name as "provider." The term is italicized on the DV-901 but not on the DV-900. 5. The third sentence should be combined with the second sentence to read as follows:	2. This information is included in item 3 so it is completed by all providers. Programs electing to attach an optional report will skip item 4. Check box preceding item 3(b) has been removed. 3. The committee has made these revisions. 4. The forms have been revised to use consistent terms on all forms. 5. The committee has made this revision.

	Commentator	Position	Comment	Committee Response
			"Complete this form and send it to the cell phone service provider (*service provider*), along with a copy of the order (Form DV-900). **Immigration Consequences** 6. Replace "deported/deportation" on forms with "removed/removal" to reflect current language used in immigration hearings.	6. Based on the public comments received and the lack of statutory authority requiring this type of notice, the committee does not recommend including an advisal on the potential immigration consequences of violating a domestic violence protective order.

Item number: 06

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Special Immigrant Juvenile Status (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: To enrich recommendations to the council and to avoid duplication of efforts, the committee will continue to collaborate with the Probate and Mental Health Advisory Committee and the CJER Governing Committee to implement Senate Bill 873, Assembly Bills 899 and 900 (Stats. 2015, ch 694), and any other federal and state legislation or judicial decision that affects the intersection of federal immigration law and California child welfare or child custody law. This collaboration may include development of rules and forms, educational events, informational materials, and other resources to aid judges and court staff as well as justice partners and court users.

If requesting July 1 or out of cycle, explain:
This proposal continues implementation of SB 873 in response to specific requests received in public comment. RUPRO approved this proposal for July 1 effect on the advisory committee's annual agenda.

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: April 15, 2016

Title
Family Law: Special Immigrant Juvenile Findings

Rules, Forms, Standards, or Statutes Affected
Cal. Rules of Court, rule 5.130; Judicial Council forms FL-356, FL-357, FL-358

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
July 1, 2016

Date of Report
March 10, 2016

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

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one rule of court and one new family law form and revising two family law forms to guide litigants and courts in filing and adjudicating requests for Special Immigrant Juvenile (SIJ) findings in family law custody proceedings. The rule and forms are needed for effective implementation of section 155 of the Code of Civil Procedure. (Sen. Bill 873; Stats. 2014, ch. 685, § 1.) The rule also responds to specific requests from the courts and the public in response to a previous invitation to comment.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Adopt rule 5.130 to establish a procedural framework for requesting, responding to a request, and adjudicating a request for Special Immigrant Juvenile (SIJ) findings and to implement

the confidentiality requirements of section 155(c) of the Code of Civil Procedure in the context of family law custody proceedings.[1]

2. Revise *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) to clarify that it is confidential, to require it to be filed as a standalone form, and to clarify the requirements for requesting SIJ findings;

3. Revise *Special Immigrant Juvenile Findings* (form FL-357) to indicate that it should be kept in a confidential part of the case file;

4. Adopt *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358) to provide a confidential vehicle for attorneys and self-represented litigants to respond to requests for SIJ findings.

The text of the amended rules and the new and revised forms are attached at pages 10–17.

Previous Council Action

In spring 2015, the Family and Juvenile Law Advisory Committee collaborated with the Probate and Mental Health Advisory Committee to develop and circulate forms to implement section 155, along with rule 7.1020 of the California Rules of Court to establish a procedural framework for filing and adjudicating a request for SIJ findings in a probate guardianship proceeding. The forms included a *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220) for use in probate guardianship proceedings, a *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for use in family law custody proceedings, and a *Request for Special Immigrant Juvenile Predicate Findings* (form JV-356) for use in juvenile dependency and delinquency proceedings. Each form provides a distinct format suitable for requesting SIJ predicate findings in the proceedings to which it applies. All three forms solicit the information necessary for the superior court to determine whether the SIJ findings are warranted in the circumstances of the case before it. The committees also developed a joint SIJ findings form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357). The Judicial Council adopted rule 7.1020 and the forms discussed above at its October 27, 2015, business meeting. The rule and the forms took effect January 1, 2016.

Rationale for Recommendation

As noted above, this recommendation is intended to implement section 155 of the Code of Civil Procedure by promoting the timely and effective adjudication of requests for SIJ findings in family law custody proceedings. Rule 5.130 also responds to requests from courts and attorneys, in response to a previous invitation to comment, for a rule of court addressing SIJ findings in family law custody proceedings. Section 155[2] affirms the superior court's authority to issue SIJ

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

[2] Sen. Bill 873; Stats. 2014, ch. 685, § 1.

findings, specifically in proceedings under the Family Code, the Juvenile Court Law,[3] and the Guardianship-Conservatorship Law[4]; sets forth the findings themselves; establishes confidentiality requirements; and incorporates the procedures and requirements for sealing court records in rules 2.550 and 2.551. But section 155 addresses the procedures for seeking and making the SIJ findings only in broad generalities and directs the Judicial Council to adopt the rules and forms necessary to implement its requirements. (Code Civ. Proc., § 155(e).) The council first acted to implement section 155 last year, adopting a rule for requesting SIJ findings in probate guardianship proceedings, three mandatory forms for requesting the findings, and a joint form for issuing the findings if warranted. Further developments over the past year have highlighted the need for a rule for requests in family law proceedings, a response form, and revisions to the family law request form and the joint findings form.

Background

SIJ status was created by federal law in 1990 to protect undocumented court-dependent abused, neglected, and abandoned children from the additional disruption and risk posed by deportation from the United States to their countries of origin. Congress amended the Immigration and Nationality Act (INA)[5] to include these children within the class of "special immigrants," eligible for temporary admission to the United States and authorized to apply for adjustment to lawful permanent resident (LPR) status.[6]

After several further amendments, the INA currently defines an SIJ as an immigrant child[7] 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 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) who is the subject of a juvenile court or administrative determination 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.[8]

To apply for SIJ classification, a child must obtain and attach to his or her application a "juvenile court order" finding that the applicant satisfies each of the three elements of the statutory SIJ definition.[9] Recognizing that federal immigration agencies are neither authorized to make child custody and child welfare decisions nor competent to resolve issues of abuse, neglect,

[3] Welf. & Inst. Code, §§ 200–987.

[4] Prob. Code, §§ 1400–3925.

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

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

[7] For purposes of the INA, a child is an unmarried person under 21 years old.

[8] INA, 8 U.S.C. § 1101(a)(27)(J).

[9] See 8 C.F.R. § 204.11(d)(2).

abandonment, or a child's best interest, the INA relies on predicate findings regarding these elements by state courts, made in proceedings under state law.

The federal SIJ regulations define 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.[10] In California, the superior courts are courts of general jurisdiction. Any duly sworn superior court judge may hear and determine any action over which a statute has granted the court subject matter jurisdiction.[11] But only in the context of certain actions or proceedings does the court hold authority to make a determination about the custody or care of a child. These proceedings include juvenile dependency and delinquency proceedings, custody proceedings under the Family Code,[12] and guardianship proceedings under the Probate Code.[13]

Rule 5.130

Rule 5.130(a) specifies the rule's applicability to any request for SIJ findings filed in a proceeding under the Family Code (rule 5.130(a)). Subdivision (b) states that rules 5.90–5.125, governing requests for court orders, also apply to requests for SIJ findings unless otherwise required (rule 5.130(b)). The rule identifies the persons who may file a request for SIJ findings (rule 5.130(b)(1)), specifies that the request must be filed on *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), and requires either prior or concurrent filing of a request for sole physical custody of the child who is the subject of the requested SIJ findings (rule 5.130(b)(2)). It further requires that form FL-356 be filed as a separate document, not as an attachment, and that a separate form FL-356 be filed for each child for whom SIJ findings are requested (rule 5.130(b)(3)–(4)). The rule also authorizes a request for SIJ findings to be filed at the same time as a request for other orders regarding the same child.

In response to comments and recent case law, the committee added subdivision (c) to the recommended rule to clarify the requirements for serving a notice of hearing and copy of the request for SIJ findings.[14] This subdivision requires notice to be served in the appropriate manner specified in rule 5.92(a)(6)(A)–(C) on all parties to the underlying action, all alleged, biological, and presumed parents of the child who is the subject of the requested findings, and any other person who has physical custody or is likely to claim a right to physical custody of the child. Rule 5.130(d) authorizes any person entitled to notice under subdivision (c) to file a response to

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

[11] See, e.g., *In re Chantal S.* (1996) 13 Cal.4th 196. In smaller courts, a single judge will hear and determine actions arising under several different codes. Larger courts are organized as a matter of convenience into divisions, each of which hears actions authorized under a specific code or codes.

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

[13] See Prob. Code, §§ 800, 1510–1516, 2351.

[14] See *Bianka M. v. Superior Court* (Mar. 2, 2016, B267454) ___ Cal.App.4th ___ [pp. 26–27 & n.13] [2016 WL 815525]. Remittitur is scheduled to issue on May 2, 2016. (Cal. Rules of Ct., rule 8.490(d).) The committee intends rule 5.130(c) to be consistent with, but not dependent on, the Court of Appeal's emphasis on the need for proper notice to an absent parent of a request for SIJ findings alleging parental abuse, neglect, or abandonment.

the request using the new *Confidential Response to Request for Special Immigrant Juvenile Findings—Family Law* (form FL-358).

The rule requires that, to obtain a hearing on a request for SIJ findings, a person must file and serve a separate form FL-356 for each child with respect to whom SIJ findings are requested (rule 5.130(e)). The rule does, however, permit consolidation into one hearing of a request for custody and a request for SIJ findings with respect to the same child, as well as separate requests for SIJ findings for multiple siblings or half-siblings (rule 5.130(e)(1)–(2)). Courts in which proceedings related to siblings or half-siblings were pending would be permitted to communicate about consolidation and proper venue consistent with the procedures and limits in section 3410(b)–(e) of the Family Code (rule 5.130(e)(3)).

In a case involving requests for SIJ findings for more than one child, the rule would require the court to issue separate findings for each qualified child in the case and document those findings on a separate form FL-357 for each such child (rule 5.130(f)). Separate findings and documentation are necessary to implement section 155(b) because each child must apply individually to the U.S. Citizenship and Immigration Services (USCIS) for SIJ classification. In addition, the Immigration Court determines each child's petition for relief from removal (deportation) on an individual basis.

Rule 5.130(g) specifies procedures to implement section 155(c), which requires that any information about the immigration status of the child who is the subject of the request for SIJ findings "remain confidential and . . . be available for inspection only by the court" and certain specified persons. The rule requires that any *Confidential Request for Special Immigrant Juvenile Findings* (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) be kept in a confidential part of the case file. Furthermore, the rule requires any information about the immigration status of a child who is the subject of a request for SIJ findings be redacted from all records kept in a publicly accessible part of the court file.[15]

[15] The committee also considered proposing a rule to implement Assembly Bill 899 (Stats. 2015, ch. 267), but declined to do so because of uncertainty over the reach of the statute. AB 899 added section 831 to the Welfare and Institutions Code to clarify that juvenile court records "should remain confidential regardless of the juvenile's immigration status." (Welf. & Inst. Code, § 831(a).) Section 831 goes on to state that nothing in article 22 (beginning with section 825) of chapter 2 of division 2 of the Welfare and Institutions Code, which governs access to juvenile court records, authorizes disclosure to, dissemination to or by, or attachment to documents given to or provided by "federal officials" of "juvenile information" without a court order in response to a petition filed under section 827(a)(1)(P) or 827(a)(4). (Welf. & Inst. Code, § 831(b)–(d).) The statute then defines "juvenile information" to include not only the court file, but also "information related to the juvenile, including name [and] date or place of birth," regardless of its origin or source, as long as it is "maintained by a government agency." (Welf. & Inst. Code, § 831(e).) Despite the Legislature's express intent only to declare existing law, AB 899 may be interpreted to extend confidentiality to information not currently protected. Given multiple plausible yet conflicting interpretations of the legislation, the committee chose to defer action pending legislative or judicial guidance.

***Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356)**
The Judicial Council originally adopted form FL-356 as an attachment to *Request for Order* (form FL-300) because the determination of a request for SIJ findings in a family law proceeding depends on the court's prior or contemporaneous grant a request for order of sole physical custody of the child who is the subject of the SIJ findings.[16] The form's initial status as an attachment is consistent with regular family law procedure, in which form FL-300 serves as a cover sheet for almost all requests for court orders. It has become apparent, however, that filing form FL-356 as an attachment to other forms presented serious logistical problems for court staff in light of section 155(c)'s confidentiality requirements. Specifically, staff must develop procedures to separate an attached FL-356 from any other filing that must be kept in the publicly accessible part of the court file. Recognizing the workload impact on court staff, the committee recommends revising form FL-356 to serve as a standalone request. The revisions include adding a caption box and a notice of hearing to page one, inserting a confidentiality notice to court staff in the file stamp box, and renaming the form, *Confidential Request for Special Immigrant Juvenile Findings—Family Law.*

***Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357)**
The committee recommends revising form FL-357 to insert a notice of confidentiality in the file stamp box to remind court staff to keep the form in a confidential part of the court file. Because section 155(c) of the Code of Civil Procedure applies to requests for SIJ findings submitted in any suitable proceeding regarding the care or custody of a child, the maintenance of the form in a confidential file is also appropriate in juvenile and guardianship proceedings.

***Confidential Response to Request for Special Immigrant Juvenile Findings—Family Law* (form FL-358)**
In response to a number of comments, the committee recommends adoption of a separate form, *Confidential Response to Request for Special Immigrant Juvenile Findings—Family Law* (form FL-358), for use to respond to a request for SIJ findings in a family law proceeding. This form is needed to give parties and other interested persons entitled to notice of a request for SIJ findings a simple, confidential vehicle with which to file a response.

Comments, Alternatives Considered, and Policy Implications

As part of the winter 2016 invitation-to-comment cycle (December 11, 2015, to January 22, 2016), the proposal was sent out for public comment to the standard mailing list for family and juvenile law proposals, which includes judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations, as well as to the regular rules and forms mailing list. In addition, committee staff sent the proposal to immigration attorneys, nonprofit immigrants' rights organizations, and the USCIS Office of Policy and Strategy. Ten comments were received; all

[16] See Judicial Council of Cal., Advisory Com. Rep., *Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings* (Aug. 27, 2015) pp. 2, 6–7.

commentators supported the proposal in principle.[17] Four commentators agreed with the proposal as circulated, while six commentators suggested modifications.

Several commentators emphasized the difficulty that court staff would experience trying to file *Request for Special Immigrant Juvenile Findings—Family Law* (form (FL-356) confidentially if it remained an attachment to other forms kept in the public file. Commentators also noted that rule 5.130(f) as circulated could be interpreted to expand the confidentiality requirements in section 155(c) to apply to all records of a proceeding related to SIJ findings rather than only to "information regarding the child's immigration status," as required by the statute. This expansion was inadvertent.

In considering modifications to the proposal, the committee attempted to strike a proper and practical balance between making court records accessible to the public under section 68150(*l*) of the Government Code and protecting the confidentiality of information about the child's immigration status as required by section 155(c). The committee recommends that the rule require only *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) to be kept in a confidential file or part of the file. Because SIJ findings are available only to an undocumented child, the filing any of these forms indicates that the child named on them is undocumented. Public access to any of these forms would therefore reveal "information regarding the child's immigration status." The rule would also require the redaction of any information about the child's immigration status from records of a proceeding in response to a request for SIJ findings that are kept in a publicly accessible part of the case file. These requirements are intended to make as much as possible of the case file accessible to the public while eliminating any risk that information about the child's immigration status might be revealed to persons not authorized by section 155(c).

To facilitate keeping the forms in a confidential file, as well as to simplify the procedures for filing a request for SIJ findings, the committee also recommends making form FL-356 a standalone form. Although the proposal that circulated for comment did not include any form revisions, most commentators and virtually all of the courts requested that form FL-356 be detached from form FL-300 and filed separately. To make the form independent, the committee recommends the revisions discussed on page 6 of this report, above. The also recommends modifying rule 5.130(b)(3) to specify that form FL-356 must be filed separately from other papers, even when all are filed concurrently.

Several commentators requested that the rule be amended to indicate that a request for SIJ findings may be made only if a party has requested sole physical custody of the child. Form FL-356 already indicates this requirement. Because SIJ findings require that reunification with at least one parent not be legally viable, an order of joint physical custody would not, as a matter of law, support SIJ findings. The committee has therefore modified its recommendation to add

[17] A chart providing the full text of the comments and the complete committee responses is attached at pages 18–37.

language to rule 5.130(b) and its subparts specifying that a request for SIJ findings may be filed only in the context of a proceeding in which at least one person has requested sole physical custody of the child.

The committee included a provision on sealing the record of a proceeding in response to a request for SIJ findings in the proposal circulated for comment. That subdivision was intended to implement section 155(d) by specifying that such a record may be sealed if the requirements of rules 2.550 and 2.551 are met. The lone commentator who addressed this subdivision pointed out that it did not significantly clarify the statute or establish a procedure for sealing records of a proceeding in response to a request for SIJ findings. The committee agrees that the statutory reference to rules 2.550 and 2.551 and the standards and procedures describe in those rules provide sufficient guidance to courts and litigants, and has removed that language from its recommendation.

At one commentator's suggestion, the committee considered whether to specify the fee to file a request for SIJ findings in a proceeding under the Family Code. The commentator speculated that parties would seek to file requests for SIJ findings in Domestic Violence Prevent Act cases because the courts may not charge a filing fee for requests for protective orders in proceedings under that act. The committee does not recommend specifying fees for filing a request for SIJ findings separate or different from the fees set by section 70677 of the Government Code for motions or requests for orders. To the extent that the legislation has left open the possibility of requesting SIJ findings in any action under the Family Code that supports a request for custody, the committee must defer to that choice. If the filing fee poses a hardship for the requesting person, a fee waiver may be available under section 68630 et seq. of the Government Code. A party who applied for a fee waiver would be entitled under section 68634 to file the paper immediately without paying the fee.

One commentator asked whether proceedings in response to requests for SIJ findings must be closed to comply with the confidentiality requirements in section 155(c). Beginning from the premise that civil judicial proceedings must be open to the public under section 124 of the Code of Civil Procedure unless otherwise specified, staff examined section 155(c). That section provides that, in a judicial proceeding in response to a request for SIJ findings, "information regarding the child's immigration status" must "remain confidential" and "be available for inspection" only by the court and specified persons.

The committee does not believe that section 155(c) clearly requires that SIJ hearings be closed. One interpretation of "information" would, obviously, include information conveyed orally at a hearing. However, the qualification that such information be "available for inspection" only by specified persons implies that the statute protects only written information. Because of the presumption in section 124 of the Code of Civil Procedure that judicial proceedings are open to the public, the committee does not believe it is authorized to close these proceedings by rule without more explicit guidance from the Legislature. Section 214 of the Family Code, however, permits the court to close proceedings on a case-by-case basis in "the interests of justice and the

persons involved." The family court has discretion to apply these considerations in proceedings in response to requests for SIJ findings.

One commentator suggested that the rule specify who holds the burden of proving facts in support of the SIJ findings and the standard for meeting that burden. Section 155(b)(1) requires only that "there [be] evidence to support the findings." This language indicates no intent to create an exception to sections 500 and 550 of the Evidence Code and, therefore, gives no reason to think that anyone other than the person requesting the findings would bear the burden of proof. The statutory language is less clear regarding the necessary quantum of evidence. Stating that "there is evidence" leaves open the possibility that the standard could be satisfied by less than a preponderance of the evidence, the default standard of proof in civil proceedings. However, without express intent to depart from the default standard, requiring proof by a preponderance would seem appropriate. The committee considered specifying in the rule that the holder of the burden and the standard of proof remain the same as in other civil proceedings, but elected to remain silent absent an express need to depart from these defaults.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require some implementation and training costs. These costs are necessary to comply with section 155. In particular, the proposed rule will require training for court staff that receives and processes filings in family law proceedings. The committee intends the modification of rule 5.130 in response to comment, the revision of forms FL-356 and FL-357, and the adoption of form FL-358 to reduce the training and workload required to implement section 155's procedural and confidentiality requirements.

Attachments and Links

1. Cal. Rules of Court, rule 5.130, at pages 10–12
2. Judicial Council forms FL-356, FL-357, and FL-358, at pages 13–17
3. Chart of comments, at pages 18–37
4. Attachment A: Code of Civil Procedure, section 155

Rule 5.130 of the California Rules of Court is adopted, effective July 1, 2016, to read:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 6. Request for Order

Article 6. Special Immigrant Juvenile Findings

Rule 5.130. Request for Special Immigrant Juvenile Findings

(a) Application

This rule applies to a request by or on behalf of a minor child who is a party or the child of a party in a proceeding under the Family Code for the judicial findings needed as a basis for filing a federal petition for classification as a Special Immigrant Juvenile (SIJ). This rule also applies to an opposition to such a request, a hearing on such a request or opposition, and judicial findings in response to such a request.

(b) Request for findings

Unless otherwise required by law or this rule, the rules in this chapter governing a request for court orders in a family law proceeding also apply to a request for SIJ findings.

(1) *Who may file*

Any person—including the child's parent, the child if authorized by statute, the child's guardian ad litem, or an attorney appointed to represent the child—authorized by the Family Code to file a petition, response, request for order, or responsive declaration to a request for order in a proceeding to determine custody of a child may file a request for SIJ findings with respect to that child.

(2) *Form of request*

A request for SIJ findings must be made using *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356). The completed form may be filed in any proceeding under the Family Code in which a party is requesting sole physical custody of the child who is the subject of the requested findings:

(A) At the same time as, or any time after, the petition or response;

(B) At the same time as, or any time after, a *Request for Order* (form FL-300) or a *Responsive Declaration to Request for Order* (form FL-320) requesting sole physical custody of the child; or

(C) In an initial action under the Domestic Violence Prevention Act, at the same time as, or any time after, a *Request for Domestic Violence Restraining Order (Domestic Violence Prevention)* (form DV-100) or *Response to Request for Domestic Violence Restraining Order (Domestic Violence Prevention)* (form DV-120) requesting sole physical custody of the child.

(3) A *Confidential Request for Special Immigrant Juvenile Findings—Family Law* filed at the same time as any of the papers in (A), (B), or (C) must be filed separately from, and not as an attachment to, that paper.

(4) *Separate FL-356 for each child*

A separate form FL-356 must be filed for each child for whom SIJ findings are requested.

(c) Notice of hearing

Notice of a hearing on a request for SIJ findings must be served with a copy of the request and all supporting papers in the appropriate manner specified in rule 5.92(a)(6)(A)–(C) on the following persons:

(1) All parties to the underlying family law case;

(2) All alleged, biological, and presumed parents of the child who is the subject of the request; and

(3) Any other person who has physical custody or is likely to claim a right to physical custody of the child who is the subject of the request.

(d) Response to request

Any person entitled under (c) to notice of a request for SIJ findings with respect to a child may file and serve a response to such a request using *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358).

(e) Hearing on request

To obtain a hearing on a request for SIJ findings, a person must file and serve a *Confidential Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for each child who is the subject of such a request.

(1) A request for SIJ findings and a request for an order of sole physical custody of the same child may be heard and determined together.

(2) The court may consolidate into one hearing separate requests for SIJ findings for more than one sibling or half-sibling named in the same family law case or in separate family law cases.

(3) If custody proceedings relating to siblings or half-siblings are pending in multiple departments of a single court or in the courts of more than one California county, the departments or courts may communicate about consolidation consistent with the procedures and limits in section 3410(b)–(e) of the Family Code.

(f) Separate findings for each child

The court must make separate SIJ findings with respect to each child for whom a request is made, and the clerk must issue a separate *Special Immigrant Juvenile Findings* (form FL-357) for each child with respect to whom the court makes SIJ findings.

(g) Confidentiality (Code Civ. Proc., § 155(c))

Confidential Request for Special Immigrant Juvenile Findings—Family Law (form FL-356), *Confidential Response to Request for Special Immigrant Juvenile Findings* (form FL-358), and *Special Immigrant Juvenile Findings* (form FL-357) must be kept in a confidential part of the case file or, alternatively, in a separate, confidential file. Any information regarding the child's immigration status contained in a record related to a request for SIJ findings kept in the public part of the file must be redacted to prevent its inspection by any person not authorized under section 155(c) of the Code of Civil Procedure.

PARTY WITHOUT ATTORNEY *or* 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* **CONFIDENTIAL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
CONFIDENTIAL REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW	CASE NUMBER:

To the person filing this request: You must file this request in the case identified in 6, below, at the same time as or any time after the petition and a request for an order of sole physical custody of the child named in 4.*

To the court clerk: You must file this request in a confidential part of the case file.

1. **A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room.:

   b. Address of court ☐ same as noted above ☐ other *(specify):*

2. 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.

3. This court has jurisdiction to make a custody determination about the child in item 4 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) is attached.

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

5. The child's parents are *(name each):*

   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent

6. The following petition has been filed ☐ earlier in this case ☐ at the same time as this request.

   a. ☐ *Petition—Marriage/Domestic Partnership* (form FL-100), asking for sole physical custody of the child named in 4.

   b. ☐ *Petition to Establish Parental Relationship* (form FL-200), asking for sole physical custody of the child named in 4.

   c. ☐ *Petition for Custody and Support of Minor Children* (form FL-260), asking for sole physical custody of the child named in 4.

   d. ☐ *Request for Domestic Violence Restraining Order* (form DV-100), asking for sole physical custody of the child named in 4.

   e. ☐ *Adoption Request* (form ADOPT-200) asking to adopt the child named in 4.

   f. ☐ Another petition and request for sole physical custody of the child named in 4 *(specify):*

7. ☐ This court made final orders about physical custody of the child on *(date):* . The orders remain in effect.
   ☐ The case in 6 is pending in this court.

(Prepare and file 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 [Rev. July 1, 2016]

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:

8. After the court has made final orders in this case, identified in 6, the child will be legally placed under the custody of an individual appointed by the court. The court will have jurisdiction to determine requests to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.

9. 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 issued final orders giving sole physical custody to one parent, return of the child to the physical custody of another parent (i.e., reunification) will not be legally possible while those orders are in effect.

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

10. The child has been placed in the custody of *(name):*
who is an individual appointed by the court as described in the orders referred to in 7, 8, and 9.

11. 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 11.

12. 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 12.

13. ☐ 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)

PARTY WITHOUT ATTORNEY *or* 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*):	**CONFIDENTIAL** DRAFT ONLY not approved by 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
      (1) ☐ placed under the custody of an individual *(name, unless confidential):*
      (2) ☐ placed under the custody of an entity *(name):*
      (3) ☐ 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.

CASE NAME:	CASE NUMBER:

5. Reunification of the child with ☐ the mother ☐ the father ☐ the 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

PARTY WITHOUT ATTORNEY or 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* **CONFIDENTIAL** DRAFT ONLY not approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY:	
CONFIDENTIAL RESPONSE TO REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:
HEARING DATE: TIME: DEPARTMENT OR ROOM:	

1. SPECIAL IMMIGRANT JUVENILE FINDINGS
   a. ☐ I agree to the findings requested.
   b. ☐ I do not agree to the findings requested.
   c. ☐ I would agree to the following findings:

2. ☐ SUPPORTING INFORMATION
   ☐ Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

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)

W16-11

Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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

	Commentator	Position	Comment	Committee Response
1.	Virginia Johnson Staff Attorney Superior Court of San Diego County	NI	***Does the proposal appropriately address the stated purpose?*** No. CCP § 155(e) requires the Judicial Council to adopt a rule that implements the statute. As I read the rule, it basically restates the statute rather than adopting procedures for implementation. Restating the statute but using slightly different wording creates ambiguity, confusion, and, in some provisions, conflicts with the statute. As written, the rule overcomplicates the SIJS findings procedure. Consider a very simple rule about the use of the forms for each child attached to an RFO. ***Subd. (a)*** Arguably, the family court can only order sole custody to an individual and find reunification with one or both parents is not viable because of abuse, neglect, or abandonment unless there is a contested custody issue before the court, even if it is by default or an unopposed RFO. ***Subd. (b)(2)*** See comments in section (a). Consider limiting the request and attachment to only an RFO in a contested custody proceeding. Allowing the FL-356 to be attached to anything but an RFO in an action that involves contested custody would seem to conflict with the typical finding in family court that the child was placed	The committee understands these initial comments to refer to subdivision (f), regarding confidentiality, and subdivision (g), regarding sealing of records. No other provisions of this rule paraphrase statutory language or restate it verbatim. The committee struggled to interpret and implement section 155(c) and (d) of the Code of Civil Procedure in a way that would protect the confidentiality of information about a child's immigration status in court records while maintaining public access to court records to the greatest possible extent. For specific modifications, please see the committee's responses to comments on individual subdivisions, below. Assuming for the purpose of discussion that the family court may issue a final order awarding sole custody only in a contested proceeding (but see *Burchard v. Garay* (1986) 42 Cal.3d 531, 535), the committee does not believe that the rules of court should require a litigant to predict whether his or her request will be contested at the time of filing. See response to comments on subdivision (a). The committee intends the rule to apply to all plausible circumstances in which a request for SIJ findings may be filed and considered in a family law proceeding. In response to comments pointing out the practical difficulties of maintaining confidentiality, the committee has reconsidered its

	Commentator	Position	Comment	Committee Response
			in the custody of an individual (usually one parent) and that reunification with the other party is not viable due to abandonment. I realize that my recommendations would require another revision of the newly adopted FL-356.	decision to make form FL-356 an attachment to a request for order on form FL-300. Form FL-356 has been modified to serve as a standalone form.
			(A) As an attachment to a petition or response in a family law proceeding <u>only if the party is seeking sole custody of the minor child</u>; or This revision will match form FL-356 and support the necessary SIJS finding. *(B) As an attachment to a Request for Order (form FL-300) or a Responsive Declaration to Request for Order (form FL-320) <u>in a proceeding involving contested custody of a minor child.</u>*	The committee agrees that the request for SIJ findings should be brought only in a proceeding in which at least one party is seeking sole physical custody of the child and has modified its recommendation accordingly. Although the committee anticipates that, in most cases, the party requesting sole physical custody will also file the request for SIJ findings, it does not recommend precluding other parties from doing so.
			The only scenario I have ever seen in our family court is that Dad is long gone and no one even has an address for him. Mom serves the summons and petition by publication and the RFO is served on the clerk of the court. The SIJS is based on "abandonment." There is never a response from Dad. If there is a response to the RFO by another parent seeking sole custody, the court could grant sole custody to one parent, but if you have two parents battling for sole custody, arguably there would be no basis for finding that reunification with the other parent is not viable.	The committee intends the rule to apply to all plausible circumstances in which a request for SIJ findings may be filed and considered in a family law proceeding.
			~~(C) In an initial action under the Domestic~~	Form FL-356 specifies that the DVPA action must

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			~~*Violence Prevention Act, as an attachment to Request for Domestic Violence Restraining Order (Domestic Violence Prevention) (form DV-100) or Response to Request for Domestic Violence Restraining Order (Domestic Violence Prevention) (form DV-120).*~~ This avenue needs to be given serious reconsideration. Allowing FL-356 to be attached to an RFO in a DV without further explanation could cause multiple problems.	include a request for sole physical custody to serve as a predicate for a request for SIJ findings. The committee has modified its recommendation to add that requirement in the rule as well.
			Custody orders in a DV are only temporary which, arguably, does not satisfy the intent of the SIJS law. It would create confusion as to how and when the SIJS findings would be made. Conceivably the findings could not be made at the DVRO hearing unless the party filed the SIJS/RFO with the DVTRO which is set on the same date and time as the DVRO and the RFO is timely served on CCP §1005.	The committee reads section 6340(a) of the Family Code to require that a custody order made after a hearing in a DVPA action remain in force after the termination of the protective order. If the hearing was conducted under the procedures and requirements of division 8 (beginning with section 3000) of the Family Code, then section 6345(b) would appear to permit a custody order issued in a DVPA action to become a final order subject to modification only in the event of a substantial change of circumstances if a change is in the best interests of the child under the standard articulated by the Supreme Court in *Burchard v. Garay* (1986) 42 Cal.3d at pp. 534–536.
			What if the DVRO is not based on abuse of the child or does not include the child as a protected party?	The committee understands that, if the DVRO is granted, but not based on abuse of the child or the child is not named as a protected party, the court nevertheless holds the authority to award sole physical custody to the protected parent. The party requesting SIJ findings would then need to show that reunification of the child with the restrained

	Commentator	Position	Comment	Committee Response
				parent is not legally viable because of abuse, neglect, or abandonment.
			What happens if the DVTRO is denied and the applicant waives their right to a hearing? Under normal circumstances the case would be dismissed. Does the case remain open to allow the party to premise their SIJS/RFO on neglect or abandonment? What happens if the permanent DVRO is denied? Again, does the court allow the party to premise their SIJS/RFO on neglect or abandonment?	The committee understands that a request for SIJ findings depends on the disposition of the underlying request for sole physical custody. This state law relief serves as a necessary predicate to the SIJ findings. If the state law action results in circumstances under which the law and the facts support all three SIJ findings, then the court must make the findings. If not, then the court may not make the findings. If the underlying action is dismissed, all requests for orders filed in that action, including the request for sole physical custody and the request for SIJ findings, would also be dismissed.
			Parties will likely expect no fee to be charged for filing the separate RFO in a DV case. Parties should not be treated differently because the FL-356 is in a DV case, particularly if the DV is denied. If parties know the SIJS/RFO will go forward regardless of the results of the DVRO, parties will be able to use the free filing of the DV case to manipulate the system for their SIJS request.	The committee does not recommend using the rules of court to address the filing fee for a request for SIJ findings. The statutory fee for filing a request for order, all exceptions, and all eligibility requirements for a waiver of fees would appear to apply to a request for SIJ findings or a response.
			Subd. (b)(4) Requests for multiple orders *A party filing a request under this rule may combine that request with a request for other orders relating to the child under the Family Code.* What does this language mean? If it means child	The committee agrees that the language used is confusing. The committee intended this language to indicate that a party may file a request for SIJ findings at the same time as but separate from requests for other orders under the Family Code. The recommendation has been modified to

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			support or visitation, this subsection appears to be in conflict with section (a).	express this intent more clearly. The committee does not intend to imply that a request for a child support order, without more, would serve as a valid basis for the court to make SIJ findings. On the other hand, the committee does not intend to preclude the concurrent filing of a request for a support order, a request for sole physical custody, and a request for SIJ findings.
			Also, see comments in section (a).	See responses to comments on subd. (a).
			Subd. (d)(1) Theoretically, there will never be an order of "parenting time" concurrent with an SIJS finding that reunification with one or both parents is not viable.	The committee does not wish to preclude by rule the possibility of a court finding that a final custody order granting sole physical custody to one parent and supervised visitation or parenting time to another parent might serve as a valid basis for SIJ findings. Please note also that subd. (d) is now designated subd. (e).
			Subd. (f) By including the conjunctive "and" in the first line, the language becomes ambiguous. It could be read as requiring that both "all records that pertain to the request" and "information regarding the child's immigration status" be confidential. This would broaden the scope of CCP §155(c) which limits confidentiality to "the child's immigration status." It would also cause confusion and complications on the confidentiality of the RFO itself and any other pleadings submitted with the RFO on custody issues and DV. Moreover, this subsection is simply a restatement of the statute.	The committee agrees that the addition of "and" to the specified sentence introduced one ambiguity in an effort to eliminate another. The committee recommends modifying the sentence, consistent with the recommended revisions to forms FL-356 and FL-357 and the adoption of form FL-358, to require the confidential filing and storage of those specific forms and the redaction of all information about the child's immigration status from publicly accessible filings. The committee does not intend the rule to expand the scope of section 155(c). The committee does not, however, recommend the elimination of subdivision (f). The committee

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			Subd. (g) As written, this rule is also ambiguous and appears to broaden the scope of CCP §115(d). I interpret CCP §115(d) as limited to the option to seal only those records of the immigration portion of the hearing. To interpret the statute otherwise and give parties the ability to request that all records pertaining to the custody or DV hearing be sealed could incentivize parties to file motions to seal all records which, in all likelihood, would be denied. Most litigants and attorneys are not familiar with the high burden of proof for a sealing order. This would create an undue burden on the court's time and resources. Moreover, this subsection is simply a restatement of the statute.	intends the subdivision to specify a process by which a court may comply with the confidentiality requirement in section 155(c). Please note that subd. (f) is now designated subd. (g). The committee agrees that subdivision (g) of the circulated rule does not add materially to the requirement in section 155(d) and has deleted that subdivision from the proposed rule.
2.	Orange County Bar Association by Todd G. Friedland, President	A	No specific comment.	Thank you for your comment. No further response required.
3.	State Bar of California Family Law Section, Exec. Comm. by Saul Bercovitch, Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar supports this proposal.	Thank you for your comment. No further response required.
4.	State Bar of California Standing Comm. on the Delivery of Legal Services by Phong S. Wong, Chair	A	*(Agree with proposal in its entirety)* **Specific Comments** <u>Does the proposal appropriately address the stated purpose?</u> Yes. The proposed rules are clear and concise as to who may file for an SIJ finding, how to file,	Thank you for your comment. No further response required.

	Commentator	Position	Comment	Committee Response
			and when to file. Also, confidentiality and sealing of the record are adequately covered. The filing of the forms for the SIJ filing falls within the family law framework and would be eligible for fee waivers.	
5.	Superior Court of Los Angeles County	AM	The language at 5.130(b)(1) is ambiguous. As written it seems to suggest that anyone who could file a response to a petition or a response to request for order may file for SIJS findings. But, who may file a Response to a Petition or RFO depends on who files the petition and what is alleged. Under the present wording a non-parent/non-guardian, non-GAL could file for SIJS findings on the theory that they could file a response to a hypothetical petition.	The committee intends the rule to permit any person entitled to be a party to the underlying proceeding, as well as the child if authorized by statute, to file a request for SIJ findings. The committee intends the proposed modification of rule 5.130(b)(1), along with changes to other subdivisions that clarify that a request for SIJ findings must be filed in the context of a proceeding in which at least one party is requesting sole physical custody of the child and that the request may only be file at the same time as or later than the first paper, to limit abuses of the process.
			5.130(c) is also ambiguous. It allows someone who is entitled to notice of an RFO under CRC 5.92 to object to the SIJS petition. But, who is entitled to notice is not determined by CRC 5.92 rather, that is determined by the petition and the Constitution.	The committee agrees. In addition to adding a new subdivision (c) to clarify the persons on whom notice and a copy of the request must be served, the committee has clarified in newly designated subdivision (d) that only a person entitled in (c) to notice of a request for SIJ findings may file an opposition to such a request.
			Does the proposal appropriately address the stated purpose? The proposal would be improved significantly by creating a stand-alone petition specifically to address SIJ findings as opposed to creating the FL-356 as an attachment. Additionally, this would provide greater insurance that the	The committee agrees and has modified its recommendation to include revising form FL-356 to be a standalone form. The committee also recommends the adoption of form FL-358 as a response to a request for SIJ findings.

	Commentator	Position	Comment	Committee Response
			confidentiality of these documents is maintained.	
			Rule 5.130(b)(2)(A) states that the Request for Special Immigrant Juvenile Findings (FL-356) may be attached to a petition or a response in a family law proceeding. However, a court hearing is required for the court to make findings, so it is unclear what the purpose of attaching it to a petition may be. Attaching it to a petition, may give a self-represented litigant the impression that the findings will be granted without the filing of an RFO or setting of a hearing.	The committee agrees in part and has modified its recommendation to indicate that the request for SIJ findings may be filed at the same time as or any time after the petition or response. In addition, the committee has proposed adding language to paragraph (b)(2) and subparagraph (b)(2)(D) to clarify that the request must be filed separately, not attached, and may be filed only in a proceeding in which at least one party is seeking sole physical custody of the child.
			Rule 5.130(d)(1) indicates that, if filed at the same time as a request for determination of custody or parenting time, a request for SIJS findings and the request for order determining custody or parenting time may be heard and determined together. Are two separate RFOs required or can the Request for SIJF be attached to the RFO requesting custody?	The committee intends that, even when they are filed concurrently, the request for SIJ findings be filed as a separate document to simplify the process of keeping it confidential. Please note also that subd. (d) is now designated subd. (e).
			The confidentiality requirement in section (f) indicates that all records that pertain to a request under this section, including information about the child's immigration status, must be kept in a confidential. This becomes problematic if the SIJF is attached to a Petition or RFO for custody which do not have the same confidentiality requirements.	The committee intends the proposed amendments to rule 5.130(f), now 5.130(g), and the revision of form FL-356 as a standalone form to resolve this issue.

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			Would the confidentiality requirements in the proposed rule impose specific or logistical record-keeping burden? The confidentiality requirements would impose specific record keeping burdens on courts. As noted above, having confidential and non-confidential documents filed as one document will present problems. The proposed rule does not address how to handle documents when the FL-356 is attached to documents that are not confidential. Guidance should be provided to avoid inconsistent practices.	The committee intends the revision of form FL-356 as a standalone form to reduce or eliminate the logistical burden on court staff. The forms associated with a proceeding in response to a request for SIJ findings could be handled in the same manner as other confidential documents, such as a custody evaluation, filed in a family law case.
			Would this proposal have different effect on courts of different sizes? Larger courts will have more of a workload depending on the volume of filings.	The committee agrees in part. Larger courts may see a proportionally larger number of filings, but courts in specific locations, such as Los Angeles, Orange County, and the San Francisco bay area, are likely to see a disproportionate number of SIJ filings based on their larger populations of undocumented immigrants from Central America. To the extent that larger courts do see a proportionally larger number of filings, the Workload Allocation Funding Model is intended to address the identified workload disparity.
			Does the proposal provide cost savings? The proposal does not appear to provide cost savings. To the extent paper files are maintained, the use of confidential envelopes will increase. Access to otherwise public records by parties seeking to view confidential documents in these type of cases will require additional file management resources.	The committee agrees, but has no authority to recommend confidentiality requirements less stringent than those required by statute. The recommended modifications to rule 5.130(g) and forms FL-356, FL-357, and FL-358 are intended to minimize the need for new or additional procedures and associated costs.

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Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)
All comments are verbatim unless indicated by an asterisk (*).

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			Would two months be sufficient time to implement the proposal? Two months is not enough time to implement the proposal. The handling of confidential documents attached to non-confidential documents would require a court to address record keeping procedures, update and or modify existing practices and procedures and train staff prior to implementation. If a stand-alone petition specifically to address SIJ findings, instead of using FL-356 as an attachment, would be easier to implement.	The committee does not recommend the delaying implementation of the rule and forms. Consistent with the commentator's suggestion, the committee intends the modifications to rule 5.130(g) and the revision of form FL-356 to make it a standalone form to simplify the filing process enough to eliminate confusion, logistical issues, and the need for longer processing times and to permit implementation within the normal, two-month time frame.
6.	Superior Court of Orange County Family Law & Juvenile Court Operations by Blanca Escobedo Principal Administrative Analyst	AM	The proposed purpose is met as it pertains to Family Law. However, we would like to recommend the following revisions: CRC 5.130 (b)(2)(B) should reflect that there must be an existing family law case or initiating document filed with the family law court. Perhaps utilizing wording from item #5 of the FL-356 would be helpful. CRC 5.130 (b)(2)(C) should reflect the DV-100/DV-120 with custody issues. According to the proposed rule, all SIJ records should be confidential. However, the FL-356 is an attachment to other filings that are not	No response required. The committee agrees that a request for SIJ findings may not be filed independent of a family law proceeding in which at least one party is requesting sole physical custody of the child. Modifications to proposed subdivision (b) are intended to clarify that the request may only be filed in the context of such a proceeding, but allow for concurrent filing of the request with the first paper in the proceeding. The committee agrees and has modified its recommendation accordingly. The committee has modified its recommendation to revise form FL-356 to be a standalone form in part to permit courts to keep that form confidential

	Commentator	Position	Comment	Committee Response
			confidential (e.g., Petition, Response, etc.). Courts would need to develop procedures to separate documents when they are filed and imaged. For courts that provide remote access to records, this might be confusing to the public because there will be references to attachments in the underlying filing and no attachments available on a court's public website. In addition, clarification is requested on the following issues:	without needing to develop special procedures to separate the FL-356 from other documents.
			Are courts required to redact any SIJ references on the underlying filings?	Under section 155(c) of the Code of Civil Procedure, in a judicial proceeding in response to a request for SIJ findings, "information regarding the child's immigration status" must "remain confidential" and "be available for inspection only by the court" and specified persons. Because SIJ findings with respect to an undocumented, child, the existence of a request for those findings and any proceedings in response to such a request necessarily reveals that the child is undocumented. The committee therefore understands the statutory language to require the redaction of any information referring to the child's request for SIJ findings maintained in the public case file. The committee has modified the recommended language in subdivision (f), now (g), to reflect this requirement.
			Should SIJ hearings be closed proceedings?	The committee does not believe that section 155(c) clearly requires that SIJ hearings be closed. One interpretation of "information" would include information conveyed orally at a hearing.

	Commentator	Position	Comment	Committee Response
				However, the qualification that such information be "available for inspection" only by specified parties implies that the statute applies only to *written* information. Because of the presumption in section 124 of the Code of Civil Procedure that judicial proceedings are open to the public, the committee does not believe it is appropriate to close these proceedings by rule without more explicit guidance from the Legislature. Section 214 of the Family Code, however, permits the court to close proceedings on a case-by-case and issue-by-issue basis "in the interests of justice and the persons involved." Courts may wish to consider whether section 214 applies to issues related to a child's immigration status.
			Are there special considerations the courts should follow when a party requests copy work for SIJ filings?	The committee does not intend rule 5.130 to authorize the dissemination of copies of SIJ filings. Section 155(c) of the CCP authorizes only inspection, not copying or dissemination, of SIJ filings. If the comment refers to copying for distribution within the court and to persons required to be served under rule 5.130(c), courts should follow existing procedures for copying and distributing confidential documents, such as financial declarations or custody evaluations.
			Lastly, there appears to be a discrepancy between the proposed rule and CCP 155(c) as it pertains to confidentiality. CCP 155(c) states, "In *any judicial proceedings in response* to a request that the superior court…" The proposed whereas the	The committee agrees and has modified its recommendation to specify that only the request for SIJ findings, any response to the request, and the findings themselves must be kept in a confidential part of the case file. As noted above, information regarding the child's immigration

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			proposed rule states "*All records* that pertain to a request under this rule…"	status contained in other documents related to the request that are kept in the public part of the file must be redacted to prevent the inspection of that information by persons not authorized by section 155(c).
			We don't believe there would be a cost savings. The new confidentiality rules may create additional work if filings need to be separated and/or SIJ references need to be redacted.	The committee intends that modifications to require filing form FL-356 alone, not as an attachment, will mitigate any increase in workload to the greatest extent permitted by statute.
			Implementation requirements for our court includes training for judges and staff. Depending on the confidentiality decision, minor case management changes may be required.	No response required.
			Additional Questions/Comments: Are there exceptions to the service of process for SIJ filings if a parent lives outside the country?	The committee is not aware of, and does not intend the rule to create, any exceptions to the requirements for service of process that ordinarily apply in the underlying family law proceeding. The committee has added a new subd. (c) to rule 5.130 to clarify the notice and service requirements associated with a request for SIJ findings.
			We recommend an SIJ information sheet be created to help the public understand where they should file their SIJ petitions.	The committee agrees that an information sheet would be helpful and, if time and resources are available, will consider developing one. In the meantime, the California Courts Online Self-Help Center currently includes a webpage with information on SIJ status for self-represented

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				litigants. The webpage will be updated to reflect current law.
			Are there recommended processing time standards?	The committee does not intend to set standards for case processing times in the rule. The court should adhere to existing processing time standards for custody proceedings. If exigent circumstances or the interests of justice require expedited processing, the court has sufficient authority to grant a request for it on a case-by-case basis.
			Are courts required to provide interpreters for these hearings?	Under section 757 of the Evidence Code, the court has the same authority to provide an interpreter in a proceeding in response to a request for SIJ findings as it has in any civil proceeding. The Judicial Council's Language Access Plan includes standards and priorities for provision of interpreters in these proceedings, and the governor's proposed budget for 2016 includes additional funds for court interpreters.
			Should courts use the same service of process requirements for the FL-356 the same as the underlying filing?	The committee has new subd. (c) to rule 5.130 to .
7.	Superior Court of Riverside County by Marita Ford Senior Management Analyst	A	The confidentiality requirement in proposed rule 5.130(f) would create logistical issues for courts that use electronic filing and image court records. Because the FL-356 is an attachment form, it would be difficult for courts that image court records to only make the attachment page confidential. Currently, to keep the attachment page confidential the entire document it is attached to (*i.e. petition, response, RFO, DVRO,*	The committee agrees and has modified its recommendation to amend subd. (f), now (g), and to make FL-356 a standalone form. The committee intends this revision to simplify the filing process enough to eliminate confusion, logistical issues, and the need for longer processing times.

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			etc.) would have to be made confidential, thereby limiting public access to those documents. Since the FL-357 is a separately filed document, there are no logistical issues in maintaining the confidentiality of that document in electronic systems. However, it is difficult to keep the court minutes pertaining to a request for SIJ findings confidential in electronic case management systems; especially if the request for SIJ findings is heard along with custody and parenting time issues.	The committee has nevertheless revised form FL-357 to clarify that it must be filed confidentially. The committee agrees and has modified its recommendation to require that information about the child's immigration status included in documents that are kept in a publicly accessible file be redacted from those documents. The committee intends this requirement to apply to the minutes of proceedings on SIJ findings as well.
8.	Superior Court of Sacramento County by Rebecca Reddish Business Analyst	AM	Page 9, (f) Confidentiality—What if the Request is part of an RFO that includes other issues? How will we separate or must all of the documents filed with the Request be deemed confidential?	The committee has modified its recommendation to amend subd. (f), now (g), to clarify the confidentiality requirements. It has also made form FL-356 a standalone form to relieve the court of the need to separate it from other documents. The committee intends this revision to reduce or eliminate the practical challenges of keeping the request confidential.
9.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	In answer to the request for specific responses, our court provides the following: Q: Would the proposal provide cost savings? No. Q: What are implementations requirements for courts? Training business office staff on new forms	No response required. The committee intends revising form FL-356 to be a standalone form to reduce training requirements for court staff.

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

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			(FL-356 & FL-357).	
			Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes? Greater impact on larger courts based on number of staff and filings.	The committee agrees in part. Larger courts may see a proportionally larger number of filings, but courts in specific locations, such as Los Angeles, Orange County, and the San Francisco bay area, are likely to see a disproportionate number of SIJ filings based on their larger populations of undocumented immigrants from Central America. To the extent that larger courts do see a proportionally larger number of filings, the Workload Allocation Funding Model should address the identified workload disparity.
			Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? Yes.	No response required.
			Q: Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purpose.	No response required.
			General comments: In working on these requests, we have not found anything that specifies who has the burden of proof and what that burden is. CCP 155 just says there must be evidence to support the findings. It would be	In the absence of a statute establishing an exception to sections 500 and 550 of the Evidence Code or setting a heightened standard of proof, the committee understands that the person requesting the findings would have the same

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			helpful to address the burden of proof in the rules of court.	burden of establishing the facts and circumstances supporting the findings as in any other civil proceeding, that is, by a preponderance of the evidence. The committee contemplates that, in most cases, the facts and circumstances in support of the underlying order for sole physical custody would be sufficient to support the SIJ findings. If not, the requesting person would be entitled to present additional evidence at the hearing on the request for SIJ findings.
			If this rule is implemented, the Juvenile Division will be the only division that does not have its own rule of court addressing Special Immigrant Juvenile status. A juvenile rule would be helpful to point people to the appropriate forms and to address the burden of proof.	The committee does not recommend adopting a rule of court for requesting SIJ findings in juvenile proceedings at this time, but may consider developing such a rule in the future. When the SIJ findings forms were circulated for comment last year, the committee sought specific comment on whether a rule for seeking SIJ findings in juvenile court proceedings was desirable. No commentators indicated that such a rule would be desirable. Two commentators indicated that it was not needed. The juvenile dependency courts are accustomed to determining requests for SIJ findings, as these requests have applied to dependency proceedings since 1990. Recent case law has included extensive discussion of SIJ findings in delinquency proceedings. The committee will continue to monitor the need for a juvenile SIJ rule.
			Comments regarding specific CRC amendments: Page 4 paragraph 2 of the Invitation to Comment references 5.130(a)(1). However, there is no (a)(1) in the attached rule.	The committee will try to avoid similar errors in the future.

W16-11

Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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

	Commentator	Position	Comment	Committee Response
			Proposed rule 5.130, subsection (b)(2)(C): The proposed rule as written in conjunction with proposed rule 5.130(d) may create confusion as to what hearing the requested SIJ status findings should be addressed, particularly if a FL-300 is never filed. Typically the issues on the DV-100 and/or the DV-120 are addressed at the noticed hearing on the DV-110 unless continued. If a litigant is allowed to file the FL-356 as an attachment to a DV-100 (presumably under item 22) or DV-120 (unclear where the form would be attached) but then must also file an FL-300 with an attached FL-356 to obtain a hearing on the SIJ status request, notice about filing the FL-300 to obtain the actual hearing on the request should be somewhere else besides this rule of court, perhaps on the FL-356?	The committee has modified its recommendation to make form FL-356 a standalone form. Notice of the hearing has been included on page one of the revised FL-356. Therefore, no FL-300 and no additional FL-356 would need to be filed to obtain a hearing. Furthermore, the committee has proposed amendments to rule 5.130(b)(2)(C) to clarify that the request for SIJ findings may be filed in a DVPA action only if there is also a request for sole physical custody. The committee intends these changes to resolve the concerns identified in this comment.
			Proposed rule 5.130, subsection (f): The proposed rule as written may be misread or could be found confusing in regards to the scope exactly what documents are confidential as set forth in Code of Civil Procedure section 155, subsection (c). It is the child's immigration status that must be kept confidential under this subsection. Consider deleting the word "and" from the proposed rule as follows: "All records that pertain to a request under this rule ~~and~~ that include information about the child's immigration status must be kept in a confidential part of the case	The committee agrees and has modified its recommendation to specify in rule 5.130(f), now (g), which documents must be kept in a confidential portion of the file and how to treat documents in the public part of the file. The committee has also revised form FL-356 to be standalone form to simplify keeping it confidential.

W16-11

Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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

	Commentator	Position	Comment	Committee Response
			file, or alternatively, in a separate, confidential file."	
10.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	AM	Modify the proposal by creating a stand-alone petition specifically to address SIJ findings as opposed to creating a document (FL-356) to be attached to a petition or response in a family law proceeding. If the form is attached to a petition, as proposed by this proposal, a self-represented litigant may not understand that he/she needs to file an RFO or set a hearing to obtain the SIJS relief. Also, subsection (f) states that all records that pertain to a request under this section must be kept confidential. However, if the SIJF is attached to a Petition or RFO for custody, which does not have confidentiality requirements, court staff will have great difficulty in processing the document so that some parts are kept confidential and others are not. The proposed date for implementation is not feasible or is problematic: Unless modified, the proposal will take more than two months to implement in order to provide local procedures for processing confidential documents that will be required to be separated from non-confidential parts of the same submission. Accordingly, the JRS requests that the effective date of this proposal be extended to three months (90 days) from Judicial Council approval.	The committee agrees with the comment and has modified its recommendation to make form FL-356 a standalone form that includes a notice of hearing. The committee agrees with the comment and has modified its recommendation to revise form FL-356 to be a standalone form and to specify that, even when filed concurrently with other papers, the form must be filed separately, not attached to the other papers. These changes are intended to eliminate the need to separate confidential from non-confidential filings. The committee does not recommend extending the proposal's effective date. The committee intends that amending subd. (f), now (g), and revising form FL-356 to be a standalone form will simplify the filing process enough to eliminate the need for new procedures and permit implementation within the normal two-month time frame.

W16-11

Family Law: Special Immigrant Juvenile Findings (adopt Cal. Rules of Court, rule 5.130; adopt form FL-358; revise forms FL-356 and FL-357)

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

	Commentator	Position	Comment	Committee Response
			Other major fiscal or operational impacts: The proposal will cause confusion for court staff and it will be difficult to implement because there is not a stand-alone petition to obtain the requested relief. In addition, confidential documents would be attached to non-confidential documents, causing substantial additional staff time to process. See proposed modification.	The committee has modified its recommendation to make FL-356 a standalone form. The committee intends this revision to simplify the filing process to eliminate confusion, logistical issues, and the need for longer processing times.

State of California
CODE OF CIVIL PROCEDURE
PART 1. OF COURTS OF JUSTICE
TITLE 1. ORGANIZATION AND JURISDICTION
CHAPTER 7. SPECIAL IMMIGRANT JUVENILE FINDINGS
§ 155

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155. (a) A superior court has jurisdiction under California law to make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J) and 8 C.F.R. Sec. 204.11), which includes, but is not limited to, the juvenile, probate, and family court divisions of the superior court. These courts may make the findings necessary to enable a child to petition the United States Citizenship and Immigration Service for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(b) (1) If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following findings:

(A) The child was either of the following:

(i) Declared a dependent of the court.

(ii) Legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered.

(B) That reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable.

(C) That it is not in the best interest of the child to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence.

(2) If requested by a party, the court may make additional findings that are supported by evidence.

(c) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child's immigration status that is not otherwise protected by state confidentiality laws shall remain confidential and shall be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian.

(d) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the proceedings that are not otherwise protected by state confidentiality laws may be sealed using the procedure set forth in California Rules of Court 2.550 and 2.551.

(e) The Judicial Council shall adopt any rules and forms needed to implement this section.

(Added by Stats. 2014, Ch. 685, Sec. 1. (SB 873) Effective September 27, 2014.)

Item number: 07

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Changes to Petition and Response (revise forms FL-100, FL-120, and FL-160

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: Approved December 10, 2015. Item 26: Family Law Petition Forms

Project description from annual agenda: Revise forms FL-100 and FL-120 to remove legally incorrect language (reference to "state" following U.S. Supreme Court's Obergefell v. Hodges decision).

If requesting July 1 or out of cycle, explain:
Forms FL-100 and FL-120 are required to request a dissolution of any marriage in California. The U.S. Supreme Court made its decision in Obergefell v. Hodges on June 26, 2015. The forms should be changed as soon as possible to conform to the present state of the law regarding the dissolution of a same-sex marriage. Technical changes to FL-160 are needed to reflect revisions to forms FL-100 and FL-120.

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 April 14–15, 2016

Title
Family Law: Changes to Petition and Response

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-100, FL-120, and FL-160

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
July 1, 2016

Date of Report
February 26, 2016

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising *Petition—Marriage/Domestic Partnership* (form FL-100) and *Response—Marriage/Domestic Partnership* (form FL-120) to reflect a 2015 U.S. Supreme Court decision that requires all states in the United States to license marriage between two people of the same sex and also to recognize a lawful same-sex marriage that was performed out-of-state. The committee also recommends substantive changes in response to suggestions from court professionals and attorneys about other areas of these forms. In addition, the committee recommends technical changes to *Property Declaration* (form FL-160) that are needed to reflect the numbered subject headings in the *Petition* and *Response*.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Revise *Petition—Marriage/Domestic Partnership* (form FL-100) and *Response—Marriage/Domestic Partnership* (form FL-120), as follows:

    a. Revise the language in item 2 to clarify the residence requirements of a marriage as specified in Family Code section 2320;

    b. Include a statement under the heading "Minor Children" that the court has the authority to determine that a child listed on the form born before the marriage or domestic partnership is a child of the marriage or partnership;

    c. Delete item 6.d., to avoid requiring a parent to request that the court determine parentage of children born before the marriage or domestic partnership; and

    d. Add a new notice on page 3 that includes a link to information about the process for divorce and legal separation (*Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO)), as well as an online guide for parents and children involved in the family court system (*www.familieschange.ca.gov*).

2. Make technical changes to *Property Declaration* (form FL-160) on page 4 to reflect the renumbering of the Separate Property and Community and Quasi-Community Property provisions of the Petition and Response.

Copies of the revised forms are attached at pages 10–19.

Previous Council Action

Effective January 1, 2015, the Judicial Council revised forms FL-100 and FL-120 to reflect the changes to federal and state law relating to same-sex marriages and to streamline procedures in family court.

Forms FL-100 and FL-120 were also revised to include a new item for a party to list a child who is not yet born at the time the action is filed. This revision made forms FL-100 and FL-120 more consistent with the child custody provisions in *Petition to Establish Parental Relationship* (form FL-200).

Effective July 1, 2013, the Judicial Council revised *Property Declaration* (form FL-160) as part of a larger proposal to conform declaration-of-disclosure forms to the amendments to Family Code section 2104 as mandated by Assembly Bill 1406 (Stats. 2011, ch.107).

Rationale for Recommendation

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

The committee's recommendation to revise forms FL-100 and FL-120 implements the U.S. Supreme Court decision in *Obergefell v. Hodges* by replacing language that reflected that same-sex marriages were not legal in all states of this nation.[1]

Forms FL-100 and FL-120 contain a provision in item 2(b) based on Family Code section 2320(b)(1).[2] Section 2320 allows same-sex couples who married but no longer reside in California to file for divorce in this state if the jurisdiction where they live does not recognize their marriage, in which case the code includes a rebuttable presumption that the jurisdiction will not dissolve the same-sex marriage.

Forms for dissolution are commonly used by self-represented litigants, and the forms currently use the term "state or nation" instead of "jurisdiction" because those terms are more commonly understood. However, in light of the Supreme Court's decision in *Obergefell v. Hodges*, no longer will any state in the United States *not* recognize same-sex marriages; hence, the Judicial Council is required to revise the forms to remove the term *state*.

Property Declaration (form FL-160)

The committee's recommendation to revise form FL-160 will make the form consistent with the revisions to the *Petition* and *Response* forms, effective January 1, 2015. The changes to form FL-160 are to the instructions on page 4. They were developed to provide important information to litigants and attorneys about how to use and complete form FL-160, which is a multipurpose form. For example, it can be attached to a *Petition* (form FL-100), *Response* (form FL-120), *Declaration of Disclosure* (form FL-140), *Request to Enter Default* (form FL-165), or *Judgment* (form FL-180).

The specific changes are to the instructions under the heading, "When using this form only as an attachment to a *Petition* or *Response*." Currently, the instructions are incorrect because they direct the party or attorney to "[a]ttach a *Separate Property Declaration* to respond to item 4" and "[a]ttach a *Community or Quasi-Community Property Declaration* to respond to item 5." These items should have been renumbered from 4 and 5 to 9 and 10, respectively, when the *Petition* and *Response* were revised effective January 1, 2015.

The committee did not identify the need to include *Property Declaration* (form FL-160) when the *Petition* and *Response* circulated for comment in April 2014. Including the technical changes to form FL-160 with this report is appropriate because they relate directly

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[1] *Obergefell v. Hodges* (2015) 576 U.S. ___ (135 S.Ct. 2071).

[2] The complete text of Family Code section 2320 is at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=2320*.

to the *Petition* and *Response* and will help to avoid confusion when completion of the *Property Declaration* is necessary in a family law case.

Comments, Alternatives Considered, and Policy Implications

The current proposal circulated for comment as part of the winter 2016 invitation to comment cycle, from December 11, 2015, to January 22, 2016, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals.

The committee received comments from 10 individuals or organizations. Of these commentators, 4 agreed with the proposal, 4 agreed if modified, and 2 expressed no position but included comments; no one disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 20–27.

Petition and *Response*—Changes to Residence Requirements

The committee received four comments relating to the proposed changes to item 2. The committee proposed changing item 2 to state: "We are the same sex and were married in California, but are not residents of California. Neither of us lives in a jurisdiction that will dissolve the marriage. This case is filed in the county in which we married. Petitioner's residence *(specify)*: Respondent's residence *(specify):* ." The committee asked for input about whether *jurisdiction* could be replaced by another term that self-represented litigants would understand better.

Two commentators agreed with the changes proposed in the invitation to comment. The other two commentators suggested alternative language. Of these commentators:

- One stated that use of the word *jurisdiction* replacing old language does not really clarify what is meant by *residence* when the parties are asked to provide "residence" information. The commentator then suggested "…break[ing] up residence question into 'city, state and country' where Petitioner and Respondent live. . ., [or] stating 'jurisdiction' or 'nation' instead of merely 'jurisdiction' [since this] may help to clarity [sic] the term to lay people."

- The other stated that "[t]he proposed language could be too technical for some members of the public. While 'jurisdiction' is an accurate term to use, [the commentator] supports use of 'resides in a location' or 'lives in a location' instead of 'lives in a jurisdiction' . . . [because it is] more user friendly for self-represented litigants than the existing language. If however, the proposed language is not used, [the commentator] supports the use of the term 'jurisdiction.' Jurisdiction may be

confusing, however, it is a more accurate term than the others terms suggested by the Invitation to Comment."

The committee considered revising the forms using terms other than *jurisdiction*. It considered but rejected the term *country* because the word is often misread as *county* and could cause confusion. The committee also considered maintaining *nation*, but was concerned that it could appear to exclude geographic regions that are considered territories, commonwealths, or kingdoms. Because the commentator's suggestions added additional questions to the form and might add to the confusion, the committee recommends that item 2(b) be revised to state:

> We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we were married.
> Petitioner lives in *(specify*): Respondent lives in *(specify):*

The committee believes that the above language better addresses the residence requirements of Family Code section 2320 than does the language that circulated for comment. Although it retains the word *jurisdiction*, this word more accurately covers persons who live abroad (in a nation, commonwealth, kingdom, or territory) or who are members of an Indian tribe (as defined under federal and state law).

Finally, the committee recommends a technical change to item 2(b)—specifically, that it be renumbered as item 2(c) and appear as the last entry under "Residence Requirements." Changing the order of this listing will increase the readability of this section when a party completes this part of the form.

Petition **and** ***Response*****—Additional comments sought about item 4**

Background. The committee also asked for public input on suggestions received outside of the regular public comment cycles relating to item 4 on these forms; specifically, children born before the marriage. The suggestions were received from judges and court staff, who noted that many people fail to check the box to determine parentage of children born before the marriage (item 6d on forms FL-100 and FL-120). Court staff suggested that the form be modified to state that "if any children listed above were born before the marriage, the court will have the jurisdiction to determine those children to be children of the marriage."

Another court professional suggested that Family Code section 7540 should be amended and the petition and response forms revised to allow a party to request that the court determine parentage for children conceived before the marriage. She noted that (1) there is a gap in the *Petition* and the *Response* because neither mentions that the court has the authority to determine parentage of children conceived before the parties were married; (2) the Department of Child Support Services defines parentage by conception, not marriage; and

(3) Family Code section 7540 is unclear because it does not clarify whether the conclusive presumption of parentage includes conception of a child during marriage.[3]

Based on the above suggestions, the committee asked whether:

1. The heading for "Minor Children" should be changed to add the term "conceived" to the parenthetical so that it would state, "Minor Children (children conceived before (or born or adopted during) the marriage or domestic partnership)," and

2. There are any objections to revising item 4 to include the following statement below the list of children: "If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage."

Comments. Four commentators specifically agreed with the proposed changes (noted above as 1 and 2), and four commentators opposed and one commentator agreed with the proposed changes to item 4 without specifically responding to the question.

The four commentators who agreed with expanding the language in the forms to include the word "conceived" stated that they did so because:

- "It is similar to the language regarding support already in use";

- "This change covers all the possibilities and is consistent with applicable law"; and

- "[C]onception is a key consideration as it relates to the determination of parentage."

In addition, these commentators suggested other revisions. One stated that changing the wording in item 4 would require changing item 6.d. to, "Determine the parentage of children conceived or born to petitioner and respondent before the marriage or domestic partnership." Another recommended revising Judicial Council form FL-107-INFO and its translations to reflect this change. A court professional also recommended inserting an exception regarding signed voluntary declaration of paternity: "If any child listed above was born or conceived before the marriage or domestic partnership, *and a voluntary declaration of paternity is not signed*, the court has the authority to determine those children to be children of the marriage."

Those who opposed the changes to item 4 stated the following reasons:

[3] Family Code section 7540 provides: "Except as provided in Section 7541, the child of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.

- "[W]hen the children are conceived is not the basis for presumption of paternity. The standard is that the husband of children born to wife and husband who are cohabitating (assuming husband is not infertile) is presumed to be the father. This should not be changed."

- "[T]here is no need for the change in the word, as it has the tendency to confuse and because the applicable codes already address the necessary and pertinent provisions for this type of procedure in such situations."

- "Conceived is a more complex word than born, and there is no legal need to refer to children who were conceived before marriage. If a child is born prior to marriage, it is important to establish paternity. However, Family Code section 7611(a) establishes a presumption of paternity for any child born to a married couple, so the date of conception is less relevant than the date of birth. [¶] The word conceived will cause uncertainty with self-represented litigants. . . . [¶] [T]he word conceived is unnecessary as paternity is presumed for any children born during marriage, regardless of when they were conceived under Family Code section 7611(a)."

- "This section does not correspond with the forms or comments, and thus, is a violation of the normal process. This section should not be considered."

In response to the above comments, the committee does not recommend that the form be modified to include the term "conception." Rather, it recommends keeping the language in the *Petition* and *Response* simple and focused on the fundamental point of simplifying the establishment of parentage for children born to the couple before the marriage or domestic partnership. Doing so would allow the court to make a determination based on the applicable law.

Therefore, the committee recommends revising forms FL-100 and FL-120 as follows:

- Simplify the heading for item 4 to state "Minor Children" and deleting the current language in the parentheses;

- Adding a section 4.c. below the list of children to state, " If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership"; and

- Deleting item 6.d. because a party will no longer have to specifically request that the court determine parentage in the case.

***Property Declaration* (form FL-160)**

This form was not circulated for comment. The modifications to form FL-160 are minor substantive changes and unlikely to create controversy. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Forms FL-100 and FL-120. The committee considered not making changes to these forms. However, because the current forms are legally incorrect, the committee concluded that it should recommend changes and seek recommendations regarding simplification of language and procedures.

Property Declaration (form FL-160).

The committee considered including the minor, technical changes to this form in a separate report of other rules or forms that required technical changes. The committee decided that it would be better to include the technical changes to form FL-160 with this report because the changes are associated with the *Petition* and *Response.*

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, update forms packets, and train court staff about the changes to the forms included in this proposal. However, the committee expects that ultimately the changes will save resources for the courts by clarifying and simplifying procedures.

The committee anticipates savings to the courts by eliminating the need for the parents to check the box indicating that they wish parentage to be determined for the minor children born to the couple before the marriage or domestic partnership. This change should eliminate the need to amend petitions that do not include this box and also eliminate the need for separate filings regarding parentage in these cases.

One court reported that implementation requirements could include changes to the e-filing system and require more than two months to implement because it is an Odyssey court. Other courts noted that two months from Judicial Council approval of this proposal until its effective date should be sufficient time for implementation and that training would be minimal because no new codes need to be created.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in the report support the policies underlying Goal I, Access, Fairness, and Diversity, because they help remove barriers to the courts for all parties, especially for same-sex couples who were married in California but are unable to dissolve their marriages where they currently live. The changes also help remove barriers in resolving parentage issues in actions for dissolution of a marriage or domestic partnership. Simplifying the process for courts to acquire jurisdiction over parentage issues with standard language on the

form will preclude parties from having to amend their petition on discovering that they failed to check a box on the form before filing it with the court.

The new notice on page 3 of forms FL-100 and FL-120 also increase access to the courts by informing parties about free information that can help them understand the process of a divorce and legal separation (*Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO)) and connecting parents and their children to important information and resources while they are involved in the family court system (*www.familieschange.ca.gov*).

These recommendations also serve Goal III, Modernization of Management and Administration, by adopting streamlined practices for a court to obtain jurisdiction over the issue of parentage in a dissolution action.

Attachments

1. Forms FL-100, FL-120, and FL-160, at pages 10–19
2. Chart of comments, at pages 20–27

PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
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:	
PETITIONER: RESPONDENT:	
PETITION FOR ☐ **AMENDED** ☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER:

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

2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage.This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*

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

4. **MINOR CHILDREN**
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age	Sex

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of paternity. A copy ☐ is ☐ is not attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-100 [Rev. July 1, 2016]

PETITION—MARRIAGE/DOMESTIC PARTNERSHIP
(Family Law)

Family Code, §§ 297, 299, 2320, 2330, 3409;
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Petitioner requests that the court make the following orders:

5. **LEGAL GROUNDS** (Family Code sections 2200–2210, 2310–2312)

a. ☐ Divorce or ☐ Legal separation of the marriage or domestic partnership based on *(check one):*
(1) ☐ irreconcilable differences. (2) ☐ permanent legal incapacity to make decisions.

b. ☐ Nullity of void marriage or domestic partnership based on
(1) ☐ incest. (2) ☐ bigamy.

c. ☐ Nullity of voidable marriage or domestic partnership based on
(1) ☐ petitioner's age at time of registration of domestic partnership or marriage.
(2) ☐ prior existing marriage or domestic partnership.
(3) ☐ unsound mind.
(4) ☐ fraud.
(5) ☐ force.
(6) ☐ physical incapacity.

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

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

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

7. **CHILD SUPPORT**

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

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**

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

9. **SEPARATE PROPERTY**

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

PETITIONER: RESPONDENT:	CASE NUMBER:

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

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

b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
☐ in *Property Declaration* (form FL-160) ☐ in Attachment 10b.
☐ as follows *(specify)*:

11. **OTHER REQUESTS**

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

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

c. ☐ Other *(specify):*

☐ Continued on Attachment 11c.

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

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) and visit "Families Change" at *www.familieschange.ca.gov*—an online guide for parents and children going through divorce or separation.

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

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

PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
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:	
PETITIONER: RESPONDENT:	
RESPONSE ☐ **AND REQUEST FOR** ☐ **AMENDED** ☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER:

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

2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in items 1a and 1c must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*

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

4. **MINOR CHILDREN**
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age	Sex

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of paternity. A copy ☐ is ☐ is not attached.

Form Adopted for Mandatory Use
Judicial Council of California
FL-120 [Rev. July 1, 2016]

RESPONSE—MARRIAGE/DOMESTIC PARTNERSHIP
(Family Law)

Family Code, § 2020
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Respondent requests that the court make the following orders:

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

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

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

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

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

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

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

PETITIONER: RESPONDENT:	CASE NUMBER:

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

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

b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
☐ in *Property Declaration* (form FL-160). ☐ in Attachment 10b.
☐ as follows *(specify)*:

11. **OTHER REQUESTS**

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

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

c. ☐ Other *(specify):*

☐ Continued on Attachment 11c.

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation (**form FL-107-INFO**)* and visit "Families Change" at *www.familieschange.ca.gov*—an online guide for parents and children going through divorce or separation.

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

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

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

PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, State Bar number, and address):*	
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:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
☐ **PETITIONER'S** ☐ **RESPONDENT'S** ☐ **COMMUNITY AND QUASI-COMMUNITY PROPERTY DECLARATION** ☐ **SEPARATE PROPERTY DECLARATION**	CASE NUMBER:

See *Instructions* on page 4 for information about completing this form. For additional space, use *Continuation of Property Declaration* (form FL-161).

A	B	C - D = E			F	
ITEM NO. BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER	RESPONDENT
1. REAL ESTATE		$	$	$	$	$
2. HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES						
3. JEWELRY, ANTIQUES, ART, COIN COLLECTIONS, etc.						
4. VEHICLES, BOATS, TRAILERS						
5. SAVINGS ACCOUNTS						
6. CHECKING ACCOUNTS						

Form Approved for Mandatory Use
Judicial Council of California
FL-160 [Rev. July 1, 2016]

PROPERTY DECLARATION
(Family Law)

Family Code, §§ 115, 2104, 2500-2660
www.courts.ca.gov

A	B	C - D = E			F	
ITEM NO. BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER	RESPONDENT
7. CREDIT UNION, OTHER DEPOSITORY ACCOUNTS		$	$	$	$	$
8. CASH						
9. TAX REFUND						
10. LIFE INSURANCE WITH CASH SURRENDER OR LOAN VALUE						
11. STOCKS, BONDS, SECURED NOTES, MUTUAL FUNDS						
12. RETIREMENT AND PENSIONS						
13. PROFIT-SHARING, IRAS, DEFERRED COMPENSATION, ANNUITIES						
14. ACCOUNTS RECEIVABLE, UNSECURED NOTES						
15. PARTNERSHIP, OTHER BUSINESS INTERESTS						
16. OTHER ASSETS						
17. ASSETS FROM CONTINUATION SHEET						
18. TOTAL ASSETS						

A	B	C	D	
ITEM NO. DEBTS— SHOW TO WHOM OWED	DATE INCURRED	TOTAL OWING	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER	RESPONDENT
19. STUDENT LOANS		$	$	$
20. TAXES				
21. SUPPORT ARREARAGES				
22. LOANS—UNSECURED				
23. CREDIT CARDS				
24. OTHER DEBTS				
25. OTHER DEBTS FROM CONTINUATION SHEET				
26. TOTAL DEBTS				

☐ A *Continuation of Property Declaration* (form FL-161) is attached and incorporated by reference.

I declare under penalty of perjury under the laws of the State of California that, to the best of my knowledge, the foregoing is a true and correct listing of assets and obligations and the amounts shown are correct.

Date:

(TYPE OR PRINT NAME)

SIGNATURE

INFORMATION AND INSTRUCTIONS FOR COMPLETING FORM FL-160

Property Declaration (form FL-160) is a multipurpose form, which may be filed with the court as an attachment to a *Petition* or *Response* or served on the other party to comply with disclosure requirements in place of a *Schedule of Assets and Debts* (form FL-142). Courts may also require a party to file a *Property Declaration* as an attachment to a *Request to Enter Default* (form FL-165) or *Judgment* (form FL-180).

When filing a *Property Declaration* with the court, do not include private financial documents listed below.

Identify the type of declaration completed

1. Check "Community and Quasi-Community Property Declaration" on page 1 to use *Property Declaration* (form FL-160) to provide a combined list of community and quasi-community property assets and debts. Quasi-community property is property you own outside of California that would be community property if it were located in California.

2. Do not combine a separate property declaration with a community and quasi-community property declaration. Check "Separate Property Declaration" on page 1 when using *Property Declaration* to provide a list of separate property assets and debts.

Description of the Property Declaration chart

Pages 1 and 2

1. Column A is used to provide a brief description of each item of separate or community or quasi-community property.
2. Column B is used to list the date the item was acquired.
3. Column C is used to list the item's gross fair market value (an estimate of the amount of money you could get if you sold the item to another person through an advertisement).
4. Column D is used to list the amount owed on the item.
5. Column E is used to indicate the net fair market value of each item. The net fair market value is calculated by subtracting the dollar amount in column D from the amount in column C ("C minus D").
6. Column F is used to show a proposal on how to divide (or confirm) the item described in column A.

Page 3

1. Column A is used to provide a brief description of each separate or community or quasi-community property debt.
2. Column B is used to list the date the debt was acquired.
3. Column C is used to list the total amount of money owed on the debt.
4. Column D is used to show a proposal on how to divide (or confirm) the item of debt described in column A.

When using this form only as an attachment to a *Petition* or *Response*

1. Attach a *Separate Property Declaration* (form FL-160) to respond to item 9. Only columns A and F on pages 1 and 2 and columns A and D on page 3 are required.
2. Attach a *Community or Quasi-Community Declaration* (form FL-160) to respond to item 10, and complete column A on all pages.

When serving this form on the other party as an attachment to *Declaration of Disclosure* (form FL-140)

1. Complete columns A through E on pages 1 and 2, and columns A through C on page 3.
2. Copies of the following documents must be attached and served on the other party:
   (a) *For real estate* (item 1): deeds with legal descriptions and the latest lender's statement.
   (b) *For vehicles, boats, trailers* (item 4): the title documents.
   (c) *For all bank accounts* (item 5, 6, 7): the latest statement.
   (d) *For life insurance policies with cash surrender or loan value* (item 10): the latest declaration page.
   (e) *For stocks, bonds, secured notes, mutual funds* (item 11): the certificate or latest statement.
   (f) *For retirement and pensions* (item 12): the latest summary plan document and latest benefit statement.
   (g) *For profit-sharing, IRAs, deferred compensation, and annuities* (item 13): the latest statement.
   (h) *For each account receivable and unsecured note* (item 14): documentation of the account receivable or note.
   (i) *For partnerships and other business interests* (item 15): the most current K-1 and Schedule C.
   (j) *For other assets* (item 16): the most current statement, title document, or declaration.
   (k) *For support arrearages* (item 21): orders and statements.
   (l) *For credit cards and other debts* (items 23 and 24): the latest statement.
3. Do not file copies of the above private financial documents with the court.

When filing this form with the court as a attachment to *Request to Enter Default* (FL-165) or *Judgment* (FL-180)

Complete all columns on the form.

For more information about forms required to process and obtain a judgment in dissolution, legal separation, and nullity cases, see ***http://www.courts.ca.gov/8218.htm***.

W16-12
Family law: Changes to Petition and Response (revise forms FL-100, FL-120, and FL-160)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Los Angeles Center for Law and Justice By: Carmen E. McDonald, Supervising Attorney	N/I	**Re: Form FL-100, page 1, Item #2:** The new language related to same sex marriage dissolution: use of the word jurisdiction replacing old language does not really clarify what is meant by "residence" when the parties are asked to provide "residence" information. Maybe break up residence question into "city, state and country" where Petitioner and Respondent live. Also, stating "jurisdiction" or "nation" instead of merely "jurisdiction" may help to clarity the term to lay people. **Form FL-100, page 1, Item 4** Regarding the language of conception, when the children are conceived is not the basis for presumption of paternity. The standard is that the husband of children born to wife and husband who are cohabitating (assuming husband is not infertile) is presumed to be the father. This should not be changed.	The committee recommends that item 2 be revised to state: We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we were married. Petitioner lives in *(specify)*:___ Respondent lives in *(specify):* The committee believes that the above language better addresses the residence requirements of Family Code section 2320 than the language that circulated for comment. Although it retains the word "jurisdiction," this word more accurately covers persons who live abroad (in a nation, commonwealth, kingdom, territory) or who are members of an "Indian tribe" (as defined under federal and state law). The committee agrees and decided not to recommend revising forms FL-100 and FL-120 to include content about conception.
2.	Los Angeles County Bar Association by: Barbara Jimenez, Corporate Paralegal	N/I	***Form FL-100, page 1, Item 4** Item 4 of the Petition should be changed to state "Minor Children (children conceived before (or born or adopted during) the marriage or	The committee decided not to recommend revising forms FL-100 and FL-120 to include content about conception. The committee prefers to keep the language in the *Petition* and *Response*

	Commentator	Position	Comment	Committee Response
			domestic partnership)"	simple and focused. Therefore, the committee recommends revising item 4 by deleting the language in the parenthetical. The heading will simply state "Minor Children."
			*The following language should be added below item 4 of the Petition and Response: "If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership."	The committee decided to recommend revising the Petition and Response to state "If any child listed above was born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership." This language will focus on the importance of establishing parentage and avoid over complicating the issue.
3.	Orange County Bar Association by: Todd G. Friedland, President	A	***Form FL-100 and FL-120, page 1, Item 4** Item 4 of the Petition should be changed to state "Minor Children (children conceived before (or born or adopted during) the marriage or domestic partnership)."	Same as above response.
			*No objection to the following language should be added below item 4 of the Petition and Response: "If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership." It is similar to the language regarding support already in use.	See the above response to the Los Angeles County Bar Association.
4.	State Bar of California Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by: Saul Bercovitch, Legislative	AM	**Re: Form FL-100, page 1, Item #2:** FLEXCOM supports replacing the words "state or nation" with the single word "jurisdiction." We believe the word is not overly confusing and is easily understandable by the layperson and self-represented litigants.	The committee agrees with the comment and recommends revising item 2 to state "We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This Petition is filed in the county in which we

	Commentator	Position	Comment	Committee Response
	Counsel		**Form FL-100, page 1, Item 4** FLEXCOM opposes changing the heading from "born" to "conceived" in the Petition (FL-100), item 4, and opposed revising item 4 to include below the list of children: **"**If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage.**"** FLEXCOM believes there is no need for the change in the word, as it has the tendency to confuse and because the applicable codes already address the necessary and pertinent provisions for this type of procedure in such situations.	were married. Petitioner's residence *(specify):* Respondent's residence *(specify):*" The committee agrees with the comment and decided not to recommend revising forms FL-100 and FL-120 to include content about conception.
5.	State Bar of California Standing Committee on the Delivery of Legal Services By: Phong S. Wong, Chair	A	**Re: Form FL-100, page 1, Item #2:** Does the proposal appropriately address the stated purpose? Yes. However, the proposed language could be too technical for some members of the public. While, "jurisdiction" is an accurate term to use, SCDLS supports use of "resides in a location" or "lives in a location" instead of "lives in a jurisdiction." SCDLS believes this proposed language will be more user friendly for self-represented litigants than the existing language. If, however, the proposed language is not used, SCDLS supports the use of the term "jurisdiction." Jurisdiction may be confusing, however, it is a more accurate term than the others terms suggested by	The committee recommends that item 2 be revised to state: "We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we were married. Petitioner lives in *(specify*):___ Respondent lives in *(specify):__*" The committee believes that the above language better addresses the residence requirements of Family Code section 2320 than the language that circulated for comment. Although it retains the word "jurisdiction," this word more accurately covers persons who live abroad (in a nation,

	Commentator	Position	Comment	Committee Response
			the Invitation to Comment. **Form FL-100, page 1, Item 4** Should the heading at item 4 be changed as follows: "Minor Children (children [born] conceived before (or born or adopted during) the marriage or domestic partnership)"? Yes. This change covers all the possibilities and is consistent with applicable law. Are there any objections to revising item 4 to include the following statement below the list of children: "If any child listed above was born or conceived before the marriage or domestice partnership, the court has the authority to determine those children to be children of the marriage." Response: No.	commonwealth, kingdom, territory) or who are members of an "Indian tribe" (as defined under federal and state law). Same as the response to the Los Angeles County Bar Association. Same as the response to the Los Angeles County Bar Association.
6.	Superior Court of Los Angeles County	AM	**Re: Form FL-100, page 1, Item #2:** We agree with the change at item 2b from state or nation to jurisdiction. **Re: Form FL-100 and FL-120, Item #4:** The current heading at item 4 of the Petition (FL-100) and Response.(FL-120) should not be changed to include the word conceived. Conceived is a more complex word than born, and there is no legal need to refer to children who were conceived before marriage. If a child is born prior to marriage, it is important to establish paternity. However, Family Code	No response required. The committee agrees with the comment and recommends not revising forms FL-100 and FL-120 to include content about conception. The committee agrees that it is not necessary to use "conceived" in the forms. The committee prefers to keep the language in item 4 of the *Petition* and *Response* simple and focused. Therefore, the committee recommends revising

	Commentator	Position	Comment	Committee Response
			section 7611a establishes a presumption of paternity for any child born to a married couple, so the date of conception is less relevant than the date of birth. The word conceived will cause uncertainty with self-represented litigants. 3) We strongly support the addition of the language referring to establishment of parentage for children born prior to the marriage. However, the word conceived is unnecessary as paternity is presumed for any children born during marriage, regardless of when they were conceived under Family Code section 7611a. Adding this language will save a great deal of resources as most litigants who complete the forms on their own miss the establishment of parentage box, which is located on a different page of the form. In our court, many of these litigants must then file amended Petitions in order to include a specific request to establish parentage. If the intent is to leave litigants the option of checking or not checking the box at item 6d, we recommend moving this box to the first page, immediately under the reference to the Court establishing parentage. If the intent is to automate the request, similar to the way in which the child support request is already included in the form at item 7, then we suggest removing item 6d on both the Petition (FL-100)	forms FL-100 and FL-120 as follows: • Simplify the heading for item 4 to state "Minor Children" and deleting the current language in the parentheses; • Adding a section 4.c. below the list of children to state, " If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership; and • Deleting item 6.d. to avoid redundancy. The committee decided to recommend revising the forms to simplify/automate a request to establish parentage in an action for dissolution. Therefore, the committee recommends deleting item 6d. and relocating it to page 1 as standard text authorizing the court to establish parentage for children listed in item 4.

	Commentator	Position	Comment	Committee Response
			and Response. (FL-120). We propose removing item 6d with the advisement that parentage may be established. This puts the other party on notice that the child may be found to be a child of the marriage. The staff will need to be trained on the revision or implementation of any form. The time estimate is approximately 30 minutes. Two months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. There are no significant changes. Training would be minimal and there are no new codes that would need to be created. Packets at our forms windows will need to be updated. The proposal should not have a different effect on courts of different sizes. The notice is provided in plain language such that it will be accessible to a broad range of litigants, including self-represented litigants.	The committee recommends this change to forms FL-100 and FL-120. The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, update forms packets, and train court staff about the changes to the forms included in this proposal. However, the committee expects that the changes will save resources for the courts by clarifying and simplifying procedures. No response required.
7.	Superior Court of Orange County by: Family and Juvenile Court Operations Managers	AM	**Re: Form FL-100 and FL-120, Item #4:** We agree with the proposed change for item 4; conception is a key consideration as it relates to determination of parentage. We recommend inserting exception regarding signed voluntary declaration of paternity: "If any child listed above was born or conceived before the marriage or domestic partnership, *and a voluntary declaration of paternity is not signed*, the court has the authority to determine those children to be children of the marriage."	In response to this comment, the committee prefers to not recommend revising forms FL-100 and FL-120 to include content about conception. The committee prefers to keep the language in the *Petition* and *Response* simple and focused. Therefore, the committee recommends revising the form as suggested by the commentator.

	Commentator	Position	Comment	Committee Response
			We believe this proposal would be cost neutral. Implementation requirements for our court would include changes to our efiling solution. We are an Odyssey Court, and therefore we are awaiting development regarding the Guide and File. This change would need to be considered in development efforts. Two months might not be enough time to implement this change. We are an Odyssey court and would need to coordinate this change with the CATUG workgroup. We would request courts be given flexibility as it pertains to the implementation date. **Additional Questions/Comments:** We recommend Judicial Council forms FL-107-INFO, FL-701S, FL-107V, and FL-107K be revised to reflect this change.	No response required. No response required. Since these are forms that are prepared by litigants, rather than the courts, and since the changes reflect relatively minor changes in language rather than the structure in the form, the committee continues to recommend that the changes be effective July 1, 2016. Because the committee does not recommend adding language relating to conception, the changes suggested by the commentator are not necessary.
8.	Superior Court of Riverside County	A	No specific comment.	No response required.
9.	Superior Court of Sacramento County by: Family law staff	AM	Page 3, Request for Specific Comments – This section does not correspond with the forms or comments, and thus, is a violation of the normal process. This section should not be considered.	The request for specific comments section routinely helps the committee focus public comment on issues relating to the proposal. The questions included in the Request for Specific Comments directly relate to items in forms FL-100 and FL-120.
10.	Superior Court of San Diego County By: Michael M. Roddy	A	*The proposal would not provide cost savings. *The implementation requirements for courts are: training staff on revised forms and updating packets. Two months from the JC approval of	No response required. The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, update forms packets, and train

	Commentator	Position	Comment	Committee Response
			this proposal until its effective date provides sufficient time for implementation. This proposal has a greater impact on larger courts based on the number of staff and filings. The notice is provided in language such that it would be accessible to a broad range of litigants, including self-represented litigants.	court staff about the changes to the forms included in this proposal. However, the committee expects that the changes will save resources for the courts by clarifying and simplifying procedures.
			Re: Form FL-100 and FL-120, Item #4: *Agree that the heading at item 4 should be changed to state "Minor Children (children conceived before (or born or adopted during) the marriage or domestic partnership)"? However, if you change the wording here in Item 4, then on Page 2, Item 6.d. you will have to change the language to "Determine the parentage of children <u>conceived</u> or born to petitioner and respondent before the marriage or domestic partnership." *No objections to revising item 4 to include the following statement below the list of children: "If any child listed above was born or conceived before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage."	No response required. Same response as the Los Angeles County Bar Association.

Item number: 08

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Psychotropic Medication

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): 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: December 10, 2016
Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for rules and forms requried by recent legislative changes as a result of Senate Bill 238 (Mitchell; Stats. 2015, ch. 534).

If requesting July 1 or out of cycle, explain:
SB 238 requires the Judicial Council to develop rules and forms to implement the bill's mandates by July 1, 2016.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
This proposal has not yet been copyedited. In addition, forms JV-217-INFO, JV-218, and form JV-219 are being reviewed by a plain language expert. The committee will make additional minor changes to improve the clarity and accuracy of this proposal before submission to the Judicial Council.

The comment chart contains all of the comments received. The column with the committee's response is not included. An updated version with those responses will be distributed before the meeting.

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: April 15, 2016

Title
Juvenile Law: Psychotropic Medication

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt form JV-220(B), JV-224; revise forms JV-220, JV-220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-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
July 1, 2016

Date of Report
March 11,2016

Contact
Kerry Doyle, Attorney, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending rule 5.640 of the California Rules of Court, approving two optional forms, adopting one mandatory form, revising four forms, and revising and renumbering one form to conform to recent statutory changes to the requirements for court authorization of psychotropic medication for foster children enacted by Senate Bill 238 (Mitchell; Stats. 2015, ch. 534).

Recommendation

The committee recommends several actions to implement five amendments to the Welfare and Institutions Code that require the Judicial Council to develop rules and forms.

1. Newly enacted sections 369.5(a)(2)(B)(i) and 739.5(a)(2)(B)(i) require the Judicial Council to develop rules and forms to ensure that the child and his or her caregiver and court-appointed special advocate volunteer (CASA), if any, have an opportunity to provide input on the medications being prescribed. To implement this requirement, the Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

a. Amend rule 5.640(c) to allow the child, caregiver, CASA, parents, and Indian child's tribe to provide input to the court by the proposed new *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219); submission of a letter; talking to the judge at a hearing; or through the social worker, probation officer, lawyer, or CASA. Input from the CASA would also be allowed by a court report;

b. Approve for optional use *Child's Statement About Psychotropic Medication* (form JV-218);

c. Approve for optional use *Statement About Psychotropic Medication* (form JV-219);

d. Revise *Application for Psychotropic Medication* (form JV-220) with several questions that the social worker or probation officer must answer when filling out the form;

e. Further amend rule 5.640(c) to require service of a blank *Child's Statement About Psychotropic Medication* (form JV-218), or *Statement About Psychotropic Medication* (form JV-219) when serving *Application for Psychotropic Medication* (form JV-220) and to remove the option for service to parents, children, and caregivers, that rather than blank forms, service could include information on how to obtain the forms;

f. Further amend rule 5.640(c) to require that *Child's Statement About Psychotropic Medication* (form JV-218) and *Statement About Psychotropic Medication* (form JV-219) be filed within four court days of receipt of notice of the application for psychotropic medication; and

g. Revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to ensure the child has an opportunity to provide input on the prescribed medication by eliminating from the form the option for the prescribing physician to not inform the child of the request, the recommended medications, benefits, and side effects because the child is too young.

2. Newly enacted sections 369.5(a)(2)(B)(ii)–(iii) and 739.5(2)(B)(ii)-(ii) require the Judicial Council to develop rules and forms to ensure that information regarding an assessment of the child's overall mental health and treatment plan, as well as information regarding the rationale for the proposed medication are provided to the court. To implement this requirement, the the Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

a. Amend rule 5.640(c) to require that *Prescribing Physician's Statement—Attachment* (form JV-220(A)) include information regarding an assessment of the child's overall mental health and treatment plan, as well as information regarding the rationale for the proposed medication;

b. Revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to include the information required by SB 238, including information on other pharmacological and nonpharmacological treatments that have been utilized and the child's response to those treatments, a discussion of symptoms not alleviated or ameliorated by other current or past treatment efforts, and an explanation of how the psychotropic medication being prescribed is expected to improve the child's symptoms;

c. Revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to separate out compound questions; and

d. Adopt for alternate mandatory use *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)).

3. Newly enacted sections 369.5(a)(2)(B)(iv) and 739.5(a)(2)(B)(iv) require the Judicial Council to develop rules and forms to address how to proceed if information, otherwise required to be included in a request for authorization, is not included in the request. To implement this requirement, the committee recommends that the council, effective July 1, 2016:

a. Amend rule 5.640(c) to direct the court, if all the required information is not included in the request for authorization, to order the applicant to provide the missing information and set the application for a hearing; and

b. Further revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an item on the form so the court can order that the applicant must submit the missing information by the time specified on the order, and so the court can order a hearing on the application.

4. Newly enacted sections 369.5(a)(2)(C) and 739.5(2)(C) require the Judicial Council to develop rules and forms to include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication. To implement this requirement, the committee recommends that the council, effective July 1, 2016:

a. Amend rule 5.640(f) and (g) to mandate progress reviews at every status review hearing and allow progress reviews at any other time at the court's discretion.

b. Amend rule 5.640(f) to require the social worker or probation officer to file a completed *Report About Psychotropic Medication—County Staff* (form JV-224) at any scheduled psychotropic medication progress review hearing and each status review hearing.

c. Revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to ensure the court has all the information needed to provide thorough periodic oversight of court ordered psychotropic medications, including requiring an explanation if the child agrees with the medication, mandating information on whether all relevant laboratory tests were performed, and expanding the list of types of therapeutic services in which the child is enrolled or is recommended to participate. Ensure that the same information is contained in *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)).

d. Adopt for mandatory use *Report About Psychotropic Medication—County Staff* (form JV-224).

5. Newly enacted sections 369.5(c)(2) and 739.5(c)(2) mandate that the child welfare agency, probation department, or other person or entity who submitted the request for authorization of psychotropic medication provide a copy of the court order approving or denying the request to the child's caregiver. To implement this requirement, the committee recommends that the council, effective July 1, 2016:

a. Amend rule 5.640(e) to require that the child welfare agency, probation department, or other person or entity who submitted the request for authorization of psychotropic medication provide the child's caregiver with a copy of the court order approving or denying the request within two days of when the order is made.

b. Amend rule 5.640(e) to mandate that the order also contain the last two pages of form JV-220(A) and the Food and Drug Administration (FDA) label that was attached to the JV-220(A). This would ensure that the caregiver has the information needed on dosages, side effects, and recommended therapeutic interventions.

c. Revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an order that the applicant must provide the caregiver with a copy of the order, the last two pages of form JV-220(A), and the FDA label within two days of when the order is made.

While not mandated by SB 238, the committee recommends that the council, effective July 1, 2016:

6. Amend rule 5.640 to improve clarity by moving the paragraphs regarding what forms must or can be used to the beginning of the rule.

7. Revise *Information About Psychotropic Medication Forms* (form JV-219-INFO) and *Proof of Notice: Application for Psychotropic Medication* (form JV-221) to conform to changes to the new forms and procedures.

8. Renumber form JV-219-INFO as JV-217-INFO, so that the form with information on the psychotropic medication request and approval process is at the beginning of the series of psychotropic medication forms.

9. Revise *Opposition to Application Regarding Psychotropic Medication* (form JV-222) so that it can be used to provide input to the court, even if the person using the form does not oppose the medication, and rename the form *Opposition to or Statement About Application for Psychotropic Medication*.

10. Revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include the new forms in this proposal as evidence the court has read and considered.

11. Further revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an order about gradually reducing the psychotropic medication.

Previous Council Action

As mandated by Senate Bill 543 (Bowen; Stats. 1999, ch. 552), effective January 1, 2001, the Judicial Council adopted a California Rule of Court and two Judicial Council forms regarding administration of psychotropic medications to children under the jurisdiction of the juvenile court. This initial proposal included rule 1432.5, *Application for Order for Psychotropic Medication—Juvenile* (form JV-220), and *Opposition to Application for Order for Psychotropic Medication—Juvenile* (form JV-220A). Clarifying changes were made to the rule and forms effective January 1, 2003, January 1, 2005, and July 1, 2005. Effective January 1, 2007, rule 1432.5 was renumbered as rule 5.640, as part a comprehensive reorganization and renumbering to improve the format and usability of the California Rules of Court. Most recently, effective January 1, 2008, at the request of the Family and Juvenile Law Advisory Committee, the Judicial Council amended rule 5.640, revised form JV-220, revoked form JV-220A, and adopted forms JV-219-INFO, JV-220(A), JV-221, JV-222, and JV-223 to improve the statewide procedure used to seek authorization for administering psychotropic medication to children in out-of-home placements.

Rationale for Recommendation

As indicated in the legislative history for SB 238, in 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster youth.[1] Senate Bill 543 also provided that the juvenile court may issue a specific order delegating this authority to a parent if the parent poses no danger to the child and has the capacity to authorize psychotropic medications. This legislation was passed in response to concerns that

[1] Sen. Com. on Judiciary, Analysis of Sen. Bill No. 238 (2014–2015 Reg. Sess.) Apr. 7, 2015, pp. 1–2

foster children were being subjected to excessive use of psychotropic medication, and that judicial oversight was needed to reduce the risk of unnecessary medication. The Judicial Council was required to adopt rules of court to implement the new requirement. Accordingly, rule 5.640 specifies the process for juvenile courts to follow in authorizing the administration of psychotropic medications and permits courts to adopt local rules for the courts to use to further refine the approval process.

In 2004, the provisions of SB 543 were amended by Assembly Bill 2502 (Keene; Stats. 2004, ch. 329), which required a judicial officer to approve or deny, in writing, a request for authorization to administer psychotropic medication, or set the matter for hearing, within seven days. This amendment was intended to ensure timely consideration of requests for authorization to administer psychotropic medication to dependent children.

Despite these measures, concerns remain that psychotropic medication is overused and underreported in the child welfare system. Senate Bill 238 is a comprehensive bill that seeks to address the issues related to the administration of psychotropic drugs in the foster care system by requiring additional training, oversight, and data collection by caregivers, courts, counties, and social workers. The bill also requires the Judicial Council, in consultation with other specified groups, to implement specified provisions of the bill.

The committee identified five main amendments to the Welfare and Institutions Code that require the Judicial Council to develop rules and forms. [2]

Opportunity to provide input

Newly enacted sections 369.5(a)(2)(B)(i) and 739.5(a)(2)(B)(i) require the Judicial Council to develop rules and forms to ensure that the child and his or her caregiver and court-appointed special advocate volunteer (CASA), if any, have an opportunity to provide input on the medications being prescribed. To implement this requirement, the committee recommends amending rule 5.640(c) to allow the child, caregiver, CASA, parents, and Indian child's tribe to provide input to the court by the proposed new *Child's Statement About Psychotropic Medicine* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219); letter; talking to the judge; or through the social worker, probation officer, lawyer, or CASA. Input from the CASA would also be allowed by a court report. The committee also recommends approving for optional use *Child's Statement About Psychotropic Medicine* (form JV-218) and *Statement About Psychotropic Medication* (form JV-219).

In order to provide a streamlined way to address the court in writing, the committee recommends creating a new optional Judicial Council form that can be filled out by the child, *Child's Statement About Psychotropic Medicine* (form JV-218). The committee also recommends a form that can be filled out by the caregiver or CASA, *Statement About Psychotropic Medication* (form JV-219). The committee concluded that parents and an Indian child's tribe often have very

[2] Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code and all rule references are to the California Rules of Court.

important historical information and current observations regarding the child that are extremely helpful to the court and therefore, they could also use form JV-219 to provide input on the request to administer psychotropic medication.

The committee concluded that the manner of providing input to the court should be that which is easiest for the person providing input. Therefore, rather than mandate the use of the new proposed forms, the committee decided the full array of ways to provide information to the court should be allowed, such as writing a letter; talking to the judge at the hearing; or through the social worker, probation officer, lawyer, or CASA.

The committee also recommends that the council amend *Application for Psychotropic Medication* (form JV-220) with several questions that the social worker or probation officer must answer when filling out the form, including questions that would ask for a description of what the child and caregiver report about taking the medication, and what the child and caregiver report about the benefits and side effects. The form would also require the social worker or probation officer to tell the judge how the child and caregiver wish to provide input on the medications being prescribed. The form would also require the social worker or probation officer to describe both mental health treatment alternatives to the proposed medication and other psychotropic medications used in the past six months. It would also ask what therapeutic services, other than medication, the child is enrolled in—or is recommended to participate in—during the next six months. This question is critical to ensure the legislative intent that psychotropic medications are not overused, and that alternative treatments to the use of psychotropic medications are considered for children in foster care.

The committee also recommends that the council revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to ensure the child has an opportunity to provide input on the prescribed medication. The committee recommends that the physician must provide an explanation both when the child agrees to the proposed medication and when the child does not agree. Currently the form does not require an explanation if the child is agreeable. However, in order to determine if the child truly agrees, and to what, an explanation from the physician would help the court to better understand the child's position on taking the medication. This is important since a child may agree to the medication to avoid consequences, such as loss of privileges, for refusing the medication.

Additionally, the committee recommends that the option for the prescribing physician to not inform the child of the request, the recommended medications, benefits, and side effects—because the child is too young—be eliminated from the form. The committee decided that even very young children can be told about recommended psychotropic medication in an age-appropriate manner. If the child is indeed too young for such an explanation, the "other" option would remain on the form and could be used for this purpose. The option to not inform the child because the child lacks the capacity to provide a response would also remain on the form.

Assessment of overall mental health and treatment plan

Newly enacted sections 369.5(a)(2)(B)(ii)–(iii) and 739.5(2)(B)(ii)-(ii) require the Judicial Council to develop rules and forms to ensure that information regarding an assessment of the child's overall mental health and treatment plan, as well as information regarding the rationale for the proposed medication are provided to the court.

The committee recommends that the council amend rule 5.640(c) to require that *Prescribing Physician's Statement—Attachment* (form JV-220(A)) include information regarding an assessment of the child's overall mental health and treatment plan, as well as information regarding the rationale for the proposed medication.

The committee concluded that the best person to provide the newly required information is the prescribing physician and that these requirements should be added to the existing mandatory form JV-220(A).

The new code sections further mandate that the request to the court include information on other pharmacological and non-pharmacological treatments that have been utilized and the child's response to those treatments, a discussion of symptoms not alleviated or ameliorated by other current or past treatment efforts, and an explanation of how the psychotropic medication being prescribed is expected to improve the child's symptoms. The committee concluded that the prescribing physician is in the best position to provide this information to the court, and therefore recommends that these topics be added as questions on form JV-220(A).

The committee recommends that the council revise *Prescribing Physician's Statement* (form JV-220(A)) to separate out compound questions. The committee recognized that many of the items in the form JV-220(A) asked multiple questions. In order to ensure that each question is answered in full, the committee proposes separating out each question into its own item. This would not result in a substantive change for the physician, but would make the form longer.

The committee recommends that the council adopt for alternative mandatory use *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)). This shortened form would be used for a request to continue the same medication by the same physician that completed the most recent JV-220(A). This form was created by the committee in direct response to comments received during the public comment period, as discussed below in the Comments section.

Procedure when request is missing information

Newly enacted sections 369.5(a)(2)(B)(iv) and 739.5(a)(2)(B)(iv) require the Judicial Council to develop rules and forms to address how to proceed if information, otherwise required to be included in a request for authorization, is not included in the request.

The committee recommends that the council amend rule 5.640(c) to direct the court, if all the required information is not included in the request for authorization, to order the applicant to provide the missing information and to set the request for authorization for a hearing.

The committee also recommends that the council revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an order that the applicant must provide any missing information by the time specified in the order, and to set a hearing on the application.

Periodic oversight

Newly enacted sections 369.5(a)(2)(C) and 739.5(2)(C) require the Judicial Council to develop rules and forms to include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication.

The committee recommends that the council approve for mandatory use *Report About Psychotropic Medication—County Staff* (form JV-224) and amend rule 5.640(f) to require the social worker or probation officer to file a completed *Report About Psychotropic Medication—County Staff* (form JV-224) at any scheduled psychotropic medication progress review hearing and each status review hearing.

The newly enacted code sections mandate that the periodic oversight includes the caregiver's and child's observations regarding the effectiveness of the medication and its side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments. The oversight process must be conducted in conjunction with other regularly scheduled court hearings, and reports must be provided to the court by the county agency.

The committee recommends that the council amend rule 5.640(f) and (g) to mandate progress reviews at every status review hearing and allow progress reviews at any other time at the court's discretion. The committee recommends that the option to present this information orally be eliminated from rule 5.640(f) and that rule 5.640(g) mandate the filing of the new proposed *Report About Psychotropic Medication–County Staff* (form JV-224) at any scheduled psychotropic medication progress review hearing and each status review hearing. The committee concluded that having a written record of the progress reports was important, particularly if someone other than the regularly assigned judicial officer was conducting the status review hearing.

The committee also recommends that the council revise *Prescribing Physician's Statement—Attachment* (form JV-220(A)) to ensure that the court has all the information needed to provide thorough periodic oversight of court ordered psychotropic medications.

The committee recommends that the council adopt for alternative mandatory use *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)). This shortened form would be used for a request to continue the same medication by the same physician that completed the most recent JV-220(A). This form was created by the committee in direct response to comments received during the public comment period, as discussed below in the Comments section.

The committee recommends that both forms require the physician to provide an explanation both when the child agrees to the proposed medication and when the child does not agree. Currently the form does not require an explanation if the child is agreeable. However, in order to determine if the child truly agrees, and to what, an explanation from the physician would help the court in its oversight function.

To ensure the court can provide meaningful oversight, the committee also recommends the following changes to form JV-220(A):

- Replace DSM-4 with DSM-5 to conform to updated practices.
- In item 16, mandate the information regarding laboratory tests performed, which is currently optional. Also, eliminate the detailed list of laboratory tests, and replace it with a statement regarding whether all essential laboratory tests were performed.
- Revise the item, now number 19, regarding therapeutic services to require the physician to indicate what therapeutic services the child "is enrolled in or is recommended to participate" in during the next six months, rather than the services the child "will participate" in, since the physician cannot predict the services the child will actually participate in.
- In item 22, mandate information on the medication administration schedule (schedule of when medication should begin, the dosage and number of doses per day), which is currently optional.
- Add a section to item 24 regarding reduction of medication. If the physician is requesting to stop medication, he or she must also recommend whether the medication is to be stopped immediately or gradually reduced and, if so, for what period of time.

Notice of progress review hearings

Newly enacted sections 369.5(a)(2)(C) and 739.5(2)(C) require the Judicial Council to develop rules and forms to include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication. To implement this requirement, the committee amended rule 5.640 to require a progress review of court-ordered psychotropic medication at every status review hearing and any other time at the court's discretion. After reviewing the comments, however, it became evident to the committee that the rule lacked a procedure for notice of progress reviews. The committee amended the rule to require that notice of a progress review include blank copies of *Child's Statement About Psychotropic Medication* (form JV-218), *Statement About Psychotropic Medication* (form JV-219), and *Opposition to or Statement About Application for Psychotropic Medication* (form JV-222), as appropriate, mirroring the requirements for notice of the authorization request.

The newly proposed notice requirements did not circulate for public comment, and will increase workload and cost by requiring additional blank forms served with the notice of status review hearings, and additional notice for any psychotropic medication progress review that is not scheduled at the same time as a status review hearing. The committee concluded this extra workload is necessary to meet the requirement in SB 238 that the council develop rules and forms to ensure that the child and his or her caregiver and CASA, if any, have an opportunity to

provide input on the medications being prescribed. Without notice of the hearing, and without blank copies of the form intended to allow for easy input, the child and caregiver will be unable to provide the required input.

Providing court order to caregiver

Newly enacted sections 369.5(c)(2) and 739.5(c)(2) mandate that the child welfare agency, probation department, or other person or entity who submitted the request for authorization of psychotropic medication provide the child's caregiver with a copy of the court order approving or denying the request.

The committee recommends that the council amend rule 5.640 to require that the child welfare agency, probation department, or other person or entity who submitted the request for authorization of psychotropic medication provide the child's caregiver a copy of the court order approving or denying the request.

The committee recommends adding this requirement at subdivision (e) of rule 5.640 and requiring that the copy be provided in person or mailed within two days of when the order is made to ensure the caregiver receives the order promptly.

The committee recommends that the council revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an order regarding providing a copy of the order to the caregiver.

The committee recommends adding to form JV-223, at item 4, an order that the social worker, probation officer, or person who submitted the application must give a copy of the order to the child's caregiver either in person or by mail within two days.

The committee recommends that the council amend rule 5.640(e) to mandate that the order also contain the last two pages of form JV-220(A) and the Food and Drug Administration (FDA) label that was attached to the JV-220(A). This would ensure that the caregiver has the information needed on dosages, side effects, and recommended therapeutic interventions.

Other Form Changes

The committee recommends several other form changes that are not specifically mandated by SB 238 but that improve the overall clarity of the process including:

- Revise *Information About Psychotropic Medication Forms* (form JV-219-INFO) and *Proof of Notice: Application for Psychotropic Medication* (form JV-221) to conform to changes to the recommended new forms and procedures.
- Renumber form JV-219-INFO as JV-217-INFO. This would place the form with information on the psychotropic medication request and approval process at the beginning of the series of psychotropic medication forms.

- Revise *Opposition to or Statement About Application for Psychotropic Medication* (form JV-222) so that it can be used to provide input to the court, even if the person using the form does not oppose the medication.
- Revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include the new forms in this proposal as evidence the court has read and considered.
- Further revise *Order Regarding Application for Psychotropic Medication* (form JV-223) to include an order about gradually reducing the psychotropic medication.
- Revise form names to improve readability. For example, rename *Application Regarding Psychotropic Medication* to *Application for Psychotropic Medication.*

Comments and Alternatives Considered

Comments

This proposal circulated for comment as part of the winter 2016 invitation to comment cycle, from December 11, 2015, to January 22, 2016, 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 organizations that the Judicial Council was mandated to consult with in developing the rules and forms implementing the legislation—the State Department of Social Services, the State Department of Health Care Services, and stakeholders, including, but not limited to, the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, the Chief Probation Officers of California, associations representing current and former foster children, caregivers, and children's attorneys.

Thirty individuals or organizations provided comments; three agreed with the proposal, six agreed if modified, six opposed the proposal, and fifteen did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 67-161.

In addition, after all the comments were reviewed and discussed by the committee, the committee convened a five-hour meeting with members of the committee and the SB 238 mandated stakeholders. Invitees included the County Behavioral Health Directors Association, California Academy of Child & Adolescent Psychiatry, California Psychiatric Association, National Center for Youth Law, East Bay Children's Law Office, Chief Probation Officers of California, County Welfare Directors Association, California Department of Social Services, Humboldt County Transition Age Youth Collaboration, State Department of Health Care Services, California Alliance of Child and Family Services, and the California Youth Connection. At this meeting the committee provided participants a summary of the comments received as well as a chart of all comments. The committee asked the stakeholders for additional feedback on key issues that arose from the comments, as well as allowed the attendees an opportunity to raise additional questions or concerns not highlighted by the committee.

As the comment chart demonstrates, this proposal generated significant comments. The issues that received the most comment or which raised critical issues are noted below; the comment

chart contains responses to all the input received and what action the committee proposes for council action.

Prescribing Physician's Statement

Many commentators, particularly physicians and organization representing physicians, stated the length and level of detail required in the proposed *Prescribing Physician's Statement—Attachment* (form JV-220(A)) would discourage providers from pursuing psychotropic medication when it would be indicated and beneficial. The length, they commented, would result in decreased access to care; faced with the increased administrative burden, some psychiatrists and pediatricians would stop addressing the mental health needs of foster youth and increased time filling out the form would decrease time spent with the patient and family

To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages.

Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions.

Providing parents a copy of form JV-220(A) with notice of an application

As circulated for public comment, the proposal provided parents a copy of form JV-220(A) with notice of an application. Under the current rule, the parents receive only a statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication, the name of the medication, and a statement that an *Application for Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) are pending before the court. Prior to circulation, the committee concluded that in order for the parents to provide meaningful input to the court, they needed to know what information was used as a basis for the proposed prescription and what alternatives, if any, could be tried in lieu of the proposed medication. It was the committee's view that by providing the full application rather than merely notice that it is pending, the parents would have the information necessary to provide meaningful input to the court.

Many commentators, including physicians and child advocacy organizations, opposed providing parents a copy of form JV-220(A). These comments included concerns that it violated physician-patient confidentiality and would limit the information the child provides to the physician. Commentators stated that if the physician was unable to ensure appropriate confidentiality, it would compromise the relationship with the child and the physician would not be able to gather

information essential to treatment. Further, compromising confidentiality would discourage children from engaging meaningfully in their mental health treatment because of their perception that personal information would be shared widely.

Several commentators also stated that providing a copy of form JV-220(A) violates the law. Commentators stated that providing form JV-220(A) to parents conflicts with several statutes enacted as part of Senate Bill 1407 (Leno; stats 2012, ch. 657);[3] the language in each provision is identical:

> Notwithstanding Section 3025 of the Family Code… or any other provision of law, a psychotherapist[4] who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6…. shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records[5] of the minor patient after finding that such an order would not be detrimental to the minor patient.

Several physicians and physician-based organizations also commented that providing the form to parents could be a possible breach of the Health Insurance Portability and Accountability Act (HIPAA) which may have a chilling effect on the potential pool of providers for this population due to penalties related to HIPAA violations. HIPAA requires that except in very specific circumstances, a covered entity such as a physician share only the minimum necessary medical information with an outside entity to accomplish a specific, authorized purpose.[6]

The committee agrees with many of these comments, and in light of physician-patient confidentiality, to ensure full disclosure to prescribing physicians, and to ensure the child's confidentiality is protected, no longer proposes that a copy of the JV-220(A) form be given to parents with notice of a request to administer psychotropic medication. The committee does not recommend that the council amend this portion of the rule to add new notice requirements.

Providing caregivers a copy of form JV-220(A) with notice of an application

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[3] Civil Code §56.106, Health & Safety Code §123116, and Welf. & Inst. Code §5328.03

[4] Psychotherapist is broadly described in Evidence Code § 1010 and includes sixteen categories of health care professionals.

[5] Mental health records is broadly described in Health & Safety Code § 123105 as patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

[6] 45 C.F.R. §164.502(b)

Similar to the discussion above regarding providing parents a copy of form JV-220(A) with notice of an application, as circulated for public comment, the proposal provided caregivers a copy of form JV-220(A) with notice of an application. Commentators raised the same concerns as discussed above regarding violation of physician-patient confidentiality and possible breaches of HIPAA.

The committee agrees with many of these comments, and in light of physician-patient confidentiality, to ensure full disclosure to prescribing physicians, and to ensure the child's confidentiality is protected, no longer proposes that a copy of the JV-220(A) form be given to parents with notice of a request to administer psychotropic medication. The committee does not recommend that the council amend this portion of the rule to add new notice requirements.

After consultation with the stakeholders, as mandated in SB 238, however, the committee recommends moving several items to the last two pages of form JV-220(A) and amending rule 5.640 to specify that the last two pages of the form and the medication information sheets (medication monographs) that the physician attached to form JV-220(A) must be provided to the caregiver with the copy of the court order. The moved items include whether the caregiver was informed of the request and what the possible adverse reactions could be; therapeutic services other than medication, in which the child is enrolled in or is recommended to participate in;[7] and information regarding the medication treatment plan and follow up. Moving these items to the last two pages and mandating that they be given with the order will ensure that the caregiver has the necessary information to monitor the medication and to know what services, other than medication, the child should participate in.

Proposed rule and form amendments regarding temporary orders when application missing information

Newly enacted sections 369.5(a)(2)(B)(iv) and 739.5(a)(2)(B)(iv) require the Judicial Council to develop rules and forms to address how to proceed if information, otherwise required to be included in a request for authorization, is not included in the request.

As circulated for public comment, the committee proposed amending rule 5.640(c) to allow for a temporary order granting the application if all the required information is not included in the request for authorization and amending rule 5.640(c)(14) to allow the court to temporarily grant the application for authorization for a period not to exceed 14 calendar days, or deny the application, and order the department to provide the required information. The circulated proposal also proposed revising *Order Regarding Application for Psychotropic Medication*

[7] There was consensus from members of two physicians groups that there should be more emphasis on what was circulated as question 17 to ask for specific types of Evidence Based Practices and/or promising practices that have been provided/are available. The committee, after consultation with stakeholders, recommends expanding the list of therapeutic services the prescribing physician can recommend to include more evidence based practices and promising practices including art therapy, Wraparound services, cognitive behavioral therapy (CBT), Therapeutic Behavioral Services (TBS), and American Indian/Alaska Native healing and cultural traditions.

(form JV-223) to include an order that the application is temporarily granted and that the department is ordered to resubmit the application with the missing information.

Many commentators were opposed to 14-day temporary orders when not all the information is contained in the application. The committee has removed the proposed revisions regarding temporary orders from rule 5.640 and *Order Regarding Application for Psychotropic Medication* (form JV-223). The committee recommends that the council revise the rule to mandate that if necessary information is missing from the application, the court must set a hearing and order the applicant to provide the missing information.

Child and caregiver input at progress review hearings

Newly enacted sections 369.5(a)(2)(B)(i) and 739.5(a)(2)(B)(i) require the Judicial Council to develop rules and forms to ensure that the child and his or her caregiver and court-appointed special advocate (CASA), if any, have an opportunity to provide input on the medications being prescribed.

To implement this requirement, the committee proposed amending rule 5.640(c) to allow the child, caregiver, CASA, parents, and Indian child's tribe to provide input to the court by the proposed new *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219); letter; talking to the judge; or through the social worker, probation officer, lawyer, or CASA. Input from the CASA would also be allowed by a court report.

Several commentators stated that the proposal allowed for input at the time of the request for medication only, and did not, but should, allow for ongoing input.

The committee intended for the child and his or her caregiver and court-appointed special advocate (CASA), if any, to have an opportunity to provide input on the medications being prescribed, and at any progress review of the prescribed medication. The committee recommends that the council revise the rule to make the ability to provide ongoing input more clear, and to provide notice of progress reviews which will include blank copies of the proposed new *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219).

Forms for Use by Social Workers and Probation Officers

Several commentators stated that the mandatory forms for social workers and probation officers are beyond the scope of social worker and probation officer training.

Newly enacted sections 369.5(a)(2)(C) and 739.5(2)(C) require the Judicial Council to develop rules and forms to include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication. To implement this requirement, the committee recommends that the council adopt for mandatory use at progress reviews *Report About Psychotropic Medication—County Staff* (form JV-224).

Some commentators noted that child psychiatry is nuanced and complex; treatment information being asked of probation officers and social workers calls for specialized knowledge generally possessed by medically trained professionals only, particularly the items asking for non-pharmacological and pharmacological treatment alternatives, and if none tried, the rationale for not doing so.

The committee concluded that the social worker or probation officer would be asking the physician these questions and reporting back to the court. The committee has also redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager.

One large group representing county welfare directors did not oppose new forms, but requested that any of the information on form JV-220(A) not be repeated in the social worker forms. They commented that much of the information will need to be obtained from the prescribing physician, and they stated it is more appropriate for the physician to provide that information. Further, they commented that it would result in a significant workload on the social worker, and potentially could create liability issues for the worker to ensure the information is correct and complete.

The committee concluded that form JV-224 would be submitted for any progress reviews on medication. This will usually not be at the same time as the physician submits a form JV-220(A) with a request to reauthorize or change medication. The questions on the JV-224 are necessary to ensure that the court can meet the mandates in the newly enacted code sections that the periodic oversight include the caregiver's and child's observations regarding the effectiveness of the medication and its side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.

Additionally, the committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220).

Definition of caregiver

The committee sought specific comment on whether there should be a definition of caregiver in the rule. Commentators were fairly equally divided on this question with half stating it was not necessary and half stating it would be helpful. What became obvious to the committee was that most of the commentators who wanted a definition, wanted one because it was unclear for children in group homes who would receive notice of the request for authorization and the order.

The committee recommends that the council amend rule 5.640 to clarify that for children placed in group homes, notice should be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.

Public Health Nurses

One group representing Public Health Nurses requested copies of the forms filled out by the prescribing physician and social worker or probation officer, for health care coordination and maintenance of the Health and Education Passport (HEP).

Senate Bill 319 (Bealle; Stats. 2015, ch. 5353) authorizes foster care public health nurses to provide oversight and monitoring of psychotropic medications for children in foster care. In this role, the commentator asserted it is necessary to receive copies of all the forms, however, most specifically the forms filled out by the prescribing physician and social worker or probation officer. The commentator cited Civil Code section 56.103.(a).[8]

The committee recommends that the council revise rule 5.640 to contain a cross reference to the newly amended Civil Code §56.103. This will enable each county to develop its own process and procedure regarding the release of these forms based on its interpretation and understanding of the recent amendments to this code section.

Other topics

Commentators provided many suggestions on how the rule and forms could be improved that the committee agreed with. These suggestions included:

- Additional information that should be asked of the child and caregiver;
- A cross reference in the rule to section 349 regarding the child's right to be present and participate at the hearing;
- Revisions to form JV-217-INFO to include the forms created by this proposal; and
- Additional types of placement options on the application form.

Additionally, one of the cosponsors of the legislation suggested that if on form JV-218 the box was checked indicating the child has not been told either how the medication is supposed to help or what the potential side effects are, that the rule mandate that the court deny the application. The committee concluded that the judge should have discretion in granting or denying these requests, and that mandating in the rule when the court must deny the request does not allow for discretion and could cause unnecessary delays. If the child checks the box indicating he or she

[8] That section states: A provider of health care may disclose medical information to a county social worker, a probation officer, a foster care public health nurse acting pursuant to Section 16501.3 of the Welfare and Institutions Code, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor, including, but not limited to, the sharing of information related to screenings, assessments, and laboratory tests necessary to monitor the administration of psychotropic medications.

has not been told either how the medication is supposed to help or what the potential side effects are, the court has many tools available to ensure the child is provided with this information including talking with the child at the hearing, or continuing the matter for the child's attorney to speak with the child.

Alternatives

In addition to the many alternatives discussed above in the Comments section, the committee considered renumbering the forms so that they were sequential and the numbers reflected the order the forms are actually filed. To do this, however, would require that the *Application for Psychotropic Medication* (form JV-220) be renumbered. Many jurisdictions use the form JV-220 as a term of art, however, referring to the psychotropic medication process as the "the JV-220" process. Because of this, and because the committee wanted the form to be easy to find, the committee numbered *Child's Statement About Psychotropic Medication* as form JV-218 and *Statement About Psychotropic Medication* as form JV-219.

The committee also considered having two separate *Statement About Psychotropic Medication* forms, one for an initial request that addressed only the child's behaviors and description of current treatment, and a different form for a renewal request that addressed behaviors and treatment as well as the perceived benefits and side effects of the medication. The committee concluded that filling out the wrong form was likely and if that happened, the judicial officer would not have all the necessary information when deciding a renewal request,which could result in delays. The committee therefore decided to make one form, with instructions on which items to answer depending on the type of request made.

Implementation Requirements, Costs, and Operational Impacts

Many of the costs associated with the implementation of this proposal are due to mandates in SB 238.

The proposed notice requirements will impact courts and the person or persons responsible for providing notice under local court rules or local practice protocols. The newly proposed notice requirements for progress reviews did not circulate for public comment, and will increase workload and cost by requiring additional blank forms served with the notice of status review hearings, and additional notice for any psychotropic medication progress review that is not scheduled at the same time as a status review hearing. The committee concluded this extra workload is necessary to meet the requirement in SB 238 that the council develop rules and forms to ensure that the child and his or her caregiver and CASA, if any, have an opportunity to provide input on the medications being prescribed. Without notice of the hearing, and without blank copies of the form intended to allow for easy input, the child and caregiver will be unable to provide the required input.

Providing notice with additional documents will likely result in minimal implementation costs and a slight increase in workload for the person or persons providing notice to the parties and attorneys. In implementing the revised forms, courts will incur standard reproduction costs.

By requiring increased information in the *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and mandating additional information in the *Application for Psychotropic Medication* (form JV-220(A), this proposal could reduce delays in obtaining orders for psychotropic medications and could reduce the number of hearings a judicial officer must set to obtain the information necessary to make an informed decision on the request to administer psychotropic medication.

Requiring social workers and probation officers to complete additional questions in *Application for Psychotropic Medication* (form JV-220(A) and the new *Report About Psychotropic Medication—County Staff* (form JV-224) will result in slight implementation costs and will increase workload. The committee, however, feels the information requested in these forms is critical to meet the mandates of SB 238.

Attachments and Links

1. Proposed Cal. Rules of Court, rule 5.640, attached at pages 21-28
2. Proposed forms JV-217-INFO, JV-218, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, JV-223, and JV-224, attached at pages 29-66
3. Chart of comments, at pages 67-161
4. Senate Bill 238, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB238*

Rule 5.640 of the California Rules of Court would be amended, effective July 1, 2016, to read:

Rule 5.640. Psychotropic medications

(a) * * *

(b) Authorization to administer (§§ 369.5, 739.5)

(1)~~–~~**(2) * * ***

(3) The court must grant or deny the application using *Order Regarding Application for Psychotropic Medication* (form JV-223).

(c) Procedure to obtain authorization

(1) ~~*Application Regarding Psychotropic Medication* (form JV-220), *Prescribing Physician's Statement—Attachment* (form JV-220(A)), *Proof of Notice: Application Regarding Psychotropic Medication* (form JV-221), *Opposition to Application Regarding Psychotropic Medication* (form JV-222), and *Order Regarding Application for Psychotropic Medication* (form JV-223) must be used to~~ To obtain authorization to administer psychotropic medication to a dependent child of the court who is removed from the custody of the parents or guardian, or to a ward of the court who is removed from the custody of the parents or guardian and placed into foster care, the following forms must be completed and filed with the court:

(A) *Application for Psychotropic Medication* (form JV-220); and

(B) *Prescribing Physician's Statement—Attachment* (form JV-220(A) unless the request is to continue the same medication by the same physician that completed the most recent JV-220(A), then the physician may complete *Prescribing Physicians Statement, Request to Continue--Attachment* (form JV-220(B).

(2) The child, caregiver, parents, child's Indian tribe and Court Appointed Special Advocate, if any, may provide input on the medications being prescribed.

(A) Input can be by *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219); letter; talking to the judge at a court hearing; or through the social worker, probation officer, attorney of record, or Court Appointed Special Advocate.

(B) If form JV-218 or JV-219 is filed, it must be filed within four court days after receipt of notice of the pending application for psychotropic medication.

(C) Input from a Court Appointed Special Advocate can also be by a court report under local rule.

(3) *Opposition to or Statement About Application for Psychotropic Medication* (form JV-222) may be filed by a parent or guardian, his or her attorney of record, a child's attorney of record, a child's Child Abuse Prevention and Treatment Act guardian ad litem appointed under rule 5.662 of the California Rules of Court, or the Indian child's tribe. If form JV-222 is filed, it must be filed within four court days of receipt of notice of the application.

~~(2)~~ (4) Additional information may be provided to the court through the use of local forms that are consistent with this rule.

~~(3)~~ (5) Local county practice and local rules of court determine the procedures for completing and filing the forms and for the provision of notice, except as otherwise provided in this rule. The person or persons responsible for providing notice as required by local court rules or local practice protocols are encouraged to use the most expeditious manner of service possible to ensure timely notice.

~~(4) An application must be completed and presented to the court, using *Application Regarding for Psychotropic Medication* (form JV-220), and *Prescribing Physiscian's Statement—Attachment* (form JV-220(A)). The court must approve, deny or set the matter for a hearing within seven court days of the receipt of the completed application.~~

~~(5)~~ (6) *Application ~~Regarding~~ for Psychotropic Medication* (form JV-220) may be completed by the prescribing physician, medical office staff, child welfare services staff, probation officer, or the child's caregiver. If the applicant is the social worker or probation officer, he or she must complete all items on form JV-220. The physician prescribing the administration of psychotropic medication for the child must complete and sign *Prescribing Physician's Statement—Attachment* (form JV-220(A)) or if it is a request to continue the same medication by the same physician that completed the most recent JV-220(A), then the physician may complete and sign *Prescribing Physicians Statement, Request to Continue* (form JV-220(B)) .

(7) The court must approve, deny, or set the matter for a hearing within seven court days of the receipt of the completed JV-220 and JV-220(A) or (B).

~~(6) *Prescribing Physician's Statement—Attachment* (form JV-220(A)) must include all of the following:~~

~~(A) The diagnosis of the child's condition that the physician asserts can be treated through the administration of the medication;~~

~~(B) The specific medication recommended, with the recommended maximum daily dosage and length of time this course of treatment will continue;~~

~~(C) The anticipated benefits to the child of the use of the medication;~~

~~(D) A description of possible side effects of the medication;~~

~~(E) A list of any other medications, prescription or otherwise, that the child is currently taking, and a description of any effect these medications may produce in combination with the psychotropic medication;~~

~~(F) A description of any other therapeutic services related to the child's mental health status; and~~

~~(G) A statement that the child has been informed in an age-appropriate manner of the recommended course of treatment, the basis for it, and its possible results. The child's response must be included.~~

~~(7)~~(8) Notice must be provided to the parents or legal guardians, their attorneys of record, the child's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, the child's current caregiver, the child's Court Appointed Special Advocate, if any, and where a child has been determined to be an Indian child, the Indian child's tribe (see also 25 U.S.C. § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3). If the child is living in a group home, notice to the caregiver must be by notice to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, regulation 84064.

Notice must be provided as follows:

(A) Notice to the parents or legal guardians and their attorneys of record must include:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child and the name of the psychotropic medication;

(ii) A statement that an *Application ~~Regarding~~ for Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) or *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Information About Psychotropic Medication Forms* (form ~~JV-219-INFO~~ JV-217-INFO); ~~or information on how to obtain a copy of the form; and~~

(iv) A blank copy of *Statement About Psychotropic Medication* (form JV-219); and

~~(iv)~~ (v) A blank copy of *Opposition to or Statement About Application ~~Regarding~~ for Psychotropic Medication* (form JV-222) ~~or information about how to obtain a copy of the form~~.

(B) Notice to the child's current caregiver and Court Appointed Special Advocate, if one has been appointed, must include only:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child and the name of the psychotropic medication; ~~and~~

(ii) A statement that an *Application ~~Regarding~~ for Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) or *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Information About Psychotropic Medication Forms* (form JV-217-INFO);

(iv) A blank copy of *Child's Statement About Psychotropic Medication* (form JV-218); and

(v) A blank copy of *Statement About Psychotropic Medication* (form JV-219) .

(C) Notice to the child's attorney of record and any Child Abuse Prevention and Treatment Act guardian ad litem for the child must include:

(i) A completed copy of ~~the~~ *Application ~~Regarding~~ for Psychotropic Medication* (form JV-220);

(ii) A completed copy of ~~the~~ *Prescribing Physician's Statement—Attachment* (form JV-220(A)) or *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B));

~~(iii)~~ (iv) A copy of *Information About Psychotropic Medication Forms* (form ~~JV-219-INFO~~ JV-217-INFO) or information on how to obtain a copy of the form~~; and~~

~~(iv)~~ (v) A blank copy of *Opposition to or Statement About Application ~~Regarding~~ For ~~Psychiatric~~ Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form.; and

(vi) A blank copy of *Child's Statement About Psychotropic Medicine* (form JV-218) or information on how to obtain a copy of the form.

(D) Notice to the Indian child's tribe must include:

(i) A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication to the child, and the name of the psychotropic medication;

(ii) A statement that an *Application ~~Regarding~~ for Psychotropic Medication* (form JV-220) and a *Prescribing Physician's Statement—Attachment* (form JV-220(A)) or *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) are pending before the court;

(iii) A copy of *Information About Psychotropic Medication Forms* (form ~~JV-219-INFO~~ JV-217 INFO) or information on how to obtain a copy of the form; ~~and~~

(iv) A blank copy of *Opposition to or Statement About Application ~~Regarding~~ For Psychotropic Medication* (form JV-222) or information on how to obtain a copy of the form~~.~~; and

(v) A blank copy of *Child's Statement About Psychotropic Medication* (form JV-218) or information on how to obtain a copy of the form.

(vi) A blank copy of *Statement About Psychotropic Medication* (form JV-219) or information on how to obtain a copy of the form.

(E) Proof of notice of the application regarding psychotropic medication must be filed with the court using *Proof of Notice: Application ~~Regarding~~ for Psychotropic Medication* (form JV-221).

~~(8) A parent or guardian, his or her attorney of record, a child's attorney of record, a child's Child Abuse Prevention and Treatment Act guardian ad~~

~~litem appointed under rule 5.662 of the California Rules of Court, or the Indian child's tribe that is opposed to the administration of the proposed psychotropic medication must file a completed *Opposition to Application Regarding Psychotropic Medication* (form JV-222) within four court days of service of notice of the pending application for psychotropic medication.~~

(9) If all the required information is not included in the request for authorization, the court must order the applicant to provide the missing information and set a hearing on the application.

~~(9)~~(10) The court may grant the application without a hearing or may set the matter for hearing at the court's discretion. If the court sets the matter for a hearing, the clerk of the court must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys of record, the dependent child if 12 years of age or older, a ward of the juvenile court of any age, the child's attorney of record, the child's current caregiver, the child's social worker or probation officer, the social worker's or probation officer's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, the child's Court Appointed Special Advocate, if any, and the Indian child's tribe at least two court days before the hearing. Notice must be provided to the child's probation officer and the district attorney, if the child is a ward of the juvenile court.

(d) Conduct of hearing on application

At the hearing on the application, the procedures described in rule 5.570 and section 349 must be followed. The court may deny, grant, or modify the application for authorization. ~~and may~~ If the court grants or modifies the application for authorization, the court must set a date for review of the child's progress and condition. This review must occur at every status review hearing and may occur at any other time at the court's discretion.

(e) * * *

(f) Continued treatment

If the court grants the request or modifies and then grants the request, the order for authorization is effective until terminated or modified by court order or until 180 days from the order, whichever is earlier.

~~If a progress review is set, it may be by an appearance hearing or a report to the court and parties and attorneys, at the discretion of the court.~~

(g) Progress review

(1) After approving any application for authorization, regardless of whether the approval is made at a hearing, the court must set a progress review.

(2) A progress review must occur at every status review hearing and may occur at any other time at the court's discretion.

(3) If the progress review is held at the time of the status review hearing, notice under section 293 or 295 must include a statement that the hearing will also be a progress review on previously ordered psychotropic medication, and must include a blank copy of *Child's Statement About Psychotropic Medication* (form JV-218) and a blank copy of *Statement About Psychotropic Medication* (form JV-219).

(4) If the progress review is not held at the time of the status review hearing, notice must be provided as required under section 293 or 295; must include a statement that the hearing will be a progress review on previously ordered psychotropic medication; and must include a blank copy of *Child's Statement About Psychotropic Medication* (form JV-218) and a blank copy of *Statement About Psychotropic Medication* (form JV-219).

(5) Before each progress review, the social worker or probation officer must file a completed *Report Regarding Psychotropic Medication—County Staff* (form JV-224) at least ten calendar days before the hearing. If the progress review is set at the same time as a status review hearing, form JV-224 must be attached to and filed with the report.

(6) The child, caregiver, parents, and Court Appointed Special Advocate, if any, may provide input at the progress review as stated in (c)(2).

(7) At the progress review, the procedures described in section 349 must be followed.

(h) Copy of order to caregiver

(1) Upon the approval or denial of the application, the county child welfare agency, probation department, or other person or entity who submitted the request must provide the child's caregiver with a copy of the court order approving or denying the request.

(2) The copy of the order must be provided in person or mailed within two days of when the order is signed.

(3) If the court approves the request, the copy of the order must include the last two pages of form JV-220(A) and all medication information sheets (medication monographs) that were attached to form JV-220(A).

(4) If the child resides in a group home, a copy of the order, the last two pages of form JV-220(A), and all medication information sheets (medication monographs) that were attached to the JV-220(A) must be provided to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, regulation 84064.

(5) If the child changes placement, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A), and the medication information sheets (medication monographs) that were attached to form JV-220(A).

~~(g)~~ (i) * * *

~~(h)~~ (j) Section 601–602 wardships; local rules

A local rule of court may be adopted providing that authorization for the administration of such medication to a child declared a ward of the court under sections 601 ~~and~~ or 602 and removed from the custody of the parent or guardian for placement in a facility that is not considered a foster-care placement may be similarly restricted to the juvenile court. If the local court adopts such a local rule, then the procedures under this rule apply; any reference to social worker also applies to probation officer.

(j) Public health nurses

Information may be provided to public health nurses as governed by Civil Code section 56.103.

JV-217-INFO Information About Psychotropic Medication Forms

Use the Judicial Council forms listed below when requesting an order regarding psychotropic medication. Local forms may be used to provide additional information to the court.

JV-218, *Child's Statement About Psychotropic Medication*
JV-219, *Statement About Psychotropic Medication*
JV-220, *Application for Psychotropic Medication*
JV-220(A), *Prescribing Physician's Statement—Attachment*
JV-220(B), *Prescribing Physician's Statement, Request to Continue—Attachment*
JV-221, *Proof of Notice: Application for Psychotropic Medication*
JV-222, *Opposition to or Statement About Application for Psychotropic Medication*
JV-223, *Order Regarding Application for Psychotropic Medication*
JV-224, *Report About Psychotropic Medication—County Staff*

General Instructions

1. Use psychotropic medication forms when a child is under the jurisdiction of the juvenile court and living in an out-of-home placement and the child's physician is asking for an order:
   a. giving permission for the child to receive a psychotropic medication that is not currently authorized *or*
   b. renewing an order for a psychotropic medication that was previously authorized for the child because the order is due to expire.
2. Use of the JV-220, JV-220(A) or JV-220(B), JV-221, JV-223, and JV-224 forms is mandatory for a child who is a dependent of the juvenile court and living in an out-of-home placement. Use of the JV-218 and JV-219 forms is optional.
3. Use of the JV-220, JV-220(A) or JV-220(B), JV-221, JV-223, and JV-224 forms is mandatory for a child who is a ward of the juvenile court and living in a foster care placement, as defined in Welfare and Institutions Code section 727.4.Use of the JV-218 and JV-219 forms is optional.
4. Use of the forms is optional for a child who is a ward of the juvenile court and living in an out-of-home facility that is not considered a foster care placement as defined in Welfare and Institutions Code section 727.4, unless use of the forms is required by a local rule of court.
5. Use of the forms is not required if the court has previously entered an order giving the child's parent the authority to approve or deny the administration of psychotropic medication to the child.
6. If the applicant is the social worker or probation officer, he or she must complete all items in *Application for Psychotropic Medication* (form JV-220).
7. Form JV-220(A), *Prescribing Physician's Statement—Attachment* or if it is a request to continue the same medication made by the same physician who submitted the most recent JV-220(A), Form JV-220(B), *Prescribing Physician's Statement, Request to Continue—Attachment* may be completed and signed by the prescribing physician and forwarded to the person responsible for completing Form JV-220, *Application Regarding Psychotropic Medication,* as provided for in local court rules or local practice protocols. The completed JV-220(A), or JV-220(B) with all its attachments, must be attached to JV-220 when it is filed with the court.
8. The person or persons responsible for providing notice under local court rules or local practice protocols must complete, sign, and file with the court Form JV-221, *Proof of Notice: Application Regarding Psychotropic Medication.*

JV-220, *Application for Psychotropic Medication*

1. This form gives the court basic information about where the child lives and whether the current situation has caused the child to be moved to a temporary location such as a psychiatric hospital, a juvenile hall, a shelter home, or respite care. It also provides the name and contact information for the child's social worker or probation officer. If the applicant is the social worker or probation officer, this form also provides the court with information related to what the child and caregiver report about taking the medication and how the child and caregiver want to provide input on the medication being prescribed.

2 This form may be completed by the prescribing physician, the medical office staff, the child welfare services staff, the probation department staff, or the child's caregiver. If completed by a staff person from the medical office, the child welfare services agency, the probation department, or the child's caregiver, he or she must check the appropriate box, type or print his or her name, and sign the form. If completed by the prescribing physician, he or she must check the appropriate box and complete and sign Form JV-220(A), or Form JV-220(B) if the request is for the same medication and made by the same physician who submitted the most recent Form JV-220(A).

JV-220(A), *Prescribing Physician's Statement—Attachment*

1 This form must be completed and signed by the prescribing physician, who must provide information related to the administration of the psychotropic medication, including the child's diagnosis, relevant medical history, other therapeutic services, the psychotropic medication to be administered, and the basis for the psychotropic medication recommendation.

2 Prior court authorization must be obtained before a psychotropic medication not currently authorized is given to a child except in an emergency situation. An emergency situation occurs when a physician finds that the child requires psychotropic medication because of a mental condition and the purpose of the medication is to protect the life of the child or others, prevent serious harm to the child or others, or treat current or imminent substantial suffering and it is impractical to obtain prior authorization from the court. Court authorization must be sought as soon as practical but never more than two court days after the emergency administration of the psychotropic medication.

JV-220(B), *Prescribing Physician's Statement, Request to Continue—Attachment*

1 This form must be completed and signed by the prescribing physician, who must provide information related to the administration of the psychotropic medication, including the child's diagnosis, relevant medical history, other therapeutic services, the psychotropic medication to be administered, and the basis for the psychotropic medication recommendation.

2 This shortened form can be used if the request is for the same medication and made by the same physician who submitted the most recent Form JV-220(A).

JV-221, *Proof of Notice: Application for Psychotropic Medication*

1 This form provides verification of the notice required by rule 5.640 of the California Rules of Court.

2 This form must be completed and signed by the person or persons responsible for providing notice as required by local court rules or local practice protocols. A separate signature line is provided on each page of the form to accommodate those courts in which the provision of notice is shared between agencies—for example, when local court rule or local practice protocol requires the child welfare services agency to provide notice to the parent or legal guardian and the caregiver and the juvenile court clerk's office to provide notice to the attorneys and CASA volunteer. If one agency does all the required noticing, only one signature is required on page 3 of the form.

3 The person or persons responsible for providing notice as required by local court rules or local practice protocols is encouraged to use the most expeditious manner of service possible to ensure timely notice.

4 Notice may be given by electronic service only with the prior authorization of the person to be served and in compliance with the requirements of section 1010.6 of the Code of Civil Procedure.

JV-218, *Child's Statement About Psychotropic Medication*

1 This form can be used by the child to tell the court how he or she feels about the request for the court to order medication, to tell the court whether the medications are helping, and whether the child is experiencing any adverse side effects. The child can fill out the form by himself or herself, or someone can read the form to the child and help him or her fill it out.

2 This form must be filed within four court days of receipt of the notice of an application, or before any status review hearing or medication progress review hearing.

3. This form is not the only way for the child to provide information to the court. The child can also provide input on the medication by letter; talking to the judge at the court hearing; or through the social worker, probation officer, attorney of record, or Court Appointed Special Advocate.

JV-219, *Statement About Psychotropic Medication*

1. This form can be used by the caregiver, CASA, or tribe to inform the court about their feelings about the request for the court to order medication, to tell the court whether the medications are helping, and if the child is experiencing any adverse side effects.
2. This form must be filed within four court days of receipt of the notice of an application, or before any status review hearing or medication progress review hearing.
3. This form is not the only way for the caregiver, CASA, or tribe to provide information to the court. The caregiver, CASA, or tribe can also provide input on the medication by letter; talking to the judge at the court hearing; or through the social worker, probation officer, attorney of record, or CASA. A CASA can also file a report under local rule.

JV-222, *Opposition to or Statement About Application for Psychotropic Medication*

1. This form may be used when the parent or guardian, the attorney of record for a parent or guardian, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe does not agree that the child should take the recommended psychotropic medication. This form may also be used to provide input to the court.
2. Within four court days of service of notice of the pending application regarding psychotropic medication, the parent or guardian, his or her attorney, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe that disagrees must complete, sign, and file Form JV-222 with the clerk of the juvenile court.
3. The court will make a decision about the child's psychotropic medication after reading the application and its attachments and any opposition, JV-218, or JV-219 filed on time. The court is not required to set a hearing when an opposition is filed. If the court does set the matter for a hearing, the juvenile court clerk must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys, the child if 12 years of age or older, the child's attorney, the child's current caregiver, the child's social worker, the social worker's attorney, the child's CAPTA guardian ad litem, the child's CASA, if any, and the Indian child's tribe at least two court days before the date set for the hearing. In delinquency matters, the clerk also must provide notice to the child regardless of his or her age, the child's probation officer, and the district attorney.

JV-223, *Order Regarding Application for Psychotropic Medication*

1. This form contains the court's findings and orders about psychotropic medications. Upon the approval or denial of the application, the county child welfare agency, probation department, or other person or entity who submitted the request must provide a copy of the court order approving or denying the request to the child's caregiver.
2. The copy of the order must be provided in person or mailed within two days of when the order is made.
3. If the court approves the request, the copy of the order must include the last two pages of JV-220(A) and all medication information sheets (medication monographs) that were attached to the JV-220(A).
4. If the child changes placement, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A), and medication information sheets (medication monographs) that were attached to the JV-220(A).

JV-224, *Report About Psychotropic Medication—County Staff*

1. This form must be completed and filed by the social worker or probation officer before each progress review. It contains information that the court must review including the caregiver's and child's observations regarding the effectiveness of the medication and its side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.
2. This form must be filed at least ten calendar days before the progress review hearing. If the progress review is set at the same time as a status review hearing, the form must be attached to and filed with the court report.

JV-218 Child's Statement About Psychotropic Medicine

Clerk stamps date here when form is filed.

This form is for you to tell the judge what you think about the request for the judge to order medicine for you. You don't have to use this form. If you want, you can talk to the judge or write a letter. You can also let your lawyer, social worker, probation officer, or CASA know how you feel. If someone is helping you fill out this form, they should read this form to you. If you need more space to answer any of the items, write the item number and additional information on page 4 of this form. If you need more space than page 4, attach a sheet or sheets of paper.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 My name: _____

2 My date of birth: _____

3 a. ☐ I know a doctor wants me to take medicine.

b. ☐ I did not know that a doctor wants me to take medicine.

4 a. ☐ I have been told about how the medicine is supposed to help me, but I feel what I was told about how the medicine is supposed to help me is private.

b. ☐ I have been told about how the medicine is supposed to help me. I was told _____

_____

_____

c. ☐ I have not been told how the medicine is supposed to help me.

5 a. ☐ I have been told about possible side effects. I was told

_____

_____

_____

_____

b. ☐ I have not been told about possible side effects.

6 a. ☐ I agree ☐ I do not agree with taking the medicine because

_____

_____

_____

_____

b. ☐ I need to know more to decide if I want to take the medicine. I need to know:

_____

_____

_____

_____

7 Do you know the name of the medicine prescribed for you and the doses? ☐ Yes ☐ No

8 Have you taken this medicine before? ☐ Yes ☐ No ☐ I do not know

9 What other treatments are you in? (For example, therapy)

_____

_____

_____

_____

10 a. What do you like to do for fun?

_____

_____

_____

_____

_____

b. What activities would you like to be involved in?

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

If you are currently taking medication, answer questions 11–13. If you are not taking medication, skip to questions 14–16.

11 a. ☐ I am having side effects from the medicine. The side effects are:

- ☐ Weight gain
- ☐ Weight loss
- ☐ Headache
- ☐ Nausea
- ☐ Difficulty sleeping
- ☐ Excessive sleepiness
- ☐ Other *(specify):*
- ☐ Other *(specify):*
- ☐ Other *(specify):*
- ☐ Other *(specify):*

b. ☐ I am not having side effects from the medicine *(skip question 8)*

12 a. ☐ I have told Dr. _____ about the side effects I am having.

b. ☐ I have not told a doctor about the side effects I am having.

13 *For children 17 years and older*: When you turn 18, if you want you will be able to continue taking psychotropic medicine.

a. Do you know how to get the medicine? ☐ yes ☐ no ☐ I do not know

b. Will you be able to stay with your current doctor? ☐ yes ☐ no ☐ I do not know

14 What else do you want the judge to know?

_____

_____

_____

_____

_____

_____

15 I filled this form out ☐ by myself ☐ with help.

16 ☐ I helped the child fill out this form. I am

☐ the social worker ☐ the probation officer ☐ the caregiver

☐ the child's attorney ☐ the child's CASA

☐ other *(specify):* _____

Child's name: _____

Case Number:

17 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet or sheets of paper.

Date:

_____ ▶ _____

Type or print name of person filling out form *Signature of person filling out form*

_____ ▶ _____

Type or print child's name *Child's signature*

JV-219 Statement About Psychotropic Medication

This form is for you—the child's caregiver, CASA, or Indian tribe—to tell the court how you feel about the request for the court to order medication. If this is an initial request and the child is not currently taking psychotropic medication, fill out items 1–13. If the child is currently taking psychotropic medication, fill out items 1–23. You can also provide input to the court by a letter, through your attorney, through the social worker or probation officer, or by attending the hearing and talking to the judge. If you need more space to answer any of the items, write the item number and additional information on page 6 of this form. If you need more space than page 6, attach a sheet or sheets of paper.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Child's name: _____

2 Your name and relation to child: _____

_____

3 a. How long have you known the child?
_____years _____months _____days

b. How long has the child lived in your home or facility?
_____years _____months _____days _____N/A

4 What is the child's behavior like at home? ☐ I don't know.

_____

_____

_____

_____

_____

5 What is the child's behavior like at school? ☐ I don't know.

_____

_____

_____

_____

_____

6 How does the child interact with his or her peers? ☐ I don't know.

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

7 How does the child interact with adults? ☐ I don't know.

8 How is the child sleeping, and for how long? ☐ I don't know.

9 What type of counseling is the child receiving and how often? (e.g. individual counseling; group counseling)
☐ I don't know.

10 What other medications does the child regularly take? ☐ I don't know.

If you are the child's caregiver, fill out items 11-16, others skip to item 18.

11 Were you able to meet with and provide information to the prescribing physician? ☐ Yes ☐ No

12 Were you informed of the recommended medications, the anticipated benefits, and the possible adverse reactions?
☐ Yes ☐ No

13 Do you know how to obtain and refill the medication? ☐ Yes ☐ No

Child's name: _____ **Case Number:**

14 a. Do you know about future medical appointments? ☐ Yes ☐ No

b. Are you able to get to future medical appointments? ☐ Yes ☐ No

c. Are you able to ensure the child gets to future medical appointments? ☐ Yes ☐ No

15 Do you know what to do if child has a bad reaction to the medication? ☐ Yes ☐ No

16 Do you agree with use of the medication? ☐ Yes ☐ No

17 a. Who will administer the medication? *(specify)* _____

b. Who is responsible for monitoring the child's use of the medication? *(specify)* _____

_____

18 What else do you want the judge to know?

_____

_____

_____

_____

_____

If the child is not currently taking psychotropic medication, you are done filling out this form. If the child is taking psychotropic medication, fill out items 19–28.

19 Is the medication affecting school and/or learning? If so, how? ☐ I don't know.

_____

_____

_____

_____

_____

20 Is the medication affecting the child's ability to concentrate? If so, how? ☐ I don't know.

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

21 Does the child have appropriate energy levels throughout the day? ☐ I don't know.

22 Is the medication affecting the child's participation in hobbies and/or after school activities? If so, how?
☐ I don't know.

23 Has the child lost or gained weight while on the medication? ☐ Yes ☐ No

a. ☐ weight loss pounds: _____ ☐ estimate

b. ☐ weight gain pounds: _____ ☐ estimate

24 Does the child willingly take the medication or is it a struggle? ☐ I don't know.

Child's name: _____

Case Number:

25 Is someone talking regularly with the child about how he or she feels when on this medication?

☐ Yes ☐ No ☐ I don't know.

If yes, who? *(specify):* _____

26 What are the side effects, if any? ☐ I don't know.

27 What are the benefits, if any? ☐ I don't know.

28 What else do you want the judge to know that is not on this form? ☐ I don't know.

Child's name: _____

Case Number:

29 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet or sheets of paper.

Date:

Type or print name of person filling out form

Signature

JV-220 Application For Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

A completed and signed Form JV-220(A), *Prescribing Physician's Statement—Attachment, or Prescribing Physician's Statement, Request to Continue—Attachment* (Form JV-220(B)) with all its attachments must be attached to this form before it is filed with the court. Read Form JV-217-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Information about where the child lives:

a. The child lives ☐ with a relative ☐ in a foster home
☐ with a nonrelative extended family member
☐ group home, level _____ ☐ at a juvenile custodial facility
☐ short term residential treatment center
☐ other *(specify):* _____

b. If applicable, name of facility where child lives:

c. Contact information for responsible adult where child lives:
(1) Name:
(2) Phone:

d. Child has lived at the placement in (a) since *(insert date):* _____

2 Information about the child's current location:

a. ☐ The child remains at the location identified in **1**.
b. ☐ The child is currently staying in:
(1) ☐ a psychiatric hospital *(name):*
(2) ☐ a juvenile hall *(name):*
(3) ☐ other *(specify):*

3 Child's ☐ social worker ☐ probation officer

a. Name:
b. Address:
c. Phone: Fax:

4 Number of pages attached:

Date:

Type or print name of person completing this form

Signature

☐ Medical office staff *(sign above)*
☐ Caregiver *(sign above)*
☐ Prescribing physician *(sign on page 6 of JV-220(A) or page 4 of JV-220(B))*

Child's name: _____ **Case Number:**

If you are the child's social worker or probation officer, you must fill out items 5-14 of this form. If you do not know the answer to a question write "I do not know".

5 Describe if the child has shared feelings about starting to take medication. If this is a request to renew or modify medication, include what the child reports regarding the benefits and side effects of having taken the medication.

_____

_____

_____

_____

_____

6 The child will provide input on the medication being prescribed (*check all that apply):*

a. ☐ through the social worker/probation officer
b. ☐ through their attorney
c. ☐ through their CASA
d. ☐ by filling out JV-218
e. ☐ by writing a letter to the judge
f. ☐ by talking to the judge at a hearing
g. ☐ other *(specify):* _____

7 Describe what the caregiver reports regarding the child being placed on the medication. If this is a request to renew or modify medication, include what the caregiver reports regarding the benefits and side effects of having the child take medication.

_____

_____

_____

_____

_____

8 The caregiver will provide input on the medication being prescribed (*check all that apply)*:

a. ☐ through the social worker/probation officer
b. ☐ by filling out JV-219
c. ☐ by writing a letter to the judge
d. ☐ by talking to the judge at a hearing
e. ☐ other *(specify):* _____

9 a. Have mental health treatment alternatives to the proposed medications been used in the last six months?
☐ Yes ☐ No ☐ I do not know

b. If yes, describe the treatment and the child's response. If no, explain why not.

_____

_____

_____

_____

_____

_____

9 c. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped if the reasons are known to you.

Medication name (generic or brand)	*Reason for stopping*

10 a. Have other psychotropic medications been tried in the last six months?

☐ Yes ☐ No ☐ I do not know

b. If yes, describe the treatment and the child's response. If no, explain why not.

11 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months *(check all that apply; include frequency for group therapy and individual therapy):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____

c. ☐ Milieu therapy *(explain):* _____

d. ☐ Therapeutic Behavioral Services (TBS) _____

e. ☐ Applied behavior analysis _____

f. ☐ Art therapy _____

g. ☐ Cognitive behavioral therapy (CBT) _____

h. ☐ Wraparound services _____

i. ☐ American Indian/Alaska Native healing and cultural traditions _____

j. ☐ Speech therapy _____

k. ☐ Other modality *(explain):* _____

12 What other services could benefit or enhance the child's well-being? *(For example, sports, art, extracurricular activities)*

Child's name: _____

Case Number:

13 What comments, if any, do you have regarding the application? What else do you want the judge to know?

14 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet of sheets of paper.

Date: _____

_____
Type or print name of person completing this form

_____
Signature

☐ Child welfare services staff *(sign above)*

☐ Probation department staff *(sign above)*

JV-220(A) Prescribing Physician's Statement—Attachment

Case Number:

This form must be completed and signed by the prescribing physician. Read Form JV-217-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 Information about the child *(name):* _____

Date of birth: _____ Current height: _____ Current weight: _____

Gender: _____ Ethnicity: _____

2 Type of request:

a. ☐ An initial request to administer psychotropic medication to this child

b. ☐ A request to start a new medication or to increase the maximum dose of a previously approved medication

c. ☐ A request to continue psychotropic medication the child is currently taking

3 ☐ This application is made during an emergency situation. The emergency circumstances requiring the temporary administration of psychotropic medication pending the court's decision on this application are:

_____

_____

_____

4 Prescribing physician:

a. Name: _____ License number: _____

b. Address: _____

c. Phone numbers: _____

d. Medical specialty of prescribing physician:

☐ Child/adolescent psychiatry ☐ General psychiatry ☐ Family practice/GP ☐ Pediatrics

☐ Other *(specify):* _____

e. How long have you been treating the child? ____ years ____ months ____ days

f. In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?

_____

_____

_____

_____

_____

5 This request is based on a face-to-face clinical evaluation of the child by:

a. ☐ the prescribing physician on *(date):* _____

b. ☐ other *(provide name, professional status, and date of evaluation):* _____

_____

6 Information about child provided to the prescribing physician by *(check all that apply):*

☐ child ☐ caregiver ☐ teacher ☐ social worker ☐ probation officer ☐ parent

☐ public health nurse ☐ tribe

☐ records *(specify):* _____

☐ other *(specify):* _____

Child's name: _____

Case Number:

7 Provide to the court your assessment of the child's overall mental health. ☐ I don't know.

8 Describe the child's symptoms, including duration, and the child's treatment plan. ☐ I don't know.

9 Describe the child's response to any current psychotropic medication. ☐ I don't know.

10 a. Have nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?

☐ Yes ☐ No ☐ I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

Child's name: _____

Case Number:

11 a. Have other nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?

☐ Yes ☐ No ☐ I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

c. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped if the reasons are known to you.

Medication name (generic or brand)	*Reason for stopping*

12 Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts. ☐ I don't know.

13 Describe how the medication being prescribed is expected to improve the child's symptoms.

Child's name: _____ **Case Number:**

14 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) or ICD-10* (provide full Axis I and Axis II diagnoses; inclusion of numeric codes is optional):

15 Relevant medical history *(describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results):*

☐ I don't know.

16 a. ☐ All essential laboratory tests were performed.

b. ☐ All essential laboratory tests were not performed (explain what laboratory tests were not done an why).

17 a. ☐ The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was

☐ agreeable ☐ not agreeable

Briefly describe child's response: _____

b. ☐ The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:

(1) ☐ the child lacks the capacity to provide a response *(explain):* _____

(2) ☐ other *(explain):* _____

Child's name: _____ **Case Number:**

18 a. ☐ The child's present caregiver was informed of this request, the recommended medications, the anticipated benefits, and the possible adverse reactions which include

_____

_____

_____

The caregiver's response was ☐ agreeable ☐ other *(explain):*

_____

_____

_____

_____

_____

19 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months *(check all that apply; include frequency for therapy):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____

c. ☐ Milieu therapy *(explain):* _____

d. ☐ Therapeutic Behavioral Services (TBS) _____

e. ☐ Applied behavior analysis _____

f. ☐ Art therapy _____

g. ☐ Cognitive behavioral therapy (CBT) _____

h. ☐ Wraparound services _____

i. ☐ American Indian/Alaska Native healing and cultural traditions _____

j. ☐ Speech therapy _____

k. ☐ Other modality *(explain):* _____

20 **Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

21 Additional information regarding medication treatment plan and follow up: _____

_____

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

22 List all psychotropic medications currently administered that you propose to continue and all psychotropic medications you propose to begin administering. Mark each psychotropic medication as New (N) or Continuing (C).

Medication name (generic/brand) and class, and symptoms targeted by each medication's anticipated benefit to child	*C or N*	*Maximum total mg/day*	*Treatment duration**	*Administration schedule* • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				

**Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.*

23 Other information about the prescribed medication that you want the court to know (E.g. why prescribing more than one medication in a class, why prescribing outside the approved range, or why prescribing medication not approved for a child of this age)

24 List all psychotropic medications currently administered that will be stopped if this application is granted.

Medication name (generic or brand)	*Reason for stopping*	*Stop immediately or over period of time? (specify, including time)*

Date:

Type or print name of prescribing physician

Signature of prescribing physician

JV-220(B) Prescribing Physician's Statement, Request to Continue—Attachment

Case Number:

This form must be completed and signed by the prescribing physician. Read Form JV-217-INFO, *Information About Psychotropic Medication Forms,* for more information about the required forms and the application process.

1 Information about the child *(name):* _____

Date of birth:_____ Current height:_____ Current weight:_____

Gender:_____ Ethnicity:_____

2 Only fill out this form if both boxes are checked:

a. ☐ This is a request to continue psychotropic medication the child is currently taking.

b. ☐ This is the same prescribing physician as the most recent JV-220(A).

3 Prescribing physician:

a. Name:_____ License number:_____

b. Address:_____

c. Phone numbers:_____

d. Medical specialty of prescribing physician:

☐ Child/adolescent psychiatry ☐ General psychiatry ☐ Family practice/GP ☐ Pediatrics

☐ Other *(specify):*_____

4 This request is based on a face-to-face clinical evaluation of the child by:

a. ☐ the prescribing physician on *(date):*_____

b. ☐ other *(provide name, professional status, and date of evaluation):* _____

_____

5 Information about child provided to the prescribing physician by *(check all that apply):*

☐ child ☐ caregiver ☐ teacher ☐ social worker ☐ probation officer ☐ parent

☐ public health nurse ☐ tribe

☐ records *(specify):*_____

☐ other *(specify):*_____

6 Provide to the court your assessment of the child's overall mental health.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

7 Describe the child's response to any current psychotropic medication.

8 Nonpharmacological treatment alternatives

a. Describe nonpharmacological treatment alternatives to the proposed administration of psychotropic medication that have been tried with the child in the last six months.

b. Describe the child's response to the nonpharmacological treatments in (a).

9 Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.

10 a. Relevant medical history *(describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results):*

Child's name: _____ **Case Number:**

11 a. ☐ All essential laboratory tests were performed.

b. ☐ All essential laboratory tests were not performed (explain what laboratory tests were not done and why).

_____

_____

12 a. ☐ The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was

☐ agreeable ☐ not agreeable

Briefly describe child's response: _____

_____

_____

_____

b. ☐ The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:

(1) ☐ the child lacks the capacity to provide a response *(explain):* _____

_____

(2) ☐ other *(explain):* _____

13 a. ☐ The child's present caregiver was informed of this request, the recommended medications, the anticipated benefits, and the possible adverse reactions which include

_____

_____

_____

The caregiver's response was ☐ agreeable ☐ other *(explain):*

_____

_____

_____

_____

b. ☐ The child's present caregiver was not informed of this request, the recommended medications, the anticipated benefits, and the possible adverse reactions which include

_____

_____

_____

14 Additional information regarding medication treatment plan and follow up: _____

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

15 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months *(check all that apply; include frequency for group therapy and individual therapy):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____
c. ☐ Milieu therapy *(explain):* _____
d. ☐ Therapeutic Behavioral Services (TBS) _____
e. ☐ Applied behavior analysis _____ f. ☐ Art therapy _____
g. ☐ Cognitive behavioral therapy (CBT) _____
h. ☐ Wraparound services _____
i. ☐ American Indian/Alaska Native healing and cultural traditions _____
j. ☐ Speech therapy _____
k. ☐ Other modality *(explain):* _____

16 List all psychotropic medications currently administered that you propose to continue. Mark each psychotropic medication as Continuing (C).

Medication name (generic/brand) and symptoms targeted by each medication's anticipated benefit to child	*C or N*	*Maximum total mg/day*	*Treatment duration**	*Administration schedule* • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				

**Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.*

17 Other information about the prescribed medication that you want the court to know (e.g. why prescribing more than one medication in a class, why prescribing outside the approved range, or why prescribing medication not approved for a child of this age)

_____
_____
_____
_____
_____

Date:

_____ ▶ _____
Type or print name of prescribing physician *Signature of prescribing physician*

JV-221 Proof of Notice: Application for Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT - Not approved by the Judicial Council

Read JV-217-INFO, *Information About Psychotropic Medication Forms,* for more information about the required forms and the application process.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 ☐ The following parents/legal guardians of the child were notified of the physician's request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with JV-217-INFO, *Information About Psychotropic Medication Forms,* a blank copy of JV-219, *Statement About Psychotropic Medication* and a blank copy of JV-222, *Opposition to or Statement About Application Regarding Psychotropic Medication*.

a. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

c. Name: _____ Date notified: _____ Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

2 ☐ Parental rights were terminated, and the child has no legal parents who must be informed.

3 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

4 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

5 The child's current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that an application is pending before the court. The caregiver was provided JV-217-INFO, *Information About Psychotropic Medication Forms* and a blank copy of JV-219, *Statement About Psychotropic Medication* or information on how to obtain a copy of the form as follows:

Child's Name: _____ **Case Number:**

5 Attorney's name: _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____ ☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the following address *(specify):* _____

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

Date:

_____ ▶ _____

Type or print name *Sign your name* ☐ Signature follows on page 3.

6 ☐ The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed JV-220, *Application Regarding Psychotropic Medication;* completed JV-220(A), *Prescribing Physician's Statement—Attachment or* completed *Prescribing Physician's Statement, Request to Continue—Attachment;* a copy of JV-217-INFO, *Information About Psychotropic Medication Forms;* a blank JV-218, *Child's Statement Regarding Psychotropic Medication;* and a blank copy of JV-222, *Opposition to or Statement About Application Regarding Psychotropic Medication,* as follows:

a. Attorney's name: _____ Date notified: _____
Manner: ☐ In person ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. CAPTA guardian ad litem's name: _____ Date notified: _____
Manner: ☐ In person ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

7 ☐ The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with a copy of JV-217-INFO, *Information About Psychotropic Medication Forms,* and a blank copy of JV-222, *Opposition to or Statement About Application Regarding Psychotropic Medication,* or with information on how to obtain a copy of each form as follows:

a. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____

7 b. ☐ By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

c. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

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

Date:

_____ ▶ _____
Type or print name *Sign your name* ☐ Signature follows on page 3.

8 ☐ The child's CASA volunteer was notified that of the physician's request to begin and/or continue administering psychotropic medication of the name of each medication, and an application is pending before the court as follows:

CASA volunteer *(name):* _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

9 ☐ The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with JV-217-INFO, *Information About Psychotropic Medication Forms,* a blank copy of JV-219, *Statement About Psychotropic Medication* and a blank copy of JV-222, *Opposition to or Statement About Application Regarding Psychotropic Medication*.

Indian Tribe *(name):* _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address *(specify):* _____

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

Date:

_____ ▶ _____
Type or print name *Sign your name*

JV-222 Opposition to or Statement About Application for Psychotropic Medication

Clerk stamps date here when form is filed.

If you do not agree that the child should take the recommended psychotropic medication and/or continue the psychotropic medication that the child is currently taking, or if you wish to tell the court something about the child or medication, you must complete this form and file it with the court within four court days of service of notice of the pending application for psychotropic medication. Read JV-217-INFO, *Information About Psychotropic Medication Forms,* for more information about the required forms and the application.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Your information:

a. Name: _____

b. Address: _____

_____

c. Phone: _____ Fax: _____

E-mail: _____

d. If you are not an attorney filling out this form for a client, your relationship to the child is: _____

e. If you are an attorney filling out this form for a client, provide the following information about your client:

Your client's name: _____

Your client's relationship to the child: _____

2 The application is opposed because: _____

Child's name: _____ **Case Number:**

3 The application is not opposed, but I want to tell the court the following:

4 ☐ I am the attorney for the child.

a. ☐ I need more time to investigate the application.

b. ☐ I need the following information to determine whether to agree with or oppose the application:

c. ☐ There is other information the judge should know:

5 ☐ Additional information about the child for the court to consider is included on an attached sheet or sheets of paper. Write "Attachment 5" on top.

Date:

_____ ▶ _____

Type or print name *Signature*

JV-223 Order Regarding Application for Psychotropic Medication

Clerk stamps date here when form is filed.

The Court read and considered:

a. JV-220, *Application Regarding Psychotropic Medication,* and JV-220(A), *Prescribing Physician's Statement—Attachment, or Prescribing Physician's Statement, Request to Continue—Attachment* filed on *(date):* _____

b. ☐ JV-222, *Opposition to or Statement About Application Regarding Psychotropic Medication,* filed on *(date):* _____

c. ☐ JV-218, *Child's Statement Regarding Psychotropic Medication,* filed on *(date):* _____

d. ☐ JV-219, *Statement Regarding Psychotropic Medication,* filed on *(date):* _____

e. ☐ CASA report

f. ☐ Other *(specify):* _____

_____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

The Court finds and orders:

Court fills in case number when form is filed.

Case Number:

1 a. ☐ Notice requirements were met.

b. ☐ Notice requirements were *not* met. Proper notice was not given to:

_____

_____

_____

2 ☐ The matter is set for hearing on (*date)*: _____ at *(time):* _____ in *(dept.):* _____

3 ☐ Application was made for authorization to begin or to continue giving the child the psychotropic medication listed in 22 on page 6 of JV-220(A).

A copy of page 5 and 6 of JV-220(A) is attached to this order.

The application is *(check one):*

a. ☐ granted as requested.

b. ☐ granted with the following modification or conditions to the request as made in 22 on the attached page 5 of JV-220(A) *(specify all modifications and conditions):* _____

_____

_____

c. ☐ denied *(specify reason for denial):* _____

_____

_____

If the application was for medication the child is currently taking, the social worker or probation officer must consult with the prescribing physician to determine whether the physician is ordering that the medication should be stopped immediately or gradually reduced over time.

Child's name: _____

Case Number:

4 ☐ The applicant must resubmit the application with the missing information which is:

The matter is set for hearing on (*date*): _____ at *(time):* _____
in *(dept.):* _____

5 The

a. ☐ social worker

b. ☐ probation officer

c. ☐ person who submitted application

is ordered to give a copy of this order, including page 5 and 6 of the JV-220(A) and the FDA approved drug label attached to the JV-220(A) to the child's caregiver either in person or by mail within two days.

6 ☐ Other *(specify):* _____

7 The order is set for a progress review on (*date*): _____ at *(time):* _____
in *(dept.):* _____

This order is effective until terminated or modified by court order or until 180 days from the date of this order, whichever is earlier. If the prescribing physician is no longer treating the child, this order extends to subsequent treating physicians. A change in the child's placement does not require a new order regarding psychotropic medication. Except in an emergency situation, a new application must be submitted and consent granted by the court before giving the child medication not authorized in this order or increasing medication dosage beyond the maximum daily dosage authorized in this order.

Date: _____

▶ _____
Signature of judge or judicial officer

JV-224 Report About Psychotropic Medication—County Staff

Clerk stamps date here when form is filed.

DRAFT - Not approved by the Judicial Council

The social worker or probation officer must file this form for any hearing which the court is providing oversight of psychotropic medications. This includes all scheduled progress reviews on orders authorizing psychotropic medication and every status review hearing. If you are filing this form for a status review hearing, file it with the status review hearing report. If you need more space for any of the items, write the item number and additional information on page 4 of this form. If you do not know the answer to a question, write "I do not know."

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Your name: _____

2 Your relationship to the child:

- ☐ Social worker ☐ Probation officer
- ☐ Public health nurse
- ☐ Other county staff *(specify):* _____

3 a. Caregiver's relationship to child: _____

b. Date of last communication with caregiver: _____

4 Child Information

a. Child's height: _____ b. Child's weight: _____

c. Prescribing physician's name: _____

d. Date last seen by prescribing physician: _____

e. Next appointment date: _____

f. Therapist's name: _____

g. Date last seen by therapist: _____

5 List current court approved psychotropic medications. *(Verify that this is what child is taking.)*

Name of Medication	Dosage

Name of Medication	Dosage

6 ☐ The child is taking the medication in **5**. This was verified by ☐ child ☐ caregiver ☐ other *(specify):* _____

7 ☐ The child is not taking the following medication in **5** *(specify):* _____
This was verified by ☐ child ☐ caregiver ☐ other *(specify):* _____

8 Describe the caregiver's observations regarding how the child's behaviors and/or symptoms have changed since the medication was begun.

9 Describe the caregiver's observations regarding the side effects of the medication.

10 Describe any concerns the caregiver has regarding the medication.

11 Describe what the child says about whether his or her behaviors and/or symptoms have changed since the medication was begun.

12 Describe what the child says about the side effects of the medication.

13 Describe any concerns or complaints the child has regarding the medication.

14 List the dates of all medication management appointments since the last court hearing.

15 List the dates and reasons of other follow-up medical appointments since the last court hearing.

16 Describe other mental health treatments that are part of the child's overall treatment plan (For example, frequency and type of counseling, wraparound, etc.) or attach mental health treatment plan from treating clinician.

17 Provide any other information you think the judge should know.

Child's name: _____

Case Number:

18 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet or sheets of paper.

Date:

_____ ▶ _____

Type or print name of person completing this form

Signature

- ☐ Child welfare services staff *(sign above)*
- ☐ Probation department staff *(sign above)*
- ☐ Public health nurse *(sign above)*
- ☐ Other *(specify):* _____ *(sign above)*

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

New List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	Aspiranet by Dawn Mehalakis, Social Worker Antioch, CA	N	Many parents who give up their rights as parents are struggling with mental illness or substance abuse. Therefore, foster children have a genetic predisposition toward mental illness or have been exposed to traumatic experiences that can trigger the onset of mental illness. In addition, some children in foster care have been exposed to substance abuse In Utero, causing mental health issues. It is impossible to apply parenting techniques to these children in the throes of an episode when they require the use of medication to manage difficult behaviors to teach them new skills. This will only complicate an already complicated situation in getting foster children the help they need. For more reasons why this is a bad idea Listed are the reasons that this rule will hurt our children who require mental health attention, and will increase the number of children who will struggle with moderate to several mental illnesses as adults. 1. The decision to put these children on medication will no longer be the responsibility of the doctor but of the court.	No response required. In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a

New List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
				request from a physician. Welf. & Inst. Code § 369.5(a)(1).
			2. The documents have to be signed by foster youth's foster parent, psychiatrist, social worker, and juvenile court judicial officer before the child can be prescribed psychotropic medication. In Contra Costa County, it takes approx. two months to get a primary doctor to refer to a county psychiatrist. The process to submit to the court system will take even longer.	This proposal does not alter the signature requirements for physicians, social workers, or judicial officers. SB 238 mandates that the child and caregiver be allowed the opportunity to provide input on the medication being subscribed. The committee concluded that providing an optional form, as well as multiple other means of providing input, would best meet this mandate. existing process for gathering information from a
			3. This process will take parents longer to get the child on medication for a mental health diagnosis. This could potentially lead to homelessness for the child if the foster family cannot manage difficult behaviors.	This proposal does not alter the existing process to obtain psychotropic medication by parents to whom the court has delegated the authority to authorize psychotropic medication.
			4. Each time the medication has to be changed by the doctor (dosage, name, use, etc.), the same process has to be followed.	See response above to comment 1.
			5. When a change of medication is required the child could be on the wrong medication over an extended period of time.	See response above to comment 1.
			6. If a child is 5150, they will not be able to leave the hospital with a prescription.	This proposal does not alter the process for a physician to administer psychotropic medication in an emergency situation. Welf. & Inst. Code

New List of All Commentators, Overall Positions on the Proposal, and General Comments				
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				§369; Cal. Rules of Court, rule 5.640(g).
			7. The foster child could lose their placement in the home because of the risk they present to other children in the foster home.	See response above to comment 6.
			8. The child that is in and out of foster homes could go a lifetime without medication because of the time it takes to obtain treatment. This could cause the child homelessness and the need to self-medicate.	See response above to comment 6.
			9. This process will cost the county more with all the readmitting of forms and documents for review.	Most of the costs of this proposal are due to mandates in SB 238.
			1. The proposal does not address the stated purpose of preventing the overmedication of children in foster care, because it does not address overmedication by caregivers. What is needed is caregiver training on medication management and identification of and charting of problematic behaviors to describe to the doctors to ensure appropriate medication and dosage.	SB 238 was a comprehensive bill and mandates the Department of Social services to develop a training program for many foster care stakeholders, including caregivers. Welf. & Inst. Code §16501.4(d)
			2. A foster child's psychiatrist, social worker and caregiver will have to submit documents to the judicial officer to obtain authorization for the use of psychotropic medication, causing delays, and those people must sign them, causing additional delays of up to several	This proposal does not alter the signature requirements for physicians, social workers, or judicial officers. SB 238 mandates that the child and caregiver be allowed the opportunity to provide input on the medication being subscribed. The committee concluded that providing an

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			months	optional form, as well as multiple other means of providing input, would best meet this mandate.
			In some cases, there may be difficulties determining who the authorized caregiver is.	The committee has amended the rule to indicate that if a child is in a group home, notice and a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
			3. Documents ask for parents to input background of mental illness in the family. Parents going through reunification are not likely to input such information out of fear of denial of reunification.	This proposal does not alter the existing process for gathering information from a parent regarding family mental illness. The committee believes that this issue is best address through training.
			3. The child must write a letter stating whether he or she should be medicated. Children do not have the cognitive skills to assess whether they need medication.	SB 238 required the Judicial Council to develop rules and forms to ensure that the child and his or her caregiver and court-appointed special advocate (CASA), if any, have an opportunity to provide input on the medications being prescribed. The child may provide this input in a variety of ways including by the proposed new *Child's Statement Regarding Psychotropic Medication* (form JV-218); letter; talking to the judge at the hearing; or through the social worker, probation officer, lawyer, or CASA.
			4. Appropriate medication management of children using psychotropic drugs is typically a process of trial and error, The delays required	In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to

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			in the new process would be detrimental to this process and could even cause side effects mimicking symptoms of mental illness, making diagnoses difficult. 5. The final decision to put these children on medication will no longer be the responsibility of the doctor but of the court.	make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1). See response above to comment 4.
2.	Brandi Hohimer Azevedo	N	Really? I do not understand what is so wrong with people these days! Not only do the children get kidnapped from their family because their family believes differently than the social workers but then they are having labels put on them, being told something is wrong with them because the tragic life events they went through, caused by nosy people, taking them from their family and putting them in foster care, has caused them great pain? Who wouldn't be emotionally distraught? What child isn't going to act out and have anger issues or mental health issues, as people like to label? And if all that they are going through isn't enough people want to make them feel like they aren't entitled to those feelings by giving them medication to make them normal or better. What kind of *** is that!!!! Telling a child they need a pill to change them because God messed up when he was made. So not only did God make a mistake by allowing you	No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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			to be born to your very bad parents but our god right here has a pill to make you better. Yep that's what they are saying to children in my eyes. We must have God all wrong in my family that's why we are told we need pills and more laws and parents then the ones we initially were given. You know the Constitutional Rights or Fundamental Human Rights that we have yet due to greed and language and numbers there is a selective group of religions that have control and power over those of us that aren't driven by greed and power. So we get used and taken advantage of and if you dare try to stand up for yourself they just throw you in jail for one of their beliefs and leave you there cause they have the keys and you can't do anything without conforming to them so your pretty much at the mercy of whatever religion it is that has the most people and will do anything for money. Even taking children from loving homes and sabotaging any effort the parent puts in to fight back. Sad County of Sutter and Yuba. Can't wait for Judgement Day for all of them who aided in the destruction of innocent lives. I submitted my comment but am unsure whether it was received. I am so against in in too many ways to list so I will sum it up in my ancestors words Constitutional Rights. Fundamental human rights and the protection of family is the root of everything this country	No response required.

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			and nation is suppose to stand for yet, look at what is being done to our land and our family members? Taking them from their parents and then telling them its not OK to be upset about anything so just take this pill from this Dr and kill your feelings so you can become confused in your life and we can have some more people to look down on and make ourselves feel better about what we are doing. All that I just said was not me talking it was me interoperating the situation being commented on. So in my opinion, any mention at all of a foster child, or any human, not being entitled to their own individual unique feelings and emotions is murder. Medication is not needed. Ever. I don't believe that anything is wrong with anyone as long as they keep their hands to them self. I have spent too many years trying to conform to society and all its done is caused me to dislike my actions. But when I try to be me, everyone else dislikes me and locks me up for not following their religion or denies me natural recourses that are being stored and sold for money. Then how am I an equal if I can't believe in my own religion just because it doesn't believe in money? Because I believe in freedom from discrimination yet I am discriminated against all thee time? I can't even eat unless I go ask someone for something because I'm so mentally confused by everyone's hypocritical views and the laws and everything that I just go without because I	

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			can't seem to change who I am to be one of them.	
3.	California Academy of Child & Adolescent Psychiatry and California Behavioral Health Directors Association by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	NI	We have provided specific comments on the various proposed changes and updates to the JV-220 process on the following pages. We thank you again for your efforts and for allowing us to help make the forms that would be best for children and adolescents we serve. We look forward to the opportunity to meet with members of your committee to further discuss this important process.	No response required.
4.	California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	NI	The California Alliance of Child and Family Services welcomes the invitation to review and comment upon proposed amendments to the forms and procedures used to authorize the use of psychotropic medications within our foster care and juvenile probation populations. As an association representing over 120 member agencies throughout the State that provide services and supports to children, youth and families, including psychotropic medications when part of the approved treatment plan, we appreciate the Judicial Council's development of draft materials and sharing them with stakeholders We have provided feedback by following the outline of provided materials, and answered the additional questions directed at the courts at the conclusion of the draft materials. We have	No response required.

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			also added comments and insights from our staff and members who were able to review the Committee's document. Additional Questions to the Courts and Stakeholders The Alliance reviewed the entire set of questions that were directed to the courts, as we thought the perspectives of the stakeholders would also add value. 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. Unknown, but additional costs appear likely. This question lacks some necessary information, such as to which organizations, persons, state/federal agencies, etc. "cost savings" would accrue. On the surface, there appears to be significant additional record keeping that would be required, and additional information sought on forms. All of this would require additional staff and prescriber time which would result in additional costs to those interacting with the courts. As a result of these new	Many of the costs associated with the implementation of this proposal are due to mandates in SB 238.

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			processes, additional court hearings and proceedings – all of these may be generating additional costs. If by implementing these measures, the number of prescriptions provided to foster youth and probation wards is reduced, there may be some reductions in Medi-Cal pharmacy costs. Whether those savings would offset the added procedural costs is unknown. Should any of these recommended changes in process and information gathering result in delays or disruptions in psychiatric services, including medications, the results could be costly to both the child and the county as hospitalization or other emergency or crisis services would need to be accessed to ensure child safety. • 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 California Alliance cannot comment upon the new requirements of the courts. As the Judicial Council reviews the needs of local courts and current training	Senate Bill 238 is a comprehensive bill that seeks to address the issues related to the administration of psychotropic drugs in the foster care system by requiring additional training, oversight, and data

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			programs, the development of a similar training program with sufficient content and intensity will be necessary for all child welfare workers and county probation officers, as well as all participating placement agencies. Filling out the JV 220 (B) [circulated version of form JV-220(B) withdrawn from final proposal] appears to involve significant investment in training to ensure that all participating employees are appropriately educated to assist in the process, regardless of their position within the county. These training programs should have content that reflects a shared platform, so that further disagreements about the use of psychotropic medications are not inadvertently created due to disconnected state and local training programs.	collection by caregivers, courts, counties, and social workers.
			• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. The California Alliance does not believe that a two-month notification period would allow successful implementation at the scale of all 58 counties. While there are certainly counties and their juvenile courts that have developed sophisticated training programs,	SB 238 mandates that the Judicial Council develop rules and forms to implement the legislation and mandates that the rules and forms have an effective date of July 1, 2016.

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			and collaborate very well across agencies, the courts and prescribers, there are others that would need additional time to identify court, placement agency and prescriber training needs, schedule those trainings, and implement them. Communications with the California Medical Association, California Psychiatric Association and the California Academy of Child and Adolescent Psychiatry should begin immediately. We do not think that a two month notification of the new requirements will ensure sufficient time for all to be compliant. • How well would this proposal work in courts of different sizes? Unknown, likely to vary. The "size" of the court is only one variable in this equation. The Alliance trusts that your communications with the courts will yield useful information about their own perceptions of the proposal challenges. In addition to court size, the size and strength of the medical community, county placing agencies and placement facilities will also impact "how well" these proposed changes will work. Assessing the vibrancy of the "interagency" community serving children, and the inclusion/exclusion of the physician workforce of the area will likely	No response required.

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			yield useful information regarding implementation needs of each county/community. Additional Comments The California Alliance appreciates this opportunity to provide feedback upon the proposed changes being offered by the Judicial Council's work group. They have clearly made attempts to improve upon the court authorization processes for psychotropic medications as guided by the JV 220 documentation. The addition of new forms, and opportunities for participation in the court's process will broaden the information available to the courts when reviewing requests for administration of psychotropic medications. With this added input, however, will come added challenges to the courts, especially when critical players in the lives of these children have different experiences, strong disagreements, or perspectives about medication, the child's history, existing needs, problems and challenges. It would appear that the courts will need a very trusted and qualified advisor to assist in listening to the many voices, and arriving at the most effective health care decisions that protect the short term and long term health of the youth.	No response required. Juvenile court judicial officers every day hear different positions and perspectives, afford them the weight they deem suitable, and issue important decisions about the children and families who appear before them.

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			A very real concern may be the court's capacity to actually understand the materials that have been entered on to forms with handwriting. Though this may seem like a silly issue, the Alliance knows from years of experience with staff, communications, and paperwork that one of challenges in reviewing documents is always clarity. Good handwriting is not usually a requirement for many positions, and hurried staff generally have a tendency to speed through tasks, leaving behind documents that may not be sufficiently clear.	The committee concluded that the issue of clarity of writing is best addressed in training. Physicians, social workers, and probation officers can all be trained that these forms are fillable and can be typed on a computer.
			The Alliance notes that there could be sensitive health care information contained in the Prescribing Physician's Statement. The wide dissemination of the Statement and other health care documents could jeopardize the privacy of patient health information. We do not want attending physicians to self-edit or leave materials out in an effort to protect PHI.	The committee agrees with this comment and no longer proposes providing the parents or caregivers a copy of the form the physician completes and provides to the court.
			The issue of disconnected responsibilities and authority does not come across in these documents. There appears to be an assumption that a prescriber has the authority to make directives on a child's treatment plan to include alternative interventions. While this may be true in some counties or in some health settings, it is important to understand that many prescribers are not part of a county mental	The form asks the prescriber to list other nonpharmacological treatment alternatives the child is participating in, or recommended to participate in. It is up to the county social worker or probation officer to determine if those treatment alternatives are available for the child.

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			health program, and have no authority to direct treatment interventions there. Asking the prescriber why a specific or alternative intervention wasn't considered or provided may well be outside of their relationship with the patient, and the county departments. Judges need to understand that the lack of responses in this area should not reflect poorly on the attending physician.	
			Several of our members thought that the JV-223 will need clarification about whether the Prescribing Physician can make the decision to end or taper a prescribed medication that is denied. The proposed language is that the CSW or PO must consult with the physician, indicating they would actually be making this medical decision. The Alliance believes that the JV-223 should clarify that physicians and not caseworkers make decisions about medical practice.	The committee agrees that this decision should be made by the doctor and has revised the form to indicate that the social worker or probation officer must consult with the doctor to determine whether the doctor is ordering the medication to stop immediately or over time.
			Under "Providing court order to caregiver" it indicates that the court rules would be modified to mandate that the court order re: psychotropic meds must be given to the caregiver within 2 days. The Alliance requests that "caregiver" be defined to include not just a foster parent or kin caregiver, but any involved Foster Family Agency, group home or Short-term Residential Treatment Center.	The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.

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			See comments on specific provisions below.	No response required.
5.	California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	NI	The California Department of Social Services (CDSS) and Department of Health Care Services (DHCS) are pleased to have the opportunity to submit joint comments in response to the Judicial Council of California's proposed amendments to the Rules of Court and Judicial Council forms regarding the administration of psychotropic medications for foster youth. The CDSS appreciates the imitative the Judicial Council has taken to improve the court authorization process for psychotropic medications for children in foster care in response to Senate Bill (SB) 238 (Mitchell; Statutes of 2015, Chapter 534). The CDSS and DHCS have received the proposed rules and forms and submit the following comments for consideration by the Judicial Council. See comments on specific provisions below.	No response required.
6.	Karen Cohen Walnut Creek, CA	N	The changes will not fulfill the purpose of preventing overmedication of foster children because: 1. Caregivers are responsible for most overmedication. Unless caregivers are trained in the proper use of medication, overmedication will continue.	SB 238 was a comprehensive bill and mandates the Department of Social services to develop a training program for many foster care stakeholders, including caregivers. Welf. & Inst.

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				Code §16501.4(d)
			2. The changes will cause longer delays in the administration of medication to the many foster children with mental illness, and further delays as medications need to be changed. Treatment with appropriate psychotropic medications is already often a lengthy trial and error process in order to titrate the dosage up to the therapeutic level, wean off the drug if it is not effective and then change prescriptions.	The timelines in the rule of court remain the same. The court must approve, deny, or set the matter for hearing within seven court days of the receipt of the completed application. Proposed Rule 5.640(c)(5).
			3. Fearing denial of reunification, parents going through reunification are unlikely to provide requested information about family history of mental illness.	This proposal does not alter the existing process for gathering information from a parent regarding family mental illness. The committee concluded that this issue is best addressed by training.
			3. Children are typically unable to assess their need for medication, but a letter from the child is required.	SB 238 required the Judicial Council to develop rules and forms to ensure that the child and his or her caregiver and court-appointed special advocate (CASA), if any, have an opportunity to provide input on the medications being prescribed. The child may provide this input in a variety of ways including by the proposed new *Child's Statement Regarding Psychotropic Medication* (form JV-218); letter; talking to the judge at the hearing; or through the social worker, probation officer, lawyer, or CASA.
			5. Courts will make the final decision to medicate a child. This should be the	In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a

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			responsibility of the doctor.	juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1). Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1).
7.	County of San Diego by Laura Vleugels, MD, Supervising Child and Adolescent Psychiatrist San Diego, CA	NI	The County of San Diego welcomed the opportunity to comment on the proposed changes prompted by the passage of SB 238. Information regarding the proposed changes were disseminated to our Children's System of Care Council with a request for feedback. Included in this correspondence will be individual feedback, community feedback, and feedback regarding existing procedures in our County that address psychotropic medication prescribing oversight. First I would like to highlight steps the County of San Diego has taken to support prescribers in our community and the judges charged with making decisions regarding psychotropic medications for youth. • Programs in our Children's System of Care are staffed primarily by Board Certified/Board Eligible Child and	No response required. No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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			Adolescent Psychiatrists. • A team of Board Certified/Board Eligible Child and Adolescent Psychiatrists are tasked with reviewing each and every JV220. This team provides direct feedback to prescribers when/if there are concerns or questions. The team submits feedback and guidance to the Judge. • The County makes available a free second-opinion option for any unfunded, Medi-Cal or dependent/delinquent youth. Board Certified/Board Eligible Child and Adolescent Psychiatrists have the ability to collect records from CWS, the court and prior treatment records so that a comprehensive review can be completed and feedback can be provided to the requesting party. • Our System of Care has a "Medication Monitoring" process. Each quarter, medical records are peer-reviewed with feedback going both back to the prescriber and to the County monitors. The Medication Monitoring tool is in the process of being updated to reflect the California Guidelines that were published last year. Through the processes described above, our County has data an existing process for collecting data on youth prescribed	

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			psychotropic medication. Data is collected both at the point of the JV220 review and through the Medication Monitoring process. With respect to the proposed changes outlined: Our Child and Adolescent Psychiatry community echoes the concerns about information not being available during their scheduled appointments and strongly feel that if the system desires more through assessments and a higher quality of care, information should be readily available to those who are providing care to the youth. Many shared stories of foster youth coming to assessment appointments with new foster parents who held no historical information about the youth, previous treatment, family/trauma history etc. Some have required CWS workers to be available by phone or in-person, but as there is turnover and sometimes the CWS workers don't have long histories with clients this is of limited benefit. It was noted that when court documents (ie Juridiction/Disposition reports) are available, they provide a wealth of information about the child and his/her history. These are not routinely or automatically provided to the prescribers. Changes proposed do nothing to increase information available to the prescriber in	The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal. See response above.

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			advance of the assessment. It is noted that there is no specific feedback requested from the therapist. • Concern that the proposed changes are an effort to fix a problem that has yet to be defined with specific data. • Concern that there is no proposed feedback/education being targeted at prescribers—what is being done to ensure accurate assessments and to increase coordination of care? • Concern that fewer children will receive appropriate treatment for potentially devastating conditions due to additional barriers to care. Ongoing concerns noted: • Concern that PSW's are not submitting JV 220s to the court for review in a timely fashion, leading the prescriber to have to follow-up frequently before a youth can be prescribed medication. • Concern that prescribers are not being notified when a JV220 has been approved. • Concern that there is an unnaturally long clinical gap between discussing medication treatment and being able to implement treatment—this MD notes she prefers to not to state she is starting on an "emergency basis" unless it is truly an	While the committee recognizes these ongoing concerns, they were not addressed by SB 238 and therefor out of the scope of this proposal.

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			emergency. This prescriber instead elects to put multiple potential options of the JV 220 application so that she can move between treatments without further delays. Please let me know if there are questions regarding our community outreach efforts or about the information submitted. See comments on specific provisions below.	
8.	County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	NI	CWDA respectfully submits the following comments with respect to the proposed Rules and Forms relating to Juvenile Law: Psychotropic Medication (W16-06). Finally, please note that SB 238 requires specific stakeholder input for implementation of this bill, specifically stating: "(2) (A) On or before July 1, 2016, the Judicial Council shall amend and adopt rules of court and develop appropriate forms for the implementation of this section, in consultation with the State Department of Social Services, the State Department of Health Care Services, and stakeholders, including, but not limited to, the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, the Chief Probation Officers of California, associations representing current and former foster children, caregivers, and children's attorneys. This effort	No response required. In addition to the to the standard mailing list for family and juvenile law proposals, this proposal was sent to the organizations that the Judicial Council was mandated to consult with in developing the rules and forms implementing SB 238. After all the comments were reviewed and discussed by the committee, the committee convened a five-hour meeting with members of the committee and the SB 238 mandated stakeholders. At this meeting the committee provided participants a summary of the comments received as well as a chart of all comments. The committee asked the stakeholders for additional feedback on key issues that arose from the comments, as well as allowed the

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			shall be undertaken in coordination with the updates required under paragraph (2) of subdivision (a) of Section 739.5." While county child welfare is afforded a representative to the Family and Juvenile Law Committee of the Judicial Council, and our representative did provide input into these proposed rules and forms, we at CWDA were not directly consulted on these rules. Therefore, we respectfully request direct consultation prior to the finalization and adoption of the proposed rules and forms. Thank you for your consideration of our comments. See comments on specific provisions below.	attendees an opportunity to raise additional questions or concerns not highlighted by the committee. At the beginning of the public comment period, the proposal was sent to CWDA at what apparently was the wrong email address, but there was no bounce-back email indicating the email was undeliverable. CWDA did have 3 representatives at the stakeholder meeting discussed above.
9.	East Bay Children's Law Offices by Roger Chan, Executive Director Oakland, CA	NI	These comments are submitted on behalf of East Bay Children's Law Offices with respect to W16-06 (Psychotropic Medication). East Bay Children's Law Offices (EBCLO), a nonprofit law firm in Oakland, California, is court-appointed to represent children and youth in their delinquency, dependency, or probate guardianship proceedings in Alameda County. Our office represents more than 2,000 youth every year. In regard to the Request for Specific	No response required.

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			Comments: • Effect of Court Order The rule and forms convey a message that the child's opportunity to refuse to accept the medication is a one-time event and that thereafter the child is required to comply with the doctor's "orders." It should be clear that while the court authorizes the prescribing of psychotropic medication, the child has a right at any point to refuse the medication. Child welfare agencies acknowledge the limits of the court's "authorization." See, e.g. Los Angeles Dep't of Children and Families, Child Welfare Policy Manual, Psychotropic Medication: Authorization, Review, and Monitoring for DCFS Supervised Youth (Rev. 7/1/2014) ("A child's objection to, or non-compliance with, the approved psychotropic medication is a treatment issue to be resolved by the physician prescribing the medication. A child cannot be forced to take psychotropic medication unless they are subject to an involuntary hospitalization or have a court-appointed conservator.")1 See, also, California Department of Social Services, Community Care Licensing Division, Advocacy and Technical Support Resource Guide: Medications in Group Homes (Draft 11/20/15 version)(Includes "No resident can be forced to	The committee intended for the child and his or her caregiver and court-appointed special advocate (CASA), if any, to have an opportunity to provide input on the medications being prescribed, and at any progress review of the prescribed medication. The committee recommends that the council revise the rule to make the ability to provide ongoing input more clear, and to provide notice of progress reviews which will include blank copies of the proposed new *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219). At each progress review of psychotropic medication orders, the social worker or probation officer must complete and file *Report About Psychotropic Medication—County Staff* (form JV-224). The rule and forms are structured to receive ongoing information.

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			take [psychotropic] medication.") See comments on specific provisions below.	
10.	Mark D. Edelstein, MD Board Certified Child and Adolescent Psychiatrist Medical Director EMQ FamiliesFirst	NI	The following remarks on the proposed JV-220 changes are based on my participation in the creation and later revision of the original JV-220 forms; my use of the JV-220(a) on countless occasions; and my interactions with social workers, public health nurses, attorneys, CASAs and judges whom I have trained on the use of psychotropic medicines with foster youth. I think nearly all doctors, patient advocates and judges would agree that he JV-220 process is a flawed process. Doctors often submit JV-220(a) forms that are incomplete. Some don't complete the form at all. Judges are placed in the position of making decisions with neither medical expertise nor a way to gauge the trustworthiness of the doctor. And some foster youth end up as victims of under-prescribing, over-prescribing and mis-prescribing. See comments on specific provisions below.	No response required. No response required.
11.	Robert Horst, MD Board Certified Child and Adolescent Psychiatrist Medical Director Sacramento County Child and Family	NI	I support the responsible use of psychotropic medication in foster youth and applaud the Council's efforts in insuring that safe and effective medications are available to this vulnerable group of children. I share concerns	The committee concluded that while appointing child psychiatrists to liaison with the courts in each county to oversee and review JV220s and to flag and follow-up with concerns, is a good suggestion, it is not mandated by statute and is

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	Mental Health Associate Clinical Professor University of California at Davis Department of Psychiatrist		that medications are being used inappropriately in this population and feel strongly that measures need to be taken to insure that foster children are not prescribed unnecessary or harmful medications. However, I also feel strongly that a much more effective approach to the problem would be to appoint child psychiatrists to liaison with the courts in each county to oversee and review JV220s, flag and follow-up with concerns. This would be more effective and efficient than adding additional paperwork, burdens and barriers to an already taxed mental health delivery system. See comments on specific provisions below.	beyond the purview of the Council's rule making authority. SB 238 was a comprehensive bill and added to the already mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d).
12.	Keather Kehoe, MD Child and Adolescent Psychiatrist Sacramento, CA	N	To Whom It May Concern, I am a Child and Adolescent Psychiatrist in Sacramento. What does that mean? After college, I attended four year of medical school, three years of a residency in General Psychiatry, and two years of a Fellowship specialized in Child and Adolescent Psychiatry. I have been in practice since 2003, working in my own private practice, as well as working at a community based agency in Sacramento (where approximately half of my patients are in foster care). I am Board Certified in both Psychiatry and Child and Adolescent Psychiatry. When I evaluate children initially, I typically spend	No response required.

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			from 1.5-2 hours meeting with them and their caregivers, as well as often meeting with their therapists. I see the children back approximately once per month, often collaborating with others in their lives in the interim (school/teachers, caregivers, therapists). I share this information so you can understand what my training is and what my process is. My level of training is typical for Child and Adolescent Psychiatrists in the community, and my evaluation process is similar to other providers in my field. I would assert that most Child and Adolescent Psychiatrists spend more time and see their patients more frequently than most other fields of medicine. The current modifications proposed to the court approval process of medication consents for children in foster care are concerning. They create added bureaucracy and red tape that will ultimately have the opposite of its intended effects. If the government wants to ensure that children are receiving better mental health care, making the process for treatment more laborious is not the avenue by which to achieve it. The current proposed JV220(A) (Physician's Statement) has doubled in length. The current form can be completed in 20-30 minutes; the new form would double that time at a minimum. When I think about spending an hour on a form after I have evaluated a child	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial

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			for two hours, I am befuddled. I do a thorough assessment; I am highly trained and qualified in mental health assessments, diagnoses, and treatments. Documenting my clinical rationale ad nauseum for my proposed treatments for a judicial entity is not productive. It takes away time from treating children and evaluating them directly. Apart from the economic impact on community based mental health agencies that pay for psychiatric services, as well as funding from such agencies and from MediCal, the paperwork time detracts from valuable resources. There is already a dearth of Child and Adolescent Psychiatrists in the country; children and their families typically wait months for a psychiatric evaluation because of these limited resources. If I am spending more time on paperwork, I am not treating children and fewer children are receiving the mental health care they desperately need to maintain their home and school placements. The added paperwork and new proposed court medication authorization process is incredibly stigmatizing of mental health. The legislature is saying that the clinical expertise of highly trained mental health providers holds little value when such providers are asked to complete an onerous amount of paperwork to justify their medical decision making. Would the legislature question other medical	requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not. In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1).

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			specialties in the same manner as which psychiatry is being singled out? Do you require pediatric cardiologists or pediatric surgeons to fill out a six page form to prescribe a single medication or to initiate what may be life-saving treatment? The very idea of that seems preposterous, yet that is what is being proposed. Non-medical personnel are being asked to interpret medical facts and symptoms to make a decision about the medical utility of treatment. Among the unintended consequence of the proposed changes is also a delay in children obtaining treatment. Added paperwork from the physician's end, as well as added paperwork from the various individuals in the child's life means more processing time. The current wait time for medication authorizations to be approved varies significantly from one county to another, but takes typically 3-4 weeks at a minimum. That is 3-4 weeks that a child is not receiving treatment, in comparison to non-foster youth whose parents can consent to treatment when seen. That delay in treatment at present can and has led to placement loss (of foster home or school). Increased forms require more time: time for each entity to complete their portion of the process and added time for	Child, caregiver, and CASA input on the medication is mandated by SB 238. The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1).

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			judicial review. I can easily see the process stagnating due to one form or another not being completed in a timely fashion, with medication authorization suddenly taking months to obtain. Vital medical care could be delayed for months on end; such a system would be considered malpractice in medicine. You are taking vulnerable youth and subjecting them to delays in care because they suffer from mental illness. These unintended consequences cannot be ignored. I request the additions to the requirements for the court approval for medications be seriously reconsidered. The proposed changes are onerous at best, stigmatizing at worst. They will, over the long term, ensure that fewer children are receiving the mental health care they need as the providers and the system is stuck in the red tape of paperwork. As a trained Child and Adolescent Psychiatrist, I do not take lightly prescribing children medication, whether they are in foster care or not. The decision for medication is a carefully thought out one when the proposed treatment will improve that child's life and their functional level. The legislature should be respectful of the training and skills of the professionals in mental health, rather than further stigmatizing them and the children in foster care.	See response above.

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13.	Richard Mancina, MD Sacramento, CA	N	I will restrict my input to general comments. I have been practicing Child and Adolescent Psychiatry for 30 years in California. I obtain informed consent from families in my office many times a month. Along with Penelope Knapp at U.C. Davis, I published a journal paper about informed consent in pediatric psychopharmacology that explored the complexities and pitfalls of this process. An informed consent discussion for a non-foster youth is ideally an informative and reciprocal exchange of ideas. The various psychotherapies and medications available are discussed in about 5 to 10 minutes. It allows the youth and family time to ask questions and consider their choices, and usually educates the youth and family about the illness. In my opinion, the process of informed consent for foster youth through the court is decidedly inferior to this, both in the SB 543 and the SB 238 iterations. The main problem is the lack of reciprocal information exchange. Usually, it is just one-way, from the involved parties to the court, and then communication stops. Also, it takes far longer. To complete the physician portion of the JV-220 takes about 25 to 45 minutes in our setting. That prevents us from seeing another youth for treatment during that time.	No response required. No response required.

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			The new forms appear longer. Let me now explain the main concerns. First, I believe a statement made in the background section of your document is wholly inaccurate and constitutes revisionist history that may misguide the process. This following reportedly comes from the legislative history for SB 238 and refers to SB 543 passed in 1999: "This legislation was passed in response to concerns that foster children were being subjected to excessive use of psychotropic medication, and that judicial oversight was needed to reduce the risk of unnecessary medication." In fact, what prompted SB 543 was that a minority of foster children were being denied access to psychotropic medication treatment by their parents, who through disability, inaccessibility, dereliction, and other reasons were not allowing their children in court custody to be given medications necessary to treat their serious mental illnesses. SB 543 suddenly allowed that minority of	See response below. The legislative history of SB 543 indicates that "the bill is in part a response to an expose by the Los Angeles Times series on foster care, which made allegations that foster children are being overly medicated and are receiving inconsistent and potentially harmful doses of psychotropic drugs."[1]

[1] Sen. Com. on Judiciary, Analysis of Sen. Bill No. 543 (1999-2000 Reg. Sess.) Apr. 13, 1999, p. 2

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			foster children to receive the benefits of treatment. Prior to SB 543 these youth would often languish in a depressed or even psychotic state for months to years. I know this to be a fact as I saw this repeatedly during those years. These foster children experienced more loss of home placement, loss of school placement, loss of friends, hospitalizations, and incarcerations, not to mention the anguish and pain of un- or under-treated mental illness. Thus, passage of SB 543 actually increased access to medication for these youth and reduced pain and suffering for many California foster youth. Now SB 238 has passed. To the degree that the new process improves communication between the youth and family, the judicial official who makes the decision, and the physician who provides the medical information, I support it. The previous form JV-220 was not adequate. The greatest risk with the new forms and process being presented is that the government is now erecting new barriers to treatment of the minority of seriously mentally ill children in foster care. We run a high risk of taking a big step backwards towards the pre-SB528 era unless the judicial council pares down the volume of information being requested and makes sure the process does not increase delays in treatment.	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication

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				administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not. The committee carefully reviewed all questions and forms only contain what the committee believes are critical for an informed decision.

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			I also am concerned that social workers, a subset of whom are notoriously slow to respond, and others may be required to be involved. This will slow the process and may also cause significant delays of treatment. Let's not create new barriers to the mentally ill by erecting an unnecessarily burdensome bureaucratic process. I ask that you please pare down the information requirements to those elements that you feel would be adequate for a judicial official to make a good decision for foster youth. The rest is superfluous. Thank you for your consideration.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). The committee carefully reviewed all questions and forms only contain what the committee believes are critical for an informed decision.
14.	Hon. Michael Nash (Ret.) Judge Superior Court of Los Angeles County	AM	This proposed rule change offers a very significant improvement to the psychotropic medication approval process because it provides for substantially more information to be provided to the court before the court decides whether to approve the medication. The current process is mostly conclusionary, does not in itself help the court know how accurate the information is, and does not mandate any information from the agencies that have custody of the child to help the court. For this process to work, it is essential that the	No response required.

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			judicial officer receive as much information as possible relating to the request from all who are involved with the child and the child, if possible. The child's involvement and input is particularly important because too many youth who age up and out of the system have not been engaged in the process and are therefore not prepared to make their own decisions and/ or follow through with the process when they reach the age of majority. In addition to the child, it is important that the caregiver and a parent in a reunification plan also be engaged in the process. The court needs to know if the caregiver is fully informed about the child's issues, if the caregiver knows how to obtain the medication, if the caregiver knows what to look for after the child starts taking the medication, and whether the caregiver is capable of following the medication regimen, among other things. If a parent is in a reunification plan, the court needs to know the parents attitude towards the use of the medication and whether the parent has the ability to follow through with the child's needs. See comments on specific provisions below.	The committee agrees that this is important information that the court needs to know from the caregiver and has amended *Statement About Psychotropic Medication* (form JV-219) with these questions.
15.	National Center for Youth Law by Jackie Thu-Houng Wong Director of Government	NI	See comments on specific provisions below.	No response required.

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	Relations			
16.	Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	AM	The OCBA generally agrees with the proposed changes, however there are some modifications needed. See comments on specific provisions below.	No response required.
17.	Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	AM	Comments on the Proposal as a Whole… Since the Order Regarding Application for Psychotropic Medication (JV-223) is limited to a specific time frame or six months from the date the order is issued, whichever occurs first; one could infer that a Social Worker, at each status review hearing and/or progress review, may be required to complete all of the following documents: • Application Regarding Psychotropic Medication (form JV-220) • Social Worker or Probation Officer's Statement—Attachment (form JV-220(B)) • Report Regarding Psychotropic Medication—County Staff (form JV-224) Having multiple forms may create confusion, adds delays in processing the application, and impact workload. Could there be a consideration for the information obtained via the JV-224 (intended for periodic oversight) to be included in the court report prepared for the child's status review/progress review hearings?	The committee concluded that it was rare for an application to be submitted at the same time as a status review hearing. Rather than mandate which forms should be filed if this did occur, the committee was silent on this in the rule so that each jurisdiction can determine a process should this occur. Depending on local practice, the court in one county may find a particular form more helpful than another, and the helpfulness of a particular form could vary by county. Prior to circulating this proposal for public comment, the committee did consider whether the information needed for the court to provide periodic oversight could be included in the social worker or probation officer's court report. However, given how long it typically takes to get updates to CWS/CMS (the electronic system that contains court report templates) and the

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				importance of the court receiving thorough information, the Committee concluded that a completed, mandatory form was necessary.
			Alternatively, can the JV-220 (B) and JV-224 be combined into a single document? If the two forms where condensed into one, the form can reference what items should be completed when the form is being submitted for "periodic oversight" purposes, which may be in conjunction with a renewal application as well. Some of the questions appear to be duplicative. See comments on specific provisions below.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). The information needed for an application is different than the information the court needs to provide oversight of an already-prescribed drug, therefor, the committee will continue to recommend two separate forms.
18.	Brenda J. Parish Public Health Nurse Alameda County Public Health Department Hayward, CA	A	The proposal addresses the stated purpose in accordance with SB 238. SB 319 authorizes foster care public health nurses provide oversight and monitoring of psychotropic medications for children and youth in foster care. In this role, it would be necessary to receive copies of all the proposed forms, however, most specifically JV220(A), JV220(B), JV224.	No response required. The committee has amended rule 5.640 to contain a cross reference to the newly amended Civil Code §56.103. This will enable each county to develop its own process and procedure regarding the release of these forms to public health nurses based on its interpretation and understanding of

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			I am a foster care public health nurse, and welcome the opportunity to partner/collaborate with the Judicial Court to conduct periodic reviews of prescribed psychotropic medications for children and youth in foster care. Thank you.	the recent amendments to this code section.
19.	Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney Los Angeles, CA	NI	On behalf of Public Counsel's Children's Rights Project, I'm submitting this letter regarding the proposed revisions to the forms for the JV-220 process and Rule of Court 5.640. I. Children's Rights Project's Comments Regarding the Proposed New Forms and Revisions to Rule 5.640 a. New Notice provisions- The proposed amendments to Rule 5.640 would require that the JV-220(A), JV-220(B), JV-217, and a blank copy of Opposition form JV-222 be provided to: child's parents/legal guardians, caregiver, child's attorney and child's CAPTA GAL, child's CASA, and Indian child's tribe. We agree with position of the National Center	No response required. The committee no longer proposes providing the parents, caregivers, or tribes with a copy of *Prescribing Physicians Statement—Attachment* (form JV-220(A)). No response required.

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			for Youth Law (NCYL) as set forth in its response to the Council's Invitation to Comment, that this aspect of proposed Rule 5.640 appears to conflict with several statutes, including Civ. Code § 56.106, Health & Safety Code § 1231 16, and W IC § 5238.03, which prohibit a psychotherapist from allowing the parent of a dependent child to inspect or obtain copies of mental health records of a minor patient. Aside from disclosure to parents, the general rule is that medical information is confidential, and the provider cannot disclose such information without a proper written authorization, under the Confidentiality of Medical Information Act (CMIA), Cal. Civ. Code § 56 et seq. Additional research should be completed to determine whether it would violate CMIA to provide a dependent child's confidential mental health information to the tribe of an Indian child in situations where the child's attorney has not consented to the release of the information, and there is no court order allowing for such disclosure. Foster parents and relative caregivers have a right to receive medical and mental health information about the children in their care, under Welf. & Inst. Code §§ 16010, 16010.4, and 16010.5. This information is generally provided in the form of a summary such as the	The committee no longer proposes providing the parents or caregivers with a copy of *Prescribing Physicians Statement—Attachment* (form JV-220(A)).

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			DCFS Health and Education Passport. "The health and education summary shall include, but not be limited to, the names and addresses of the child 's health , dental, and education providers; the child 's grade level performance; the child 's school record; assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; the number of school transfers the child has already experienced; the child's educational progress, as demonstrated by factors, including, but not limited to, academic proficiency scores; credits earned toward graduation; a record of the child's immunizations and allergies; the child's known medical problems; the child's current medications, past health problems, and hospitalizations; **a record of the child's relevant mental health history; the child's known mental health condition and medications; and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services.** [ ] If any other law imposes more stringent information requirements, then that section shall prevail." WlC § 16010(a) (emphasis added). The information contained in the revised JV-220(A) may go beyond what caregivers are	

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			entitled to receive under the WIC provisions, absent the consent of the minor's attorney (or the minor herself, if old enough). For example, the revised form requires the physician to provide "an assessment of the child's overall mental health," the child's symptoms and response to current medication, a list of pharmacological and non-pharmacological alternatives that were tried in the last six months and the child's response to them, and which symptoms are not alleviated by current treatment. Some of this information is found in the Health and Education Passport, but not all of it (such as "an assessment of the child's overall mental health.") Additional research should be undertaken to verify whether providing caregivers with the information contained in the revised JV-220(A) and JV-220(B) is permissible under Welf. & lnst. Code §§ 16010, 16010.4, and 16010.5. b. Procedure for when an application is missing information The proposed amendments to 5.640(c) would allow for a temporary order granting the application where the request is missing information, but only for a 14 day period. We agree with NCYL's proposal in its response to the Invitation to Comment that when the required information is not provided, the	The committee no longer proposes amending the rule to allow for temporary orders if all the information is not contained in the application. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing.

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			application should be denied, subject to the emergency provisions in the existing rule. The revised rule might also distinguish between a request for a new medication and a renewal. In the latter situation, a fourteen-day extension of the court's previous authorization might be justified.	
20.	Public Health Nurses by Mike Ranga Oakland, CA	NI	Rule 5.640 (C) - Expanding Information Provided to Foster Care Public Health Nurse A Statement: That a foster care public health nurse should receive a copy of the Prescribing Physician's Statement Form (JJV-220A) and Report Regarding Psychotropic Medication – County Staff Form (JV-224) for health care coordination and maintenance of the Health and Education Passport (HEP). 56.103.(a) A provider of health care may disclose medical information to a county social worker, a probation officer, a foster care public health nurse acting pursuant to Section 16501.3 of the Welfare and Institutions Code, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor, including, but not limited to, the sharing of information related to screenings, assessments, and laboratory tests necessary to monitor the administration of psychotropic medications.	The committee notes that the cite provided is to the California Civil Code. The committee recommends that the council revise rule 5.640 to contain a cross reference to the newly amended Civil Code §56.103. This will enable each county to develop its own process and procedure regarding the release of these forms based on its interpretation and understanding of the recent amendments to this code section.
21.	River Oak Center for Children	N	1. A thorough discussion of the pro and cons	No response required.

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	by Harry Wang, MD, Psychiatric Director Sacramento, CA		of psychotropic medication usage prior to court authorization is welcome. Discussion before initiating or continuing treatment, done in a timely manner, is preferable to the delays in treatment that have occurred when the TAR medication process has been lengthy. 2. The county social worker will need to take a key role in providing updated information to biological parents and to the court about the progress of children and teenagers in out-of-home placements, including the progress of all treatment modalities. Current social worker caseloads sometimes make it challenging for them to gather this information themselves, much less share this with biological parents and/or with the court. 3. The county social worker's role will especially be important if parents are given a copy of the entire JV-220, as proposed. Parents will likely have many questions about the content of the JV-220 which would best be understood if there is frequent communication with the county social worker about the progress of their child or teenager. 4. Prescribing physicians are the only professionals qualified to make medication recommendations to the court and to report progress on medication. It is crucial that the court gives great weight to what the physician	No response required. The committee no longer proposes providing parents with a copy of form JV-220(A). SB 238 was a comprehensive bill and added to the already mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma,

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			reports.	and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d). The committee believes that this comment can best be addressed when developing curriculum to meet the training mandate.
			5. Because of the complexity of treatment options, child psychiatric consultation should be available to the court to help in the decision-making process.	The committee concluded that while psychiatric consultation is a good suggestion, it is not mandated by statute and is beyond the purview of the council's rule making authority. SB 238 was a comprehensive bill and added to the already mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d).
			6. Resources such as Helping Parents and Teachers Understand Medications for Behavioral and Emotional Problems ed. By Mina Dulcan, MD and Rachel Ballard, MD should be available to everyone involved in the medication decision-making process. See comments on specific provisions below.	Thank you for suggesting resources that may be helpful when developing trainings mandated by SB 238.
22.	San Francisco Department of Public Health, Behavioral Health Services	NI	Concerns about decreased access to essential medication interventions:	

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	by Karen Finch, MD, Medical Director of Foster Care Mental Health Program		There is presently a critical shortage of child psychiatrists in the United States to serve the number of children and adolescents with mental health disorders[i]. Many low resource counties rely on non-child psychiatrists prescribers (ie pediatricians, general adult psychiatrists, nurse practitioners, etc) for the treatment of pediatric mental health disorders. In our experience, filling out the necessary forms can take anywhere from 30 to 60 minutes plus, which will likely require additional appointment time to do so. The sheer length and the level of detail required in the forms will discourage providers from pursuing psychotropic medication when it would be indicated and beneficial.	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item

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				regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not.
			We are concerned that what is intended to be a helpful oversight process will result in decreased access to treatment and bad outcomes. This concern is supported by what occurred with antidepressant medication for pediatric and young adult depression following the Food and Drug Administration's (FDA) addition of a "black box" warning label, which was intended to be a useful alert for providers. The use of commonly prescribed antidepressants subsequently decreased, and during the same period suicide attempts rose in teens and young adults. Researchers concluded that the decrease in antidepressant use was related to fears evoked in prescribers. This inadvertently resulted in many depressed young people without appropriate treatment, which may have boosted the increase in suicide attempts.[ii]	No response required.
			There are many mental health disorders in youth that benefit from the use of psychotropic medication, and there are numerous FDA indications that have emerged from this	No response required.

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			evidence (Attention Deficit Hyperactivity Disorder, Depression, Obsessive Compulsive Disorder, Schizophrenia, Bipolar Disorder to name a few). There are many situations, however, where there are no FDA approved psychotropic medications for a particular mental health concern. Experts indicate the historical lack of pediatric drug testing is primarily due to the fact that pharmaceutical companies generally have viewed children as a market that would bring only small financial benefits.[iii] Pediatric psychiatrists must often extrapolate data from adult studies and populations to inform psychotropic medication selection in youth. The practice of pediatric psychiatry is nuanced and complex. It requires significant post-graduate training beyond medical school to master these skills. The treatment information that is now being asked of social workers, probation officers, and judges in this new proposal falls out of the scope of practice for these non-medically trained professionals. The increased requirements of the non-medically trained professionals are unrealistic, and will contribute to delays in treatment for youth who require psychotropic medication as an integral aspect of their treatment plan. The questions that specifically fall out of the scope of practice for social workers and	The committee concluded that the social worker or probation officer would be asking the physician these questions and reporting back to the court. The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form

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			probation officers include Items 7 & 8 of JV-220(B) – (asking for non-pharmacological and pharmacological treatment alternatives, and if none tried rationale for not doing so).	JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). Questions 7 and 8, as circulated for comment asked about pharmacological and nonpharmacological treatment options that had been tried in the last 6 months. The committee agrees to amend form JV-220 to delete the two questions that would be duplicative of the information in the JV-220(A) and ask instead if the information provided by the physician for questions #12-13 is correct, to the best of the social worker's knowledge, and whether the social worker has any additional information to add about mental health treatment alternatives to the proposed medication or other psychotropic medication tried in the last six months. This information is essential to the court's oversight function, and the prescribing physician may not have received enough information to answer these questions. The committee has redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well

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				within the social worker or probation officer's knowledge as the child's case manager.
			Concerns regarding the availability of non-pharmacological interventions: As discussed above, we are concerned that this proposal delays access to psychotropic medication intervention, a key treatment aspect for many youth. On virtually all of the forms, the proposal inquires about non-pharmacological interventions. We agree that non-pharmacological interventions are essential. In most cases, the medical literature supports the use of psychotropic medication in children and adolescents in addition to psychosocial interventions, which are often the primary interventions. Many foster youth have experienced significant trauma in their lives, and in those cases of Post-Traumatic Stress Disorder it is especially important that treatment planning consider a comprehensive approach, with trauma-focused psychotherapies as first-line treatment.[iv] It can be difficult, and nearly impossible for prescribers to locate and access providers with specific, trauma-focused training. We recommend adding resources to be allocated to ensure availability of the full array of primary, non-pharmacological treatments that have been identified to be beneficial to children and	The committee has redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager. SB 238 mandates that information regarding the rationale for the proposed medication must be provided to the court, and must include information on other pharmacological and nonpharmacological treatments that have been utilized and the child's response to those treatments. Welf. & Inst. Code § 369.5(a)(2)(B)(iii)

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			adolescents (such as trauma-focused cognitive behavioral therapy, child parent psychotherapy, family therapy, dialectical behavioral therapy). See comments on specific provisions below.	The committee agrees that it is important for children to have available to them the full array of primary, non-pharmacological treatments that have been identified to be beneficial to children and adolescents. Adding financial resources to ensure their availability, however, is outside the purview of the Judicial Council's rulemaking authority and is the responsibility of the Governor and Legislature.
23.	State Bar of California, Executive Committee of the Family Law Section by Saul Bercovitch, Legislative Counsel San Francisco, CA	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with the following modifications: See comments on specific provisions below.	No response required.
24.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
25.	Superior Court of Riverside County by Marita Ford, Senior Management Analyst	A	No specific comment.	No response required.
26.	Superior Court of San Diego County by Mike Roddy, Executive Officer San Diego, CA	AM	This has always been a complicated process, and it is only getting more complicated. The proposal, however, is necessary in light of SB 238. See comments on specific provisions below.	No response required.
27.	Melissa Vallas, MD Alameda County Behavioral Health Care Services (ACBHCS) San Leandro, CA	AM	See comments on specific provisions below.	No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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28.	Harry Wang, MD Sacramento, CA	NI	I am board certified in pediatrics, psychiatry, and child and adolescent psychiatry. I have been in private practice since 1986 and have been psychiatric director of River Oak Center for Children (ROCC) since 1987. ROCC provides a wide range of mental health services for over 900 Sacramento County Medi-Cal clients. About 32% of our clients receive psychiatric care. In addition, I am Clinical Professor of Psychiatry at UC Davis School of Medicine where I supervise Child and Adolescent Psychiatry Residents and also co-teach a class. I previously submitted comments representing ROCC. These are my personal comments. I understand that the purpose of proposed changes to the JV-220 is to ensure that psychotropic medication is used and monitored appropriately given concerns raised in this area. However, there are three issues that need to be considered. First, I have heard little discussion about why so many children and youth are being placed into foster care in the first place and what can be done on the "front end" to keep them with their families. As long as children and youth continue to be traumatized and have insecure relationships, they will continue to be placed into foster homes. Prescribing physicians are trying to do their best in helping to improve their	No response required. No response required.

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			behavioral and emotional dysregulation but this will always be a challenge because of the long-lasting effect of past traumas and the frequent unavailability of a familial home. Secondly, I am very concerned that the detailed information required by the court, and shared with biological parents, will threaten confidentiality, delay treatment, and also take away time that physicians could be spending with other clients. There needs to be an appropriate balance between informing the court for the consent process without affecting confidentiality or create delays in treatment. Thirdly, child and adolescent psychiatrists are uniquely qualified to diagnose, provide input into a comprehensive treatment plan, consult with other medical and mental health professionals, and to recommend, prescribe, and provide follow-up for clients on psychotropic medication. While it is important for the court to consider other sources of information, the primary rationale for medication treatment and subsequent progress should come from the prescribing physician, just as an operating surgeon should be the one to provide information to the court for a proposed surgery.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). SB 238 was a comprehensive bill and added to the mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d). The committee concluded that this comment could best be addressed as curriculum is developed to meet the training mandate.
29.	Young Minds Advocacy by Aisa Villarosa, Associate Attorney	NI	To the members of the Family and Juvenile Law Advisory Committee:	

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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	San Francisco, CA		Thank you for the opportunity to comment on Proposal W16-06 ("Juvenile Law: Psychotropic Medication"). Having carefully examined the Invitation to Comment and proposed changes, I appreciate the thoughtful work that went into its drafting. Overall, I support the spirit of collaboration emphasized by the proposal in requesting more detailed feedback from a youth's prescribing physician, social worker, probation officer and caregivers. I strongly believe, however, that the proposed changes present significant privacy concerns that can delay or prevent successful treatment for youths. Moreover, the proposal fails to extend coordination to mental health services providers—an essential component of the child's treatment team. I hope that the recommendations contained in the following Comment provide guidance in finalizing the proposal, particularly in the areas of concern highlighted below. In closing, thank you again for the opportunity to submit feedback to W16-06. Together, we can achieve the objectives of the proposal in assuring quality mental health treatment to children	To address privacy concerns, the committee no longer proposes providing caregivers or parents with form JV-220(A). SB 238 mandated the council to create rules and forms to implement 5 main provisions. Coordination with mental health services was not among these provisions. The committee concluded that this coordination would require additional legislation. No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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			across the state. I. Introduction Proposal W16-06 amends Court Rule 5.460 to require parents, caregivers, CASA and the Indian child's tribe to be served with a copy of forms JV-220(A) and (B) as part of the application process to request psychotropic medication for an adjudicated youth. The proposal intends to "ensure that the child and his or her caregiver and court-appointed special advocate (CASA), if any, have an opportunity to provide input on the medications being prescribed…" To this end, Proposal W16-06 will: • Revise form JV-220(A) ("Prescribing Physician's Statement"); • Adopt the new form JV-220 B ("Social Worker or Probation Officer's Statement); • Revise forms JV-220 ("Application Regarding Psychotropic Medication"), JV-221 ("Proof of Notice: Application Regarding Psychotropic Medication") and JV-223 ("Order Regarding Application for Psychotropic Medication"); and • Approve of the optional forms JV-218 ("Child's Statement Regarding Psychotropic Medication") and JV-219 ("Statement Regarding Psychotropic Medication")	No response required.

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			Presently, Rule 5.460 requires the aforementioned parties to be provided 1) a statement from a physician asking to treat the child's emotional or behavioral issues by beginning or continuing administration of psychotropic medication, 2) the name of the psychotropic medication and 3) a statement that an application (a form JV-220) and "Prescribing Physician's Statement" (JV-220A) is pending before the court. The W16-06 Proposal Committee concluded "that in order for the caregiver, CASA, and Indian child's tribe to provide meaningful input to the court, they [need] to know what information was used as a basis for the proposed prescription and what alternatives, if any, could be tried in lieu of the proposed medication. By providing the full application rather than merely notice that it is pending, the caregiver, CASA, parents, and Indian child's tribe will have the information necessary to provide meaningful input to the court." B. Potential Negative Effects In general, the approach taken by the JV-220 process of treating medications as a unique and separable mental health service ignores the larger challenge we face: how to provide foster youth with safe and effective mental health	No response required. No response required.

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			services. Impeding access to one mental health service—medications—will not likely improve mental health care to individual youths, or to foster youth overall. A primary reason for the high level of psychotropic medication use among child welfare-involved youth is the high level of mental health needs in this population. Indeed, most psychotropic medications are not "overused," considering the disproportionate need for mental health treatment among foster youth.4 Moreover, in cases where other mental health services are not available, are ineffective, or are delayed or of poor quality, medications may be being provided because they are the "only game in town." In these circumstances, it hardly makes sense to deny a child the only service available, or to expect the psychiatrist to magically resolve systemic mental health problems with service access, quality, and efficacy. A better approach would be to include in the court oversight process agencies or actors who have some control or influence over these factors. Those agencies and actors are the county's Mental Health Plan or care coordinator, and possibly the child's Managed Care Plan or its care coordinator. The changes to Rule 5.460 may constrain some physicians from prescribing some medications, but in doing so it could	SB 238 mandated the council to create rules and forms to implement 5 main provisions. Coordination with mental health services was not among these provisions. The committee concluded that this coordination would require additional legislation. In 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to

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			mean that foster youth become second class citizens, denied services that would be provided to youth who are not subject to the JV 220 process. Moreover, the additional process will almost certainly result in delay and denial of services to foster youth. Moreover, to the extent that a judge denies a child prescribed medications, the court may violate the child's rights under Medicaid because the JV 220 process for determining what's in the interest of the child is not the same as the process for determining medical necessity under Medi-Cal. Failure to Extend Coordination to Providers It is important that a youth's caregivers and parents collaborate with physicians, social workers and probation officers in the best interests of the child. However, a key weakness in the proposal is the failure to extend coordination to the mental health services provider or providers. This oversight appears to stem from a misunderstanding of the role the prescribing physician performs in delivering mental healthcare to foster youth in California's mental health managed care system. In general, a care coordinator or therapist funded by the County Mental Health Plan guides the treatment planning process and access to specialty services, including psychiatry and medication management. It is this care coordinator or therapist who bears primary responsibility for coordinating mental	make orders regarding the administration of psychotropic medications for foster children. Court authorization for the administration of psychotropic medication must be based on a request from a physician. Welf. & Inst. Code § 369.5(a)(1). SB 238 mandated the council to create rules and forms to implement 5 main provisions. Coordination with mental health services was not among these provisions. The committee concluded that this coordination would require additional legislation.

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			health care for the youth and driving decisions about the treatment plan. As a separately contracted service, the prescribing physician does not have direct oversight, and often has limited influence, over the treatment plan or the other service providers on the treatment team. Moreover, the physician's role is typically limited to evaluating the need for and appropriateness of medications. Acting alone, the doctor usually has no authority or capacity to provide alternative services or therapies. In order to both improve the information available to the prescribing physician, and encourage responsible alternatives to medication, it is essential to include the Mental Health Plan's treatment coordinator or therapist in the JV 220 process. As drafted, the proposal overlooks this essential collaboration. See comments on specific provisions below.	SB 238 mandated the council to create rules and forms to implement 5 main provisions. Coordination with mental health services was not among these provisions. The committee concluded that this coordination would require additional legislation.
30.	Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	NI	To Whom It May Concern: These comments are submitted on behalf of the Youth Law Center, 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 around the country. Our comments are on the following	No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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			rules and forms in the above-referenced proposal: See comments on specific provisions below.	

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Rule 5.640—Psychotropic Medications		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	With all this protected health information being released, we also have concerns that children and adolescents need the option of keeping personal information from being shared with family and tribal or community members. One of the first questions we are asked when evaluating a child is whether the information is confidential or whether it will just be shared with their caregivers. If we are not able to ensure appropriate confidentiality, we may compromise our relationship with a child and not be able to gather information that is essential for treatment.	The committee no longer proposes providing parents or caregivers with a copy of Prescribing Physician's Statement—Attachment (form JV-220(A)).
	COMMENTS: The county social worker's role will especially be important if parents are given a copy of the entire JV-220, as proposed, and will likely result in workload increases. Parents will likely have many questions about the content of the JV-220 which would best be understood if there is frequent communication with the county social worker about the progress of their child or teenager. Current social worker caseloads sometimes make it challenging for them to gather this information themselves.	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
	How can we assure confidentiality for kids if we're sending what is essentially a complete assessment to the courts and potentially sending a list of their history, treatments, and treatment options to their families, CASA, and/or tribe?	
	Compromising confidentiality could discourage adolescents, for example, who may not engage meaningfully in their mental health treatment because of their perception that personal information is shared so widely. This proposal also brings in possible breaches of HIPAA, which may have a chilling effect on the potential pool of prescribers for this population due to	

Rule 5.640—Psychotropic Medications		
Commentator	**Comment**	**Committee Response**
	penalties related to HIPPA violations. We would recommend considering how we may further allow children and adolescents the option to keep sensitive or stigmatizing information confidential.	
	Illegible completion of forms is not addressed in this section as "missing information" but should likely be included. The number of separate pages and forms that are proposed may inadvertently result in an increase of "missing information". In most counties these forms are sent to the juvenile court by the facsimile process which can be very problematic at times as opposed to electronic submissions. As stated previously, the completion of forms by typing is not evident in the guidance provided in the draft forms and may be an issue that should be addressed in further revisions.	The committee has amended the rule to mandate that if information is missing from an application, the court must order the applicant to provide the missing information and set the application for a hearing.
	"Temporary" orders of the administration of medications can be clinically problematic in the case of certain classes or categories of medication; some medications like antidepressants take time to aid the nervous system in repairing itself, while therapeutic levels of other classes of medications may need time to build up to be effective. Interrupting the time required to repair or reach therapeutic level may thereby prolong the duration of symptoms and delay of medication benefit. We believe that further discussion is warranted regarding the temporary authorization timeframes.	The committee has removed from the proposed rule the option for the court to make temporary orders for medication.
	COMMENTS – Mandating this at each status review hearing may be problematic in that such dates may not align with the observed benefit of the medication especially if such a date occurs very early in the period of the "build-up" necessary for	SB 238 mandates that the court's periodic review be conducted in conjunction with other regularly scheduled court hearings.

Rule 5.640—Psychotropic Medications		
Commentator	**Comment**	**Committee Response**
	some medications. Thus it may not be useful in such instances. There should be some consideration given to providing guidance to the courts on this specific issue. It also was not clear to some if there would be a process to ensure that these progress reports are also provided to the prescribing physician? That may indeed be the case, but it wasn't readily clear upon first examination of this section.	SB 238 was a comprehensive bill and added to the mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d). The committee concluded that this comment could best be addressed as curriculum is developed to meet the training mandate. The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal.
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Amend Rule 5.640. Discussion: The Prescribing Physician's Statement JV 220A The Alliance notes that the JV 220A "must" be fill out by the physician (Page 13) and include all of the listed items. The current practices vary from physician to physician as we understand it, depending upon their specialty, the clinic location and relationship to the residential setting of the child. Currently clinical staff of some residential placements may assist in compiling the needed information, entering it into the form, allowing for the physician's review during the	

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	examination process. If the literal requirement were to be implemented, and/or a physician believed that she/he needed to do all of actual data entry, this may deter some physicians from participating in this segment of health care, already severely impacted by lack of child and adolescent psychiatrists. It is time consuming, and not necessarily reimbursable through Medi-Cal for the entire time required to complete. Recommendation: The Alliance recommends that instructions for the completion of the JV 220A allow for the prescriber to sign the form, and that it be allowed that alternative clinical and administrative staff members involved with the authorization request be approved to participate in the information gathering and entry. Discussion: Items (c) (1-2) introduce the new forms that are proposed to be part of the authorization process, and new options for input from county staff, youth, caregivers, parents, and CASA's. The courts will be working hard to organize this quantity of information, and make sense of it. While many options certainly are in the best interests of achieving inputs from these individuals, there may be confusion created within the many stakeholders as to who is responsible for gathering this, and could we find that so many options create unnecessary workloads managing the many optional points of communication. Recommendation: Courts will need additional staffing to manage these communications and track responses in order to effectively assist in the court processes.	Rule 5.640(c)(7) requires that form JV-220 "must include" all of the listed items. It is silent as to who can or cannot fill out the form. The rule does not preclude alternative clinical and administrative staff members involved with the authorization request from participating in the information gathering and entry. The committee agrees that the new forms will increase workload for court staff and for those who are responsible to provide notice. However, the child and caregiver's input is mandated by SB 238 and is critical

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		in the court's new periodic oversight role.
	Discussion: Items under (c) (7) (D-G) on Page 13 would insert a list of items that MAY or MAY NOT be available to prescribing physician as part of completing the Prescribing Physician's Statement for a number of reasons that have been discussed in the last year during legislative hearings, such as the child is new to a residential program, on a waiting list at county mental health for access to psycho-social treatments and a "tx plan". Awaiting medical records from past placements and past health care professionals is a known problem within the foster care populations and not likely to be resolved in the near future.	
	Recommendation: While including the items for possible prescriber/staff responses, the absence of responses in these fields should not trigger an automatic response from the courts denying the request.	The items in rule 5.640(c)(7)(D)-(G) are required under the newly enacted Welf. & Inst. Code § 369.5(a)(2)(B)(iii).
	Discussion: The item (c) (7) (J) asks for responses from the prescriber as to what additional services the patient is receiving or recommended to receive. With a significant portion of the psychotropic medications for foster youth being prescribed by pediatricians and general practice offices, they may not be aware of the specialty mental health services that could be made available to this youth.	SB 238 was a comprehensive bill and added to the mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments. , including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d). The committee concluded that this comment could best be addressed as curriculum is developed to meet the training mandate.
	Recommendation: Lack of responses in this portion of the JV 220A should not trigger an automatic denial from the courts on the authorization of the medication.	
	Discussion: The item (c) (7) (K) asks for a statement from the	See response above. The committee concluded that this

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	prescribing physician that the child has been informed of the proposed treatment, and asks for the "child's response and an explanation". It is unclear what is being requested to be explained, is the court seeking a physician's perspective on how the child received this information, understood the information, agreed with the recommendation, or disagreed?	comment could best be addressed as curriculum is developed to meet the training mandate.
	Recommendation: The "explain" line following this item on the form should be clearer to ensure the information sought is delivered in this statement.	The committee has amended the form and replaced "explain" with "Briefly describe the child's response:"
	Discussion: Item (c) (9) describes in great detail what the noticed parties will receive as part of the authorization request. The Alliance notes that there is always a concern for child safety, in the immediate and in the long terms. There may be information contained within the Prescribing Physician's Statement that will be the basis for future parental displeasure, or anger. There does not appear to be any "gatekeeping" on this material.	
	Recommendation: The Judicial Council should work with stakeholders and foster youth on how best to fully inform parents/caregivers and others while at the same time recognizing situations which need additional safeguards when it comes to sharing patient information. These findings should direct CWS and Probation Staff to work with courts on how to protect sensitive client information.	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
	Discussion: Items (c) (10-13) articulates the various statements (JV 218 and JV 219) and timelines for filing with the court. The Alliance has concerns about these safeguards and participation standards due to the unknown accuracy of the	Juvenile court judicial officers every day hear different positions and perspectives, afford them the weight they deem suitable, and issue important decisions about the children and families who appear before them. This

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	information being self-reported, or reported by adults. The courts appear to become arenas for competing information and opinions, perhaps adding difficulty to the task of sorting out the information and its relevance to the request for authorization. Analyzing these various statements and making judgements as to the accuracy and perspective of the author of these statements appears to add burdens to the court staff. The JV 219 does not have a clear focus upon specific emotions or behaviors that are generally associated with serious mental health conditions. Recommendation: There may be no realistic way to collect this important information without gathering up potentially conflicting and erroneous feedback.	form is meant to be filled out by caregivers to provide the court with much needed information on the child's behaviors and in the event of a renewal request, the benefits and side effects of the medication. It is an area of judicial discretion to determine how much weight to give the caregiver's statement.
	That said, presenting descriptions of behavior related to anxiety, depression, violent/aggressive behaviors in neutral "checkboxes", could be included as part of the JV 219 to assist parents in recognizing past behaviors.	The committee concluded that narrative questions and answers would provide the court with a more comprehensive understanding of how the medication was effecting the child than checkboxes would provide.
	Discussion: Item (c) (14) allows courts to grant temporary authorization when applications are not complete. There many circumstances in which prescribing physicians and placement agencies cannot obtain immediate access to ALL of the requested materials in the revised forms. This flexibility allows for appropriate medical interventions while additional information is sought. Recommendation: Retain this temporary authorization pathway.	Based on concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the

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		rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Mandatory JV-224 and proposed changes to Rule 5.640(f) and (g): We do not oppose the mandate to mandate a filing of the new proposed form at the status review hearing, but we have concerns with the information required of County staff in order to complete this form. Our concerns and comments here are consistent with comments made for the JV-220(B). Some of the information requested on this form will likely to be completed by the CWS Public Health Nurse (eg: List of prescribed medications, name of prescribing physician, etc.). However, some of this information is repetitive of information already submitted on the JV 220 (which should be retained by the Court in the court's case file). Much of this information will need to be obtained from the prescribing physician, and we believe it is more appropriate for that physician to provide directly to the court. As such, we recommend a new form be developed that would be completed by the prescribing physician to update information and submitted to the court, such as the dates of follow up visits (Question 15) and the dates of laboratory tests completed (Question 16), thereby eliminating the requirement that the social worker or public health nurse provide this information. Any new/changes in medications would require a new JV 220A, as such, questions #5 is unnecessary. The caregiver and child's observations, Questions 8-13, may be addressed by the JV-218 and JV-219, and as such, these questions should not be necessary for the social worker/PHN to complete if the caregiver has completed these forms.	The committee concluded that form JV-224 would be submitted for any progress reviews on medication. This will usually not be at the same time as the physician submits a form JV-220(A) with a request to reauthorize or change medication. The questions on the JV-224 are necessary to ensure that the court can meet the mandates in the newly enacted code sections that the periodic oversight include the caregiver's and child's observations regarding the effectiveness of the medication and its side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.

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East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	Additional Comments: 5.640(c)(7)(B) – Prescribing Physician's Statement - SUPPORT The new language appears to address the issue of when a new medication is prescribed to replace a current medication. We agree that physicians should clearly articulate the treatment plan and schedule, in particularly when recommending a change in medications that requires an overlapping period of multiple medications. Because some psychotropic medications should be tapered off instead of immediately stopped, physicians occasionally prescribe multiple medications with the intention of transitioning youth from the previous regimen to a new regimen (e.g. transitioning from Strattera to Vyvanse). An additional requirement may be for the physician to explain any potential negative impact on the child if the old and new medications overlap and how the transition will be monitored. 5.640(c)(10)-(12) -- Time to respond to JV-220 - SUPPORT WITH MODIFICATION The rule allows certain people to file an Opposition or Statement regarding the JV-220 "within four court days of service of notice of the pending application for psychotropic medication." Does "service of notice" mean the date the Application is transmitted to the required individuals, or the date of receipt of the Application? The Rule does not specify the mode of notice (e.g. US Mail, fax, email, etc.). If the application is sent by US Mail, the receiving person may not have adequate time to respond to the application.	The committee has amended the order form to include an order that if the physician is recommending that a medication be stopped, that the social worker or probation officer must consult with the physician to determine if the physician is ordering that the medication should be stopped immediately or gradually over time. The committee has amended the rule to indicate that the forms must be filed within four court days of *receipt* of notice of the application.

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	Recommendation: The rule should permit the identified people to respond within four court dates "after receipt" of the notice. 5.640(c)(14) – Temporary Authorization - OPPOSE The new rule allowing for a temporary order for use of medications although required information is missing from the request to the court is potentially dangerous to the health of children and youth. We understand that the decision to administer psychotropic medications is time-sensitive and often in the midst of some behavioral crisis for the young person, and no one wants to delay access to necessary treatment for youth. However, the professionals responsible for preparing the Application should be held responsible for providing the Court with the required information every time they make such an important application. Recommendation: Delete "can temporarily grant the application for authorization for a period not to exceed 14 calendar days or deny the application" and instead authorize the court to "order the department to provide the required information" or set the matter for a hearing within 7 days (or other reasonably short period of time) to ascertain the required information. • 5.640(c)(15) Time for hearing – CLARIFICATION	Based on this comment and concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application. The committee did not amend the rule to indicate a

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	NEEDED The rule does not specify the time for hearing but should require that a hearing be held within a specified time period, such as within 15 calendar days. • 5.640(g)(2) Progress Review – SUPPORT WITH MODIFICATION We agree that the social worker or probation officer should be required to file a completed Report. However, we are concerned that without a court order, they will not comply or that there will be delays in compliance, due to labor negotiation issues, as happens so often with new procedural requirements. Recommendation: Make clear that the court is ordering the social worker or probation officer to file the completed report for the Progress Review.	timeframe by which the application must be heard. The committee concluded the timeframe is a matter of judicial discretion and did not want to mandate a timeframe in the rule. The committee concluded that the court could not order a form filed within a rule. If noncompliance with report filing is a problem in a county, the judge can use discretion and order the social worker or probation officer to file the report.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	Expanding Information Provided to Parent. The current Rule provides that notice to the parents[2] is limited to • A statement that a physician is asking to treat the child's emotional or behavioral problems by beginning or continuing the administration of psychotropic medication and the name of the psychotropic medication; and • A statement that an Application Regarding	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

[2] Notice to the parent's attorney is limited to this same information under the current Rule, Rule 5.640 (c)(7)(A).

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	Psychotropic Medication and the supporting Prescribing Physician's Statement are pending before the court. (emphasis added) The proposed rule, Rule 5.640 (c)(9)(A)(iii) and (iv) would require that parents are provided with, among other additional information, a completed copy of the Prescribing Physician's Statement (Form JV-220A). The Judicial Council committee explained that "they [parents, et al] needed to know what information was used as a basis for the proposed prescription and what alternatives, if any, could be tried in lieu of the proposed medication."[3] It appears that the proposed Rule change conflicts with several statutes – i.e. Civil Code §56.106, Health & Safety Code §123116, and Welf. & Inst. Code §5328.03[4]- enacted as part of SB 1407 (Leno) in 2012. SB 1407 prohibits the disclosure of a dependent child's[5] mental health records or information based on the request of a child's parent or guardian, unless the court finds that the release of	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

[3] The child's caregiver, CASA, and Indian tribe also would be provided with this additional information. See, Proposed Rule 5.640 (c)(9)(B) & (D).

[4] The language in each provision is identical

> Notwithstanding Section 3025 of the Family Code… or any other provision of law, a psychotherapist who knows that a minor has been removed form the physical custody of his or her parent or guardian pursuant to Article 6…. shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

[5] Although the Assembly analyses states that the bill prohibits disclosure of "a dependent child's mental health records or information," the prohibition applies even prior to adjudication to any minor who "has been removed from the physical custody of his or her parent or guardian…"

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	information would not be detrimental to the child and orders otherwise. It amended three sections of the Code addressing the confidentiality of medical records – Lanterman-Petris-Short Act, Patient Access to Health Records Act, and the California Confidentiality of Medical Information Act. The prohibition in SB 1407 applies to disclosures of 'mental health records" by a 'psychotherapist.' Each of these terms references existing definitions elsewhere in the Code. Both 'mental health records' and 'psychotherapist' are very broadly defined. 'Psychotherapist' for example includes 16 categories of health care professionals.[6] The bill's restrictions on release of mental health information about the child are based on concerns > [A] noncustodial parent may not be acting in their child's best interests when authorizing use of the child's mental health treatment information, and may use this confidential information to further their own legal purposes, undermining the child's stated wishes or best interests. Children who lose trust in the confidentiality of their communications may be unwilling to trust future therapists, social workers or counselors.[7] In further support of the bill, the author pointed out	

[6] Evid. Code §1010. The reference to physicians, however, includes "a person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry."
[7] Senate Judiciary Committee, Bill Analyses, p.5,

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	[L]imiting the ability of a parent, whose child has been removed from his or her custody in dependency proceedings, to make certain decisions regarding his or her child, is consistent with existing law... During the time a parent does not have physical custody of his or her child, the court may restrict a parent's rights in a number of ways.[8] The limitations noted by the author included the section of the Code giving courts the sole authority to make orders regarding the administration of psychotropic medications for children who have been removed from their parent's custody pursuant to Welfare and Institutions Code Section 300. (Welf. & Inst. Code Sec. 369.5(a).)[9] removed from their custody. It does not address the access of caregivers, CASA's or Indian tribes to the child's mental health information.[10]	
	Mandates elsewhere in the Code requiring and/or permitting caregivers and CASAs to have access to or to be provided a broad range of information about a child for whom they are providing care[11] appear to allow them access to information	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

[8] Senate Judiciary Committee, Bill Analyses, pp. 5-6,
[9] Id.
[10] Under the current and proposed rule, counsel for the child is provided with the complete application for administration of psychotropic medication. This appears consistent with existing law under which child's counsel, for the sole purpose of fulfilling his or her obligation to provide legal representation of the child, is provided access to all records with regard to the child, Welf. & Inst. Code §317 (f)
[11] CASAs are given access to a broad range of information, including mental health information, about a child for whom they have been appointed:

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	that otherwise is foreclosed by health care confidentiality laws.[12] CASAs are given access to a broad range of information, including mental health information, about a child for whom they have been appointed: > [U]pon presentation of the order of his or her appointment by the CASA, and upon specific court order and consistent with the rules of evidence, any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the CASA to inspect and copy any records relating to the child involved in the case of appointment without the consent of the child or parents, Welf. & Inst. Code §107 Similarly, foster parents, relatives, and other caregivers must be provided with information about the health and education of a child placed in their home.[13] Authorization for the release of	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

[U]pon presentation of the order of his or her appointment by the CASA, and upon specific court order and consistent with the rules of evidence, any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the CASA to inspect and copy any records relating to the child involved in the case of appointment without the consent of the child or parents, Welf. & Inst. Code §107

[12] Whether or not these laws override all laws protecting a child's health care information from disclosure may need further analyses.
[13] 42 U.S.C. §675 (5)(D) requiring

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	this information to caregivers is explained in California Dep't of Social Services All County Information Notice I-05-14 (January 15. 2014). Under the subheading "Information Sharing by Social Worker, Probation Officers and Tribal Social Workers" the ACIN advises Information regarding the child's educational, medical, dental and mental health history and current needs must be shared so that the caregiver can appropriately care for the child and fulfill his or her obligation to cooperate with the child's case plan.[14] Attachment A to the ACIN lists "specific information and documents that must be provided to the caregiver pursuant to federal and state law…"[15]	

a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care…

Welf. & Inst. Code 16010 (c)

(c) As soon as possible, but not later than 30 days after initial placement of a child into foster care, the child protective agency shall provide the caregiver with the child's current health and education summary as described in subdivision (a). For each subsequent placement of a child or nonminor dependent, the child protective agency shall provide the caregiver with a current summary as described in subdivision (a) within 48 hours of the placement.

[14] CDSS, *ACIN I-05-14*, p. 2.
[15] The ACIN also includes a brief section and Attachment on "Limitations on Sharing Information."[15] The records not to be shared with the caregiver include "child welfare petitions and court reports, substance abuse treatment records, and certain medical records." Attachment B indicates that medical or mental health treatment records where the minor has a right to consent to the care cannot be shared absent a court order or consent from the affected individual. Specifically,

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	Caregiver Definition. Neither the current nor proposed rule defines 'caregiver.' The definition of 'caregiver' is not included within the general definitions set forth in Rule 5.502. Since 'caregivers' are entitled to notice of the application for psychotropic medication, supporting documents, and the court's order, as well as the opportunity to provide input on the application and at progress reviews, we recommend the Rule be amended to include a definition of 'caregiver.' The list of 'caregivers' should include at least the child's foster parent, relative caregiver, pre-adoptive parent, and nonrelative extended family member.[16] The Rule also should include 'resource family' as a 'caregiver.'[17]	Most commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
	The Prescribing Physician's Statement, especially as revised by the proposed Rule, includes mental health records or information subject to the protections of SB 1407. For example, Sections 9 & 10 of the new form, require the physician to provide an assessment of the child's overall mental health and to describe the child's symptoms and treatment plan. The mental health records subject to the prohibition on disclosure by SB 1407 include "patient records or discrete portions	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

If the minor consents to mental health services or could have consented to such services under Family Code 6924 or Health & Safety Code 124260, information may be shared only with the signed authorization of the minor or court order.

[16] Welf. & Inst. Code §293 (6), Rule 5.708 (b)
[17] Welf. & Inst. Code §16519.5

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	thereof, specifically related to evaluation or treatment of a mental disorder."[18] SB 238 did not amend any of the sections of the Code restricting parents' access to mental health information about a child removed from their physical custody as a result of a dependency proceeding. Indeed, the revisions in the rules of court and forms are specifically addressed at ensuring that "the child and his or her caregiver and court-appointed special advocate, if any, have an opportunity to provide input on the medications being prescribed." There is no mention of the parent in this section. Other provisions of SB 238 address information to be provided to the court and again fail to mention the child's parents. See, Welf. & Inst. Code 369.5 (a)(2)(B) (ii) and (iii) as amended by SB 238: (ii) Information regarding the child's overall mental health assessment and treatment plan is provided to the court. (iii) Information regarding the rationale for the proposed medication, provided in the context of past and current treatment efforts, is provided to the court… (emphasis added) The absence of any reference to or requirement that parents are provided with additional information is significant. It supports withholding mental health information from parents who lose physical custody of a child in the course of a dependency proceeding.	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

[18] Health & Safety Code §123105 (b). Subsection (d) defines 'patient records' as "records in any form or medium maintained by, or in the custody or control of, a health care provider relating to health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient."

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	Expanding Information Provided to Caregivers & CASAs.[19] SB 1407 applied solely to parents' access to the mental health records of a child	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
	Almost 6000 foster children and youth are in group placements.[20] More than fifty percent of those children are on one or more medications.[21] For children and youth placed in congregate care facilities, the rule does not specify who at the facility should be provided with the required notices and other documents – e.g. the court order granting or denying authorization. Is it the facility administrator, manager, medical director/staff, direct care staff – all of the above? The Council may want to consult with the Community Care Licensing Division of the California Department of Social Services for help in determining whom among these many persons at the facility should be served with notice.[22]	The committee did consult with Community Care Licensing and has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
	Indian Child's Tribe. The Rule does not specify who within the tribe should receive copies of the Application and other documents. We recommend that the Rule follow Welf. & Inst.	The committee has amended the rule to indicate that notice to the tribe shall be to the tribal chairperson or designee, as in Welf. & Inst. Code §224.2 (a)(2).

[19] The proposed rule would also grant access to an Indian tribe even before they have moved to intervene in the proceedings. Unlike with CASAs and caregivers, there are no provisions in the Code that appear to support this change in the rule. We are not aware of any provision in the Indian Child Welfare Act (ICWA) that supports this either but suggest a careful analyses of ICWA should be undertaken.

[20] *Children in Foster Care –All Types - Child Welfare & Probation, Point-in-Time (July 2015)* at Webster, D., Armijo, M., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Putnam-Hornstein, E.,King, B., Sandoval, A., Yee, H., Mason, F., Benton, C., & Hoerl, C. (2015). *CCWIP reports*. Retrieved 12/7/2015, from University of California at Berkeley California Child Welfare Indicators Project website. URL: <http://cssr.berkeley.edu/ucb_childwelfare>

[21] Id., *Children Authorized for Psychotropic Medications, Child Welfare (April 1, 2015-June 30, 2015).* This table indicates that for 2048 (55%) of the 3698 children placed in a group facility a court had authorized one or more psychotropic medications. Data for probation youth is not yet published.

[22] See, California Dep't of Social Services, Community Care Licensing Division, *Resource Guide: Medication in Group Homes* (December 31, 2015).

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	Code §224.2 (a)(2) – "Notice to the tribe shall be to the tribal chairperson…" [23] The Council may want to consult with some tribes about tribal policies, practices, and restrictions on the sharing of the confidential health care information contained in the documents.	
	Progress Review. The proposed Rule 5.640 (g)(2) requires that the social worker or probation office must file a completed JV-224 prior to a progress review. The rule does not mention that the child, the child's caregiver, and/or CASA may also file their own statement, using the JV-218 or JV-219, or otherwise provide input at the progress review.	No response required.
	The statute requires "the child and his or her caregiver and court-appointed special advocate, if any, have an opportunity to provide input on the medications being prescribed." The opportunities for input should occur both before the medication is authorized and at any time after the child begins to take the medication.	No response required.
	We suggest amending the proposed Rule to add that at any time, and especially before or at the time of each progress review, "The child, caregiver, parents, and Court-Appointed Special Advocate, if any, may provide input on the medications authorized for the child. Input can be by Child's Statement Regarding Psychotropic Medications, and JV-219, Statement Regarding Psychotropic Medication; letter, or talking to the court or through the attorney of record.	The committee intended for the child and his or her caregiver and court-appointed special advocate (CASA), if any, to have an opportunity to provide input on the medications being prescribed, and at any progress review of the prescribed medication. The committee recommends that the council revise the rule to make the ability to provide ongoing input more clear, and to provide notice of progress reviews which will include blank copies of the proposed new *Child's Statement About Psychotropic Medication* (form JV-

[23] See, also, Rule 5.481(b)(4).

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Commentator	**Comment**	**Committee Response**
		218) or *Statement About Psychotropic Medication* (form JV-219).
	Petitioner. The statute is silent as to who may file an application for psychotropic medication. The current and proposed Rules provide that the Application "may be completed by the prescribing physician, medical office staff, child welfare services staff, probation officer or the child's caregiver," Rule 5.640 … and Proposed Rule 5.640 (c)(6).	No response required.
	In practice, we believe that the caseworker or probation officer files most applications. We suggest that the Rule and related form be amended to designate the caseworker or probation officer as the persons authorized to petition the court for authorization of psychotropic medications. Vesting this responsibility with the agency responsible for the child's care and placement is appropriate.	This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment.
	In addition, the proposed Rule 5.640 (c)(5), (8) requires that a new form, JV-220B, the Social Worker or Probation Officer's Statement, must be attached to any application to authorize psychotropic medication. We suggest that this form be eliminated and some of the information provided in the JV-220B simply be incorporated into a revised, expanded Application. Much of the information included on the JV-220B is duplicative of information that must be provided by the prescribing physician – e.g., Compare Sections 7 and 8 of the JV-220B with Sections 12 and 13 of the JV-220A and Section 9 of the JV-220B with Section 17 of the JV-220A.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220).
	Procedure When Request is Missing Information. The proposed Rule 5.640 (c) subsection 14 would allow the court to	

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	temporarily grant authorization of one or several psychotropic medications despite the application lacking all required information. This proposal is not consistent with the statutory language. The statute requires > Guidance is provided to the court on how to evaluate the request for authorization, including how to proceed if information, otherwise required to be included in a request for authorization under this section, is not included in a request for authorization submitted to the court. We recommend that this provision state clearly and unequivocally that when the required information is not provided the application must be denied subject to the emergency provisions in the existing rule. The revised rule might distinguish between a request for a new medication(s) and a renewal. In the latter situation, a fourteen-day extension of the court's previous authorization might be justified. This would avoid abruptly cutting off medications the child has been taking and the adverse impact of that unplanned withdrawal from the medication. The proposed rule does not specify which information the petitioner may omit among all that is required and still permit the court to temporarily authorize the medication. As written, the proposed rule provides the courts with no guidance for determining the types of information that are critical to approval of the application. For example, can an application be granted without a JV-220A? Can an application be granted despite the prescribing physician's failure to provide an	Based on this comment and concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application. SB 238 was a comprehensive bill and added to the mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments. , including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d). The committee concluded

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	assessment of the child's overall mental health, Section 9, or the maximum dosages requested of each medication? As written the proposed rule would result in courts applying widely differing standards for the types of information that can be omitted from the application. Note: The proposed rule would give the court the option to "order the department to provide the required information." 'Department' is neither referred to nor defined anywhere else in the current or proposed rule. "Department' also is not defined in the general juvenile court rules, Rule 5.502. Child's Continuing Right to Refuse Medication. The rule and forms convey a message that the child's opportunity to refuse to accept the medication is a one-time event and that thereafter the child is required to comply with the doctor's "orders." It should be clear that while the court authorizes the prescribing of psychotropic medication, the child has a right at any point to refuse the medication. Child welfare agencies acknowledge the limits of the court's "authorization." See, e.g. Los Angeles Dep't of Children and Families, Child Welfare Policy Manual, Psychotropic Medication: Authorization, Review, and Monitoring for DCFS Supervised Youth (Rev. 7/1/2014) ("A child's objection to, or non-compliance with, the approved psychotropic medication is a treatment issue to be resolved by the physician prescribing the medication. A child cannot be forced to take psychotropic medication unless they are subject to an involuntary hospitalization or have a court-appointed conservator.")[24] See, also, California Department of Social	that this comment could best be addressed as curriculum is developed to meet the training mandate. The committee concluded that "department" is used throughout the juvenile court rules and does not need a definition. The committee concluded that the child's right to refuse medication is beyond the Council's rule making authority. SB 238 was a comprehensive bill and mandates the Department of Social services to develop a training program for many foster care stakeholders. Welf. & Inst. Code §16501.4(d). A child's right to refuse medication should be a part of this training.

[24] Available at http://policy.dcfs.lacounty.gov/default.htm#Psychotropic_Meds.htm#Policy9

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Commentator	**Comment**	**Committee Response**
	Services, Community Care Licensing Division, Advocacy and Technical Support Resource Guide: Medications in Group Homes[25] (January 1, 2016)(Includes "No resident can be forced to take [psychotropic] medication.") Additional Comments Opportunity to Provide Input 1. Amend Rule 5.640(c) to require that a copy of the Prescribing Physician's Statement – Form JV-220A – is provided to the parents, caregivers, CASA, and the Indian child's tribe. Support. In addition to the reasons stated for the change, we note that the foster parent, relative or other caregiver with whom the child is living, needs the information that is provided on the JV-220A – e.g., dosage, possible side effects of the medication - in order to ensure the child's health and safety. Providing the caregiver a copy of the Physician's Statement also is consistent with federal and state law requiring that a foster parent, relative or other caregiver is provided with information about a child's health care. See, e.g., 42 U.S.C. §675 (5)(D) and Cal. Welf. & Inst. Code §16010.	The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). After consultation with the stakeholders, as mandated in SB 238, however, the committee recommends moving several items to the last two pages of form JV-220(A) and amending rule 5.640 to specify that the last two pages of the form and the medication information sheets (medication monographs) that the physician attached to form JV-220(A) must be provided to the caregiver with the copy of the court order. The moved items include whether the caregiver was informed of the request and what the possible adverse reactions could be; therapeutic services other than medication, in which the child is enrolled in or is recommended to participate in; and information regarding the medication treatment plan and follow up. Moving these items to the last two pages and

[25] Available at http://ccld.ca.gov/res/pdf/GroupHomesMedication.pdf

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		mandating that they be given with the order will ensure that the caregiver has the necessary information to monitor the medication and to know what services, other than medication, the child should participate in.
	Note: The proposed Rule 5.640 (c)(2) refers to the Child's Statement Regarding Psychotropic Medications, as form JV-217 and the Statement Regarding Psychotropic Medication as form JV-218. The references to forms should be corrected to 'Form JV-218' and 'Form JV-219.'	The proposed rule as circulated for comment contained the correct form numbers for both forms.
	2. Amend Rule 5.640 (c) to allow several ways in which the child, caregiver, CASA, parents, and Indian child's tribe can provide input to the court. Support with modification. We agree that there should be several ways in which children, foster parents, and others may provide input to the court, including appearing in court and talking with the judge, especially for older children and teens. However, we do not believe that the social worker or probation officer, who are petitioning for the authorization of psychotropic medication, should speak for the child. Welf. & Inst. Code §317 (e)(2) provides If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes.	The committee concluded that the information should be provided in the way that is easiest and most comfortable for the child. Allowing the child to provide input through the social worker does not remove the child's attorney's duties under section 317

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	Consequently, if the child does not wish to address the court themself, the obligation to convey the child's input related to the application for medication rests with the child's attorney, The Rule also should reference and/or incorporate Welf. & Inst. Code §349. Under that provision a child is entitled to be present during a hearing conducted by the juvenile court and to address the court and participate in the hearing. If the subject of the authorization for medication is ten years of age or older the court should inquire into whether the child was properly notified. For consistency, proposed Rule 5.640 (c) (9) (B) (iv) should be amended to read 'A blank copy of Child's Statement Regarding Psychotropic Medication…' Periodic Oversight 1. Amend Rule 5.640 (f) and add new form JV-224, Report Regarding Psychotropic Medication – County Staff. The proposed rule 5.640 (g) requires a "progress review" of the psychotropic medication(s) at every status review hearing.	The committee has amended the rule to cross reference Welf. & Inst. Code §349. No response required.

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

Rule 5.640—Psychotropic Medications		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	Rule 5.640 Psychotropic Medication: Under (9) (B), providing notice to caregiver appears to be missing item (vi).	The committee has amended the rule to indicate that the caregiver should be provided a blank copy of the caregiver form, form JV-219.
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	Comments on Rule 5.640 Psychotropic Medication • Under (9) (B), providing notice to caregiver appears to be missing item (vi): A blank copy of Statement Regarding Psychotropic Medication (form JV-219) or information on how to obtain a copy of the form.	The committee has amended the rule to indicate that the caregiver should be provided a blank copy of the caregiver form, form JV-219.
State Bar of California, Executive Committee of the Family Law Section by Saul Bercovitch, Legislative Counsel San Francisco, CA	1. The proposed addition of subdivision (c)(14) to the Rule of Court allows a court to temporarily authorize the administration of psychotropic medications in the event required information is missing from the application packet. FLEXCOM supports the principle of courts having such flexibility, as it balances the child's health and welfare with the desire for the court to have a strong oversight role. However, FLEXCOM believes the rule would be improved if limited in two ways. a. The court should be allowed to temporarily authorize only those medications that are of a continuing nature. The prescribing physician is currently required to designate whether the medication is new or continuing. If the medication is continuing, the court should already have sufficient information to determine whether a	No response required. Based on concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application.

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	short-term approval is warranted. Further, taking the child off the medication, only to re-start the administration at a later point in time, could cause the child to suffer harmful physical effects. If the medication sought for authorization is new, there should be very little, if any, harm in waiting a short time to seek out the additional information required by the forms. And, existing law allows for administration of medication in emergency situations. Under this proposal, if all the required information is not included in the request for authorization, the court can temporarily grant the application for authorization for a period not to exceed 14 calendar days or deny the application, and order the department to provide the required information. FLEXCOM believes the length of time for which a medication can be temporarily authorized should be less than 14 days. A court should only be in a position to grant a temporary authorization when a plethora of information is provided in the request for authorization. Therefore, the information missing would most likely be minimally material to ruling on the merits of the application. FLEXCOM does not believe it should take two weeks to gather that information and have it presented to the court, and recommends that the length of time for which medication can be temporarily authorized be no more than 10 days. 2. The Invitation for Comment asked for specific input as to	Based on concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application. Many commentators thought a definition of caregiver

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	whether Rule of Court 5.502 governing definitions for Title V should include a definition for the term "caregiver." FLEXCOM was unable to complete an exhaustive review of Title V to determine whether a uniform definition of the term should apply for all purposes. However, we believe Rule 5.640 would be strengthened by such a definition. We propose that Rule 5.640 include the following language: "For purposes of this rule, the term "caregiver" shall be defined as a relative, non-related extended family member or foster parent." FLEXCOM feels this language strikes an appropriate balance between allowing the child to receive valuable support from the caregiver and the need to protect privacy. The individual relationship of a child is much more likely to be present with the aforementioned caregivers, as opposed to a group home provider or other facility. Further, in a group home setting, the child's information is more susceptible to inadvertent disclosure among numerous staff and other residents.	was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
	3. The proposed modifications to Rule 5.640(d) require the court to set a progress review following a hearing on the application to authorize medication. FLEXCOM supports this strengthening of the court's oversight role. However, the Rule does not explicitly authorize a court to set a progress review following the grant of an application ex parte. The vast majority of applications for medication are ruled upon ex parte. The Rule should be further modified to explicitly require trial courts to set a progress review	The committee has amended the rule to clarify that progress reviews must be set whether the application was granted exparte or at a hearing.

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	upon approving any application, regardless of whether the grant is made at a hearing. 5. FLEXCOM believes requiring a method for notification and service of the form to minors would strengthen Rule 5.640. We recommend including a directive that the social worker notify all minors 12 or older of the form and assist any interested minors in accessing the form. FLEXCOM believes imposing this requirement at age 12 is appropriate due to its consistency with other aspects of the Welfare and Institutions Code and Rules of Court that trigger involvement of the child, including development of the case plan.	The committee amended the rule to require that notice of a progress review include blank copies of *Child's Statement About Psychotropic Medication* (form JV-218), *Statement About Psychotropic Medication* (form JV-219), and *Opposition to or Statement About Application for Psychotropic Medication* (form JV-222), as appropriate, mirroring the requirements for notice of the authorization request.
Superior Court of San Diego County by Mike Roddy, Executive Officer San Diego, CA	Rule 5.640(c)(2) "talking to the court" could be misconstrued and lead to improper attempts at ex parte communications. It may be better to have the form say: "statements made at a court hearing"?	The committee has amended the rule to indicate that input from the child may be by "talking to the judge at a court hearing."
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	Rule 5.640 – Psychotropic medications Rule 5.640 (c) subsection (2) The proposed Rule 5.640 (c) subsection (2) would allow a child to provide information to the court through JV-218, JV-219, a letter, talking to the court, or through several different individuals: the social worker, probation officer, attorney of record, or Court Appointed Special Advocate. This proposal needs additional information to ensure that the youth has made an informed voluntary decision as to how the youth has chosen to provide information to the court.	No response required.

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	In order for this rule to fully and clearly conform to the law we suggest the following amendments: We recommend that Rule 5.640 (c) subsection (2) be amended to provide that when a youth has chosen to give input through the child's social worker, probation officer, or Court Appointed Special Advocate the youth's counsel must attest that he or she has explained to the youth the different options available for providing input, discussed with the youth the information the youth wants to report to the court, and the youth has chosen to relay information to the court through the designated person. Furthermore, an additional technical edit to the rule may be necessary to clarify its meaning. A plain reading of the rule reads that the child, social worker, probation officer, or Court Appointed Special Advocate could provide input through the JV-218, JV-219, talking to the court, a letter or through the social worker, probation officer, or Court Appointed Special Advocate. The rule should be re-written to state that the youth is able to provide input through the JV-218, a letter, talking to the court, a court report, or social worker, probation officer, or Court Appointed Special Advocate. Rule 5.640 (c) subsection 14 The proposed Rule 5.640 (c) subsection 14 would allow the court to temporarily grant authorization of one or several psychotropic medications despite the application lacking all required information. This proposal is not consistent with the statutory language. The statute requires: "Guidance is provided to the court on how to evaluate the request for authorization, including how to proceed if information, otherwise required to	The committee concluded that the information should be provided in the way that is easiest and most comfortable for the child. Allowing the child to provide input through the social worker does not remove the child's attorney's duties under section 317. Additionally, SB 238 was a comprehensive bill that mandates attorney training. The proposed rule was that a child, caregiver, parents and CASA could provide input through the various methods indicated in the rule. The rule requires the social worker or probation to complete mandatory forms to provide information to the court. No response required.

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Commentator	**Comment**	**Committee Response**
	be included in a request for authorization under this section, is not included in a request for authorization submitted to the court." (WIC 395.5(a)(2)(B)(iv); and WIC 739.5(a)(2)(B)(iv)). Additional instruction is necessary to comply with the statute. In order for this rule to fully and clearly conform to the law we suggest the following amendments: We recommend that Rule 5.640 (c) subsection 14 state clearly and unequivocally that when the required information is not provided the application must be denied subject to the emergency provisions in the existing rule. Absent an emergency, applications should be denied unless: the court has reviewed and considered the mandatory JV 220 form and attachments and that such forms contain all of the information required under Rule 5.640 (c)(7); and the court has reviewed and considered the optional JV 218 and JV 219 forms if the optional forms are included in the application. If an application is incomplete, the court may continue the matter for up to 14 days to obtain any missing information required by the rule. Rule 5.640 (g)(2) The proposed Rule 5.640 (g)(2) requires that the social worker or probation officer must file a completed JV-224 prior to a progress review. The rule does not mention that the child, the child's caregiver, and/or CASA may also file their own statement, using the JV-218 or JV-219, or otherwise provide input at the progress review. The statute requires "the child and his or her caregiver and court-appointed special advocate, if any, have an opportunity to provide input on the medications being prescribed." (WIC 395.5(a)(2)(B)(i); and WIC 739.5(a)(2)(B)(i)).Without this clarification, the rule may be	Based on concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application. No response required.

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Commentator	**Comment**	**Committee Response**
	interpreted to prohibit the use of the JV-218 or JV-219 form prior to a progress review. In order for this rule to fully and clearly conform to the law we suggest the following amendments: The opportunities for input should occur both before the medication is authorized and at any time after the child begins to take the medication. We suggest amending the proposed Rule 5.640 (g)(2) to add that at any time, and especially before or at the time of each progress review, "The child, caregiver, parents, and Court-Appointed Special Advocate, if any, may provide input on the medications authorized for the child."	The committee intended for the child and his or her caregiver and court-appointed special advocate (CASA), if any, to have an opportunity to provide input on the medications being prescribed, and at any progress review of the prescribed medication. The committee recommends that the council revise the rule to make the ability to provide ongoing input more clear, and to provide notice of progress reviews which will include blank copies of the proposed new *Child's Statement About Psychotropic Medication* (form JV-218) or *Statement About Psychotropic Medication* (form JV-219).

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Information About Psychotropic Medication Forms* (form JV-217-INFO)**		
Commentator	**Comment**	**Committee Response**
National Center for Youth Law Jackie Thu-Houng Wong Director of Government Relations	Instructions. The JV-217 INFO explains the purpose(s) of many of the forms but omits a description of the proposed JV-218, Child's Statement Regarding Psychotropic Medications, and JV-219, Statement Regarding Psychotropic Medication. The JV-217 INFO should be amended to include a section describing these forms and indicating that they can be used by the child, caregiver, and others (1) "to tell the court how you feel about the request for the court to order medication …" and (2) to tell the court whether the medications are helping to improve the child's symptoms.[26] Both the second page of the JV-218 and pages three through five of the JV-219 indicate that the forms are intended to be used to tell the court about the impact of the medication on the child's symptoms, health, behavior and well-being. This new section of the JV-217 also should indicate that the JV-218 and JV-219 should be filed within four court days of notice of an application, prior to any status review hearing, or at any time after the medication(s) are authorized. See proposed Rule 5.640(c)(11) and (12).	The committee has revised form JV-217-INFO to include information about the new JV-218 and JV-219 forms.
Superior Court of San Diego County by Mike Roddy, Executive Officer San Diego, CA	JV-217-INFO, general instructions, item 3: Need a space before the last sentence. JV-217-INFO, JV-220(B): There is a word missing. "what the child and caregiver report about the ? taking the medication"	The committee has revised the form to correct typographical errors.

[26] Although these forms are "optional," guidance on their use should be included.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Child's Statement About Psychotropic Medication **(form JV-218)**		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry and California Behavioral Health Directors Association by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	COMMENTS: The newly added forms will require a great deal of coordination between numerous parties to ensure that they will be filled out and filed appropriately and in a timely manner. A lack of consistency and coordination is bound to create more confusion and delays in children and adolescents getting their needed treatment. How can we ensure the level of coordination needed to provide forms to the appropriate entities in a timely manner?	SB 238 was a comprehensive bill that mandated training for caregivers, judicial officers, and juvenile court professionals. The new process and court forms should be a part of that training.
	We would further note that the lack of guidance on filling out any forms electronically may also create additional confusion and delays.	Physicians, social workers, and probation officers can all be trained that these forms are fillable and can be typed on a computer.
	COMMENTS: Form JV-218 in an ideal situation should be completed (help the youth complete) by the same person who is completing form JV-220 (A). Two very important things should be taken into account: the level of training and the rapport with the youth. If these factors are not the same, this form could create more confusion and less beneficial outcomes. Per the proposal these two forms will be completed by different individuals.	The committee concluded that the form filled out by the child should be done independently of the prescribing physician to provide a more balanced view to the court.
	We would point out that having some of these forms as "optional" will make it difficult to conduct a statewide evaluation of these new requirements when there is so much potential variation among counties as it relates to the use of the revised and optional forms.	The committee concluded that the child and caregiver should be able to provide input in whatever way is easiest for them and therefor does not want to mandate the use of the forms.
	On the JV-218, Question 6a) should have lines (the same number as in the disagree section) so the minor can state reasons why they agree with taking the medication. The form	The committee has revised the form to include lines so the child can state reasons why they agree with taking the medication.

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
	currently only provides these lines for why they disagree. We would recommend that the JV-218 should state "child or teen (or youth)" where appropriate as opposed to just "child" to be more representative of the population we work with. This may apply to other newly proposed and updated forms. COMMENTS: We would request clarification of who would be responsible for sending in those forms and how that process would be coordinated with the additional forms required by the court.	Child is defined in rule 5.502 as a person under the age of 18 years. Under rule 5.640(c)(3), local county practice and local rule of court determine the procedures for completing and filing the forms and for the provision of notice.
County of San Diego by Laura Vleugels, MD, Supervising Child and Adolescent Psychiatrist San Diego, CA	What if a child completes the JV 218 and disagrees with the plan to take medication despite having been agreeable during the appointment? How will a child indicating that they disagree or need to know more impact the approval of the JV 220? This may lead to delays in care.	The committee is aware that children often change their minds. If a child disagrees or needs to know more, they will discuss this with their attorney and the court. The committee concluded that a slight delay in care is outweighed by ensuring that the child is knowledgeable about the medication being prescribed and willingly agrees to it.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Optional JV-218: We support the addition of this form which will allow the child to submit a statement to the court about his/her feelings and effects with respect to the order for psychotropic medications. Please note there is an error on this form, if additional space is needed, the child is directed to label the additional paper, and it should be labelled "JV-218" rather than "JV-217." And why restrict the additional sheet to question #9? What if the youth wishes to explain any other items? We recommend moving this statement to the bottom of the form in case the child needs additional space to answer any of the questions on this form.	Consistent with other comments received, all the forms in this proposal would be revised to indicate in the instructions that if more space is needed for any of the items, to write the item number and additional information on the last page of the form, and, if more space is needed than the last page, to attach a sheet or sheets of paper

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	Form JV-218 In the introductory sentence, change to "This form is for you to tell the ~~court~~ judge how you feel about the ~~request for the court to order~~ medication prescribed for you. If you are helping the child to make a statement to the court, read this form to the child." Please provide more space to respond to Question 4(a) "I was told …" and Question 5(a) "I was told …" There appears to be available space on the page and more space will encourage fuller answers and account for the possibility that some youth will complete the form by hand. The form should allow the child to sign in addition to any person who helped the child fill out the form.	 The committee will amend this form to improve readability after it has been reviewed by a plain language expert. The committee has revised the form to include more space to answer these questions. Additionally, consistent with other comments received, all the forms will be revised to indicate in the instructions that if more space is needed for any of the items, to write the item number and additional information on the last page of the form, and, if more space is needed than the last page, to attach a sheet or sheets of paper. The form contains signature lines for both the child and the person assisting the child complete the form.
Keather Kehoe, MD Child and Adolescent Psychiatrist Sacramento, CA	I would also like to make comment on the JV-118 form, the Child's Statement regarding proposed psychiatric medication. The form is developmentally inappropriate for many children, especially younger children. This form could easily overwhelm a child who may already be dealing with anxiety and mood symptoms. I would suggest each person thinks about medication they may be taking for one reason or another; how would you fare with having to fill out such a form? Physicians may have full and lengthy conversations with their patients about a given medication and side effects, risks, benefits, alternatives, etc. I know I certainly have those conversations with all the patients I see, regardless of their legal status. Yet,	The committee concluded that most children can be told about the psychotropic medication and its anticipated benefits and side effects in an age appropriate manner.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
	there are many (adults included) who cannot tell you what medications they are taking, much less all the proposed benefits and side effects. Yet the legislature would request a young child to be able to provide such information?	
Hon. Michael Nash (Ret.) Judge Superior Court of Los Angeles County	I have some comments about the forms, starting with JV-218. While this form is not mandatory, its use should be encouraged. If the child is going to be fully involved and ultimately prepared to handle his/her own decisions, the court should know if the child is aware of the names of the meds and the doses. Further, if a child is approaching the age of majority, the court should know if the child will be able to continue the medication regimen, ie obtain the meds, continue a relationship with the physician. Some of this information can be included on the form.	No response required. The committee has amended the form so a child aged 17 is asked if they know how to obtain the medication and whether they are able to stay with their current doctor.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	3. Optional Forms for Input. New forms JV-218 and JV-219 may be used by the child, caregiver, and CASA as a means of providing their input on the request to authorize psychotropic medication. Support with modification. Neither the statute nor the proposed Rules provide any elaboration of what may be included as "input on medication." The proposed form delineates two areas – i.e., (1) what, if anything, the child has been told about "how the medication is supposed to help me," and (2) what, if anything, the child has been "told about potential side effects." We suggest the form be amended to indicate whether or not the child knows the names of the medication being prescribed, and whether or not the child has taken any of the prescribed	No response required. The committee has amended the form to include the two questions in this comment.

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
	medications before. It should also ask the child to report what, if any, other treatments the child is being provided. On the JV-218 Section 3 there is a box for the child to check indicating, "that I am not aware I have been prescribed medication." The Rule does not address what the court should do if the child checks this box. Similarly, the Rule does not address whether or not the authorization can be approved by the court if the child checks either of the boxes in Section 4 and 5 indicating they have not been told either how the medication is supposed to help or what the potential side effects are. We suggest that the court reject applications for which the child has checked any of these boxes. We recommend that Section 11, listing the persons who may have helped the child complete the form, be amended to include "my attorney." JV-218 refers to "potential side effects" while JV-219 asks about "possible adverse reactions." This terminology should be consistent throughout the forms. We recommend that the term 'adverse effects' be used.	The committee concluded that the judge should have discretion in granting or denying these requests, and stating in the rule when the court must deny the request does not allow for discretion and could cause unnecessary delays. If the child checks the box indicating they have not been told either how the medication is supposed to help or what the potential side effects are, the court has many tools available to ensure the child is provided with this information including talking with the child, or continuing the matter for the child's attorney to speak with the child. Item 11 is for an adult who helped the child fill out the form to complete, and does include the option of "the child's attorney". The committee has amended the forms to both read "potential side effects" as this is the more plain language options of the two phrases.
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	JV forms for Psychotropic Medication JV-218: Typo on item #9, after the box…"Attach a sheet of paper and write 'JV-217, number 9' for a title." It should state JV-218.	Consistent with other comments received, all the forms in this proposal would be revised to indicate in the instructions that if more space is needed for any of the items, to write the item number and additional information on the last page of the form, and, if more space is needed than the last page, to attach a sheet or sheets of paper.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
Orange County Social Services Agency/Children and Family Services By Maritza Partida, Policy Analyst Orange, CA	JV-218: Typo on item #9, after the box…"Attach a sheet of paper and write 'JV-217, number 9' for a title." It should state JV-218.	Consistent with other comments received, all the forms in this proposal would be revised to indicate in the instructions that if more space is needed for any of the items, to write the item number and additional information on the last page of the form, and, if more space is needed than the last page, to attach a sheet or sheets of paper.
Public Counsel, Children's Rights Project Rachel Stein, Staff Attorney	New Form JV-218 will provide another method for the child to provide input to the court The addition of JV-218 is a positive step toward ensuring that youth are able to communicate their wishes and feelings regarding taking psychotropic medication to the court. NCYL's response to the Council's Invitation to Comment notes that the Form JV-218 Section 3 contains a box for the child to check indicating, "that I am not aware I have been prescribed medication." NCYL points out that the Rule does not address what the court should do if the child checks this box, nor does it address whether or not the authorization can be approved by the court if the child checks either of the boxes in Section 4 and 5 indicating they have not been told either how the medication is supposed to help or what the potential side effects are. NCYL suggests that the court reject applications for which the child has checked any of these boxes. We disagree with this suggested approach, as it could lead to unnecessary delays in the administration of medication, even in cases where the youth does not object to taking the medication. Many youth, particularly those younger than age 15, may not be able to	No response required. No response required. The committee concluded that the judge should have discretion in granting or denying these requests, and stating in the rule when the court must deny the request does not allow for discretion and could cause unnecessary delays. If the child checks the box indicating they have not been told either how the medication is supposed to help or what the potential side

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
	recall this information for purposes of completing the form, even if the youth's psychiatrist reviewed this information with the youth. Some youth may not read the form carefully, or may not fully understand it, and what boxes they check could be somewhat random. It would not make sense to automatically deny a JV-220 application simply because a youth checked one of these boxes—but it should trigger a hearing to find out about the youth's concerns. In these situations, we propose that the court should hold a hearing to find out if the physician attempted to explain this information to the child and caregiver, and to question the child's attorney about the youth's understanding of the situation. The judge then can make a determination based on all of the evidence as to whether to grant the application.	effects are, the court has many tools available to ensure the child is provided with this information including talking with the child, or continuing the matter for the child's attorney to speak with the child.
State Bar of California, Executive Committee of the Family Law Section by Saul Bercovitch, Legislative Counsel San Francisco, CA	4. The proposal calls for the creation of form JV-218, which would allow a child the opportunity to provide comment to the court. FLEXCOM applauds the recommendation to make minors more active participants in the decisions concerning medication.	No response required.
River Oak Center for Children by Harry Wang, MD, Psychiatric Director Sacramento, CA	a. Should state "child or youth" b. 6a should have lines (the same number as in the disagree section) so the minor can state reasons why they agree with taking the medication. Otherwise the form is biased towards disagreeing with taking the medication. c. 7a should be "I am not having side effects… (skip question 8)"	Rule 5.502(5) defines child as a person under the age of 18 years. The committee has amended the form to include lines so the minor can state reasons why they agree with taking the medication. The committee concluded that these items should remain in the order in which they circulated for public comment.

***Child's Statement About Psychotropic Medication* (form JV-218)**		
Commentator	**Comment**	**Committee Response**
	d. 7b should be follow. Is having 10 boxes to check necessary?	
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	Juvenile Delinquency Form JV- 218 Section 9 of the Child's Statement Regarding Psychotropic Medication Form JV-218 asks the child "what else do you want the judge to know?". In order for this form to fully and clearly conform to the law we suggest the following amendments: We recommend adding an additional question before or after this section: "Is there any other person you would like to be notified of the decision to grant this petition for Psychotropic Medication?" We think this question is necessary because even though the caregiver is provided notice and an opportunity for input because there may be other people who have provided direct care and supervision of the youth and who will continue to provide such care in and supervision in the future who should receive notice and have the opportunity to provide input. For instance, if a youth is placed in a foster family home and is subsequently arrested and is residing in juvenile hall the youth's former foster family placement should receive notice and be given the opportunity to provide input.	This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment.

Statement About Psychotropic Medication (*form JV-219*)		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	COMMENTS: The newly added forms will require a great deal of coordination between numerous parties to ensure that they will be filled out and filed appropriately and in a timely manner. A lack of consistency and coordination is bound to create more confusion and delays in children and adolescents getting their needed treatment. How can we ensure the level of coordination needed to provide forms to the appropriate entities in a timely manner?	SB 238 was a comprehensive bill that mandated training for caregivers, judicial officers, and juvenile court professionals. The new process and court forms should be a part of that training.
	We would further note that the lack of guidance on filling out any forms electronically may also create additional confusion and delays.	Physicians, social workers, and probation officers can all be trained that these forms are fillable and can be typed on a computer.
	We want to be clear that the more cumbersome this process becomes, the more likely medically necessary care is compromised. This is a primary concern to be addressed.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220).
	With that being said, there is some information that is proposed to be provided, particularly on the JV-219, that may be of value for prescribing physicians working with a child or adolescent. Currently, the proposal does not contemplate this information to be provided to a prescribing physician.	The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal.
	COMMENTS: Please see our comments above relative to the	No response required.

Statement About Psychotropic Medication (*form JV-219*)		
Commentator	**Comment**	**Committee Response**
	newly proposed Form 219. We also note that the use of Form 219 (and the other newly proposed forms) have county workload implications that may be currently underestimated. COMMENTS: We would request clarification of who would be responsible for sending in those forms and how that process would be coordinated with the additional forms required by the court.	 Under rule 5.640(c)(3), local county practice and local rule of court determine the procedures for completing and filing the forms and for the provision of notice.
County of San Diego by Laura Vleugels, MD, Supervising Child and Adolescent Psychiatrist San Diego, CA	There is also serious concern that, while gathering feedback from various parties (JV 219 for caregiver, CASA; JV 220 (B) for Social Worker or Probation Officer) can be a source of valuable information, that information needs to be available to the prescriber during the appointment with the child for the prescriber to integrate the feedback into his/her assessment and recommendations. If this feedback is mandated to be available in advance of a medication assessment, it could lead to delays in care. Our Child and Adolescent Psychiatrist community also shares concerns about feedback from vested parties being submitted to the Court (JV 219, JV 220 (B)). The physicians note that the information requested would be helpful to their assessment process but note that these questions ideally are the first steps in a dialog between the prescriber and the informant. A physician would naturally ask a series of follow-up questions to further his/her understanding and would incorporate that new information with their existing conceptualization of the case. Information provided on forms may be helpful, but ideally those vested parties would participate in the medication assessment and follow-up appointments.	The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal. See response above.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Statement About Psychotropic Medication (*form JV-219*)**		
Commentator	**Comment**	**Committee Response**
	Specific feedback from several prescribers:	
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Optional JV-219: We recommend the following changes: Recommend clarifying in the title of the form that this is an Optional Form that may be completed by a caregiver, CASA, or other Indian Tribe. Add "I do not know" options for the questions. Add to the end (or beginning) of the form, a place where the individual can add his/her name, relationship to the child, and a signature and date.	 The committee has revised this form to clarify in the instructions that the form is for optional use by a caregiver, CASA, or Indian tribe. It will also be noted in a footer on the left bottom corner of the first page of the form. The committee has revised the form to include "I do not know" options for the questions. The committee has revised the form to include a signature line and date. The individual's name and relation to child is asked at item 2.
Hon. Michael Nash (Ret.) Judge Superior Court of Los Angeles County	Regarding the JV-219 form, its use should also be strongly encouraged. In cases where the medication is new, the form should indicate whether the caregiver knows how to obtain and refill the medication. We have seen lots of cases where administration of the medication was delayed because of lack of caregiver capacity to obtain or refill. It is also important for the court to know if the caregiver knows about future medical appointments, is capable of making those appointments, and has the ability to ensure the child gets to the medical appointments. Also, does the caregiver know what to do if the child has an adverse reaction to the medication.	No response required. The committee has amended the form to include the questions in this comment. The committee has amended the form to include the questions in this comment.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Statement About Psychotropic Medication (*form JV-219*)**		
Commentator	**Comment**	**Committee Response**
	Finally, the court should know whether the caregiver agrees with the use of the medication. JV-219 needs to identify who is administering the meds and who is responsible for monitoring the effects of the meds. It is very important for the court to have this information, especially when a child is in a group home.	 The committee has amended the form to include the questions in this comment.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	3. Optional Forms for Input. New forms JV-218 and JV-219 may be used by the child, caregiver, and CASA as a means of providing their input on the request to authorize psychotropic medication. Support with modification. Neither the statute nor the proposed Rules provide any elaboration of what may be included as "input on medication." The proposed form delineates two areas – i.e., (1) what, if anything, the child has been told about "how the medication is supposed to help me," and (2) what, if anything, the child has been "told about potential side effects." We suggest the form be amended to indicate whether or not the child knows the names of the medication being prescribed, and whether or not the child has taken any of the prescribed medications before. It should also ask the child to report what, if any, other treatments the child is being provided. JV-219 – Amend Section 3 to include two subsections (a) and (b) with (b) indicating "How long has the child been placed in your home/facility?"	No response required. The committee has revised the form to contain the questions in this comment. The committee has revised the form to include the question "How long has the child been placed in your home/facility?"
River Oak Center for Children by Harry Wang, MD, Psychiatric Director	a. This information would be welcome for the prescribing psychiatrist to review.	The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that

Statement About Psychotropic Medication (*form JV-219*)		
Commentator	**Comment**	**Committee Response**
Sacramento, CA	b. There should be a section on the minor's emotional life where comments on anxiety and depression can be made. c. 22 (benefits) should precede 21 (side effects)	information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal. The committee concluded that the narrative questions on the form will allow the person filling out the form to comment on anxiety and depression. The committee concluded that these items on the form should remain in the same order that circulated for public comment because many of the answers to the questions that precede question 21 may address benefits.
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	JV-219: Item 14, 15, & 17: These items seem to assume that the medication will affect school/learning, ability to concentrate, and participation in hobbies/activities. Not all medications will affect those areas and it would be more helpful to make a general question about school and social functioning. This could be achieved by a follow-up question to Item 5 ("How is the child's learning and academic progress?") and a follow-up question to Item 6 ("How does the child function in after school activities and hobbies?")	The committee has revised the form to first ask the question and then ask, "If so, how?" For example. "Is the medication affection school and/or learning? If so, how?"
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	Revise Juvenile Delinquency Form JV-219-INFO and renumber as JV-217-INFO The JV-217 INFO explains the purpose(s) of many of the forms but omits a description of the proposed JV-218, Child's Statement Regarding Psychotropic Medications, and JV-219, Statement Regarding Psychotropic Medication. In order for this form to fully and clearly conform to the law we	No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Statement About Psychotropic Medication (*form JV-219*)**		
Commentator	**Comment**	**Committee Response**
	suggest the following amendments: The JV-217 INFO should be amended to include a section describing these forms (JV-218 and JV-219), and should indicate that the JV-218 and JV-219 should be filed within four court days of notice of an application, prior to any status review hearing, or at any time after the medication(s) are authorized. See proposed Rule 5.640(c)(11) and (12).	The committee has revised form JV-217-INFO to include descriptions of and instructions for JV-218 and JV-219.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Application For Psychotropic Medication* (form JV-220)**		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry By Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	COMMENTS: As stated above, the addition of the newly added forms, some of which are mandatory, will require additional coordination to ensure that these are provided to the appropriate entities in a timely manner.	SB 238 was a comprehensive bill that mandated training for caregivers, judicial officers, and juvenile court professionals. The new process and court forms should be a part of that training.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Mandatory JV-220 Application for Psychotropic Medications: Q1: "Where the child lives" – Due to the implementation of the Continuum of Care reform, references to Group homes may become obsolete. Effective January 1, 2017, group homes will transition into Short Term Residential Treatment Centers (STRTCs), although the law allows current group homes to operate through Dec 31, 2018 under a county waiver. We recommend instead of the two Group Home boxes (1-11 and 12-14) to collapse this into simply "Group Home, level ___" and the worker can insert the level number. Add STRTC, also add Therapeutic Foster Care (TFC)/Intensive Treatment Foster Care (ITFC).	The committee has revised the form consistent with these comments.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	4. Amend JV-220 Application to include the type of placement in which the child resides. Support. The addition of different types of group homes in which the child is living and how long that child has been in the placement is important information for the court to have.	No response required.
Melissa Vallas, MD Alameda County Behavioral Health Care Services (ACBHCS)	I think the JV220 should include the following questions: If the requested medications are approved for a child of the	This is a comment that is likely to have varying opinions and, particularly because of the many comments regarding the additional length of the JV-220(A), would

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Application For Psychotropic Medication* (form JV-220)**		
Commentator	**Comment**	**Committee Response**
San Leandro, CA	noted age - If the answer is "NO" then having space to explain why the medication is being used. If the dose requested is within an approved range - If the answer is "NO" then having space to explain why the dose is being requested	need to circulate for public comment. The committee will discuss this comment if the rule is again circulated for public comment. The committee did add an optional question for the physician to provide other information about the prescribed medication that he or she wants the court to know (e.g. why prescribing more than one medication in a class, why prescribing outside the approved range, or why prescribing medication not approved for a child of this age)

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	While circulating this proposal to our membership for comments, we noticed a few common themes emerged. For instance, we noticed a general concern that the newly expanded JV-220A would take a great deal of time to complete and further reduce the amount of time Child and Adolescent Psychiatrists would be available to meet with patients. In some instances, this means an additional appointment time just to fill out the form. It also involves various moving parts that need to be coordinated in order to ensure timely submittal. While certainly well-intentioned, the size and scope of these proposed changes to the Rules of the Court do not seem to fully take into account the current infrastructure and dearth of Child and Adolescent psychiatrists most counties are currently facing. Our primary concerns related to the proposed amendments are the array of possible unintended consequences, such as: compromising access to medically necessary care by increasing the non- compensated work load on the part of prescribers when there is already a dearth of such prescribers in many counties throughout the state, decreasing the potential pool of physicians who could provide such care, and potential for delaying access to care and the unintended consequence of those delays. We would like to work with your committee and stakeholders to help ensure that these forms are expanded in an efficient way that strikes a balance between providing all the necessary information required under SB 238 and helping prevent against unnecessary delays in access to care for foster youth. For instance, we notice that the form is nearly a complete assessment and contains much protected health information.	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	Perhaps it is possible to incorporate at least parts of these forms into a prescribing physician's initial assessment and then those portions could be sent to the dependency court.	conducted and a request for a brief explanation if not.
	COMMENTS: – We would agree that the prescribing physician is the best person to provide the newly required information and that the JV-220A is the appropriate place for that to occur. We do remain concerned however that the scope of the expansion of the JV-220A as currently proposed will compromise the amount of time a Child and Adolescent Psychiatrist has to see and treat kids.	See response above.
	COMMENTS: The inclusion of Question 2b (re: request to modify) is a good addition to the JV-220A.	No response required.
	The intent/need of Question 8 on the JV-220A (in what capacity have you been treating the child) wasn't very clear to our respondents. Whether or not that question is necessary should be examined.	The committee has revised the form to give examples of treatment capacities to help clarify this question. (E.g. treating psychiatrist, treating pediatrician).
	The pairing of Question 12c and 13c was also a bit confusing to our respondents. It seems as if the proposed change is trying to get at "Why was this medication initially chosen as opposed to another?" If that is indeed the case, perhaps we could just use that question and reduce potential confusion/overlap.	The committee has amended the form to clarify these questions.

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	On question 13d some respondents recommended using generic names for everything to reduce confusion. It typically gives at least a general idea of the category of medication being prescribed (e.g., paroxeTINE, fluoxeTINE, duloxeTINE; olanzaPINE, clozaPINE, quetiaPINE).	Based on input at the stakeholder meeting, the committee has revised the form to read "brand/generic".
	There was also the question of how detailed of a response should be provided for Question 15 on the JV-220A? Would this be a pharmacological, receptor-level explanation of how the medication works? It was noted that all the medications are supposed to attenuate/ameliorate symptoms. It may be good to consider "What symptoms are expected to improve with medication?" as an alternative question.	The committee has revised this question consistent with this comment. It now reads, "What symptoms are expected to improve with medication?"
	There was some consensus that there should be more emphasis on Question 17 to ask for specific types of EBPs and/or promising practices that have been provided/are available. Consideration should be given to expand this section, perhaps to allow for more explanatory descriptions.	The committee, after consultation with stakeholders, recommends expanding the list of therapeutic services the prescribing physician can recommend to include more evidence based practices and promising practices including art therapy, Wraparound services, cognitive behavioral therapy (CBT), Therapeutic Behavioral Services (TBS), and American Indian/Alaska Native healing and cultural traditions.
	Additional clarity was also requested for Question 19. Does the court want a MD to fax in descriptions from the Physician's Desk Reference or patient info sheets with each JV-220A? It would be good to clarify how this information is being asked to be provided.	The committee has amended the rule to indicate that the caregiver must be provided with the medication information sheets (medication monograph) that was attached to the JV-220(A).
	Additional clarity is also requested for Question 21. If a child is in a probation facility or group home, who is the "present caregiver"? Any staff member? It would be good to have this	The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as

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Commentator	**Comment**	**Committee Response**
	clarified.	defined in California Code of Regulations, regulation 84064.
	Much of what is included in the proposed forms are essentially psychiatric assessment forms. By completing these in addition to completing whatever EMR assessment, the physician time is being doubled. Is it possible to integrate these forms into EMR systems so that they can simply be printed after the assessment, potentially saving time and money?	The Judicial Council is required to develop forms to implement this statutory scheme to inform the court. If an EMR system can be programmed to generate these forms, Cal. Rules of Ct, rule 5.504 provides authorization for electronically produced forms.
	The completion of forms by typing is not evident in the guidance provided in the draft forms.	SB 238 was a comprehensive bill that mandated training for caregivers, judicial officers, and juvenile court professionals. The new process and court forms should be a part of that training. Physicians, social workers, and probation officers can all be trained that these forms are fillable and can be typed on a computer.
	COMMENTS: There was some confusion regarding what the court is looking for with that question/requirement. We would like to clarify how "explanatory" a MD would have to be in documenting this (i.e. is this just a comment on the degree of "agreeability" or documenting the entirety of that conversation?)	The committee has revised the form, after input at the stakeholder meeting, and this question now reads, "Briefly describe the child's response".
	COMMENTS: There was unanimous agreement from respondents that the JV- 220 (A) should delete DSM-IV and only use DSM-5 with (ICD-10-CM's) alpha-numeric coding and the need for multi-axial classification be eliminated.	The committee has revised the form to delete DSM-IV and only use DSM-5 with (ICD-10-CM's) alpha-numeric coding and the need for multi-axial classification be eliminated.

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	COMMENTS: Question 18b on the JV 220A regarding labs should read "fasting blood glucose" and "fasting lipid panel". It currently reads "glucose" and "lipid panel" Also the lab result section doesn't include boxes to indicate that labs are not indicated at that time or with the medications are being prescribed. Judicial Council should consider including such checkboxes. We would also consider adding "Hgb A1c" as a lab test under this section. There was also a desire expressed to clarify how the "date of most recent test" will be defined. Does that mean when the lab was ordered? Or drawn? Also as a point of clarification, "frequency" will depend on the results in the future, so that response may vary. COMMENTS: We believe the wording change is appropriate and would again reiterate that some expansion of this section to further elaborate on the therapeutic services being recommended for the child or youth.	The committee has revised the form to remove the list of tests and replaced it with questions regarding whether all relevant laboratory tests have been completed. See response above. See response above. See response above. The committee, after consultation with stakeholders, recommends expanding the list of therapeutic services the prescribing physician can recommend to include more evidence based practices and promising practices including art therapy, Wraparound services, cognitive behavioral therapy (CBT), Therapeutic Behavioral Services (TBS), and American Indian/Alaska Native healing and cultural traditions.
County of San Diego by Laura Vleugels, MD, Supervising Child and Adolescent Psychiatrist	Consider adding examples of what would constitute an emergency for JV 220 (A) #3.	Emergency situations are defined in the rule, and the committee does not want to add additional information to this form, particularly in light of the numerous comments that the form was too long.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
San Diego, CA	Consider more clearly defining question JV 220 (A) #8. Is the question what type of treatment are you providing the child? Or what program/type of program are you seeing the child in? Or something else?	The committee has revised the form to give examples of treatment capacities to help clarify this question. (E.g. treating psychiatrist, treating pediatrician).
	What type of response is expected from JV 220 (A) question #9? A one-word answer? Or comments about daily functioning? As written, expectation ambiguous. May receive more meaningful answers with some additional direction.	The committee concluded that the question was clear as it circulated for public comment and did not revise it.
	How are JV 220 (A) questions #10 and #14 different? Can they be combined?	The committee concluded that one question asked about treatments tried and another asked about symptoms that were not alleviated by the treatment, and that they should remain separate questions.
	Consider adding a "not applicable" option for JV 220 (A) question #18 as not all patients/diagnoses/medications require labs.	The committee has revised the form to remove the list of tests and replaced it with questions regarding whether all relevant laboratory tests have been completed.
	Concern about the form moving from 3 pages to 6 pages. Child psychiatrists work to transfer care to primary care once a youth has been stabilized. Increased paperwork requirements would serve as a deterrent for primary care to accept these children. Questions on the JV 220 (A) noted to be "redundant, cumbersome, and do little to help a non-medical person (the judge) make medical decisions." Our System of Care as a whole has concerns about increasing the paperwork responsibilities for prescribers. Child and	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	Adolescent Psychiatrists are in short-supply and there is a consensus that their time would be better spent with youth, families and caregivers.	rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Mandatory JV-220A Prescribing Physician's Statement: Generally, we believe the changes on the JV-220A appear consistent with the requirements under SB 238, which specifically requires: WIC 369.5 (a)(2)(B)(ii) Information regarding the child's overall mental health assessment and treatment plan is provided to the court. (iii) Information regarding the rationale for the proposed medication, provided in the context of past and current treatment efforts, is provided to the court. This information	No response required.

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	shall include, but not be limited to, information on other pharmacological and nonpharmacological treatments that have been utilized and the child's response to those treatments, a discussion of symptoms not alleviated or ameliorated by other current or past treatment efforts, and an explanation of how the psychotropic medication being prescribed is expected to improve the child's symptoms. However, we do have some concerns that the forms are placing an undue burden on social work staff to provide much of this information [see comments on the JV-220(B) and JV-224]. We have the following comments on the form: Q8: "In what capacity have you been treating this child?" – This question is vague, instead we recommend check-boxes for possible answers, such as: mental health provider, primary care physician, etc. Q10: "Describe the child's symptoms, including duration, and the child's treatment plan." We recommend adding "if known" particularly regarding the treatment plan, which may not be known if the prescribing physician is a primary care physician and not, for example, the psychiatrist at the group home. Q11: "Describe the child's response to any current psychotropic medication." This seems vague. Is the intent to obtain the child's thoughts/feelings about taking the medication, or any physiological response to the medication? Q12: Suggest starting with a yes/no checkbox, "Have nonpharmalogical treatment alternatives to the proposed medications been tried in the last 6 months?" with options of Yes, No, or Unknown (unknown may apply if this is a new	The committee has revised the form to give examples of treatment capacities to help clarify this question. (E.g. treating psychiatrist, treating pediatrician). The committee has revised the form to include checkboxes and the answer I don't' know" to almost every item on this form. This language tracks the statute and the committee concluded it should stay as circulated for public comment. The committee has revised the form consistent with this comment.

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	treating physician to the child). If yes, then ask the physician to complete (a) and (b) but combine the question into a single "If yes describe the treatment and the child's response." And "If no, explain why not." Q13: Revise this question to follow a similar format to Q12.	
Mark D. Edelstein, MD Board Certified Child and Adolescent Psychiatrist Medical Director EMQ Families First	I agree with most of the Judicial Council's recommendations, but I am deeply troubled by the proposed expansion of the JV-220(a) form, which would double the length of the form from 3 to 6 pages and increase the number of required paragraph-length narrative responses from one (item 7) to twelve. A form that now takes me 5-10 minutes to complete would take 15-20 minutes. Such a radical expansion would unquestionably decrease access to care. Faced with the increased administrative burden, some ethical and capable child psychiatrists and pediatricians will simply stop addressing the mental health needs of foster youth. Meanwhile, prescribers who continue to see foster youth will have less time to do meet with children and families. Anyone who *wants* this outcome is misguided. Mental health disorders are at least twice as common among foster youth as in non-foster youth. Roughly 10% or more have ADHD while others struggle with depression, anxiety and reactive agitation and aggression, bipolar disorder, etc. Most people with mental health conditions do not need medication, but some absolutely do. It is outrageous to discriminate against this population by further limiting their access to medical care. I am also unconvinced that the proposed changes will provide much protection to foster youth. I hope I am wrong, but	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	doctors who fail to complete the current form fully will surely fail to complete a form that is twice as long. And doctors who now make imprudent medication recommendations, fail to order the indicated labs, provide inadequate follow-up, etc. will not change their practice.	questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not.
	The proposed changes would move the JV-220 process in the wrong direction, asking the judge to more or less offer a "second opinion." No form, no matter how long, will make a judge an expert in this field. Why not leverage existing expertise? I urge the Judicial Council to keep the JV-220(a) relatively short and simple, and, as is done in several counties now, implement a process where every JV-220(a) is reviewed by a medical expert on behalf of the court. For example, counties might have trained nurses review the more routine JV-220(a)s, reserving child psychiatric review for more complex clinical circumstances.	The committee concluded that while implementing a process where every JV-220(A) is reviewed by a medical expert on behalf of the court is a good suggestion, it is not mandated by statute and is beyond the purview of the Council's rule making authority. SB 238 was a comprehensive bill and added to the already mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d).
	<u>Addendum: Specific concerns and recommendations about the JV-220(a)</u>	
	2.a. Replace "administer" with "prescribe." The provider does not administer medications.	The committee agrees to amend the form consistent with this comment.
	2.b. The option to "modify" medication incorrectly implies that Court authorization is necessary to change a dose. To avoid confusion, I suggest deleting this or replacing it with "A request to increase the maximum dose of psychotropic medication the child is currently taking."	The committee agrees to change the type of request to "A request to start a new medication or to increase the maximum dose of a previously approved medication".

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	3. There is disagreement among prescribers about just what constitutes an "emergency situation." It would be helpful if the Judicial Council added one sentence to define it.	Emergency situation is defined in rule 5.640(g). The committee has revised this form to include a reference to the rule.
	5. With the increasing use of telemedicine, sometime evaluations will be done long-distance and it is not clear if the phrase "face-to-face clinical evaluation" applies to this. I suggest clarifying this, e.g., "This request is based on face-to-face evaluation (in person or via audiovisual communication) of the child by:"	This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment if the rule is again circulated for public comment. Each jurisdiction can determine if audiovisual communication suffices for a face-to-face clinical evaluation.
	8. This question ("In what capacity have you been treating the child?") is unclear.	The committee has revised the form to give examples of treatment capacities to help clarify this question. (E.g. treating psychiatrist, treating pediatrician).
	9, 10, 11, 12, 13 a-c, 14 and 15. It is excessive to make these individual items. They are in some cases redundant. I can assure you that many doctors will put a word or two in response or not fill these items out at all because we do not have the time, leaving the Court to decide whether that is acceptable or whether to deny necessary treatment. My recommendation is to allow the doctor to include the most relevant aspects of these items should be included by the provider in the current item 7.	The committee does not view these questions as redundant. The committee has combined several of the questions , the committee rewrote two questions (circulated as 12 and 13) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions.
	20. In 20.b., the option "the child is too young" has been removed. This was a very useful checkbox for kids under, say, 7 or 8 years old, especially because it helped compensate for the self-contradiction in20.a., which incorrectly assumes that it is "age-appropriate" to explain "the recommended medications, the anticipated benefits, the possible side effects" even to a young child.	The committee decided that even very young children can be told about recommended psychotropic medication in an age-appropriate manner. If the child is indeed too young for such an explanation, the "other" option would remain on the form and could be used for this purpose. The option to not inform the child because the child lacks the capacity to provide a response would also remain on the form.

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
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	Finally, since reliable medication information for patients is widely available on the internet, it would save trees to stop requiring doctors to accompany the JV-220(a) with that additional information.	The court cannot consult documents outside of the case record when making decisions. Therefor all the information necessary to inform the court's decision must be included in the case file.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	Prescribing Physician's Statement. The proposed Rule and Form revise the information to be provided to court by the prescribing physician. We support these changes and make several recommendations for improving the form and thereby the nature and quality of information the court has upon which to base its decision. Section 6 of the Prescribing Physician's Statement Form JV-220A provides a checklist of persons from whom the physician might obtain information about the child. We recommend adding 'Public Health Nurse' to the list. Public Health Nurses who are part of the Health Care Program for Children in Foster Care (HCPCFC) are responsible, among other things, for collecting health information and updating a foster child's health records.[27] With the passage of SB 319, these nurses now have direct access to health care information.[28] By adding a box for Public Health Nurse, the physician is reminded that this person may be a key resource for medical history information about the child as well as a source of information about past treatments and their negative or positive impacts. Prescribing physicians also may not know that a Health & Education Passport (HEP) is supposed to be kept for every	No response required. The committee has revised the form to include both public health nurses and tribes as persons from whom the physician may obtain information. This is a comment that is likely to have varying opinions and would need to circulate for public comment. The

[27] Welf. & Inst. Code §16501.3
[28] SB 319, Sections 1 & 2, Cal. Stat. Chap. 535 (2015)

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Commentator	**Comment**	**Committee Response**
	child in foster care. See, Cal. Welf. & Inst. Code §16010. The physician is expected to have some knowledge of the child's health care history. For example, see Sections 12 & 13 asking for • A description of pharmacological alternatives tried within the last six months • The child's response to the pharmacological alternatives[29] We recommend that the form be modified to include a question, "Did you receive a copy of the child's Health & Education Passport?" This question might also be added to Section 6 of the JV-220A discussed above.	committee will discuss this comment when the rule is again circulated for public comment.
	At some point on the Prescribing Physician's Statement, the court should be told whether or not medication is being prescribed off-label. This should be a factor in the court's decision to grant or reject the application.	This is a comment that is likely to have varying opinions and, particularly in light of the many comments that the physicians form was too long, would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment. The committee did add an optional question for the physician to provide other information about the prescribed medication that he or she wants the court to know (e.g. why prescribing more than one medication in a class, why prescribing outside the approved range, or why prescribing medication not approved for a child of this age).
	The form, while listing the name of the medication, does not include the type or class of medication. We recommend Section 23 in the proposed form be modified to add a column in	The committee has revised the form to include the class of the medication.

[29] Section 13 b. asks for a description of the child's response to 'pharmacological treatments' in (a). We believe it should read 'pharmacological alternatives' in (a).

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	which the class of medication is specified. It is particularly important that the court know if two medications from the same class are being prescribed, as this may substantially increase the risks to the child. The classes of drugs could be drawn from the definitional sections of the statute – Welf. & Inst. Code Section 369.5 (a) and Rule 5.640 subsection (a). Section 19 of the form refers to some "Mandatory Information Attached." Acceptable sources for this information are not indicated. If the manufacturer's FDA-approved label is the intended attachment, then the Rule should specify that. 2. Revise Prescribing Physician's Statement (Form JV-220A) to delete the box indicating the prescriber did not inform the child of the request, the recommended medications, benefits and side effects because the child is too young. Support. We agree with the committee that very young children can and should be told about these powerful medications in an age-appropriate way. In fact, very few foster children under five years of age in California are prescribed psychotropic medications. Out of approximately 55,000 children in foster care, only 101 children five and under were prescribed psychotropic medication.[30] Seventy three percent of all foster children for whom psychotropic medications are authorized are eleven years old or older.[31]	 The committee has amended the rule to indicate that the caregiver must be provided with the medication information sheets (medication monograph) that was attached to the JV-220(A). No response required. No response required.

[30] *Children Authorized For Psychotropic Medications Agency Type: Child Welfare* (April 1, 2015 to June 30, 2015) at Webster, D., Armijo, M., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Putnam-Hornstein, E., King, B., Sandoval, A., Yee, H., Mason, F., Benton, C., & Hoerl, C. (2015). *CCWIP reports*. Retrieved 12/8/2015, from University of California at Berkeley California Child Welfare Indicators Project website. URL: <http://cssr.berkeley.edu/ucb_childwelfare>
[31] Id.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	Revisions to JV-220(A): Question #8 is vague- is it asking if the doctor is a primary physician or the child's psychiatrist? We suggest clarifying the form by providing "(e.g. treating psychiatrist, treating pediatrician, etc.) Question #10 asks to describe the child's symptoms "and the child's treatment plan." I suggest removing this latter phrase, as it's duplicative of questions #17, #23-24 (those questions encompass mental health services and all psychotropic medications). Question #l2(a) asks for a list of non-pharmacological treatment alternatives that have been tried with the child in the last six months. What if the child no longer qualifies for therapy or other non-pharmacological treatment under Medi-Cal but his doctor and caregiver agree that he is still in need of medication? This occurs in a small but not insignificant number of cases, particularly where the child was in therapy for a long time and was terminated because he met his therapeutic goals, but still requires medication for ADHD. Some exception/carve-out should be made for this circumstance. Questions #12(c) and #13(c) are vague- is it asking whether no non-pharmacological alternatives have ever been tried, or just in the last 6 months? Question # 13(c) is confusing- if this is the first application for psych meds, no other pharmacological alternatives would have been tried yet. If this is not the first application for	 The committee has revised the form consistent with this comment. The committee did not consider the questions as duplicative and decided to keep question as circulated for public comment. The committee concluded that if non-pharmacological treatment alternatives were not provided because they were not covered by Medi-cal, the physician could state that when answering the question "If no, explain why not" The question indicates "in the last six months." The committee has revised this series of questions by starting with a yes/no checkbox, "Have nonpharmalogical treatment alternatives to the proposed

***Prescribing Physisian's Statement—Attachment* (form JV-220(A))**		
Commentator	**Comment**	**Committee Response**
	psychotropic meds and the doctor is seeking a change to the medication, then necessarily, alternatives would have been tried. If this is not the first application for psychotropic medication but is just a renewal of prior medication that's working, then no alternatives would have been tried because the prior medication is effective. I assume this question is trying to ensure doctors have tried alternative medications if a medication is not working or is causing significant side effects. But a more clear and efficient way to address this concern would be to ask "If the medication you are prescribing is causing side-effects that concern the child or the caregiver, and you haven't tried an alternative pharmacological, why not?"	medications been tried in the last 6 months?" with options of Yes, No, or Unknown (unknown may apply if this is a new treating physician to the child). If yes, then ask the physician to answer a single question, "If yes describe the treatment and the child's response." And "If no, explain why not."
River Oak Center for Children by Harry Wang, MD, Psychiatric Director Sacramento, CA	a. 15 would change "Describe how the medication being prescribed is expected to improve the child's symptoms" to "What symptoms are expected to improve with medication"	The committee has revised the form consistent with this comment.
	b. 16 I believe the court is requesting DSM-5 only diagnosis	The committee has revised the form and removed the option of DSM-IV.
	c. 18s delete "recent abnormal laboratory results" as lab is requested in 18b	The committee has revised the form to remove the list of tests and replaced it with questions regarding whether all relevant laboratory tests have been completed, therefor, the committee concluded that abnormal laboratory tests should remain in this question.

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))**[32]		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	Discussion: Item (c)(5) introduces the Social Worker or Probation Officer's Statement (JV 220(B) which is proposed to be mandatory.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). The responses below refer to the item number on form JV-220.
	Some of the information appears to be very simple to document and make available to the courts as part of the ongoing oversight of any authorized medications. However, unless the social worker classifications and probation officer classifications include graduate school level of training and clinical internships in the disciplines associated with mental health treatments, there is concern that some of the JV 220(B) questions would appear be outside of the expertise of the designated personnel. Additionally, with large caseloads, how likely is it that the county departments will have sufficient staffing to conduct these more intensive interviews with children and youth?	The committee concluded that the social worker or probation officer would be asking the physician these questions and reporting back to the court. The committee has also redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager.
	Recommendation: The Alliance recommends that field tests of this proposed form, and/or focus groups, be used to determine the acceptance of the form by the designated professionals, and the accuracy of the information gathered by persons not trained	See response above.

[32] The comments in this chart regarding form JV-220(B) are for *Social Worker or Probation Officer's Statement—Attachment*; they are not for the newly proposed *Prescribing Physician's Statement, Continued Request—Attachment*.

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	in specialty mental health. Further, caseload analysis of typical CWS or probation staff may indicate how this requirement could further impact workloads. The same concerns and recommendations are offered by the Alliance regarding JV 224. COMMENTS: On the JV-220(B) - The form would also require the social worker or probation officer to describe both pharmacological and non-pharmacological treatment alternatives. This expertise generally comes under the domain of a Child Psychiatrists and/or partly under the expertise of a Child Psychologist, thus may not be within the scope of the social worker or probation officer. Many of our respondents question the appropriateness of the inclusion of this provision. On the JV 220B, Question 3, there is no checkbox for the child or adolescent to provide input on the medication through their physician. We would recommend including an additional checkbox for that purpose. On the JV 220B, Question 5, there is no checkbox for the caregiver to provide input on the medication through the physician. We would recommend including an additional checkbox for that purpose.	See response above. The committee concluded that the form filled out by the child should be done independently of the prescribing physician to provide a more balanced view to the court. The committee concluded that the caregiver input should be done independently of the prescribing physician to provide a more balanced view to the court.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	• JV 220 (B) noted to be out of the scope of practice of Probation Officers/Social Workers. The Mandatory JV-220(B) Q2: If the child submits a statement, the social worker should	The committee concluded that the social worker or probation officer would be asking the physician these questions and reporting back to the court. The committee concluded that the information reported

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	not be required to complete this question. We recommend adding a check-box to allow the worker to indicate "See Child Statement JV-218"	by the child at a specific point in time could be very different than what the social worker or probation officer has observed over the course of the prior six months. The social worker or probation officer should be talking with the child about the psychotropic medication at each monthly visit, so this information should be readily available to them.
	Q3: If question 2 is on this form, why is question 3 necessary? EITHER Q2 or Q3 should be answered. Both should not be required.	Question 2 asks about what the child reports about taking the medication, and if it is a request to renew or modify, what the child reports regarding the benefits and side effects. Question 3 asks about how the child will provide input to the court and provides a number of checkboxes. The committee concluded that these were two very different questions and that both should remain on the form.
	Q4: Again, if the caregivers submits a statement, this question should not be required to be completed by the social worker.	The committee concluded that the information reported by the caregiver at a specific point in time could be very different than what the social worker or probation officer has observed over the course of the prior six months. The social worker or probation officer should be talking with the caregiver about the psychotropic medication at each monthly visit, so this information should be readily available to them.
	Q6: This seems like a "catch all" question and should be moved to the end of the form.	The committee agrees to move this question to the end of the form.
	Q7 and Q8: These are to be completed by the physician, we do not feel it's appropriate for the social worker to ALSO complete this information. Therefore, we strongly urge that	Questions 7 and 8, as circulated for comment asked about pharmacological and nonpharmacological treatment options that had been tried in the last 6

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	these two questions be DELETED from this form. These questions are repetitive and could create problems if any information conflicts with the physician statement. In addition, the social worker must rely on the prescribing physician for this information, and this form will require the social worker to seek out this information, again duplicated on the JV-220(A), resulting in a significant workload on the social worker, and potentially creating liability issues for the worker to ensure the information is correct and complete. Instead, we recommend that the social worker ATTACH information on the child's treatment plan, if available. These plans can be obtained from mental health providers/county mental health. CWDA was the sponsor of SB 238 and this was The certainly not our intent to require this information to be completed by the social worker. As California implements the Continuum of Care Reform, mental health is a required member of the child and family team is a mandated participant in the team to identify the services and supports needed to support the child/youth.	months. The committee agrees to amend form JV-220 to delete the two questions that would be duplicative of the information in the JV-220(A) and ask instead if the information provided by the physician for questions #12-13 is correct, to the best of the social worker's knowledge, and whether the social worker has any additional information to add about mental health treatment alternatives to the proposed medication or other psychotropic medication tried in the last six months. This information is essential to the court's oversight function, and the prescribing physician may not have received enough information to answer these questions. The committee has redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager. Form JV-220 does not ask for information on the child's treatment plan. Form JV-224, for use at progress review hearings, has been revised to asks the social worker or probation officer to describe other mental health treatments that are part of the child's overall treatment plan OR to attach the mental health treatment plan from treating clinician.
County of San Diego by Laura Vleugels, MD, Supervising Child and Adolescent	There is also serious concern that, while gathering feedback from various parties (JV 219 for caregiver, CASA; JV 220 (B) for Social Worker or Probation Officer) can be a source of	The committee agrees that physicians should be provided with all the information necessary to make a thorough assessment of the child. Mandating any of that

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))**[32]		
Commentator	**Comment**	**Committee Response**
Psychiatrist San Diego, CA	valuable information, that information needs to be available to the prescriber during the appointment with the child for the prescriber to integrate the feedback into his/her assessment and recommendations. If this feedback is mandated to be available in advance of a medication assessment, it could lead to delays in care. Our Child and Adolescent Psychiatrist community also shares concerns about feedback from vested parties being submitted to the Court (JV 219, JV 220 (B)). The physicians note that the information requested would be helpful to their assessment process but note that these questions ideally are the first steps in a dialog between the prescriber and the informant. A physician would naturally ask a series of follow-up questions to further his/her understanding and would incorporate that new information with their existing conceptualization of the case. Information provided on forms may be helpful, but ideally those vested parties would participate in the medication assessment and follow-up appointments.	information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal. See response above.
Hon. Michael Nash (Ret.) Judge Superior Court of Los Angeles County	JV-220(B) is another new and crucial form. The court needs to know through the social worker and the probation officer whether to their knowledge the information on the JV220(A) is accurate and complete. Specifically I am referring to information re other services, other medications , who the caregiver is that is providing information, has the child been informed and does the child understand what he/she needs to know ? The form should also indicate whether they communicated with the child and caregiver in person or by phone and the frequency	No response required. This is a comment that is likely to have varying opinions and would need to circulate for public comment. The

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	of those contacts. From my perspective, the process is deficient in that it does not require the child's attorney , GAL, or CASA if there is one to weigh in similarly to the social worker and the probation officer. Court rules have established standards for CASAs and attorneys representing children. Their duties should require them to pay particular attention to issues related to psych meds. We know that social workers and probation officers generally carry big caseloads and are generally stretched thin, factors which often impact the quantity and quality of their information. These other entities involved with the child need to also weigh in to help the court make the right decisions. They are not being asked to make medical decisions, only to inform the court about facts it needs to be aware of . It will help ensure the accuracy and completeness that the court receives. As noted above, since these children do not have a competent parent who knows them and who watches them like a hawk, it is therefore crucially important that the whole village involved with them participate in the process.	committee will discuss this comment whenf the rule is again circulated for public comment. The committee concluded that mandating the child's attorney to fill out a form had a high potential of violating attorney-client privilege. The court can ask the child's attorney his or her position on any application. Additionally, nothing in this proposal removes the duties of the child's attorney under section 317(e).
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	• JV-220(B): Item #4, second sentence should say, "If this is a request to renew…," not to "review," see item #2 for consistency. • JV-220(B): Item #8 (a), incorrectly states, "…the medication you are prescribing that have been tried…", it should say either, "…the medication the physician is prescribing that have been tried.." or "…the medication being prescribed that you know has been tried…" as stated	The committee has revised the form consistent with this comment. The committee has revised this item.

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))**[32]		
Commentator	**Comment**	**Committee Response**
	in (d).	
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	• JV-220(B): Item #4, second sentence should say, "If this is a request to renew…," not to "review," see item #2 for consistency. • JV-220(B): Item #8 (a), incorrectly states, "…the medication you are prescribing that have been tried…", it should say either, "…the medication the physician is prescribing that have been tried.." or "…the medication being prescribed that you know have been tried…" as stated in (d).	The committee has revised the form consistent with this comment. The committee has revised this item.
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	New Form JV-220(B) would be mandatory and must be attached to JV220- "Social Worker or Probation Officer's Statement-Attachment." There is overlap between the Form JV-224 and JV-220(B); specifically, questions #2 and #4 on JV-220(B) are duplicative of questions #8-13 on JV-224. Are JV-224 and JV-220(B) intended to be submitted simultaneously, or are they for different hearings? If they are intended to be submitted at same time, consider eliminating some questions to avoid duplication. JV-224 is more comprehensive than JV-220(B), so consider eliminating questions #2 and #4 on JV-220(B)	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). Form JV-224 is for use at progress review hearings, after the medication has been ordered. Form JV-220 is for use when applying for psychotropic medication order, and form JV-224 is for use at progress review hearings on the order.

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	What is the logic behind asking the same questions of the social worker/probation officer and the physician? (Questions #7-8 on N-220(B) are the same as questions #12 and #13 on JV-220(A)). This duplication likely will result in the social worker copying the information from the JV-220(A) into the JV-220(B). If the purpose of the duplication is to have the social worker provide information that the doctor does not have, a more efficient way to do this would be to include a single question on the JV- 220(B) asking the social worker if the information provided by the physician for questions # 12-13 is correct, to the best of the social worker's knowledge, and whether the social worker has any additional information to add.	The committee agrees to amend form JV-220 to delete the two questions that would be duplicative of the information in the JV-220(A) and ask instead if the information provided by the physician for questions #12-13 is correct, to the best of the social worker's knowledge, and whether the social worker has any additional information to add about mental health treatment alternatives to the proposed medication or other psychotropic medication tried in the last six months. This information is essential to the court's oversight function, and the prescribing physician may not have received enough information to answer these questions. The committee has redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager.
River Oak Center for Children by Harry Wang, MD, Psychiatric Director Sacramento, CA	a. 3 there is no checkbox for the child to provide input on the medication through their physician b. 5 there is no checkbox for the caregiver to provide input on the medication through the physician c. 8 section on "Pharmacological treatment alternatives" should be directed to physicians, not social workers or probation officers. E.g. "Describe other pharmacological	The committee concluded that the form filled out by the child should be done independently of the prescribing physician to provide a more balanced view to the court. The committee concluded that the form filled out by the child should be done independently of the prescribing physician to provide a more balanced view to the court. The committee has also redrafted the questions regarding non-pharmacological and pharmacological treatment alternatives to discuss mental health treatment

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	alternatives to the medication you are prescribing." 	options and other psychotropic medications, areas that are well within the social worker or probation officer's knowledge as the child's case manager.
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	Should a copy of Prescribing Physician's Statement—Attachment (form JV-220(A)) and Social Worker or Probation Officer's Statement—Attachment (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court? We agree with providing these copies assuming it makes clinical sense based on the youth's relationship and rapport with caregiver or tribe. If a copy of form JV-220(A) or form JV-220(B) is included with notice that an application to administer psychotropic medication is pending before the court, should they be provided to a tribe that has acknowledged the Indian child as a member of, or eligible for membership in, the tribe and to a tribe that has intervened in the juvenile court proceeding, or just to a tribe that has intervened in the juvenile court proceeding? We agree with providing the tribe copies if the tribe has intervened in the juvenile court proceeding, and if the child is at least 12 years of age and amenable to information sharing with the tribe.	No response required. The committee no longer proposes providing parents or caregivers with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). No response required. The committee no longer proposes providing the child's tribe with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
Superior Court of San Diego County by Mike Roddy, Executive Officer San Diego, CA	JV-220(B): Include probation officer, not just social worker, in items 3 and 5. There is also serious concern that, while gathering feedback	The committee has revised the form consistent with this comment. The committee agrees that physicians should be

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))**[32]		
Commentator	**Comment**	**Committee Response**
	from various parties (JV 219 for caregiver, CASA; JV 220 (B) for Social Worker or Probation Officer) can be a source of valuable information, that information needs to be available to the prescriber during the appointment with the child for the prescriber to integrate the feedback into his/her assessment and recommendations. If this feedback is mandated to be available in advance of a medication assessment, it could lead to delays in care. Our Child and Adolescent Psychiatrist community also shares concerns about feedback from vested parties being submitted to the Court (JV 219, JV 220 (B)). The physicians note that the information requested would be helpful to their assessment process but note that these questions ideally are the first steps in a dialog between the prescriber and the informant. A physician would naturally ask a series of follow-up questions to further his/her understanding and would incorporate that new information with their existing conceptualization of the case. Information provided on forms may be helpful, but ideally those vested parties would participate in the medication assessment and follow-up appointments.	provided with all the information necessary to make a thorough assessment of the child. Mandating any of that information be provided, however, is not addressed in SB 238 and therefor out of the scope of this proposal. See response above.
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	Juvenile Delinquency Form JV-220(B) Section 3 Section 3 of this form asks the social worker/probation officer how the child will provide input to the court. The checkboxes provided do not include a checkbox for probation officer. In order for this form to fully and clearly conform to the law we suggest the following amendments: We recommend adding a checkbox to include probation officer.	The committee has form JV-220 to include probation

***Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B))[32]**		
Commentator	**Comment**	**Committee Response**
	Rule 5.640(c) states that a child may provide information to the court through the probation officer. Therefore, it would be an oversight not to include them in this section. Section 4 Section 4 of this form asks the social worker/probation officer what the caregiver reports regarding the child taking the medication. In order for this form to fully and clearly conform to the law we suggest the following amendments: We recommend adding additional questions after this section: 5.) "Have you attempted to solicit input from prior caregivers identified in the case plan as a placement where the child may return? What is his or her relationship to the youth? What does he or she report regarding the child taking the medication? 6.) Who else have you interviewed in order to complete this form? What is his or her relationship to the youth? What does he or she report regarding the child taking the medication? It is important that prior caregivers, particularly those who provided primary care preceding a group or institutional placement or those that have a permanent connection to the youth, provide information regarding the child. These additional questions are necessary to ensure that the court has as much relevant information about the child as possible before making the decision to grant or deny the application.	officer. This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment whenf the rule is again circulated for public comment.

***Proof of Notice: Application For Psychotropic Medication* (form JV-221)**		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association By Todd G. Friedland, President Newport Beach, CA	• JV-221: Item #1(a), following with box containing the statement "By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in	The committee has revised the form consistent with this comment.

***Proof of Notice: Application For Psychotropic Medication* (form JV-221)**		
Commentator	**Comment**	**Committee Response**
	the United States mail, with first-class postage prepaid, to the last known address". Consideration should be given to having the expressly identified forms including not only JV-217-INFO and JV-222 but, also, JV-220, JV-220 (A), and JV-220(B), given those forms were also provided. Alternatively, the statement could be revised as the statement in items #5, and #6: "By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address," since the information of what documents were included/provided are listed in the box preceding the item #. •	
Orange County Social Services Agency/Children and Family Services By Maritza Partida, Policy Analyst Orange, CA	• JV-221: Item #1(a), following with box with the statement "By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address," should this statement list include JV-220, JV-220 (A), and JV-220(B) as well, given those forms were also provided? Or the statement could be revised as the statement in items #5, and #6: "By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address," since the information of what documents were included/provided are listed in the box proceeding the item #. Item #7 presents in the same fashion as item #1 referenced in this bullet.	The committee has revised the form consistent with this comment.
Superior Court of San Diego County By Mike Roddy, Executive Officer San Diego, CA	JV-221, top line: should now be JV-217-INFO JV-221: This form needs a complete overhaul so it is consistent throughout: use full form names or just numbers;	The committee has revised the form consistent with this comment. The committee will revise this form to improve readability after it has been reviewed by a plain

***Proof of Notice: Application For Psychotropic Medication* (form JV-221)**		
Commentator	**Comment**	**Committee Response**
	semicolons or commas; "provided with" or just "provided", etc. The old form provided for notice by telephone that an application was pending and then listed the two documents that had to be served by mail. Now many more documents need to be provided, so the list of documents in the mail service sections is incomplete and irrelevant. Also, there is no place in the caregiver section for the date notified. Finally, why are attorneys being served at the "last known" address?	language expert. This form has been copyedited and staff attempted to make all corrections. The committee apologizes if the form contains any inconsistencies.

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Opposition to or Statement About Application For Psychotropic Medication* (form JV-222)**		
Commentator	**Comment**	**Committee Response**
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Optional JV-222: We support the changes to allow individuals to oppose or provide other comments regarding the application for psychotropic medication. We recommend, to be consistent with the intent of the form, that the first paragraph of the form which provides background/information for those completing the form, to include a statement that this form can be completed if the individual does not agree, or if the individual wishes to submit a statement not in opposition, regarding medications.	The committee has revised this form consistent with this comment.
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	• Form JV-222 We very strongly agree and appreciate the change in title to "Opposition to or Statement About…" There are many occasions where the child's attorney has additional information for the court to consider, including the child's statement about the medication, but is not necessarily opposed to the medication. Please provide more space to answer Questions 3 and 4 so that attachments will not always be necessary.	No response required. The committee has revised the form consistent with this comment.
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	• JV-222: The forms introductory paragraph is lacking a statement to instruct the respondent that the form may also be completed/used "to provide input to the court," even if not in opposition of the recommendation for psychotropic medication. It is not until the back of the page that it mentions the other possible use of the form. • JV-222: Item #5 refers to an "Attachment 5". In order to clarify what "Attachment 5" is or shall be for the	The committee has revised the form consistent with this comment. The committee has revised the form consistent with this comment.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Opposition to or Statement About Application For Psychotropic Medication* (form JV-222)**		
Commentator	**Comment**	**Committee Response**
	anticipated users of the form (including non-lawyers), please consider making this the reference: "included on an attachment on which the title 'Attachment 5' shall be written".	
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	• JV-222: The forms introductory paragraph is lacking a statement to instruct the respondent that the form may also be completed/used "to provide input to the court," even if not in opposition of the recommendation for psychotropic medication. It is not until the back of the page that it mentions the other possible use of the form. • JV-222: Item #5 speaks of an "Attachment 5," what or where is the attachment being referenced?	The committee has revised the form consistent with this comment. The committee has revised the form consistent with this comment.

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Order Regarding Application for Psychotropic Medication* (form JV-223)**		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry By Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	COMMENTS: JV 223 is a new form and has workload implication for county child welfare departments.	JV-223 is an existing form and it is used by the court to make orders regarding psychotropic medication.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	The Mandatory JV-223 Order Regarding Application for Psychotropic Medication: With respect to Question 3 we have questions/concerns. First, it is not clear what happens after 14 days if the application isn't re-submitted? And, there may be there may be circumstances where additional time is needed, beyond the 14 calendar day, to secure the information. The sudden starting, and stopping, of medication could be harmful to the child. We recommend that the Rule permit the Department to notify the Court if additional time is needed beyond 14 calendar days, the reason, and expected date for completion, and the court should automatically grant such exceptions unless rationale is not complete, is not adequate or is inappropriate.	Based on this comment and concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application.
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	Juvenile Delinquency Form JV-223 Finding # 3(c) should be deleted. In order for this form to fully and clearly conform to the law we suggest the following amendments: As stated above, we propose that applications should not be temporarily granted absent an emergency situation.	Based on concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
California Academy of Child & Adolescent Psychiatry by Robert P. Holloway, MD, President, Cal-ACAP and Kristen Barlow, CBHDA Executive Director	COMMENTS: As has been noted, the JV-224 is a new form that has workload implications for county child welfare departments.	Completion of this form is necessary for the court to provide its newly mandated oversight of orders for psychotropic medication.
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	Additional Comments: • Procedure When Request is Missing Information The CDSS has significant concerns regarding the proposed amendment to further amend rule 5640(c) to allow for a temporary order granting the application if all the required information is not included in the request for authorization and to revise Order Regarding Application for Psychotropic Medication (form JV-223) to include an order that the application is temporarily granted and that the department is ordered to resubmit the application with the missing information. Existing law allows for the immediate medical treatment of children in foster care prior to court authorization in emergency situations. Due to the significant impact these medications may have to the overall health and well-being of the youth, it does not appear to be in their best interest to begin a medication prior to receipt of a complete application package. The missing information may cause the court to make a different finding regarding the authorization thereby necessitating the discontinuance of the psychotropic medication for the child. The CDSS recommends the proposed amendments require a complete application be received within a period not to exceed seven days, prior to approval of the application.	Based on this comment and concerns from other commentators, the committee has removed the option to set temporary hearings from the rule. The committee has amended the rule to mandate that if the application is missing information, the court must order the applicant to provide the missing information and set a hearing on the application.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	JV 224 noted to be redundant given that JV 220's are required every 6 months.	The committee concluded that form JV-224 would be submitted for any progress reviews on medication. This will usually not be at the same time as the physician submits a form JV-220(A) or form JV-220(B) with a request to reauthorize or change medication. The questions on the JV-224 are necessary to ensure that the court can meet the mandates in the newly enacted code sections that the periodic oversight include the caregiver's and child's observations regarding the effectiveness of the medication and its side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.
	Changes noted to do little to improve the quality of care for our patients and noted to likely act as a barrier for physicians to care for foster youth.	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?". The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. To address the concerns that form JV-220(A) is too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and created a

***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
		new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 4 pages. Additionally, the committee rewrote two questions (items 10 and 11) that, as circulated for comment, called for six narrative answers to now ask two yes or no questions, and two narrative questions. The committee also deleted the item regarding laboratory tests that, as circulated for public comment, took up approximately 1/3 of a page, and replaced it with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not.
Hon. Michael Nash (Ret.) Judge Superior Court of Los Angeles County	The Jv-224 is an outstanding addition to the process. It should contain information about the nature of the communication between the child and caregiver and the social worker or probation officer. How many times and how have they communicated since the last hearing? Has any relevant information been received from any other sources?	No response required. This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment.
National Center for Youth Law by Jackie Thu-Houng Wong Director of Government Relations	Revisions to Form JV-224. Section 8 of the proposed new form JV-224 asks the child welfare services caseworker or probation officer to report what the caregiver and child say about "the effectiveness of the medication." However, the JV-220A requires that the physician "describe how the medication being prescribed is expected to improve the child's symptoms." The JV-219 contains questions about the child's behavior at home and at school, the child's interaction with peers, the	The committee has revised form JV-224 to include the question, "How have the child's behaviors and/or symptoms changed since the medication was begun?"

***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
	child's sleep patterns, the medications impact on the child's learning, energy levels, and ability to concentrate. We suggest that in place of reporting generally about the "effectiveness of the medication," that the caregiver and/or child be asked "How have the child's behaviors and/or symptoms changed since the medication was begun (or changed)?"	
	include also the specific areas addressed in the JV-219.	This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment.
	Section 16. **Relevant laboratory tests**. Changing the reporting of lab tests from optional to mandatory on the form is a welcomed improvement. It reminds physicians of the importance of such follow up. See, e.g., California Drug Utilization Review Board, *Educational Bulletin: Improving the Quality of Care: Antipsychotic Use in Children and Adolescents (*Rev. August 2015)(Reporting that more than six in ten children and adolescents receiving antipsychotic medications paid for by Medi-Cal did not receive metabolic monitoring set forth in professional standards).[33]	No response required.
	We suggest amending this section to indicate whether any of the lab results were abnormal and what, if any, follow-up was completed.	Question 15 regarding relevant medical history asks for any recent abnormal laboratory test results.

[33] Available at http://files.medi-cal.ca.gov/pubsdoco/dur/articles/dured_23511.01.pdf

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	Use of new form JV-224 (Report Regarding Psychotropic Medication-County Staff) is mandatory for any psychotropic medication progress review hearing and each status review hearing. We have the same question as above- are JV-224 and JV-220(B) intended to be submitted simultaneously? If so, there is overlap between JV-224 and JV-220(B); questions #2 and #4 on JV-220(B) are duplicative of questions #8-13 on JV-224. JV-224 is more comprehensive than JV-220(B), so consider eliminating questions #2 and #4 on JV-220(B) Why does the address of the caregiver need to be on the form? Pursuant to WIC section 308(a) and certain local court rules (e.g., Cal. San Diego Cty. Super. Ct. Div. VI, R. 6.1.17 (2015)), this is confidential information that shall not be released to parties other than minor's attorney and DCFS prior to dispositional hearing, at which time it shall only be disclosed to parent and other parties after a showing of good cause. We suggest confirming this form will not be served on parent/guardian or tribe of Indian child, unless the requisite findings have been made.	The committee circulated a proposed form, *Social Worker and Probation Officer's Attachment* (form JV-220(B)), that would have been submitted with the JV-220. To address several commentators concerns that requiring additional forms may result in delay if those forms are not completed, the committee no longer proposes this additional form. The committee has moved necessary questions from that proposed form into *Application for Psychotropic Medication* (form JV-220). Form JV-224 is for use at progress review hearings, after the medication has been ordered. The committee has removed the items asking for the caregiver's name and address.
Superior Court of San Diego County by Mike Roddy, Executive Officer San Diego, CA	JV-224, first paragraph: <u>for</u> any hearing (not at); scheduled progress <u>reviews</u> (not reports)	The committee has revised the form consistent with this comments.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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***Report Regarding Psychotropic Medication—County Staff* (form JV-224)**		
Commentator	**Comment**	**Committee Response**
Youth Law Center by Cat McCulloch, Legal Fellow San Francisco, CA	REQUEST FOR SPECIFIC COMMENTS: Indian Child's Tribe. Notice to the tribe should not be conditioned upon the tribe's intervention in the juvenile court proceeding. We agree with the advisory committee comment to Rule 5.481, which states: "As a matter of policy and best practice, culturally appropriate placements and services provide psychological benefit for the Indian child and family. By engaging the Indian child's tribe, tribal members, Indian Health Services, or other agencies and organizations providing services to Native Americans, additional resources and culturally appropriate services are often identified to assist in case planning." The Rule does not specify who within the tribe should receive copies of the Application and other documents. We recommend that the Rule follow Welf. & Inst. Code §224.2 (a)(2) – "Notice to the tribe shall be to the tribal chairperson." Notice. A copy of Prescribing Physician's Statement—Attachment (form JV-220(A)) and Social Worker or Probation Officer's Statement—Attachment (form JV-220(B)) should be included with notice that an application to administer psychotropic medication is pending before the court. Providing the JV-220 to the parties who receive notice, will enable those parties to confirm or deny claims made in the JV-220. It may also provide useful insight for parties responsible for caring for the youth.	The committee no longer proposes providing tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). The committee has amended the rule to indicate that notice to the tribe shall be to the tribal chairperson or designee, as in Welf. & Inst. Code §224.2 (a)(2).

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Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Yes. the proposal does address the stated goals as outlined in the introduction.	No response required.
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	Comment: The CDSS and DHCS agree that the proposed address the stated purpose and meets the intent of SB 238	No response required.
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	These new procedures will hopefully reduce or eliminate any overusage of psychotropic medications on youth in foster care by increasing the amount of information provided to the juvenile court judge when deciding whether to authorize psychotropic medications. Particularly promising, other interested people including the caregiver, and most importantly the child, will now have the opportunity to provide input directly to the judge. The current system does not give them a direct voice, and is often too fragmented so that physicians and judges and lawyers do not have the full information needed to make such an important decision. Requiring more complete information to be provided to the juvenile court judge will allow better decision making and outcomes for youth. While the new rules and requirements may be perceived as creating additional hurdles to getting medication to children whose suffering could be alleviated by an appropriate medication, protecting the health and due process rights of the child affected should never be viewed as too burdensome. The new rules and requirements strike the right balance.	No response required. No response required.

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Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association By Todd G. Friedland, President Newport Beach, CA	Yes	No response required.
Orange County Social Services Agency/Children and Family Services By Maritza Partida, Policy Analyst Orange, CA	Yes	No response required.
Public Counsel, Children's Rights Project By Rachel Stein, Staff Attorney	Yes, with the caveats discussed in this letter.	No response required.
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	From the Invitation to Comment bulletin, "SB 238 is a comprehensive bill that seeks to address the issues related to the administration of psychotropic drugs in the foster care system by requiring additional training, oversight, and data collection by caregivers, courts, counties, and social workers." We agree that increased oversight of psychotropic medication use in foster youth is important. We appreciate how this proposal aims to increase the involvement of social workers, probation officers, caregivers, and tribes in the decision-making process around the treatment plan. While the increased complexity of the proposed process will likely decrease the risk of youth receiving inappropriate medication treatment, we have grave concerns that those youth who benefit from psychotropic medication intervention will be unable or delayed in receiving the treatment they need.	No response required. No response required. No response required.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Should a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Concerns. The Judicial Council may desire to seek additional inputs from experts who manage mental health and substance use treatment records for children and parents of children under the jurisdiction of county departments. As modified currently, the JV 220 (A) would be more widely distributed. This may not be in the best interest of all children, given the many unknowns of family responses to reported issues contained within the JV 220(A). In some circumstances, the Prescribing Physician may include information regarding the medical history of parents, step parents and/or caregivers, and how that may relate to the proposed treatment plan for the child. With a wide distribution of interested parties in the authorization process, there may be multiple opportunities for these documents to be viewed and distributed by persons not authorized to do so. There may be incidences where parents have not, and do not want to share with other community members, their own previous mental health or substance use disorder treatment involvements. These same concerns may exist with foster youth, who would appreciate greater control over the distribution of their health records.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	Comment: The proposed amendment to Rules 5.640(c) requires that parents, caregivers, court appointed special advocates (CASA) and the Indian child's tribe be served with a completed copy of the Prescribing Physician's Statement-Attachment (FORM JV-220(A). While it is beneficial to provide these parties with sufficient information to allow them to participate and respond to the court authorization process for the administration of psychotropic medications to the child, the CDSS and DHCS are concerned that there may be situations in which the release of this information is not prudent. The JV-	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Should a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court?		
Commentator	**Comment**	**Committee Response**
	220(A) requests that the treating physician document significant details about the child's complete medical history, background and treatment. The medical privacy laws that apply to entities like DHCS strongly discourage the broad sharing of sensitive data contemplated in the proposal. For example, except in very specific circumstances, the Health Insurance Portability and Accountability Act requires that a covered entity such as a doctor or insurer share only the minimum necessary medical information with an outside entity to accomplish a specific, authorized purpose (45 Code of Federal Regulations (CFR) section 164.502(b)). Caregivers, CASAs, biological parents, and Indian tribes will have varying degrees of responsibility for a child depending on the particular facts of each case, and it should be an inappropriate intrusion on the child's privacy for the information to be automatically shared, especially if one or more of the entities has little involvement. For example, an Indian tribe that has not intervened in a child's case may not have a conceivable need or use for the information contained within the JV-220 form. Additionally, special rules apply to medical information if it was obtained from a federally assisted drug or alcohol treatment program; in these instances, federal law may forbid an individual or entity from sharing such information without consent or a specific type of court order even if a Rule of Court requires it (42 CFR Part 2). Finally, there does not appear to be a benefit to automatic sharing that outweighs the child's interest in privacy. The information may be shared with any of the listed individuals at the request of the	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Should a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court?		
Commentator	**Comment**	**Committee Response**
	child or with his or her consent. It is not necessary to require the information to be shared in every instance in order to ensure that all appropriate parties receive as much information as they need to fulfill their responsibilities toward the child. At a minimum, any proposed amendments to the current authorization processes should allow an opportunity for the child to object to the release of these medical details to the aforementioned parties. Absent this opportunity, the parties could learn information about the child's medical status that said child does not wish to be disclosed. For example, a biological parent who may have had little contact or interaction with the child for an extended period of time, may be provided with sensitive information regarding such as pregnancy or substance use. The CDSS and DHCS recommends that the proposed amendments provide a process by which the level of medical history provided to the parties be limited to only that which is relevant to the recommendation for the psychotropic medication be considered and which allow for the child's objection to the release of specific information.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	Yes, So long as this does not violate other laws relating to the sharing of health-related information, we believe it would be helpful.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	No. Including a copy of the Prescribing Physician's Statement to the parents is contrary to confidentiality laws protecting a foster	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Should a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court?		
Commentator	**Comment**	**Committee Response**
	child's mental health information. Civil Code §56.106, Health & Safety Code §123116, and Welfare & Inst. Code §5328.03 prevent psychotherapists, including psychiatrists as defined by Evidence Code §1010, from releasing a foster child's mental health information to a parent from whom the child has been removed, unless the court has found that the release would not be detrimental to the child. Even looking beyond these code sections, EBCLO can find no statutory authority for this proposed violation of patient privacy. Although their parents' actions or inactions were the reason for their lives to be enmeshed in the foster care system, many foster children nonetheless blame themselves. If they have fear, anxiety, anger, sadness or other strong emotions concerning their parents or about returning home, they may not want their parents to know. By requiring that parents receive a copy of the physician's statement, form JV-220(a), the proposed changes in Rule 5.640(c)(9)(A)(iii) and (iv) would result in some children not communicating with their doctors about their emotional difficulties out of fear that their parents would learn many details of what should be a private patient and doctor conversation. Thus, these children would not receive appropriate treatment and would continue to suffer the effects of mental illness.	
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	Providing JV-220 (A) and JV-220 (B) to a parent/legal guardian may be in conflict with Senate Bill 1407 (Leno, 2012), which added Civil Code § 56.106, Health and Safety Code § 123116, and Welfare and Institutions Code § 5328.03. To protect a child's mental health history a psychotherapist, as defined by Evidence Code § 1010, who knows that a child has	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Should a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)) and *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) be included with notice that an application to administer psychotropic medication is pending before the court?		
Commentator	**Comment**	**Committee Response**
	been removed from the physical custody of his or her parent/legal guardian in dependency proceedings, is prohibited from releasing or disclosing the information in the mental health records of that child (patient) to the child's parent/legal guardian.	
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	Has the Judicial Council taken into consideration the implications of providing JV-220 (A) and JV-220 (B) to a parent/legal guardian with regards to Senate Bill 1407 (Leno, 2012), which added Civil Code § 56.106, Health and Safety Code § 123116, and Welfare and Institutions Code § 5328.03? The added laws are intended to protect the child's mental health information by prohibiting a psychotherapist, as defined by Evidence Code § 1010, who knows that a child has been removed from the physical custody of his or her parent/legal guardian in dependency proceedings, from releasing or disclosing the information in the mental health records of that child (patient) to the child's parent/legal guardian.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	No, for the reasons discussed in section I—providing the confidential mental health information contained in the forms to a parent/legal guardian or tribe of an Indian child may violate applicable laws.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	We agree with providing these copies assuming it makes clinical sense based on the youth's relationship and rapport with caregiver or tribe.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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If a copy of form JV-220(A) or form JV-220(B) is included with notice that an application to administer psychotropic medication is pending before the court, should they be provided to a tribe that has acknowledged the Indian child as a member of, or eligible for membership in, the tribe and to a tribe that has intervened in the juvenile court proceeding, or just to a tribe that has intervened in the juvenile court proceeding?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	The California Alliance defers to experts and representatives of tribal health and child welfare programs.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	See comment above.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	Yes, as long as the sharing of such information does not violate other laws.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
Orange County Bar Association By Todd G. Friedland, President Newport Beach, CA	If provided to a parent then, it can be provided to a tribe.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	If the decision is made to provide the forms to the parents, there does not appear to be a reason why the forms should not also be submitted to the child's confirmed tribe whether the tribe.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	No, for the reasons discussed in section I—providing the confidential mental health information contained in the forms to tribe of an Indian child may violate applicable laws.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

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Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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If a copy of form JV-220(A) or form JV-220(B) is included with notice that an application to administer psychotropic medication is pending before the court, should they be provided to a tribe that has acknowledged the Indian child as a member of, or eligible for membership in, the tribe and to a tribe that has intervened in the juvenile court proceeding, or just to a tribe that has intervened in the juvenile court proceeding?		
Commentator	**Comment**	**Committee Response**
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	We agree with providing the tribe copies if the tribe has intervened in the juvenile court proceeding, and if the child is at least 12 years of age and amenable to information sharing with the tribe.	The committee no longer proposes providing parents, caregivers, or tribes with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)).

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Should "caregiver" be defined rule 5.502, and if so, how?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Yes. Given the many options that now present themselves to county departments, along with complex levels of parental participation and authority, it would likely benefit the courts to have a clear understanding of the range of caregivers that may be involved with children/youth who have been authorized by the court to have a psychotropic medication included in their treatment plan. The definition of caregiver should include all placement options currently used in state statute and regulation, and to be used within the next year as part of the AB 403 reforms, by the county placement agencies.	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	Comment: The CDSS and DHCS believe "caregiver" should be defined as the individual or facility with whom the child is currently placed.	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	We do not feel it is necessary for this purpose.	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	Yes. Since "caregivers" are entitled to legal notice of highly confidential and sensitive information, it would be appropriate to define a "caregiver" as well as specify that this is the "current" caregiver. A similar definition exists in the notice	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.

Should "caregiver" be defined rule 5.502, and if so, how?		
Commentator	**Comment**	**Committee Response**
	provisions for post-permanency review hearings: "The current caregiver of the child, including foster parents, relative caregivers, preadoptive parents, nonrelative extended family members, community care facility, or foster family agency having physical custody of the child …" (Welfare & Institutions Code Section 295(a)(6)). However, given the sensitive nature of the notice, it would be helpful to specify and limit who at a group home or community care facility is entitled to such notice.	
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	Not Necessary.	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
Orange County Social Services Agency/Children and Family Services By Maritza Partida, Policy Analyst Orange, CA	Not Necessary	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	We agree with the recommendations that NCYL made in its response to the Invitation to Comment, which states that "[t]he list of 'caregivers' should include at least the child 's foster parent, relative caregiver, pre-adoptive parent, and nonrelative extended family member. The Rule also should include 'resource family' as a 'caregiver.'" NYCL further suggested that for children and youth placed in congregate care facilities,	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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Should "caregiver" be defined rule 5.502, and if so, how?		
Commentator	**Comment**	**Committee Response**
	the Council may want to investigate further to determine who at the facility should be served with notice.	
San Francisco Department of Public Health, Behavioral Health Services by Karen Finch, MD, Medical Director of Foster Care Mental Health Program	Yes, we agree that "caregiver" should be defined. We agree with the definition of "caregiver" referring to an individual who on a day-to-day basis fulfills the youth's physical and psychological needs. We also recommend consulting with the youth regarding their wishes around who provides this level of input since caregiver / youth relationships can vary widely in terms of trust and rapport.	Many commentators thought a definition of caregiver was not necessary. The committee has amended the rule to indicate that if a child is in a group home, a copy of the order must be provided to the group home administrator or designee as defined in California Code of Regulations, regulation 84064.

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

Which is the best method for providing additional information when there is not enough space on the form? Should the forms request that an additional piece of paper with a title be attached as on proposed *Statement Regarding Psychotropic Medication* (form JV-219), should the forms indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper as on proposed *Report Regarding Psychotropic Medication*—County Staff (form JV-224), or is there a better method that is both user-friendly and will limit the number of attachments?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Needs further review. This area needs further review and discussion by the Judicial Council advisory panel. The "additional information" in terms of content/years in treatment will certainly vary from child to child, with some youth having many years of treatment records and educational records available for possible inclusion. This area could overwhelm both prescribers and court officers. It will take some clinical flexibility and expertise to include sufficient/critical information, while allowing other pieces of information to remain outside of the application process.	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	The CDSS and DHCS agree with the methods proposed above for providing additional information beyond the space of the form.	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	We recommend additional attachments.	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	As commented below, providing additional space for answers in some of the forms will likely reduce the number of attachments needed. Separate pages for additional information on each question	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.

Which is the best method for providing additional information when there is not enough space on the form? Should the forms request that an additional piece of paper with a title be attached as on proposed *Statement Regarding Psychotropic Medication* (form JV-219), should the forms indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper as on proposed *Report Regarding Psychotropic Medication*—County Staff (form JV-224), or is there a better method that is both user-friendly and will limit the number of attachments?		
Commentator	**Comment**	**Committee Response**
	should not be required. Instead, respondents should be encouraged to use an attachment page for any and all information they would like to provide, using item numbers to identify each section.	
Orange County Bar Association By Todd G. Friedland, President Newport Beach, CA	First proposed method/solution is for the document to be formatted to grow/expand based on the applicant's/respondent's need, when the documented is completed electronically. If this is not an option, then the latter of the two choices is preferred.	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst Orange, CA	First proposed method/solution is for the document to be formatted to grow/expand based on the applicant's/respondent's need, when completed electronically. If this is not an option, then the latter of the two choices is preferred: "indicate [on the form] the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper as on proposed Report Regarding Psychotropic Medication—County Staff (form JV-224)."	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	The proposed method makes sense; the forms should indicate that if extra space is needed, write the item number and additional information on the last page and if necessary attach extra sheets.	The committee has revised the forms to indicate in the instructions that if extra space is needed, for any of the items, write the item number and additional information on the last page of the form and if more space is needed than the last page, attach a sheet or sheets of paper.

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

Should proposed *Statement Regarding Psychotropic Medication* (form JV-219) include, after each question, a check box and opportunity for the person filling out the form to indicate "I do not know"?		
Commentator	**Comment**	**Committee Response**
California Alliance of Child and Family Services by Caroll Schroeder, MS Executive Director and Dave Neilsen, MSW Senior Policy Advocate	Yes. The inclusion of "I do not know" may be helpful in assisting placement workers and the courts in identifying youth that need additional supports and collateral information gathered. It would allow the caregiver or parent an easy option in terms of a response, and relieve them of the pressure of having to respond to each question while being uncertain of the "right" answer.	The committee has revised form JV-219 and included an "I don't know" option for almost every question.
California Department of Social Services by Lori Fuller, Bureau Chief for Gregory Rose, Deputy Director, Child and Family Services Division Sacramento, CA	Comment: As the JV-129 form is intended to be a mechanism to provide the court with information, the CDSS and DHCS do not believe it should include after each question a check box for the person filling out the form to indicate "I do not know".	The committee has revised form JV-219 and included an "I don't know" option for almost every question.
County Welfare Directors Association of California (CWDA) by Diana Boyer, Senior Policy Analyst Sacramento, CA	Yes, we support the inclusion of "I do not know"	The committee has revised form JV-219 and included an "I don't know" option for almost every question.
East Bay Children's Law Offices By Roger Chan, Executive Director Oakland, CA	No. An "I do not know" checkbox will encourage less thoughtful responses.	Almost all commentators supported the inclusion of an "I don't know" box on the form. The committee has revised form JV-219 and included an "I don't know" option for almost every question.
Orange County Bar Association by Todd G. Friedland, President Newport Beach, CA	Yes.	The committee has revised form JV-219 and included an "I don't know" option for almost every question.
Orange County Social Services Agency/Children and Family Services by Maritza Partida, Policy Analyst	Yes	The committee has revised form JV-219 and included an "I don't know" option for almost every question.

W16-06

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; approve forms JV-218, JV-219; adopt forms JV-220(B), JV-224; revise forms JV-220, JV- 220(A), JV-221, JV-223; revise form JV-219-INFO and renumber as JV-217-INFO

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

Should proposed *Statement Regarding Psychotropic Medication* (form JV-219) include, after each question, a check box and opportunity for the person filling out the form to indicate "I do not know"?		
Commentator	**Comment**	**Committee Response**
Orange, CA		
Public Counsel, Children's Rights Project by Rachel Stein, Staff Attorney	Yes	The committee has revised form JV-219 and included an "I don't know" option for almost every question.

[i] http://www.aacap.org/aacap/Resources_for_Primary_Care/Workforce_Issues.aspx

[ii] http://www.bmj.com/content/348/bmj.g3596

[iii] http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm143565.htm

[iv] http://www.jaacap.com/article/S0890-8567%2810%2900082-1/pdf

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Sealing of Records: Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600

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): 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: December 10, 2014
Project description from annual agenda: Provide subject matter expertise to the council by making recommendations for rules and forms required by recent legislative changes as a result of SB 1038 (Leno) Juveniles: dismissal of petition (Ch. 249). Removes the cap of 21 years old by which a court must dismiss a petition against a former ward of the court. Does not require the court to have jurisdiction over the former ward at the time of dismissal of a petition. Further requires a court to automatically seal the records of minors under specified circumstances, and grants limited access to such files without this access constituting "unsealing" of the records.

If requesting July 1 or out of cycle, explain:
Different versions of this proposal have been circulated in two prior Spring Cycles and deferred as a result of further legislative changes. In order to expeditiously meet prior legislative mandates to take action on rules and forms this proposal is being proposed for a July 1 effective date so that courts have the forms and direction they need to carry out these statutory duties.

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 April 14–15, 2016

Title
Juvenile Law: Sealing of Records

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; approve forms JV-591, JV-595, and JV-596; adopt forms JV-595-INFO and JV-596-INFO; revise forms JV-590 and JV-600

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
July 1, 2016

Date of Report
March 7, 2016

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting new and amended rules and forms to implement the provisions of five recently enacted statutes concerning juvenile record sealing. Assembly Bill 1006 directed the Judicial Council to develop informational materials and a form to enable a person with a juvenile record to seal that record. After the council circulated a proposal for comment to implement these requirements, new legislation (Sen. Bill 1038) was enacted that requires the court to automatically dismiss and seal the records for many juvenile wards. While a proposal was being developed and circulated to incorporate that legislation, three additional sealing bills were introduced and enacted to clarify the changes made by SB 1038, including a requirement that the council adopt rules and forms to implement its provisions and to eliminate fees for sealing for petitioners under 26 years of age. The recommended new and amended rules and forms fulfill the council's statutory obligations.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Amend rule 5.830 on sealing of juvenile court records under Welfare and Institutions Code section 781 to incorporate the requirements to provide information to minors on the process for sealing their records and to clarify the process for petitioning the court;

2. Adopt rule 5.840 to state the procedures to be followed by the court when sealing records under Welfare and Institutions Code section 786 when the court determines that probation has been satisfactorily completed;

3. Revise *Order to Seal Juvenile Records* (form JV-590) to make it an optional form so that courts are free to create their own order forms, add a statutory reference to section 781 to the title, and add space for the court to specify the time frame for sealed records to be destroyed;

4. Approve *Acknowledgment of Juvenile Record Sealed* (form JV-591) to provide a mechanism for agencies ordered to seal juvenile records to notify the court that they have complied with the court's order;

5. Approve *Request to Seal Juvenile Records* (form JV-595) as an optional form to be used to petition the court to seal juvenile records under section 781;

6. Adopt *How to Ask the Court to Seal Your Records* (form JV-595-INFO) and *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) as mandatory information forms to be provided to wards at the end of a case in compliance with the requirements of section 781(h);

7. Approve *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786* (form JV-596) for courts to use to order records sealed for satisfactory completion of probation under section 781; and

8. Revise *Juvenile Wardship Petition* (form JV-600) to add language alerting all those subject to a petition that they may have their records sealed in the future.

The proposed text of the new and amended rules is attached at pages 13–16. The proposed new and revised forms are attached at pages 17–27.

Previous Council Action

Rule 5.830 was originally adopted by the council effective January 1, 1991, as rule 1499. It was renumbered as rule 5.830 effective January 1, 2007.

The council adopted form JV-590 effective January 1, 1991, and revised the form effective January 1, 2007, to reflect the renumbered rules of court.

The council adopted form JV-600 effective January 1, 1993, and it has been revised numerous times, most recently effective January 1, 2012, to clarify issues pertaining to the Indian Child Welfare Act.

Rationale for Recommendation

Background

The Legislature has taken repeated action to ensure that all people with juvenile records who are eligible to have them sealed can have the opportunity to do so with as few barriers as possible. Before the enactment of this legislation, most sealing was ordered under Welfare and Institutions Codes section 781, which enables eligible individuals to petition the juvenile court to have juvenile records sealed under certain circumstances specified within the code. The records eligible for sealing include contacts with the juvenile justice system, law enforcement, the Department of Motor Vehicles, and other agencies. These contacts include juvenile court records resulting from formal adjudications under section 602 of the code and informal contacts with probation and law enforcement under sections 601 and 626 of the code. To qualify for sealing, among other requirements, the records must not fall within section 707(b) of the code if committed by an individual 14 years of age or older, the offense must not have led to a conviction in adult court under section 707.1, and the petitioner must not have been convicted of a felony or misdemeanor involving moral turpitude as an adult. In addition, the court must find that the petitioner has been satisfactorily rehabilitated.

In 2013, the Legislature took action to (1) ensure that all juveniles who come before the court or a probation officer receive information about the process required to request sealing of records, and (2) require the adoption of a Judicial Council form that can be used to petition the court for sealing under section 781 (Assem. Bill 1006 [Yamada]; Stats. 2013, ch. 269). In 2014, the Legislature went a step further by enacting section 786, requiring courts to seal records without requiring a petition for any child 14 or older who was not a serious or violent (707(b)) offender and who satisfactorily completed probation (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249). That legislation, however, spurred many questions and concerns within the juvenile justice system, and as a result, legislation was enacted in 2015 to clarify the scope and impacts of section 786. Assembly Bill 666 (Stone; Stats. 2015, ch. 368) and Assembly Bill. 989 (Cooper; Stats. 2015, ch. 375) both sought to clarify section 786 and remedy the ambiguities and concerns raised by stakeholders about the original legislation.

Section 786 now requires that when a child satisfactorily completes a term of informal or formal probation for any offense that is not a 707(b) offense committed when the child was 14 or over, the court must dismiss that petition and seal the records pertaining to that arrest and offense. The statute now provides that the records to be sealed must include records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice. It also allows the child to request that additional records be sealed and allows the court to grant that

sealing request if it finds that sealing the additional record will "promote the successful reentry and rehabilitation of the child (Welf. & Inst. Code, § 786(e)(2))." The court is also authorized to seal records pertaining to prior petitions if the court finds that the sealing criteria in section 786 have been met.

To address the many concerns that were raised by stakeholders as the prior version of section 786 was being implemented, the new statute includes many provisions allowing access to a previously sealed record to ensure that the courts and their juvenile justice system partners can carry out their other statutory obligations.

In addition to the changes to section 786, the Legislature also enacted Senate Bill 504 (Lara; Stats. 2015, ch. 388), amending section 781, which authorizes sealing of a delinquency record by petition to the court, as well as section 903.3, which provides for the imposition of a $150 fee to recover the costs for probation or the court to research and prepare a sealing order. The amendments to section 781 provide that an unfulfilled order of restitution is not a bar to sealing under section 781 and that outstanding restitution fines and court-ordered fees are not to be considered when the court assesses the satisfactory rehabilitation of the petitioner. They also clarify the court's authority to continue enforcing restitution, fees, and fines after a record has been sealed. The amendments to section 903.3 limit the cases in which a fee for sealing can be charged to those in which the sealing petitioner is 26 years of age or older.

New and revised forms needed to ensure compliance with the court's duty to inform regarding sealing of records

Previously, no statutory directives mandated that the court and probation "shall ensure" that eligible individuals are informed of available record-sealing options. The newly revised section 781 directs that the council must develop informational materials and a form petition for sealing of records, and that these materials and petition must be provided by the court or probation to eligible individuals when jurisdiction is terminated or the case is dismissed. Proposed new mandatory *How to Ask the Court to Seal Your Records* (form JV-595-INFO) includes information on the benefits and limitations of record sealing and includes the new provisions of SB 504 relating to restitution, fines and fees, and the fees for record sealing.

Because many minors with juvenile records will now have their cases dismissed and records sealed by the court as a matter of law if they satisfactorily complete their probation, the form also provides brief information about this type of sealing and refers them to proposed form *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) for more information so that people who do not need to petition the court for sealing of records will be informed.

Proposed new optional *Request to Seal Juvenile Records* (form JV-595) is needed to comply with the council's statutory duty under subdivision (h) of section 781 to create a form petition for sealing. This form is intended to provide the petitioner with a simple but optional method to request sealing and has been drafted in plain language to make it accessible to all petitioners.

In addition, the committee proposes amending the *Juvenile Wardship Petition* (form JV-600) to alert people subject to delinquency petitions that they may be able to have their records sealed at a later date. This change would provide some information on sealing to a broader audience of youth than are covered by the amended rule of court 5.830 discussed below.

New forms needed to implement recently enacted section 786

To provide the courts with a means to accomplish its new responsibility to seal records after dismissing a petition, as required by section 786, this proposal recommends approval of a new optional order form for this purpose. This form is very similar to the order form used to seal the records of minors who successfully complete a section 790 deferred entry of judgment program. It provides for the court to seal records in the custody of law enforcement, probation, and the Department of Justice in every case dismissed under section 786 and provides courts with the option to seal additional agency records as provided in subdivision (e). It further specifies the date by which the records must be destroyed, as required by section 786. Because section 786 does not specify a time frame for destruction of these records, the committee recommends using the timelines for record destruction stated in section 781(d): five years from the date of the order for noncourt records, and when the subject of the order attains age 38 for court records. However, because this time frame might result in destruction of records before the subject of the order is 18, and access to the sealed records is allowed if a subsequent juvenile petition is filed, the committee has revised this time frame to provide that no record may be destroyed before the subject of the order has attained 18 years of age.

Because the enactment of section 786 has significantly changed the procedural landscape on sealing of juvenile records, the committee determined that it was necessary to create an additional mandatory informational form to explain the new sealing process and requirements and to alert people with juvenile delinquency records to the probability that their records will be sealed by the court without the filing of a petition. New *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) explains how the new sealing provisions will work, which records will be sealed, and who will have access to those records and refers those whose records are not sealed to form JV-595-INFO for information on petitioning the court. Form JV-596-INFO also satisfies the requirement in section 786 that the court provide notice to people whose records are sealed that they need not disclose those offenses or records with a section explaining what it means that the arrests are deemed not to have occurred. This form would be provided to all youth whose records are sealed under section 786 in lieu of JV-595-INFO to avoid confusion and the filing of unnecessary sealing petitions.

Finally, the committee proposes that the council adopt a new optional form, *Acknowledgment of Juvenile Record Sealed* (form JV-591), to allow public agencies whose records are ordered sealed by the court under section 781 or 786 to inform the court that this sealing has occurred. This form will provide a means for agencies ordered to seal records to comply with the requirement in section 786 that they advise the court that they are sealing the record.

Form JV-590 revised to make it an optional form

Order to Seal Juvenile Records (form JV-590) is currently a mandatory form. To provide courts with maximum flexibility to issue record-sealing orders that reflect the individual court's needs, practices, and local agencies, the committee proposes that form JV-590 be revised from mandatory to optional. This change would provide flexibility from county to county, with the optional form available if needed. In addition, the committee proposes adding room on the form for the court to specify the date that these records should be destroyed and to allow those whose records are sealed to advise the court that sealing has been accomplished. In addition, the committee proposes changing the title of the form to include a reference to section 781 to distinguish it from the other sealing order forms.

Rule 5.830 amended to clarify the process for sealing of records under section 781

The proposed amendments to rule 5.830 incorporate references to forms JV-595-INFO, JV-595, and JV-590 and define the roles of the court and probation department in ensuring that the forms are provided as required. The proposed amendments also direct probation to assemble a list of contact and agency addresses to be attached to the petition so that all records will be sealed.

As circulated for comment, the proposed amendments to this rule would have limited the authority of a juvenile court to seal the records of a juvenile court in another county to those cases in which the underlying petition was transferred from the other court. This would have required petitioners with non-transfer records in more than one court to seek sealing of their records via two or more petitions. As discussed in the comments section below, there was much concern that this approach would be overly burdensome on petitioners and cause delays in accomplishing record sealing. In response to those comments, the committee has revised its proposal to specifically provide that a court has the authority to seal records in other courts but has clarified that the court is not required to determine if the records should be sealed unless the case was transferred. In addition, the rule requires the court to inform the petitioner if the court declines to seal the records of another court and to direct the petitioner to file a petition in that county.

The proposed amendments also broaden the circumstances in which probation must prepare and forward a sealing petition to the court. Currently, the rule directs probation to prepare the petition and a recommendation to the court only when probation determines that the petitioner is eligible to petition for sealing under section 781. Because of concerns that this provision might inappropriately deny petitioners the opportunity for judicial review, the proposed amendments would make probation's preparation and filing of the petition contingent only on meeting the requirement that the petitioner be at least age 18 or that five years have elapsed since his or her last contact with the juvenile justice system.

The proposed amendments add an advisory comment that provides general context on the purpose of record sealing and addresses the scope and overall specifications of the act of record sealing to clarify that record sealing can be accomplished in a variety of manners as long as they accomplish the intent of the statute.

New rule 5.840 would establish procedures for sealing under section 786

Section 786 requires that the council adopt rules and forms for the standardized implementation of that statute. Proposed rule 5.840 would fulfill this statutory requirement. It requires the sealing of all records in the custody of law enforcement, probation, and the Department of Justice in every case dismissed under section 786 and sets out the standard for sealing the records of additional agencies upon request as authorized in section 786(e). It further directs the clerk of the court to distribute the sealing order to all named agencies, the subject of order, and his or her attorney. It also includes the access exceptions allowed by sections 786 and 787.

Section 786 requires the court to set a date for when sealed records will be destroyed under that provision but offers no guidance as to what that time frame should be. As noted above, section 786 also directed the Judicial Council to adopt rules of court for the "standardized implementation of this section by the juvenile courts." Reading those two directives together, the committee has proposed that new rule 5.840 include a standard time frame for destruction of records, rather than simply leaving it to the discretion of the judge in each case. Since section 781 establishes a timeframe for destruction of records, that time frame was adopted for destruction of records under section 786 as well, with the caveat that no records be destroyed before the subject of the order was 18 to ensure access for the allowable purposes under section 786.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the winter 2016 invitation-to-comment cycle, from December 11, 2015, to January 22, 2016, 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. Thirteen organizations and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment: four agreed with the proposal, four agreed with the proposal if modified, and six 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 28–75.

Sealing of records in other county jurisdictions. The committee's proposal as circulated for public comment would have amended rule 5.830 to require that unless the out-of-county records were for a case that was transferred, petitioners would need to seek record sealing in each county in which jurisdiction was terminated, rather than asking the last court of jurisdiction to seal all records from all counties. The committee proposed this revision in light of concerns that courts and probation agencies were unable to identify the full range of out-of-county records, and thus the rule was providing false assurance to petitioners that all of their records were being sealed. Moreover, the committee noted that section 781 neither requires nor suggests sealing of multiple-county records. In addition, the committee was concerned that some judges might not be willing

to seal the records of a sister court in a case in which they had never had any jurisdiction. Because this change would have imposed a greater burden on petitioners, the committee sought specific comment on whether this change would improve or hinder the current record-sealing process. Although one commentator expressly indicated that it would improve the process and one suggested only a minor change, seven other commentators raised concerns about this change, including that it would place undue burdens and delays on young people seeking to seal their records in order to move on in their careers and education.

Although the committee remains concerned that probation departments and courts will be unable to identify all out-of-county records, the committee revised its proposal to specifically provide that a court has the authority to seal the records of other courts in all cases and must determine if sealing is appropriate in transfer cases. The revised proposal also requires a court that declines to seal the record of another court to advise the petitioner of this determination and direct the petitioner to file a sealing petition in the other court. To ensure that the court and probation have as much information as possible about the petitioner's cases and contacts, the record-sealing application and information form have been revised to alert the petitioner that the court can seal only those records identified on the petition.

Time frame for record destruction. As noted above, proposed new rule 5.840 would set a standardized time frame for destruction of records under section 786 by cross-referencing to the timeframe for destruction of records set by section 781, with the caveat that no records be destroyed before the subject of the order was 18. The committee sought specific comment on this issue, and one commentator disagreed with this approach. This commentator suggested that the courts should have full discretion to set this time frame individually in each case and that the time frame in section 781 was irrelevant because it applies only to orders under that section.

The committee considered this comment but concluded that although section 786 does not specify a time frame for the destruction of records, it does require the Judicial Council to adopt rules of court for the standardized implementation of the section by the juvenile court, and it requires the courts in their orders to specify the destruction date. Given this directive, the committee concluded that it was appropriate to set a time frame for destruction in the rule of court and that the time frame in section 781 was the clearest statement of what the Legislature deems an appropriate time frame for destruction of juvenile records.

Information forms. The committee proposed two information forms on record sealing in light of the fact that the adoption of section 786 will result in the sealing of many records as a matter of law by the court, making information on that process more relevant to people whose records are sealed than information on petitioning the court for sealing at a later date. The committee sought specific comment on whether having one information form was preferable to having two, and the commentators were split. Some preferred the simplicity of one form; others proposed that two forms would be preferable but that they should be tailored to their specific audience. The committee adopted the latter approach and has retained two forms, one for people whose records are sealed under section 786 and one for people whose records are not sealed. The forms are

specifically addressed to their target audiences and refer people who want more information to the other form.

Optional form to advise the court that records have been sealed. The committee proposed a new optional form to allow agencies to advise the court that its order was being followed and sought specific comment on whether this form would be of value to the courts. A number of courts agreed that it would be helpful, and specific suggestions to make the form more useful (including adding instructions) were adopted by the committee.

Clarifying the role of probation in the sealing process. A number of commentators raised concerns about the fact that rule 5.830 currently requires that applicants seeking record sealing under section 781 must initiate their applications with the probation department, which then investigates and prepares the petition for the court if the applicant is eligible under section 781. The proposal that circulated for comment did not include any changes to this provision, but a number of commentators were concerned that this provision makes probation a gatekeeper for sealing petitions and that some petitions might be inappropriately denied. These commentators suggested that the rule be amended to allow filing directly with the court and/or that probation be required to forward all applications to the court even if probation deems them ineligible.

The committee declined to recommend changing the rule to allow direct filing with the court because the court would be turning the application over to probation for investigation and a report anyway. However, the committee did revise its proposal to include proposed amendments to the rule to require that probation prepare petitions and reports for any case that meets the objective statutory timing criteria that the petitioner be at least 18 or that at least five years have passed since probation was terminated.

Providing information on federal recognition of sealing orders. Although California statute is clear that any arrest for which a record has been sealed shall be deemed never to have occurred and need not be reported on employment applications, the federal government does not afford this same status to state sealing orders, such that an applicant who has sealed records and applies to enlist in the military or obtain federal employment may be in a difficult situation when asked about his or her juvenile justice history. The committee sought to provide some warning on the information forms about this dilemma so that the information would not be misleading, but a number of commentators opined that the committee had made assertions that were overstated and might also be harmful to those seeking to enlist or obtain federal employment. In response, the committee has revised this language on the information forms to simply alert petitioners to the fact that the federal government may not recognize the state sealing order and to advise them to seek legal advice on how to proceed.

Sealing of child's attorney records. A number of commentators were concerned that the proposed *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786* (form JV-596) that circulated for comment included a check box for the court to seal the child's attorney's records if the child requested it. The commentators suggested that there was no reason

to seal defense counsel records because of attorney-client confidentiality rules and that to do so would be inappropriate because it would interfere with the ability of counsel to advise the client in the future. In light of these concerns, the committee removed this check box and line from the form.

Advisory Committee Comment on procedures to manage sealed records. The committee is recommending a new Advisory Committee Comment for rule 5.830 to clarify the means a court can use to seal a record. The comment discusses means of sealing records, suggests some permissible means to accomplish the objectives of the sealing rule and statute, and includes a discussion of sealing electronic records. Two commentators raised concerns about the language, one suggesting that it be strengthened and the other suggesting that it inappropriately proposed sealing methods other than physical sealing. The committee reviewed the language and concluded that it was clear and consistent with the intent of the rule but did opt to clarify the comment to provide that access controls be in place to ensure that sealed records are not accessed inappropriately.

Delaying implementation by four months from council approval
The Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees submitted a comment agreeing with the proposal but suggesting that additional time would be needed for courts to implement the proposed changes. The committee appreciates these concerns but determined that because the proposal is needed to implement statutory changes that became effective on January 1, 2015, further delay would not be of benefit to the juvenile courts, which need the forms to comply with the statutory mandate.

The committee also received a number of suggestions to clarify and correct provisions in the proposed rules and forms, many of which were adopted in this revised proposal.

Alternatives
With the passage of Assembly Bill 1006, the Legislature directed the Judicial Council to develop informational materials and a form petition to ensure that eligible individuals are adequately informed about the option of sealing their records and provided with a form to assist them in petitioning the court. Consideration was given to how the informational materials could be most effectively presented and in what format. The committee considered the option of developing an informal handout, rather than a mandatory form. The committee determined that an information form, available on the California Courts website, would be more likely to reach the target audience and remain more relevant than a less formal handout, which might, over time, be forgotten. In addition, making the information form mandatory would raise its relevance by increasing awareness and encouraging compliance. The committee, to further increase the likelihood for the form to reach its target audience and to provide information at an earlier phase of the proceedings, determined that adding a notice about record sealing to the *Juvenile Wardship Petition* (form JV-600) would be beneficial.

The committee also considered whether to recommend that other sealing forms be mandatory or optional. *Request to Seal Juvenile Records* (form JV-595), was created as required by the Legislature but is proposed as an optional form to allow petitioners to submit a request to seal in whatever manner they prefer. Although the form provides a convenient method of petitioning the court, mandating its use may delay applications and run contrary to the intent of Assembly Bill 1006. Similarly, revising form JV-590, *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781*, from a mandatory form to an optional form will lead to more flexibility in implementation for the courts.

When considering how to implement the provisions of section 786, the committee considered modifying existing rules and forms, but given that this section 786's automatic method of sealing will likely become the most common sealing procedure and given its sufficient distinctions from existing sealing-by-petition processes, the committee concluded that new forms would ultimately be more useful to the courts.

As discussed above, the committee considered proposing only one informational form on sealing but determined that two forms would cause less confusion in the long run given the different situations of people whose records are sealed as a matter of law by the court under section 786 and those whose records are not.

Consideration was also given to whether rule 5.830 needed to be revised. Ensuring consistency and clarifying the new requirements are the clear benefits of revising the rule as proposed. Although a prior version required probation to develop a list of cases and contacts to be handed out at the termination of each case, with the enactment of section 786 and the increasing frequency of sealing as a matter of law, it seemed less burdensome on probation to have the contact list created at the time the petition is filed so that this work occurs only when needed.

Implementation Requirements, Costs, and Operational Impacts

Courts will be required to produce paper copies of the information form and petition as required by AB 1006. Some courts may incur programming charges if electronic systems are used for the court order. Implementation of section 786 will require courts to generate and disseminate many new sealing orders, as required by the legislation. The optional order form will assist courts in carrying out this function, and the rule will clarify the basic procedures required to accomplish the new requirements. In addition, the optional acknowledgment form will provide a means for courts to obtain the required advisement that records have been sealed. The proposed modifications to rule 5.830 may result in preparation of more sealing petitions by probation, but those increases will be more than offset by the reduction in petitions overall because many records will be sealed by the court at the end of the probation term under section 786.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal amends, revises, and creates rules and forms to allow courts to implement statutory requirements, it supports Goal III, Modernization of Management and Administration (Goal III.A).

Attachments and Links

1. Cal. Rules of Court, rules 5.530 and 5.40, at pages 13–16
2. Forms JV-590, JV-591, JV-595, JV-595-INFO, JV-596, JV-596-INFO, and JV-600, at pages 17–27
3. Chart of comments, at pages 28–75
4. Link A: Assembly Bill 1006
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1006
5. Link B: Senate Bill 1038
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1038
7. Link C: Senate Bill 504
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB504
6. Link D: Assembly Bill 666
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB666
6. Link E: Assembly Bill 989
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB989

Rule 5.830 of the California Rules of Court is amended and rule 5.840 adopted, effective January 1, 2016, to read:

Rule 5.830. Sealing records (§ 781)

(a) Sealing records—former wards ~~(§ 781)~~

(1) A former ward of the court may apply to petition the court to order juvenile records sealed. Determinations under section 781 ~~must~~ may be made by the court in any ~~the~~ county in which wardship was ~~last~~ terminated. A court may seal the records of another court when it determines that it is appropriate to do so, and must make a determination on sealing those records if the case has been transferred to its jurisdiction under rules 5.610 and 5.612.

(2) At the time jurisdiction is terminated or the case is dismissed, the court must provide or instruct the probation department to provide form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-595, *Request to Seal Juvenile Records*, to the ward if the court does not seal the ward's records under section 786. If the court does seal the ward's records under section 786, the court must provide or instruct the probation department to provide form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, and a copy of the sealing order as provided in rule 5.840.

~~(1)~~(3) *Application—submission*

(A) The application for a petition to seal records must be submitted to the probation department in the county in which wardship was ~~last~~ terminated.

(B) The application for a petition to seal juvenile records may be submitted on form JV-595, *Request to Seal Juvenile Records*, or on another form that includes all required information.

~~(2)~~(4) *Investigation*

If the applicant is at least 18 years of age, or if it has been at least five years since the applicant's probation was last terminated or since the applicant was cited to appear before a probation officer or was taken before a probation officer under section 626 or before any officer of a law enforcement agency, ~~the probation officer determines that under section 781 the former ward is eligible to petition for sealing~~, the probation officer must do all of the following:

(A) Prepare the petition;

(B) Conduct an investigation under section 781 and compile a list of cases and contact addresses of every agency or person that the probation department knows has a record of the ward's case—including the date of each offense, case number(s), and date when the case was closed—to be attached to the sealing petition;

(C) Prepare a report to the court with a recommendation supporting or opposing the requested sealing; and

(D) Within 90 days from receipt of the application if only the records of the investigating county are to be reviewed, or within 180 days from receipt of the application if records of other counties are to be reviewed:

(i) File the petition;

(ii) Set the matter for a hearing, which may be nonappearance; and

(iii) Notify the prosecuting attorney of the hearing.

~~(3)~~(5) * * *

~~(4)~~(6) If the petition is granted, the court must order the sealing of all records described in section 781 using form JV-590, *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781*, or a similar form. The order must apply in the county of the court hearing the petition and in all other counties in which there are juvenile records concerning the petitioner. If the court determines that sealing the records of another court for a petition that has not been transferred is inappropriate, it must inform the petitioner that a petition to seal those records can be filed in the county where the other court is located.

(b) Sealing—nonwards

(1) For all other persons described in section 781, application may be submitted to the probation department in any county in which there is a juvenile record concerning the petitioner, and the procedures of (a) must be followed.

(2) When jurisdiction is terminated or the case is closed, the probation department must provide the following forms to individuals described under section 781(h)(1)(A) and (B):

(A) If the individual's records have not been sealed under section 786, form JV-595-INFO, *How to Ask the Court to Seal Your Records,* and form JV-595, *Request to Seal Juvenile Records;* or

(B) If the individual's records have been sealed under section 786, form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation,* and a copy of the sealing order.

(c) – (e) * * *

Advisory Committee Comment

This rule is intended to describe the legal process by which a person may apply to petition the juvenile court to order the sealing—that is, the prohibition of access and inspection—of the records related to specified cases in the custody of the juvenile court, the probation department, and other agencies and public officials. This rule establishes minimum legal standards but does not prescribe procedures for managing physical or electronic records or methods for preventing public inspection of the records at issue. These procedures remain subject to local discretion. Procedures may, but are not required to, include the actual sealing of physical records or files. Other permissible methods of sealing physical records pending their destruction under section 781(d) include, but are not limited to, storing sealed records separately from publicly accessible records, placing sealed records in a folder or sleeve of a color different from that in which publicly accessible records are kept, assigning a distinctive file number extension to sealed records, or designating them with a special stamp. Procedures for sealing electronic records must accomplish the same objectives as the procedures used to seal physical records, and appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

Rule 5.840. Dismissal of petition and sealing of records (§ 786)

(a) Applicability

This rule states the procedures to dismiss and seal the records of minors who are subject to section 786.

(b) Dismissal of petition

If the court finds that a minor subject to this rule has satisfactorily completed his or her informal or formal probation supervision, the court must order the petition dismissed. The court must not dismiss a petition if it was sustained based on the commission of an offense listed in subdivision (b) of section 707 when the minor was 14 or older unless the finding on that offense has been dismissed or was reduced to an offense not listed in subdivision (b) of section 707. The court may

also dismiss prior petitions filed or sustained against the minor if they appear to the satisfaction of the court to meet the sealing and dismissal criteria in section 786. An unfulfilled order, condition, or restitution or an unpaid restitution fee must not be deemed to constitute unsatisfactory completion of probation supervision. The court may not extend the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal and sealing under section 786.

(c) Sealing of records

For any petition dismissed by the court under section 786, the court must also order sealed all records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice pertaining to those dismissed petition(s) using form JV-596, *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786*, or a similar form. The court may also seal records pertaining to these cases in the custody of other public agencies upon a request by an individual who is eligible to have records sealed under section 786, if the court determines that sealing the additional record(s) will promote the successful reentry and rehabilitation of the individual. The prosecuting attorney, probation officer, and court must have access to these records as specifically provided in section 786. Access to the records for research purposes must be provided as required in section 787.

(d) Destruction of records

All sealed records must be destroyed according to section 781(d), except that no record shall be destroyed before the subject of the order has attained 18 years of age. The court must specify the destruction date for all records in its order.

(e) Distribution of order

The clerk of the issuing court must send a copy of the order to each agency and official listed in the order and provide a copy of the order to the individual whose records have been sealed and his or her attorney. The court shall also provide or instruct the probation department to provide the individual with form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*.

(f) Deadline for sealing

Each agency, individual, and official notified must immediately seal all records as ordered and advise the court that its sealing order has been completed using form JV-591, *Acknowledgment of Juvenile Record Sealed*, or another means.

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:	
ORDER TO SEAL JUVENILE RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 781	CASE NUMBER:

1. Name of petitioner *(specify aliases):* Date of birth:
2. a. Date of hearing: Dept.: Room:
   b. Judicial officer *(name):*
3. ☐ The court has read and considered the petition and the report of the probation officer.
4. The petition is
   a. ☐ granted. b. ☐ denied.

THE COURT ORDERS

5. a. ☐ The sealing of petitioner's juvenile records in the custody of this court and the courts, agencies, and officials named below *(designate county):*

   ☐ See attachment (5) for additional names.
   b. The destruction of all sealed records according to Welfare and Institutions Code section 781(d).
   c. Date court records must be destroyed:
   d. Date all other records must be destroyed:
6. ☐ Petitioner is relieved from the registration requirements under Penal Code section 290, and the registration information in the custody of the Department of Justice and other agencies and officials listed above shall be destroyed.
7. The clerk shall send a certified copy of this order to the clerk in each county in which a record is ordered sealed, and a copy to each agency and official listed above.

Date:

▶ _____
JUDICIAL OFFICER OF THE SUPERIOR COURT

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: Clerk, by _____, Deputy

Form Approved for Optional Use
Judicial Council of California
JV-590 [Rev. July 1, 2016]

Penal Code, § 290;
Welfare and Institutions Code, §781
Cal. Rules of Court, rules 5.504, 5.830
www.courts.ca.gov

AGENCY: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	*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:	*CLERK'S USE ONLY*
ACKNOWLEDGMENT OF JUVENILE RECORD SEALED	CASE NUMBER:

INSTRUCTIONS: Under Welfare and Institutions Code sections 781 and 786, agencies must advise the court of their compliance with the court's sealing order. Please return this completed *Acknowledgment of Juvenile Record Sealed* to the court upon sealing of the records.

1. TO THE CLERK OF THE COURT: I certify that the records ordered to be sealed by the court have been sealed and a copy of this acknowledgment of record sealed has been sent to the court advising the court of compliance with its order.

2. Date of Court Order:

3. Child's Name:

4. Agency Name:

Date:

By: _____ ▶ _____

(TYPE OR PRINT YOUR NAME) (SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
JV-591 [New July 1, 2016]

ACKNOWLEDGMENT OF JUVENILE RECORD SEALED

Welfare and Institutions Code, §§ 781, 786;
Cal. Rules of Court, rules 5.830 and 5.840
www.courts.ca.gov

JV-595 Request to Seal Juvenile Records

Probation stamps date here when form is received.

DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

This form can be used to petition the juvenile court to seal your juvenile records. More information about sealing is available on form JV-595-INFO, *How to Ask the Court to Seal Your Records*.

Submit this form to the probation department in the last county where you were on juvenile probation or, if you were not on probation, in any county where you had contact with law enforcement or probation that did not result in a court case. Once the probation department receives the completed form, it will have 90 days to file a record-sealing petition with the court for you, or 180 days if you include agencies outside of this county.

Fill in court name and street address:

Superior Court of California, County of

Fill in your name:

Name:

Fill in case number, if known:

Case Number:

1 My information:

a. Name: _____

b. AKA *(nickname or other family name):*

_____

c. Address: _____

d. City, state, zip: _____

e. Area code and telephone number: _____

f. Date of birth: _____

g. E-mail address: _____

2 ☐ I had a case(s) that went to court.

Case file number(s) *(if known)*: _____

The date probation was terminated *(if known):* _____

☐ I don't remember my case number and/or date.

☐ See attached. *(If you need more space, you may attach a separate page.)*

3 ☐ I had contact with law enforcement but did not go to court.

☐ Date(s) I had contact with law enforcement: _____

☐ Name(s) of law enforcement or other agency(ies): _____

☐ See attached. *(If you need more space, you may attach a separate page.)*

4 I understand that the probation department is responsible for requesting the juvenile court to seal the records of only those agencies in its records and those listed on page 2 of this form. I understand that after I file this document and pay any fees that are required (fees are required only for petitioners 26 years of age and older and may be waived), the probation department will have 90 days to conduct an investigation and file a record-sealing petition for me with the juvenile court. I also understand that some records may not be eligible for sealing. I am aware that form JV-595-INFO, *How to Ask the Court to Seal Your Records,* provides more information on this process.

Your name: _____

Case Number:

Note: When you file this form with the probation department, it will research your case history and attach a list of contacts and addresses of all agencies that it knows have records of the case(s) and contacts(s) you listed on page 1. If you have had contacts with law enforcement or another agency with a record of your offense and that entity may not have been reported to the probation department, please list it below, or that record may not be sealed. If your case was transferred from one county to another, your records in both counties will be sealed. If you have a probation record in more than one county and that record was not transferred, you may ask the court to seal that record as well. If the court does not seal that record, it will inform you that you need to file this form in that county. Contacts not included on this form may not be sealed. The court may seal only those records listed on the petition.

5 Include all contacts (with addresses) you had, before your 18th birthday, with the agencies below that might not be part of your probation records:

- ☐ Court: _____
- ☐ Probation Department: _____
- ☐ Sheriff's Department: _____
- ☐ Police Department: _____
- ☐ California Highway Patrol: _____
- ☐ Department of Motor Vehicles: _____
- ☐ Law Enforcement: _____
- ☐ School(s): _____
- ☐ Homeland Security: _____
- ☐ Other: _____
- ☐ See attached. *(If you need more space, you may attach a separate page or pages listing the contacts.)*

I declare that the information on this form is true and correct to the best of my knowledge.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

JV-595-INFO How to Ask the Court to Seal Your Records

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If you make those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now two ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal or informal) is satisfactorily completed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at termination of probation, see Form **JV-596-INFO.**

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order. You qualify if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if you owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

When do you *not* qualify to seal your records?

- If you were convicted as an adult of an offense involving moral turpitude, such as:
  - A sex or serious drug crime;
  - Murder or other violent crime; or
  - Forgery, welfare fraud, or other crime of dishonesty.
- If, when you were 14 or older and the court found that you committed a serious offense listed in Welfare and Institutions Code section 707(b), such as murder, arson, rape, or other violent crime, as well as some offenses involving drugs or weapons, unless the court has dismissed that petition.

If you are unsure if you are eligible, ask your attorney.

Who can see your sealed records?

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- You can request the court to unseal your records if you want to have access to them or allow someone else to inspect them.

How do you ask to have your records sealed?

(1) You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records,* at *www.courts.ca.gov/forms.htm*, can be used, or your court may have a local form.

2. When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement, or probation and attach it to your petition.

3. If you think there are agencies that might have records on you that were never sent to probation, you need to include them, or the court will not know to seal them.

   If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See http://oag.ca.gov/fingerprints/security for more information.

4. Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) Note: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at *www.courts.ca.gov/28120.htm*.

5. If you are currently 26 years of age or older, you may have to pay a fee. If you cannot afford the fee, ask the probation department or the court about a fee waiver.

6. Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.

7. The court will review your application. The court may decide right away to seal your juvenile records. Or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date and time of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.

8. If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your application.
   Important! **The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.**

9. If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date.

10. The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you are seeking to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions?

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at *www.courts.ca.gov/28120.htm*.

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:	
DISMISSAL AND SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786	CASE NUMBER:

1. Name of subject child: Date of birth:

2. a. Date of hearing: Dept.: Room:

   b. Judicial officer *(name):*

3. The court has read and considered the report of the probation officer and any other evidence presented or information provided.

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

4. The child has satisfactorily completed a program of informal supervision, probation under section 725, or a term of probation.

5. The petition(s) filed on *(date(s)):* is/are dismissed.

6. The child's juvenile records related to the arrest(s) on *(date(s)):*
   regarding an alleged violation of *(specify offense(s)):*
   in the custody of this court and of the courts, agencies, and officials listed below are ordered sealed:

   ☐ Probation Dept. *(specify county):*

   ☐ California Dept. of Justice

   ☐ Law enforcement agency *(specify all):*

   ☐ Law enforcement case number(s):

7. ☐ The court finds that sealing the following additional public agency records will promote the successful reentry and rehabilitation of the subject child and orders the records in their custody relating to petitions and arrests listed in 5. and 6. sealed:

   ☐ District Attorney *(specify county):*

   ☐ School:

   ☐ Department of Motor Vehicles:

   ☐ Other *(specify):*

   ☐ Attachment

Form Approved for Optional Use
Judicial Council of California
JV-596 [New July 1, 2016]

Welfare and Institutions Code, §§ 781(d), 786
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. All records pertaining to the dismissed petition are to be destroyed according to Welfare and Institutions Code section 781(d), and the arrest is deemed never to have occurred except that the prosecuting attorney, probation officer, and court may access these records for the specific purposes stated in Welfare and Institutions Code section 786 and no records shall be destroyed before the subject child has attained 18 years of age.

   a. Date court records must be destroyed:

   b. Date all other records must be destroyed:

9. The clerk shall send a certified copy to the clerk in each county in which a record is ordered sealed and a copy to the child, the child's attorney, and each agency and official listed above.

Date:

▶ _____

JUDICIAL OFFICER OF THE SUPERIOR COURT

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: Clerk, by _____, Deputy

JV-596-INFO Sealing of Records for Satisfactory Completion of Probation

In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision). If your case is dismissed by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), in many cases the court will have sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds that you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see Form JV-595-INFO** for more information about asking the court to seal your records).

The court will not seal your records if you were found to have committed an offense listed in Welfare and Institutions Code section 707 (b) (these are violent offenses such as killing, raping, or kidnapping, and also some offenses involving drugs or weapons) when you were 14 or older and it was not dismissed or reduced to a lesser offense not listed in 707 (b).

How will the court determine if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation, and have not been found to have committed any further crimes (felonies or any misdemeanors for crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines , **BUT...**

Restitution and court fines and fees must still be paid.

Even if your records are sealed, you are still required to pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and prior cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see your sealed records?

- If your records were sealed by the court at dismissal, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you have participated in but cannot use that information to keep you in juvenile hall or to punish you.
- If you have been found to have committed a felony by the juvenile court, your sealed records can be viewed to determine what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to determine if transfer is appropriate.
- You can request the court to unseal your records if you want to have access to them or allow someone else to inspect them.

  NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed in the future and you do not need to ask the court to seal them.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However,** the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you are seeking to enlist in the military or apply for a job requiring you to provide information about your juvenile records seek legal advice about this issue.

Judicial Council of California, *www.courts.ca.gov*
New July 1, 2016, Mandatory Form
Welfare and Institutions Code, § 786
Cal. Rules of Court, rule 5.840

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:	
JUVENILE WARDSHIP PETITION ☐ § 601(a) ☐ § 601(b) ☐ § 602(a)	CASE NUMBER:

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 sections of the Welfare and Institutions Code *(check applicable boxes; see attachments for concise statements of facts):*
☐ 601(a) ☐ 601(b) ☐ 602(a) Violation *(specify code section):*

b. ☐ Under a previous order of this court, dated , the child was declared a ward under Welfare and Institutions Code section ☐ 601(a) ☐ 601(b) ☐ 602(a).

c. Child's name and address:	d. Age:	e. Date of birth:	f. Sex:

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. Name:
Address:
☐ mother ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

j. Other *(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.

k. Attorney for child *(if known):*
Address:
Phone number:

l. Child is
☐ not detained. ☐ detained.
Date and time of detention *(custody):*
Current place of detention *(address):*

(See important notices on page 2.)

CHILD'S NAME:	CASE NUMBER:

2. Petitioner requests that the court find these allegations to be true.

3. ☐ Petitioner requests a hearing to determine whether the child is a fit and proper subject under juvenile court law under Welfare and Institutions Code section ☐ 707(a)(1) ☐ 707(a)(2) ☐ 707(c).

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)

☐ *Indian Child Inquiry Attachment* (form ICWA-010(A)) is completed and attached.

☐ Number of pages attached: _____

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 your child or you by a public defender or other attorney, the cost of supervision of your child by order of the juvenile court, and the cost of any restitution owed to the victim.

RECORD SEALING

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or *www.courts.ca.gov/forms.htm*, for more information about record sealing.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
1.	Alternate Public Defender's Office of Los Angeles Maureen Pacheco	NI	First, we would like to thank the Family and Juvenile Law Advisory committee members for the extensive work in proposing these informational forms, new and amended rules, and optional judicial forms. Given the rapid and significant changes we have seen in sealing provisions in recent legislative sessions, the proposals are thorough and make great progress in simplifying and clarifying the new laws. Globally, the 1. Proposed amended Rule 5.830 Although it is intended to ensure that all juvenile records are sealed, we are troubled that the default position in the new rule will now place the burden on the youth to file in each of the juvenile courts unless the case has been formally transferred. It is not only a burden on the youth; it also seems a costly duplication of efforts to have each probation department and court involved in handling separate petitions when one global sealing could achieve the same results. From the comments attached to the rule, it appears the only barrier to this process is the lack of information about those records. Because we will be seeing less of the petitions under 781 going forward, it seems that the burden of gathering the information would be more easily borne by the probation department in the last court of jurisdiction. It appears that this is the duty of the probation investigation anyway under (a)(4)(B).	No response required. In response to a number of comments raising concerns about the burden on the petitioners, the committee has revised the rule to allow courts to seal out of county records and to require them to consider doing so when the records are for a case that has been transferred. Because some courts may not be comfortable sealing the records of other courts in cases that have never been under their jurisdiction, the rule has been clarified to require the court to inform the petitioner if it declines to seal the records of another court or county and to direct them to file a petition in that county. Because there is no statewide database with information on all juvenile contacts with law enforcement or the courts, the JV-595 and JV-595-INFO forms have been revised to make it clear that the court can only seal those records that it can identify.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			With respect to the application and investigation, we believe the rule should clarify that the petition may be filed in the court or with probation, and more importantly, that probation must submit the applications/petitions to the court rather than having probation unilaterally determine whether a petitioner is eligible or not. While (a)(4)(D) provides that probation must file the petition, we are aware anecdotally of cases in which probation is tasked as a gatekeeper and given authority to deny petitions.	The committee can see no benefit in allowing the petition to be filed in the court because the court will simply refer it to the probation department to investigate and prepare the petition. However, the committee has clarified the rule to require probation to submit the petition in any case in which the timing requirements in section 781 have been met (i.e. the petitioner is at least 18 or it has been at least 5 years since probation was terminated or there was a contact with law enforcement) so that there can be no concern that probation is making judicial determinations on sealing matters.
			Rule 5.830 allows the order to seal records under 781 to be an optional order (Form JV 590). WE believe this is good policy, allowing flexibility among counties that may, e.g., want to add additional provisions such as preemptively listing the courts/agencies etc. whose records shall be sealed.	No response required.
			. Last, the commentary of the Advisory Committee should be strengthened in terms of its language re the storage of sealed records. The goal and purpose of record sealing is to ensure that only the very limited access allowed by the law is countenanced. For that reason, the language should be strengthened to reflect that it is not acceptable to maintain sealed records in a manner that allows for any undermining of the laws intent to foreclose access to these records.	The committee has reviewed the proposed comment to the rule and concluded that it is clear that any method used to seal records must ensure that they are protected from unauthorized access or disclosure but has added language regarding electronic records to ensure that access controls are in place for sealed records.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			2. Proposed new rule 5.840 • Deadline for sealing: should the court be setting a follow-up date to ensure compliance?	Because this issue was not raised in the original invitation to comment and would impose a significant workload burden on the courts the committee cannot make this change without recirculating the proposal, but will consider it if future modifications are required and there is evidence that there is a problem with compliance.
			• Subsection (b) should contain the explicit requirement of the statute that unpaid fees or unfulfilled restitution conditions shall not be a bar, nor shall the court extend probation on that basis if the youth otherwise qualifies.	The committee has adopted this recommendation and amended the proposed rule to include this requirement.
			3. JV 595-INFO and JV 596-INFO • These forms are confusing, and we wonder if perhaps they can be reworked to more clearly accomplish their purpose in providing user friendly information. It might be that three separate info forms would be better; as written they overlap in ways confusing to the person who will not really understand what the two different ways of sealing involve. However, we will attempt to give comments on the forms as they are proposed	The committee has determined that two forms are preferable so that they can be tailored based on whether files were sealed under section 786 and has revised the forms to more specifically address the two situations.
			• From the comments, JV 595 is the form that the courts and probation are to provide at the conclusion of a case. Why not provide separate forms—one for those whose probation was terminated and the records were sealed, and one for those who will need to proceed under 781?	The committee has proposed two forms and the rules of court do specifically require the provision of different forms depending on whether records were sealed under section 786.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			• Why confuse the matter by saying "how to make your juvenile records private?" • Language is oversimplistic: Eliminate/rewrite the first paragraph.	The committee has struggled with reconciling its desire to be legally accurate with the hope of making the form accessible to young people. Based on this comment and others below the committee has revised the information forms to make them more precise.
			• In response to the legislative gap identified last year in In re. G.Y. (234 Cal.App.4th 1196), the legislation also specifies that the courts now have the ability to seal the records of youth whose 707(b) offenses were subsequently reduced to misdemeanors. The paragraph that indicates there is no sealing unless the court has dismissed the 707(b) offense is inaccurate.	The committee has clarified this language to also include when a 707(b) offense is reduced to a lesser offense on the JV-596-INFO
			• Under who qualifies to ask the court, "Your last contact with probation" is not clear.	The committee included this language to try and cover a non-wardship case in plain language. Rather than trying to clarify the specific requirements from section 781 the committee has opted to delete this clause.
			• Under who can see your sealed records: the military does not have automatic access to sealed records. A more accurate statement would be that if the youth wishes to obtain a waiver for enlistment, he or she may have to move to unseal the records and provide access to the military.	The committee has deleted the reference to the federal government and tried to clarify this issue later in the information form.
			• Under if your records are sealed, do you have to report the offenses: this is a very nuanced area, as the Collateral Consequences for Juvenile Offenders makes clear. The form	The committee has rewritten this language with regard to federal access, but has left it clear that under California law sealing results in the underlying arrest being deemed never to have

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			should avoid giving any hard and fast advice in terms of revealing information about sealed records. This section should be rewritten in light of those concerns. • From 596-info: eliminate the provision under which records will be sealed for the court to order the defense attorney's records to be sealed. We do not believe such an order would be appropriate. 4. JV 596 • Eliminate the provision in paragraph 7 allowing for the sealing of child's attorney's records. Because of the duty of attorney client confidentiality, we believe no purpose is served in ordering the child's attorney to seal his or her records. 5. JV 600: we approve of the added paragraph advising the youth and parent/guardian of the right to seal records.	happened. The information form also directs those with questions or concerns to seek legal advice. The committee has deleted this language from the form as it seems that such sealing would be unusual. The committee has deleted the line specifically designating the child's attorney's records as those that the court should consider sealing at its discretion. No response required.
2.	California Public Defenders Association Michael Ogul Deputy Public Defender	NI	The California Public Defender's Association (CPDA) submits the following comments to the Judicial Council of California regarding the proposed changes to the Rules of Court and court forms regarding the record sealing process (W16-07). Statement of Interest of CPDA CPDA is the largest organization of criminal defense attorneys in the State of California. Our membership includes almost 4,000 attorneys	No response required.

	Commentator	Position	Comment	Committee Response
			who are employed as public defenders or are in private practice. CPDA has been a leader in continuing legal education for defense attorneys for over 30 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education. We regularly provide continuing legal education in all areas of criminal practice, including the representation of juveniles in dependency and delinquency matters. CPDA has been granted leave to appear in over 50 California cases that have resulted in published opinions. (See e.g., People v. Mosley (2015) 60 Cal.4th 1044; People v. Beltran (2013) 56 Cal.4th 935; Maldonado v. Superior Court (2012) 53 Cal.4th 1112; Galindo v. Superior Court (2010) 50 Cal.4th 1; People v. Nguyen (2009) 46 Cal.4th 1007; Chambers v. Superior Court (2007) 42 Cal.4th 673; People v. Warner (2006) 39 Cal.4th 548; San Francisco v. Cobra Solutions Inc. , (2006) 38 Cal.4th 839.) CPDA has also served as amicus curiae in the United States Supreme Court and other federal courts. (See, e.g., Monge v. California (1998) 524 U.S. 721; Vasquez v. Rackauckas (9111 Cir. 2013) 734 F.3d 1035.) Members of the CPDA Legislative Committee and CPDA's legislative advocate attend Senate and Assembly committee meetings on a weekly	

	Commentator	Position	Comment	Committee Response
			basis, and take positions on hundreds of bills in a constant effort to ensure that our criminal and juvenile justice procedures, and rules of evidence, remain fair and balanced. In sum, CPDA and its legal representatives have the necessary experience, collective wisdom, and interest in matters of justice and procedure to serve the Judicial Council. Of particular note is the fact that CPDA was the source of SB 1038 in 2013 and a supporter of AB 666 in 2015, both of which created the changes to the sealing process the Judicial Council is addressing at this time. Rule 5.83 The primary concern regarding the amendments to rule 5.830 are the statements in the Advisory Comment leaving the method of sealing to discretion of those entities being ordered to seal the records. The Advisory Comment proposes a number of permissible methods of sealing that do not require the actual physical sealing of the record: "Other permissible methods of sealing physical records pending their destruction under section 78l (d) include, but are not limited to, storing sealed records separately from publically accessible records, placing sealed records in a folder or sleeve of a color different from that in which publically accessible records are kept, assigning a distinctive file number extension to sealed records, or designating them with a special stamp." The problem is that none of the	The committee has reviewed the proposed comment to the rule and concluded that it is clear that any method used to seal records must ensure that they are protected from unauthorized access or disclosure but has added language regarding electronic records to ensure that access controls are in place for sealed records.

	Commentator	Position	Comment	Committee Response
			alternatives to physical sealing actually seal the records and leave the records vulnerable to inspection by ineligible individuals. An order to seal should be treated as an order to physically seal the records, as it is in other legal contexts. (See, for example, Cal. Rule of Court, rule 2.551(d).) Case law also suggests that the records should be "physically sealed." (Loder v. Municipal Court (1976) 17 Cal.3d 859, 871.) Rule 5.840 Subdivision (c), concerning the sealing of records, states in part that "The prosecuting attorney, probation officer and court must have access to these records as specifically provided in section 786." While this is a correct statement of law, the language of section 786, subdivision (f), and to a lesser extent subdivision (g), clearly delineate the limited circumstances under which access is permitted. Rule 5.840 should similarly indicate that access is limited to the situations described in subdivisions (f) and (g). A reference to these subdivisions would be sufficient. Subdivision (d) addresses the destruction of records and indicates, "All records must be destroyed according to section 781(d), except that no records shall be destroyed before the subject has attained 18 years of age." Section 781, subdivision (d), in tum, requires destruction of records five years from the	The committee prefers using the broader statutory reference in this situation as it is possible that section 786 may be amended in the future and include access under yet to be drafted subdivisions and the committee would then have to amend the rule. The committee finds nothing inaccurate or misleading in citing the entire statute. While it is accurate that section 786 does not specify a timeframe for the destruction of records, it does require the Judicial Council to adopt rules of court and forms for the standardized implementation of the section by the juvenile courts. Given this directive the committee is retaining the standard rule set for destruction of

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			sealing date if the person was "alleged to be a person described in section 601", or 38 years of age if the person was "alleged or adjudged to be a person described in section 602." By its terms, subdivision (d) of section 781 applies only to "records that are ordered sealed pursuant to this section." Conversely, this rule, 5.840, addresses the destruction of records pursuant to section 786, which states regarding destruction: "The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed." The statute does not specify a wait period before destruction may be ordered, and had the Legislature intended to limit the court's authority regarding destruction to those periods outlined in subdivision of section 781 or section 826, the Legislature would have done so. Accordingly, the trial court should be able to order destruction at any time, limited only by the outermost limits described by sections 826 and 389. JV-595-INFO	records sealed under section 786 and has adopted the timeframe in section 781 as the clearest statement of what the legislature deems an appropriate timeframe for destruction of records. Moreover, because section 786 provides for access to sealed records in a number of circumstances it seems clear that immediate destruction was not intended by the legislature.
			The form contains a section on the first page indicating that sealing is automatic for those individuals who satisfactorily completed probation for a non-Welfare and Institutions Code section 707(b) offense and for those who were granted deferred entry of judgment under "Welfare and Institutions Code section 790 to	The committee has sought to clarify this provision by adding a parenthetical modifier that explains that it is informal or formal probation. The committee has not added statutory references for fear that doing so would not make the form more accessible to its intended audience.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			795 ...." While a true statement of law, it fails to inform the reader that sealing is also automatic if the case was dismissed because the minor completed an informal program of supervision under Welfare and Institutions Code section 654.2 or non-wardship probation under section 725, as outlined in subdivision (a) of Welfare and Institutions Code section 786. The form also indicates that individuals who committed an offense listed or in section 707, subdivision (b) when they were 14 years or older or were convicted as an adult of an offense involving moral turpitude do not qualify to have their records sealed. This is a correct statement of law and is reflected in section 781, subdivision (a). However, the form gives examples of moral turpitude and includes "serious drug crime" as a disqualifier. The concern is that individuals will interpret that language as including possession of "hard" street drugs such as cocaine, cocaine base, heroin or methamphetamine, although simple possession of any controlled substance is not a crime of moral turpitude. (See People v. Castro (1985) 38 Cal.3d 301.) JV-596-INFO As with JV-595-INFO, this form outlines situations in which the court will automatically seal your juvenile record. However, the same problem outlined above exists in that the form	To address any ambiguity in a somewhat complex area of law, the committee has added a bullet to this section to advise consultation with an attorney if the petitioner is unsure regarding eligibility. As noted above, the committee has clarified this provision to specify formal or informal probation.

	Commentator	Position	Comment	Committee Response
			fails to inform the reader that sealing is automatic in cases involving successful completion of an informal program of supervision under Welfare and Institutions Code section 654.2 or non-wardship probation under section 725, as outlined in subdivision (a) of Welfare and Institutions Code section 786. Request for Specific Comments Is the timeframe for destruction of records sealed under section 786 proposed by the committee an appropriate standard given the statute is silent? No. Rule 5.840(d) addresses the destruction of records and indicates, "All records must be destroyed according to section 78l(d), except that no records shall be destroyed before the subject has attained 18 years of age." Section 781, subdivision (d), in tum, requires destruction of records five years from the sealing date if the person was "alleged to be a person described in section 601" or 38 years of age if the person was "alleged or adjudged to be a person described in section 602." By its terms, subdivision (d) of section 781 applies only to "records that are ordered sealed pursuant to this section." Conversely, rule 5.840 addresses the destruction of records pursuant to section 786, which states regarding destruction: "The court shall send a copy of the order to each agency and official named in the order, direct	See committee response on this issue to this commentator on pp. 28-29 above.

	Commentator	Position	Comment	Committee Response
			the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed." The statute does not specify a wait period before destruction may be ordered and had the Legislature intended to limit the court's authority regarding destruction to those periods outlined in subdivision of section 781 or section 826, the Legislature would have done so. Accordingly, the trial court should be able to order destruction at any time, limited only by the outermost limits described by sections 826 and 389. Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process? The proposed amendment to rule 5.83 which deletes the provision in the existing rule specifying the sealing order "must apply in the count of the court hearing the petition and in all other counties in which there are juvenile records concerning the petitioner" will require individuals seeking to seal their juvenile records to file petitions to seal in different counties if their records are held in more than one county. Unquestionably, this will create a burden on individuals seeking to seal their records. The court should strive to make it easier for individuals to seal their records and move away from the stigma of being involved with the criminal justice system. This makes it more	See response on this issue to commentator one on page 28 above.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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	Commentator	Position	Comment	Committee Response
			difficult and is a step in the wrong direction. Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable? It is CPDA's opinion that a single form is preferable. Will the optional Acknowledgement of Juvenile Record Sealed assist court in ensuring compliance with their orders? Yes. The adoption of this form will help confirm compliance with the court orders.	As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786. No response required.
3.	Commonweal Juvenile Justice Program David Steinhart, Director	NI	We submit these comments to the Committee and to the Judicial Council on behalf of the Commonweal Juvenile Justice Program. Commonweal was the primary sponsor of Assembly Bill 666 (Stone, Stats. of 2015, Chapter 368), which includes a provision requiring the Judicial Council to adopt these forms and rules. Commonweal also served as a key advisor to the legislative author of the 2014 bill that created the juvenile records auto-sealing process in California, adding Section 786 to the Welfare and Institutions Code (SB 1038, Leno, Stats. of 2014, Chapter 249). Overall, we applaud the effort made by the Committee to assemble these proposed rules	No response required.

	Commentator	Position	Comment	Committee Response
			and forms into a coherent package that incorporates complex changes in sealing laws added by no less than five legislative bills over the last two years. The comments below identify some areas where we believe the rules and forms as proposed could be even further improved to guide successful implementation by the Courts and to advise affected children and youth. Rule 5.830 (amended)— Sealing records (Section 781) • Probation as "gatekeeper" of the petition to seal under Section 781. Rule 5.830 requires a petitioner to initiate a request to seal the record through the probation department in each county in which probation has been terminated. Under Section (a) (4) of the rule, the probation department is then required to determine whether the individual is eligible for sealing under Section 781. Applications that pass this probation test are forwarded to the court for hearing and review. However, applications that do not pass this test do not proceed. In our reading of the law, Section 781 provides that an individual may "petition the court" for the relief provided. It does not establish a "stop" or gateway at probation before the petition can get to the Court. We would encourage an amendment to this rule that would require the probation department to forward all applications to the court and to	See response on this issue to commentator one on page 29.

	Commentator	Position	Comment	Committee Response
			ensure that it is the Court— not the probation department— that finally determines whether the individual is eligible for the sealing under Section 781. Alternatively the rule could or should provide that an individual whose petition is rejected by probation can refile it directly with the Court. These changes, while affecting the current status of Rule 5.830, are necessary to ensure the petitioner's access to the Court as intended and provided in Section 781. • Inter-county sealing petitions and orders. Rule 5.830 is changed to require that the petition process be initiated by the petitioner in each county where probation has terminated. This can be construed to impose an undue burden on youthful petitioners to be able to navigate jurisdictional labyrinths that even lawyers may find troubling. Juveniles with inter-county records or histories of residence in different counties will no doubt be confused by this requirement. One untoward result may be that a sealing and dismissal achieved in one county will fail to provide the individual with protection from a parallel case record that remains unsealed in another county. Such a result could expose the minor to tangible risks when completing job, education and military service applications—i.e., to the appearance of lying on an application where he or she answers no to questions about criminal history based on his or her understanding of the sealing and dismissal process.	See response on this issue to commentator one on page 28 above.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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	Commentator	Position	Comment	Committee Response
			We understand the rationale for this requirement (petitioning in multiple counties), including the Committee's statement that: …it has become clear that unless a case has been formally transferred from one court to another, many courts do not have information about these records, and as a result many courts do not seal the non-transfer records of other courts in practice. Given this context, the committee proposes deleting the requirement that courts seal the records of other juvenile courts unless the case has been transferred. While this practice may be somewhat more burdensome for those seeking to seal their records, it is also designed to ensure that all eligible records are in fact sealed and the full benefits of sealing are achieved by the petitioners Still, we suggest that the rule be amended to require the probation department, in the course of its court-delegated investigation, to make some specified effort to determine whether parallel (same or similar case) delinquency records remain unsealed in another county and to notify the petitioner accordingly. For example, when a petition is filed under Section 781, the probation department might be required to query the state juvenile justice data bases for information that would be useful to the court in determining the inter-county status of the	

	Commentator	Position	Comment	Committee Response
			petitioner's request. • Reach of sealing orders. The rule could more clearly state the obligation of the Court approving a petition to seal the record under Section 781 to order covered agencies in other counties, as known or revealed in the probation investigation or court file, to seal their records pertaining to the individual and the case. Rule 5.840 (new)- Dismissal of petition and sealing of records (Sec. 786). • Deferred or delayed sealing. We suggest that the rule include reference to the requirement of WIC 786, as recently amended, to the effect that "The period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section" (WIC 786 (c) (1)). This has come up as an issue of some concern in discussion with judges and other stakeholders, particularly as to its application in cases where restitution orders remain unfulfilled. • Notices to agencies or courts in other counties. As with the comments above on inter-county issues related to Rule 5.830, we think Rule 5.840 should be explicit in stating that the order and distribution of the order for records sealed under Section 786 should include orders	The committee has added this language to subdivision (b) of the rule. See response on this issue to commentator one on page 28 above.

	Commentator	Position	Comment	Committee Response
			to agencies or courts in other counties that have known records that are required to be auto-sealed under Section 786. The new rule should not be open to the interpretation that only records held by agencies located in the county of the Court making the order would be subject to the sealing order and distribution practice of that Court.	
			• Conforming form JV596INFO. If the title and contents of Form JV596INFO are changed as suggested the reference here to that form will also need to change.	The committee has changed titles of the forms and revised the rules accordingly
			Form JV 590. No comment.	No response required.
			Form JV 591. No comment.	No response required.
			Form JV 595- REQUEST TO SEAL JUVENLE RECORDS	
			• Language in the opening line. The opening line should be modified to eliminate the implication that the request can be filed only "if you meet the requirements of (WIC) Section 781". It is up to the Court to make the determination about meeting the requirements of Section 781—not up to the individual seeking relief. Suggest simply delete this "if" clause and open the form with the statement that this form may be used to petition the court to seal your records under the applicable law.	The committee has deleted the reference to statutory eligibility so that the form simply informs petitioners that it can be used to seal juvenile records and then directs them to the information form.

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			• Section 4. Federal agencies. The reference to federal agency acceptance of sealing orders made by California courts, appearing as the last sentence in this section, deserves further review. Based on our investigation, in practice military recruiters and federal agencies handle state-sealed juvenile records in different ways. While it is true that federal regulations do not recognize state-sealed juvenile records, military services can waive offense-record barriers to enlistment in individual cases. Defense counsel have reported cases in which a military service has requested that the court seal the record in order to gain entry to the military branch in question. A warning about the possible federal non-recognition of state sealing orders is certainly appropriate for inclusion on Form JF595. Still, the Committee may wish to give this issue a more thorough review. At a minimum, we would suggest changing the last sentence of Section 4 to state that "…the federal government may not recognize sealing of records", rather than "will not".	The committee has deleted the language about federal recognition from this form and opted to address it on the JV-595-INFO.
			• Section 5- requirement to list all contacts that might not be a part of your probation record. This requirement, while certainly intended to help locate all relevant records, is stated in a way that may discourage eligible individuals from petitioning the court. It should be softened to ask applicants to state the contacts if known and perhaps to state that	The language has been revised to be clear that the court cannot seal records that are not identified on the petition.

	Commentator	Position	Comment	Committee Response
			this information will help ensure that the sealing investigation and resulting court order are as complete as possible. Form JV 595 INFO – HOW TO MAKE YOUR JUVENILE RECORDS PRIVATE • Combine with JV596INFO? In answer to your general query on this point, we suggest that you continue to provide two different information forms. As we see it, the information forms serve overlapping but essentially different purposes. In short, we see Form JV595INFO as mainly supplying instructions for compliance with the elective process for petition sealing under Section 781, with relevant reference to post-sealing matters including agency access to sealed records, restitution and disclosures to employers and others. Alternatively, since the WIC 786 process is self-initiating or automatic, form JV 596INFO should mainly address what auto-sealing means for the juvenile whose record has in fact been sealed under Section 786; accordingly, some changes in the title and contents of that form are suggested later below. Specific Form JV595INFO suggestions. • Opening line… "If you did something wrong". This "talking down" opener on the form may be designed to make the form more familiar in some way or to avoid "legalese", but it is too vague, broad and misleading in our	The committee is maintaining the two forms and has revised them to make them more tailored to whether the recipient had his or her records sealed under section 786 while making them relevant to the public overall who might use the forms for information about the sealing process. As noted above, the Committee is trying to balance its desire to make this information as accessible as possible to the public with the need to be accurate. The committee has revised this section to make it less broad and more precise.

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			view. Probably most people "did something wrong" when they were under 18. This line could even cause concern for minors who never had sealable records generated. A more appropriate approach would be to say something like, "If you were ever arrested or subject to a court proceeding or had other contact with the justice system, there may be records of your involvement kept by courts, police, schools or other public agencies. • Second paragraph. We recognize that it is difficult to describe both auto-sealing and petition-sealing to juveniles in a lay context that is swiftly and easily understood. Even so, we believe you could do a better job in this form of explaining how the two sealing methods work under California law. As suggestion, you might start the second paragraph by highlighting the fact that "There are two ways to have your juvenile records sealed under California law. The first way happens automatically by order of the court when your probation term or diversion period ends, and it does not require you to take any action. However, if your record is not automatically sealed by the court, you will need to ask the court to seal your record by submitting a request or petition for sealing. This information sheet explains how both record sealing procedures work and whether you must petition the court in order to have your record sealed. It also explains what sealing and dismissal of the charges can mean for your	The committee has tried to make this less confusing by revising this form so that it is focused more on sealing pursuant to 781 with references to the JV-596-INFO for information on sealing pursuant to section 786. Since the rule of court directs that different forms are provided depending upon whether the court did or did not seal the records, this should ensure that information is appropriately targeted.

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			future." o Suggest then explain auto sealing in one paragraph. o Suggest then a separate paragraph entitled "When do you have to ask the court to seal your juvenile record and what do you have to do?"	
			• Page two, section 8. Other county records. Consistent with the suggestion made earlier, if Rule 5.830 is amended to require the probation department to assist with locating other-county records, this form should tell the individual that they can seek assistance from the probation department in that regard.	The form is clear that probation will identify the records that it can find, but that the petitioner needs to provide information on records that might not be known to probation.
			• Page two, "If your records are sealed, do you have to report…." and federal law reference. We suggest adding a bit more clarity here regarding disclosure protection for those whose records are sealed. For example: "No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not have to report those offenses on job, school or other applications." Additionally, we reiterate the request for further review of how the federal non-recognition of state sealing orders is characterized (see final comment above under Form JV595). Form JV 596 – DISMISSAL AND SEALING NOTICE UNDER SECTION 786	The committee has revised this language to make it clearer as suggested and has directed those confronting the issue to seek legal advice.

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			• Implied court option to seal the records of minor's counsel. Also in Section 7 of this form, there is a checkbox for the court to indicate that its order applies to the "Child's Attorney" and to require the minor's attorney to seal his or her case records. This simply goes too far. First of all, it is the minor's counsel who serves as the primary source of advice to the minor on compliance with the sealing laws and procedures, so that shutting down counsel's own record could effectively block key information the minor needs for a range of purposes including future attempts to access or open the record under one of the exceptions in subdivision (f). Secondly, an order to seal the minor's counsel records may well encroach upon an area of attorney-client privilege and confidentiality. Third, the check box as labeled is over-broad as it would appear to cover private as well as public agency counsel. Fourth, it is dysfunctional in the sense that the request to seal an additional public agency record is initiated by the minor, and the court's power is limited to granting the request—so when will minor's and their counsel ever ask the Court to seal their own records? Form JV 596 INFO – SEALING OF RECORDS AT TERMINATION AND DISMISSAL • Title and purpose of the form. As noted above, in our view the main purpose and	As noted above, the committee has deleted the checkbox for the child's attorney on this form. The committee has revised the title to read "Sealing of Records for Satisfactory Completion of Probation." The committee has not used the

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			function served by JV596INFO should be to inform the juvenile regarding the consequences of auto-sealing action taken by the Court under Section 786. The presently proposed version of this form goes in that direction, but it could be laid out and stated more clearly. For starters we would recommend that the title be changed to "Automatic Court Sealing of Juvenile Records: How does it happen and how does it affect you?" or something along those lines. The present tile is perhaps more attuned to lawyers than to clients, and a change like this will help make the form more relevant and useful for juveniles whose records are auto-sealed under Section 786. • Opening paragraph. Heading clarification. Suggest: When will the Court automatically seal your record? The first sentence should be simplified (it is too long and complex). It should start with a more simplified statement such as "Your records may be sealed automatically by the Court, without your having to take further action, if you meet certain conditions for automatic sealing." Then, list the conditions that are now packed into the wordy first sentence, perhaps using bullets. The second half of this paragraph, beginning with if the court seals your record "you should have received a notice he rest of the paragraph, beginning with "You should have received a copy of the order", is good.	term "automatic" because the sealing is not automatic, but rather requires a determination by the court that probation was satisfactorily completed. The committee has revised this paragraph to make it clearer, but as described above has refrained from using the term "automatic" in this context of section 786.

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			• Which records will be sealed? Here, we reinforce our concerns about stating that the court can order the minor's own counsel records to be sealed under Section 786. See the final bullet (comment) under "Form JV596" immediately above.	The committee has deleted the reference to the child's attorney's records on this form.
			• Consequences of sealing: "If your records are sealed do you have to report the offenses in the sealed records on job, school or other applications?" For this INFO form as well, we restate the request to further amplify the minor's right of nondisclosure of the offense once the record is sealed under Section 786, as follows: o We suggest adding a bit more clarity here regarding disclosure protection for those whose records are sealed. For example: "No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not have to report those offenses on job, school or other applications."	The committee has revised this section to try and clarify the consequences of sealing.
			• Federal law impact. Additionally, we reiterate the request for further review of how the federal non-recognition of state sealing orders is characterized here (see final comment above under Form JV595). Form JV 600 - JUVENILE WARDSHIP PETITION	See response to commentator one on pp. 31-32.
			• Recommended additional sentence. In	Because the two information forms that are

	Commentator	Position	Comment	Committee Response
			order to have the reference to record sealing be more meaningful to juveniles who take the trouble and have the comprehension to digest all of JV 600, we would request that a second sentence be added to the final text box on sealing, to follow the sentence stating that "The Court may seal your records at the conclusion of your case or you may request sealing at a later date.". The added sentence would say in essence: Sealing of the record may help you when it comes to applying for a job or school or for some other opportunity.	referenced here provide significant information about the benefits of sealing, the committee prefers not to add additional language on the JV-600 which comes much earlier in the process.
4.	East Bay Children's Law Offices Roger Chan, Executive Director	NI	These comments are submitted on behalf of East Bay Children's Law Offices with respect to W16-07 (Sealing of Records). East Bay Children's Law Offices (EBCLO), a nonprofit law firm in Oakland, California, is court-appointed to represent children and youth in their delinquency, dependency, or probate guardianship proceedings in Alameda County. Our office represents more than 2,000 youth every year. • Does the proposal appropriate address the stated purpose? One of the stated purposes is to give eligible people with juvenile records the opportunity to seal those records with as few barriers as possible. Rule 5.830(a)(3) creates a barrier by only allowing an application to be submitted to the	As noted above the rule directs filing of the application with the probation department because they need to investigate the application and prepare the petition for the court. The committee has revised the rule to be clear that probation must prepare a petition for any case in which the age or 5 year limit in section 781 have been met.

	Commentator	Position	Comment	Committee Response
			probation department. Applicants should also be allowed to apply for record sealing directly to the court, which can then direct the probation department to conduct the required investigation. Recommendation: Amend 5.830(a)(3)(A) to state: "The application for a petition to seal records must be submitted to the probation department or the court in each county in which wardship was terminated."	
			In addition, requiring an applicant to file a 781 petition in each county in which wardship was terminated can create barriers because the person may not know which counties are involved and whether the case was transferred. Instead, the person should only be required to make one application. If the probation investigation reveals that some petitions have not been transferred from other counties, then the probation department should be required to submit a record sealing petition to that county. Alternatively, please consider whether the court where the application was made should have authority to seal all eligible records, even if the records are of another court and were not transferred.	See response on this issue to commentator one on page 28 above.
			The 90 day time frame for the probation department to file a petition in 5.830(a)(4)(D) is too long. Many applicants for record sealing do so for the purpose of obtaining employment or	The committee notes that the 90-day timeframe has always been the standard in the rule and is necessary to give probation the time to research and prepare the petition and thus has declined to

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			joining the military and they need an urgent response. The time frame should be reduced to 30 days. The Rule should also provide guidance for when the hearing should occur following the filing of the petition.	shorten this timeframe. Similarly, given limited judicial resources, the committee declines to set a timeframe for the petition hearing as local courts need the flexibility to determine when these matters can be calendared in the context of other pressing statutory deadlines for hearings. In addition the committee has restored the 180 day time period for petitions that include more than one county consistent with the changes made to allow courts to seal records in multiple counties.
5.	East Bay Community Law Center Youth Defender Clinic Kate Weisburd, Supervising Attorney	AM	The proposed rules, info forms and orders are a great first step. It is obvious that the Judicial Council is trying to make the juvenile record sealing process as straight forward and streamlined as possible, which is admirable. With that said, I have some suggestions based on my experience representing numerous youth in record sealing procedures. If any of my comments are not clear, or if you have questions, please feel free to contact me: My comments are as follows: 1. Rule 5.830 re Sect. 781 (pg. 10 of PDF): -Confusing process when applicant has been on probation and/or had separate cases in several different counties as a minor. (see proposed rule 5.830 (a)(1)). Many adults won't know if their juvenile case was officially transferred or if they picked up a new case in another county. Nothing in the law says that an applicant must	No response required. See response on this issue to commentator one on page 28 above.

	Commentator	Position	Comment	Committee Response
			petition in every county where they had a case. A more streamlined approach would be to require the applicant to apply for sealing in the last county where they had a juvenile case and where probation was terminated. Seems overly burdensome to require applicants to apply in each county, especially because most applicants won't know if they had separate cases or if the case was transferred. -Probation should not be gatekeeper of all record sealing. (see proposed rule 5.830 (a)(3)-(4). There is nothing in the law that requires sealing applications go through probation. There are two problems with mandating that applications should go through probation: (1) what if the county is small and/or doesn't want probation to do this? Why not give counties option of having the application processed through probation OR filed with court clerk? And (2) In some counties, probation incorrectly determines that someone is not eligible and then the petition never makes it onto the sealing calendar and before a judge. A better policy is that probation does an evaluation; but that all record sealing applications get calendared and only judge decide eligibility. Under no circumstance should probation make determinations that result in applicants being turned away before they are able to appear before the judge. -90 days seems like a long time to give	See response on this issue to commentator one on page 29. See response on this issue to commentator 4 on

	Commentator	Position	Comment	Committee Response
			probation to review record sealing apps. See rule 5.830(a)(4)(C). Why not 30 days? Or 40?	pp. 53-54
			-The rules regarding 781 should make clear that there is no fee. The rule should state that anyone under 26 can't be charged. And over 26 they can be charged, but must also be provided with info about fee waivers.	The rule of court has never contained information about fees for sealing, and because those fees are collected administratively by probation and not by the court, the committee has elected not to add them to the rule, although the information forms clearly explain to petitioners that there is no fee and that a waiver can be requested.
			2. JV-595 – Request to Seal Juvenile Records under 781 (pg. 16 of PDF) -The text at the top of the form should be more encouraging. It currently says that the form should be used "if you meet the requirements of 781…" But many applicants won't be able to determine if they meet those requirements. Given that there is no fee for anyone under 26 there is really no downside in filing an application. Young people should be encouraged to file. There shouldn't be a preamble that could inadvertently result in applicants thinking they are not eligible when they may be. How about a preamble that says: "This form should be used if you want to seal your juvenile record. Please complete the form and turn it into X. The court will then determine whether you are eligible for record	As described above this sentence has been revised to eliminate the conditional clause and to be more neutral.

	Commentator	Position	Comment	Committee Response
			sealing." -Many applicants won't know details or dates about contact with law enforcement. (See questions #3 & #5). Many applicants won't know the dates of law enforcement contact or even the names of all the agencies they had contact with. Can probation/courts look this info up through a state-wide database? If applicants don't know this info they may think they can't apply for sealing. These two questions should either be eliminated or made optional (assuming that probation/courts have ways of checking this info on their own). 3. JV-595-INFO re Sealing under 781 (pg. 18) -Title is confusing because it's so similar to title of the JV-596-INFO (which is about 786). The audience for this form is applicants who either were not eligible for sealing under 786 or whose cases were dismissed before the passage of 786. Presumably, everyone who is eligible for sealing under 786 will have their record sealed at dismissal, so they won't need an info sheet on how to seal their record. (see comments below about the 786 info sheet) -First paragraph reads "if you did something wrong." This seems unnecessarily judgmental. 781 also covers arrest records in cases where no petition was ever filed. How about just "If you have a juvenile court record or arrest record	 The committee notes that in these cases in which there is no court record the petitioner is the person best situated to provide the information on what records are being requested to be sealed. This information may not be in state criminal history databases and thus the applicant is the key source of the information. The committee has revised the title of this form to "How to Ask the Court to Seal Your Records" and tried to clarify the two types of record sealing currently available. The committee has revised this sentence to be more legally precise.

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			from when you were under 18…"	
			-Topics are confusing. Per my first comment about this form, I think this form should be geared to people 18 years and older who either (a) didn't get record sealed under 786 b/c they didn't complete probation satisfactorily; or (b) they got off probation before 786 passed, so pre-2015.	As noted above the committee has tried to refine the focus of this form for those whose records were not sealed pursuant to section 786.
			-Applicants should be encouraged to check with public defender office to see if their record has been sealed and/or if they have a 707(b) offense.	This advice is contained on the form as circulated for comment.
			-The section entitled "when do you not qualify to seal" is a little confusing. Not clear what 'moral turpitude' means and it often is interpreted to mean a wide range of things. Applicants may count themselves out and not apply. Could a third bullet point be added that says: "If you are not sure you qualify, either speak with your local public defender's office or apply and wait for the judge to decide your eligibility." Or something like that?	The committee has added a bullet point directing applicants to contact their attorney for more information.
			-What about adding a section with a general description of what "rehabilitated to the satisfaction of the court" means and how to prove it? Ie: letters of support, letter to court explaining accomplishments, life plans, etc?	Because each court has different conventions for how this issue is handled the committee has declined to be more specific for fear of deterring applicants from seeking record sealing. Probation agencies can provide county specific information on what the court may be considering.

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			-Applicants won't know history of contact with police. On the second page, step 2 asks for a list of all agencies that the applicant had contact with. Per my earlier comment, I don't think applicants often know this info.	The form instructs applicants that probation will compile the information it has and only directs the applicant to add information if he or she believes it is not available to probation and only to ensure full sealing, thus the form is clear that this section is not required to be filled out. In addition, the information form directs applicants how to seek their criminal history information if they are uncertain as to what records may be out there.
			-Step 8 also seems unrealistic. Per my earlier comment, applying in everyone county seems unnecessary and not required by law.	See response on this issue to commentator one on page 28 above.
			4. JV 596-INFO re sealing under 786 (pg. 22)	
			-Title confusing. Per earlier comment, the title of this info sheet is confusing because it sounds so much like the title of the JV 595. It's also not clear when in the process the info on this info sheet would be helpful. It would be great to have an info sheet for youth who've just gotten their record sealed under 786 and what that means. Maybe the info sheet could be called: "What it Means Once the Court Has Sealed Your Record." And topics could be: (1) Unpaid fees, fines and restitution; (2) Which records were sealed; (3) Who can still see sealed records? (4) How to see your sealed record.	The committee has revised the title of the form and tried to tailor it to those whose records are sealed pursuant to section 786, however, the court is required by statute to provide information to all minors about how to seal your records at case termination and thus must include some information on that topic on this form.
			-Prior petitions also included. Under the current section entitled "which records will be sealed" it only talking about current case. It should clarify	That section of the form as circulated specifically states that prior cases may be sealed if the court finds them eligible thus the committee finds that

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	Commentator	Position	Comment	Committee Response
			that 786 covers prior petitions as well.	no change is required.
6.	Orange County Bar Association Todd G. Friedland, President	A	• Does the proposal appropriately address the stated purpose? Yes. • Is the time frame for destruction of records sealed under section 786 proposed by the committee an appropriate standard given that the statute is silent? Yes. • Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process? Improve. • Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable? One form.\ • Will the optional Acknowledgment of Juvenile Record Sealed assist courts in ensuring compliance with their orders? No comment.	No response required. No response required. See response on this issue to commentator one on page 1 above. As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786. No response required.
7.	Orange County Probation Christina Ronald, Assistant Division Director	NI	Below are the questions the Orange County Probation Department has in reference to the Invitation to Comment on Juvenile Law: Sealing of Records: 1. Proposed Rule 5.830 Sealing records (a) (4) Investigation (B) requires that probation compile a list of cases and contact addresses of every agency or person that the probation department knows has a record of the ward's case-including the date of each offense, case number (s), and date when the case was closed-to be attached to the sealing petition. Will a	This requirement while new to the rule is consistent with the current practice that probation will research and prepare sealing petitions. A form for this purpose has not been developed and would need to be considered in a future cycle based upon requests from probation agencies or the courts for such a form.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			standard form be created for this information? 2. Specific to outstanding financial obligation (WIC 786 (g)(1) and (2) indicates that sealing does not prohibit court from enforcing a civil judgment for outstanding restitution. Nor does a sealing relieve a minor from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees. Further, it notes that victims or local collection programs may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. With that in mind, if a minor is not relieved of the responsibility to pay outstanding financial obligations, does this also carry over to the minor's parent(s)/guardian(s) parental obligations, which are not courts ordered (institutional and legal fees)? 3. Section 831 of the Welfare and Institutions Code prohibits release of any juvenile case information to any federal official absent a court order of the judge of the juvenile court upon filing a petition pursuant to 827(a)(1)(p). We understand that this pertains to releasing information to Immigration and Customs Enforcement (ICE); however, does it also apply when making Consulate notifications. Additionally, in the juvenile arena, we have often utilized Juvenile Court Administrative	This is a legal question outside the scope of this proposal. The committee has tried to clarify issues on federal treatment of sealed records in this proposal. The new requirements of section 831 are outside the scope of this proposal, but it does appear that under that section court records may not be provided to a federal entity without a court order issued under section 827

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			Order No. 12/003-903 which allows for information to be furnished to military recruiters upon presentation of the minor's written consent. Based upon WIC 831, is it correct to assume that this aspect of the Court Order is no longer valid and that we would now also require military recruiters to file an WIC 827 petition with the court to have access to any juvenile case information? There seems to be confusion on how best to handle this as in addition to above, Section 4 of JV-595 indicates, "I also understand that the federal government will not recognize sealing of records and that juvenile records must be reported, even though sealed, if I apply for enlistment in the armed services or other federal employment requiring disclosure of juvenile records." 4. What is considered a "reasonable time" in which to seal a record once it has been ordered by the court?	The committee expects that any agency receiving a court order to seal its records will comply without delay and the rule provides that records are to be sealed immediately.
8.	State Bar of California, Standing Committee on the Delivery of Legal Services Phong S. Wong, Chair	AM	Does the proposal appropriately address the stated purpose? Yes. The mandatory information form provides helpful instructional information about the sealing of juvenile records and will be beneficial to low-income and moderate-income self-represented litigants. However, please see below for comments regarding the optional petition form.	No response required.

	Commentator	Position	Comment	Committee Response
			Is the time frame for destruction of records sealed under section 786 proposed by the committee an appropriate standard given that the statute is silent? Yes.	No response required.
			Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process? It will hinder the process. The petitioner should be able to file one petition which lists all of the courts in which he or she is requesting a sealing of records. The petition should allow for information such as case number, arresting agency, and date of arrest. Requiring a petition to be filed in each county is cumbersome and could act as a barrier for low and moderate-income petitioners who are eligible to have their juvenile records sealed but who lack transportation and/or financial resources.	See response on this issue to commentator one on page 28 above.
			Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable? One form is preferable. Two forms might confuse the issue for a juvenile. Less is best.	As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			Will the optional Acknowledgment of Juvenile Record Sealed assist courts in ensuring compliance with their orders? Yes. The optional form will help ensure that agencies ordered to seal records will advise the court that the sealing order has been followed and remove potential confusion for the petitioner as to whether or not the records have been sealed.	No response required.
9.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
10.	Superior Court of Orange County, Family Law and Juvenile Court Operations Blanca Escobedo, Principal Administrative Analyst	AM	• The proposal appropriately addresses the stated purpose. However, clarification is requested on the treatment of transferred cases. The proposed CRC 5.830 language states, "A court may seal the records of another court when a case has been transferred..." This could be interpreted as though the consideration of transferred cases is optional. I believe the intention is to require the courts to consider the sealing of other jurisdiction's records. In this same sentence, we recommend substituting the word court with jurisdiction since the court may also seal other agencies records (e.g., probation, law enforcement, etc.). • JV-590, we recommend revising item 5(a) to list agencies, similar to the JV-596. This helps ensure all agencies are included in the order. Also, expand the case number field for minors who have multiple cases. • JV-591, we recommend changing the	The rule has been clarified to require that the court determine if the other county records should be sealed in a transfer case and to allow such sealing in non-transfer cases. Because JV-590 is a sealing order under section 781 which provides for much broader sealing than section 786, the committee prefers to keep this section open and allow for attachments. The committee has adopted these suggested

	Commentator	Position	Comment	Committee Response
			header because agencies will be filing this form (not attorneys). We recommend expanding the case number field for minors who have multiple cases. • JV-595, we recommend the following changes. o Clarify the completion of items 2 and/or 3 (it will not always be both). o The information sheet provides information regarding fee waivers, yet it's not mentioned under item #4 (we recommend adding this information). Lastly, expand the case number field for minors who have multiple cases. o Item #5, under the court selection we recommend adding a district option for cases filed in larger courts (e.g., Los Angeles, Riverside, San Bernardino, etc.). • The JV-595-INFO and JV-506-INFO forms address scenarios where the dismissal occurred after 1/1/15. However, it provides little to no direction for cases prior to that date. We recommend expanding on the introduction to provide guidance on this scenario. • What vehicle will the courts use to terminate PC 290 registration requirements? I don't believe there is a DOJ form to be used for this purpose.	revisions to the form. A check box has been added to 3 to make clear it only applies when checked. The committee has added waiver information to this section. The field has been expanded as suggested. The committee has not added this option for fear of adding to the confusion of applicants who are not likely to have this information. The committee has revised both forms to be more tailored to their intended audiences. The JV-590 order form (item 6) terminates PC 290 registration requirements and directs DOJ to destroy its registration information. If courts are using other forms they should also contain this

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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	Commentator	Position	Comment	Committee Response
				provision.
11.	Superior Court of Riverside County Marita Ford, Senior Management Analyst	A	Recommend on the JV-590 that the check box next to Number 7 be removed as it appears that the clerk is required to send the order; it is not an option. On the JV-591, would recommend in the caption that 'Attorney' be removed and substitute 'Agency'. We would recommend that instructions to the agencies be added to the JV-591 form; suggested language: INSTRUCTIONS: Pursuant to WIC §§ 781 & 786, agencies shall advise the court of its compliance with the sealing order. Please return the completed Acknowledgement of Juvenile Record Sealed form to the court. Recommend that one of the judicial signatures lines be removed on the second page of the JV-596.	The committee has removed the check box as suggested. The committee has revised the caption and added the suggested instructions. The committee has revised the form to remove the unnecessary signature line.
12.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	General comments: Overall, this is a much better proposal than SPR15-20 was, partly because the law on sealing has been clarified by new legislation. It is a good idea to separate out the orders and info sheets for the two types of sealing. Rule 5.840(a) or (b): The rule should specify that a petition that includes a WIC 707(b) offense is not to be dismissed or sealed. Rule 5.840(e): the probation department (not just probation)	No response required. The committee has added the statutory language to the rule in subdivision (b). The committee has revised this rule as suggested.

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

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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	Commentator	Position	Comment	Committee Response
			JV-590: the reference to WIC 389(c) is not necessary	The committee has removed this statutory reference from the form
			JV-591: Be consistent with spelling: either acknowledgement or acknowledgment	The committee has revised the form to ensure consistent spelling.
			JV-595: Be consistent with punctuation: comma after "if you need more space" or no comma; agencies that it knows have records (top of page 2)	The committee has added a comma to item 3 for consistency and corrected the error at the top of page 2.
			JV-595-INFO: you will need to ask the court to seal your records; In the second bullet of the when you do not qualify section, maybe the form should read: "If, when you were 14 or older, the court found . . ."	The committee has revised this form as suggested.
			JV-596-INFO: A letter is missing in the sentence after the heading: **Restitution and court fines and fees must still be paid.** The next sentence should read in pertinent part: "…,you are still required to pay your restitution and court-ordered fees and fines."	The committee has corrected this typographical error.
13.	Trial Court Presiding Judges and Court Executives Advisory Committees Joint Rules Subcommittee Claudia Ortega	A	Regarding the Acknowledgment of Juvenile Record Sealed form: The JRS supports this form being made optional. Regarding additional training and increases to court staff's workload: The trial courts will need some time to train staff and ensure that case management systems allow a case to be deemed sealed. Also, it will take court and	While the committee appreciates the concerns about the short time for implementation, only two of the proposed new forms are mandatory and need to be provided beginning July 1, 2016. Those are the information forms to implement the requirements of section 781(h) which were supposed to be in place by January 1, 2015. The committee delayed taking action on these forms because of the major changes in the law that

	Commentator	Position	Comment	Committee Response
			justice partner staff time to actually do the sealing, but it is necessary. The proposed date for implementation is not feasible or is problematic: The JRS concluded that the courts will need more than two months to implement this proposal. Accordingly, the JRS requests that the effective date of this proposal be extended to four months (120 days) from Judicial Council approval.	became effective on January 1, 2015 and the further modifications effective on January 1, 2016, but further delay beyond July 1 is problematic for courts seeking to comply with the statutory mandate.
14.	Youth Law Center Cat McCulloch, Legal Fellow	NI	These comments are submitted on behalf of the Youth Law Center pursuant to Invitation to Comment W16-07. The proposed rules and forms submitted for comment will implement the provisions of AB 1006 (Yamada), SB 1083 (Leno), AB 666 (Stone), and AB 989 (Cooper) that deal with the process and requirements for sealing juvenile records. The Youth Law Center is a non-profit public interest law film that works on behalf of children and youth in the child welfare and juvenile justice systems. We became acutely aware of the need to make record sealing more accessible in the course of producing Collateral Consequences of Juvenile Delinquency Proceedings in California: A Handbook for Juvenile Law Professionals (2011). In the course of researching that book, we learned that an unsealed juvenile record can create very real barriers for young people seeking to turn their lives around, and that streamlining the process for sealing a juvenile record helps to remove	No response required.

	Commentator	Position	Comment	Committee Response
			barriers to young peoples' reintegration into society and reduce the likelihood of reoffending. The Youth Law Center appreciates the work and thought that have gone into the Council's proposed rules and forms. We offer several recommendations to refine the proposed rules and forms. Recommendation 1: Remove Change Requiring Petitions to Be Filed in Each County The committee has requested comments as to whether the proposed change in the rule to require young people to file petitions in every county in which they have non-transfer records will improve or hinder the current record-sealing process. The Youth Law Center strongly urges the committee not to require young people to file multiple petitions to seal their juvenile records. This proposed new requirement is not mandated by any change in the law, will not result in significant time or cost savings, and, most importantly, will create an unnecessary new barrier for young people working for a clean slate. As the committee notes in its background materials, the existing rule that sealing orders apply in all counties in which there are juvenile records concerning the petition has been in place for a number of years. Nothing in the recent legislative changes regarding sealing has mandated a change to this rule. Indeed, such a	See response on this issue to commentator one on page 28 above.

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Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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

	Commentator	Position	Comment	Committee Response
			change is directly contrary to the spirit of this recent legislation, which has sought to make the record sealing process easier for young people to navigate. The change is likewise not necessary to ensure that courts are making correct decisions on record sealing petitions. Courts are able to access sufficient information to determine whether out-of-county adjudications meet the statutory requirements for sealing through by reviewing RAP sheets. A court reviewing a petition will also, necessarily, have the facts available to it to determine whether a petitioner has demonstrated rehabilitation to the satisfaction of the court. Situations in which a court lacks the information necessary to decide an out-of-county petition should be quite rare; these isolated instances do not provide sufficient justification for the significantly increased hardship to petitioners that the proposed new rule creates. Nor will the proposed change in the rules increase efficiency for courts or probation departments. Indeed, the proposed rule may well increase the burden on courts and probation departments, as the proposed rule will require individuals to file petitions in multiple counties -petitions that those counties' probation departments will be required to investigate and courts will be required to adjudicate.	

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

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	Commentator	Position	Comment	Committee Response
			Moreover, requiring young people to file petitions in multiple counties will increase the burden on young people seeking a clean slate. The process to seal a record is time- consuming one. The sealing process can take many months to complete, during which time the unsealed record continues to create difficulties in the young person's search for a job and housing. Increasing the number of petitions that must be filed stretches this process out even longer and places an unnecessary barrier in front of young people. For these reasons, the Youth Law Center strongly recommends that the proposed rule changes limiting courts' ability to seal non-transfer records be deleted, and that proposed forms JV-595, JV-595-INFO be revised to reflect the fact that courts may seal out-of-county records. The committee notes that many courts do not, in practice, seal the records of non-transfer courts because they lack the necessary information to do so. The Youth Law Center does not believe that this fact requires that the rule be revised to strip courts' power to seal the records of other counties in all cases. However, we appreciate the committee's concern that as the rule currently stands, some petitioners may not be receiving the full benefits of record sealing. Although we do not believe that the benefits of changing the rule outweighs the harm to young	

	Commentator	Position	Comment	Committee Response
			people, if the council believes it necessary to revise the rule, the Youth Law Center proposes that the rule be revised to permit courts to seal out-of-county records and to require courts that do not seal non-transfer records due to a lack of information regarding eligibility to seal such records to state their reasons for the failure to seal on the record and on the order. Recommendation 2: Require Courts to Seal Records of Transferring Courts In the event that the proposed change requiring young people to file petitions in every county in which they have non-transfer records is approved, the Youth Law Center proposes that Rule 5.830(a)(6) be revised to require that a court, when a sealing petition is granted, seal the records of the court from which jurisdiction has been transferred pursuant to rules 5.610 or 5.612. As the proposed rule is presently written, a court may, but is not required to seal such records. The Youth Law Center anticipates that the present language may result in some courts failing or refusing to seal the records of a transferring court even where a petitioner has met the requirements to seal and the court has sealed other records. Explicitly requiring courts to seal the records of transferring courts is especially important given that proposed forms JV-595 and JV-595-INFO inform petitioners that "If your case was	As noted in the response on page 28, the committee has clarified that the court must determine if the records of the other court should be sealed in a transfer case.

	Commentator	Position	Comment	Committee Response
			transferred from one county to another, your records in both counties will be sealed" (JV-595) (emphasis added) and that petitioners need to file petitions in every court that has their records unless their case was transferred (JV-595-INFO). These forms indicate to petitioners that they need not file petitions in a transferring court. If the transferee court then fails to seal transferring court records -perhaps at a hearing at which the petitioner was not present -the petitioner would likely nevertheless believe that the records had been sealed based on the information contained in the forms. The Youth Law Center strongly recommends that Rule 5.830(a)(6) be revised along the following lines: "If the petition is granted, the court must order the sealing of all records described in section 781 using form JV-590, Order to Seal Juvenile Records-Welfare and Institutions Code Section 781, or a similar form. Where a case has been transferred to a court's jurisdiction under rules 5.610 and 5.612, the court shall order the sealing of all records described in section 781 in the transferring county, including the records of the transferring court." Recommendation 3: Delete Reference to Automatically Sealed Records in Rule 5.830 The committee has proposed revising Rule 5.830 to title it "Rule 5.830. Sealing Records (§	Because the court is required to provide information on record sealing to all wards at their end of their case by section 781(h) the committee has opted to retain this in the rule pertaining to section 781 because even those youth whose

	Commentator	Position	Comment	Committee Response
			781). Proposed new subrule 5.830(a)(2) states that: At the time jurisdiction is terminated or the case is dismissed, the court must provide or instruct the probation department to provide form JV-595-INFO, How to Make Your Juvenile Records Private, and form JV-595, Request to Seal Juvenile Records, to the ward if the court does not seal the ward's records under section 786. *If the court does seal the ward's records under section 786, the court must provide or instruct the probation department to provide form JV-596-INFO, Sealing of Records at Termination and Dismissal, and a copy of the sealing order as provided in rule 5.840.* (emphasis added). The Youth Law Center believes that reference to the procedure that a court should follow if it seals a ward's records under section 786 may be unnecessarily confusing if placed in a rule that refers specifically to the procedure to be followed if an individual must petition to have his or her records sealed under section 781.	records are sealed under section 786 are required to get information under section 781(h).

Item number: 10

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (out of cycle)**

RUPRO Meeting:

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Dependency: Petition Allegations for Commercially Sexually Exploited Children

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): Chris Cleary, 415-865-8792, christine.cleary@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: N/A On December 10, 2015 agenda.
Project description from annual agenda: Juvenile Dependency: Commercially Sexually Exploited Children (CSEC)

In 2014, SB 855 (Stats. 2014, ch. 29) established the new California Commercially Sexually Exploited Children (CSEC) Program within the California Department of Social Services (CDSS) to support prevention, intervention, services, and training to more effectively address CSEC in this state. The legislation also amended Welfare and Institutions Code section 300 to include section 300(b)(2), which specifically acknowledges that CSEC can come into the system through the juvenile dependency portal, recognizing CSEC as victims rather than perpetrators. This proposal would amend Form JV-121, which currently includes the allegations corresponding to section 300(b)(1), to additionally provide the basic statutory allegations from the new section 300(b)(2), which reads: "The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children."

If requesting July 1 or out of cycle, explain:
Technical changes were able to be made on two of the forms in time to meet the January 1, 2016, effective date. This form was more complicated and needed to be put in this cycle, with a July 1, 2016, effective date, along with a technical fix on another form that was inadvertently left out of the technical package.

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: April 15, 2016

Title
Juvenile Dependency Petition § 300(b) Allegations for Commercially Sexually Exploited Children (CSEC)

Rules, Forms, Standards, or Statutes Affected
Amend forms JV-101(A) and JV-121

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
July 1, 2016

Date of Report
March 4, 2016

Contact
Chris Cleary, (415) 865-8792
christine.cleary@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising two forms, form JV-121, *Failure to Protect*, and form JV-101(A), *Additional Children Attachment* to implement Senate Bill 855 [Stats. 2014, ch 29]). Senate Bill 855 added section 300(b)(2) to the Welfare and Institutions Code, to facilitate bringing Commercially Sexually Exploited Children (CSEC) into the juvenile dependency system.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise, effective July 1, 2016, form JV-121, *Failure to Protect,* to comply with new legislation (Sen. Bill 855) adding section 300(b)(2) to the Welfare and Institutions Code, to facilitate bringing

Commercially Sexually Exploited Children (CSEC) into the juvenile dependency system; and also recommends that the Judicial Council approve technical changes responding to the new section 300(b)(2) to form JV-101(A), *Additional Children Attachment*, which was inadvertently left out of the technical change cycle approved by the Judicial Council on October 27, 2015.

Copies of the proposed revised forms are attached at pages 4-5.

Previous Council Action

The committee already submitted and the Judicial Council approved the petitions JV-100 and JV-110, effective January 1, 2016, for technical changes to bring them into compliance with Welf. & Instit. § 300(b)(2). Form JV-121 is more substantive; therefore it is being revised separately in this cycle.

Rationale for Recommendation

This form amendment is urgently needed to conform to a recent change in the law. In 2014, SB 855 established the new California Commercially Sexually Exploited Children (CSEC) Program within the California Department of Social Services (CDSS) to support prevention, intervention, services, and training to more effectively address CSEC in this state. The legislation also amended Welfare and Institutions Code section 300 to include section 300(b)(2), which specifically acknowledges that CSEC can come into the system through the juvenile dependency portal, recognizing CSEC as victims rather than perpetrators. This proposal would amend form JV-121, which currently includes the allegations corresponding to section 300(b)(1), to provide also the basic statutory allegations from the new section 300(b)(2), which reads: "The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children." Additionally, this proposal would make technical changes to form JV-101(A), adding separate check boxes for sections (b)(1) and (b)(2), as was approved by the Judicial Council on October 27, 2015, for petitions JV-100 and JV-110.

Comments, Alternatives Considered, and Policy Implications

The Child Welfare Services/Case Management System**,** pending final revision of the form, temporarily added a box to JV-121 under the section 300(b)(1) allegations allowing an allegation for general neglect "as a result of the failure or inability of the parent or guardian to protect the child from commercial sexual exploitation." The committee considered adding this addition to the form for Judicial Council approval, but concluded that the two sections needed to be separately set forth to adequately cover their separate allegations, including the allegations that constitute commercial sexual exploitation.

There were five comments submitted in response to the Invitation to Comment. One of those agrees with the CWS/CMS approach of adding one more box to the current form that contains the CSEC allegations, without regard to the separate section 300(a) and (b) subdivisions. That

commenter found the committee's proposal "cumbersome and unnecessarily complicated." The other four comments agreed with the committee's proposal without modification. The committee considered the proposal again in light of the one response, but continues to recommend separating the allegations on form JV-121 to correspond to the new 300 (a) and (b) subdivisions.

A chart of comments and committee responses is attached at page 6.

Implementation Requirements, Costs, and Operational Impacts

Implementation of SB 855 will require some changes in court procedures and training, though much of that is happening through the CDSS CSEC Program planning and training with the counties that are participating in the CSEC Program. The form changes would also require some reproduction costs.

Attachments and Links

1. Proposed revisions to form JV-121
2. Proposed revisions to form JV-101(a)
3. Comment chart
4. SB 855: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_855_bill_20140620_chaptered.pdf (Please note that this is a budget trailer bill that has many, many items in it. The relevant pages for the CSEC material are pp. 114-15; 139-41.
5. W&I s.300(b)(2): http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=300-304.7

CHILD'S NAME:	CASE NUMBER:

4. 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 3a 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:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

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

5. 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 3a 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:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

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

6. I have asked about Indian ancestry for each child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A).

Form Adopted for Mandatory Use
Judicial Council of California
JV-101(A) [Rev. July 1, 2016]

ADDITIONAL CHILDREN ATTACHMENT
Juvenile Dependency Petition

Welfare and Institutions Code, § 300;
Cal. Rules of Court, rule 5.504
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

FAILURE TO PROTECT
§ 300(b)

§ 300(b)(1)

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness

☐ as a result of the failure or inability of his or her parent or legal guardian to supervise or protect the child adequately.

☐ as a result of the willful or negligent failure of the child's parent or legal guardian to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left.

☐ by the willful or negligent failure of the parent or legal guardian to provide the child with adequate food, clothing, shelter, or medical treatment.

☐ by the inability of the parent or legal guardian to provide regular care for the child due to the parent's or legal guardian's mental illness, developmental disability, or substance abuse.

§ 300(b)(2)

The child's parent or guardian has failed to, or was unable to, protect the child, and the child

☐ has been or is being sexually trafficked, as described in section 236.1 of the Penal Code.

☐ has been or is receiving food or shelter in exchange for, or who is paid to perform sexual acts described in section 236.1 or 11165.1 of the Penal Code.

(State supporting facts concisely and number them 1, 2, 3, etc.):

W16-08

Juvenile Dependency Petition § 300(b) Allegations for Commercially Sexually Exploited Children (CSEC)

(Amend forms JV-101(A) and JV-121)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Todd G. Friedland, President	AM	The proposal is cumbersome and unnecessarily complicated. The alternative considered, but not adopted, of adding one additional check box to the form is sufficient. The OCBA would suggest that the additional check box read: "as the child has received food or shelter in exchange for, or has been paid to perform, sexual acts described in § 236.1 or § 11165.1 of the Penal Code and whose parent or guardian failed to, or was unable to, protect the child."	The committee discussed this option at the outset, but recommends instead separating the allegations to clarify the different code subdivisions ((a) & (b)) that the allegations reference.
2.	State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS)	A	Agree with proposal in its entirety. The proposal amends form(s) JV-101(A) and JV-121 so that they comply with SB 855.	No response required.
3.	State Bar of California Executive Committee of the Family Law Section	A	The Executive Committee of the Family Law Section of the State Bar supports this proposal.	No response required.
4.	Superior Court of Los Angeles County	A	Agree with proposed changes.	No response required.
5.	Superior Court of San Diego County	A	Agree with proposed changes.	No response required.

Item number: 11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Delinquency Defense Attorney Qualifications - Adopt Cal. Rules of Court, rule 5.613 and Judicial Council form, JV-700

Committee or other entity submitting the proposal:
Family & 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: December 10, 2015
Project description from annual agenda: Provide recommendations for rules and forms required by recent legislative changes set forth in AB 703, which, among other things, requires counsel appointed in delinquency proceedings to satisfy certain minimum education or experience requirements to be established by the Judicial Council.

If requesting July 1 or out of cycle, explain:
This proposal is mandated by AB 703, which added section 634.3 to the Welfare and Institutions Code. Section 634.3 requires the Judicial Council to adopt a rule that establishes minimum attorney training standards by July 1, 2016.

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 April 14–15, 2016

Title
Juvenile Law: Delinquency Defense Attorney Qualifications

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.664; approve form JV-700

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
July 1, 2016

Date of Report
March 8, 2016

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting rule 5.664 of the California Rules of Court and approving optional form JV-700, *Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court*, to conform to recent statutory changes that establish training requirements for attorneys who represent delinquent youth under Welfare and Institutions Code sections 601 and 602.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Adopt California Rules of Court, rule 5.664 (Training requirements for children's counsel in delinquency proceedings), which establishes training requirements for attorneys who are appointed to represent delinquent youth.

2. Approve optional Judicial Council form JV-700, *Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court*, which can be used by courts to confirm that attorneys representing delinquent youth have complied with the training standards stated in rule 5.664, including completing continuing education requirements.

The text of the proposed rule is attached at pages 5–7. A copy of the proposed optional form is attached at page 8.

Previous Council Action

Proposed new California Rules of Court, rule 5.664, is a result of the passage of Assembly Bill 703 (Bloom; Stats 2015, ch. 369), which added Welfare and Institutions Code section 634.3, requiring the Judicial Council to promulgate rules establishing minimum training requirements for attorneys appointed to represent delinquent youth.[1] On the recommendation of the Family and Juvenile Law Advisory Committee, on April 9, 2015, the Policy Coordination and Liaison Committee took a support position on Assembly Bill 703 on the Judicial Council's behalf.[2]

Rationale for Recommendation

Assembly Bill 703 added section 634.3 to the Welfare and Institutions Code to establish training requirements for attorneys who are appointed to represent delinquent youth. Section 634.3 mandates establishment of a minimum number of training hours that attorneys must complete before accepting appointment to represent delinquent youth, as well as establishment of topics that must be included in the training hours. The Judicial Council is required to adopt rules of court to implement the requirements stated in section 634.3. The addition of rule 5.664 to the rules of court will ensure conformance with Welfare and Institutions Code section 634.3.

As mandated by section 634.3, rule 5.664 would establish "minimum hours of training and education." Specifically, proposed rule 5.664 requires that attorneys who represent delinquent youth complete a minimum of 12 hours of training or education in juvenile law before representing delinquent youth—and eight hours each year thereafter. Recognizing that experienced delinquency attorneys may possess the knowledge and skills expected to be gained from the initial training, section 634.3 and rule 5.664 provide an alternative eligibility requirement for attorneys with recent delinquency experience. Specifically, attorneys who have dedicated at least 50 percent of their practice over the most recent three years to the representation of delinquent youth and exhibited competence in their representation may waive the 12-hour requirement. However, all attorneys must comply with the 8 hours per year of continuing education and training. Proof of compliance with the training requirement will be

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

[2] California Rules of Court, rule 10.12, authorizes the Policy Coordination and Liaison Committee to take a position on behalf of the Judicial Council on pending legislative bills, provided that the position is consistent with the established policies and precedents and after considering input from advisory bodies, Judicial Council staff, and courts.

required annually based on the date the individual attorney became eligible to represent delinquent youth.

Section 634.3 mandates establishment of "required training areas" that include, at a minimum, "an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel's ethical duties, advocacy in the postdispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources." Rule 5.664 specifies the following topic areas that must be included in the 12 hours of training and education:

- An overview of delinquency law and related statutes and cases;
- Trial skills, including giving instruction on pretrial motions, introducing evidence at trial, preserving the record for appeal, filing writs, notices of appeal, and posttrial motions;
- Advocacy at the detention phase;
- Advocacy at the dispositional phase;
- Child and adolescent development, including training on interviewing and working with adolescent clients;
- Competence and mental health issues, including capacity to commit a crime and the effects of trauma, child abuse, and family violence, as well as crossover issues presented by youth involved in the dependency system;
- Police interrogation methods, suggestibility of juveniles, and false confessions;
- Counsel's ethical duties, including providing racial, ethnic, and cultural understanding and addressing bias;
- Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth;
- Understanding of the effects of and how to work with victims of human trafficking and commercial sexual exploitation of children and youth;
- Immigration consequences and the requirements of Special Immigrant Juvenile Status;
- General and special education, including information on school discipline;
- Extended foster care;
- Substance abuse;
- How to secure effective rehabilitative resources, including information on available community-based resources;
- Direct and collateral consequences of court involvement;
- Fitness hearings and advocacy in adult court;
- Appellate advocacy; and
- Advocacy in the postdispositional phase.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the winter 2016 invitation-to-comment cycle, from December 11, 2015, to January 22, 2016, 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. Eleven comments were received; 10 of the 11 commentators supported the proposal in principle. Seven commentators agreed with the proposal as circulated and 3 commentators suggested minor modifications. A chart with the full text of the comments received and the committee's responses is attached at pages 9–43.

The Initiation to Comment requested comment on the number of initial hours of training, proposed as 12 hours; three commentators suggested that the rule require attorneys to complete 16 hours of initial training to be eligible to be appointed to represent delinquent youth; and one commentator disputed the necessity of a rule requiring qualifications and continuing training. After consideration, the committee elected to retain the 12 hours of initial training proposed in the rule. Another question in the invitation to comment that garnered several comments related to whether the proposed form should include language explaining how competence by an attorney currently representing indigent youth could be demonstrated. The committee agreed with the commentators that guidance should be provided and modified the form to include the following instruction: describe trial work, including types; describe motion work, including types of motions drafted and argued; describe other criminal law practice experience.

Commentators also submitted suggestions related to the training topics and continuing training hours. Three commentators suggested including the following knowledge areas: police interrogation methods, interrogative suggestibility of juveniles and false confessions, advocacy on detention issues, advocacy on disposition, advocacy in relation to fitness and the representation of youth in adult court. The committee agreed that the suggested knowledge areas were important and modified the rule to include them in the list of training topics. In regard to the number of required continuing training hours, one commentator suggested that the continuing training hours be reduced to 16 hours over three years, while two commentators suggested it be increased to 12 or 16 hours per year. After consideration, the committee concluded that eight hours of continuing training hours per year struck the appropriate balance between maintaining high quality representation and sensitivity to attorney time and workload.

In response to a question in the invitation to comment, four commentators suggested annual compliance with the continuing training requirements and one commentator recommended that compliance with the ongoing training requirements be required every three years on the same schedule as the individual attorney's MCLE compliance cycle. After discussion, the committee determined that requiring compliance every three years in accordance with the individual attorney's MCLE compliance cycle would be the least burdensome on courts and attorneys. As such, the committee revised the optional form to reflect a three year compliance cycle and modified the rule to include guidance on prorating the continuing education hours for attorneys who become eligible for appointment to represent delinquent youth when their MCLE compliance cycle is already underway. The committee also agreed with comments suggesting that the item number three on the form, titled "Documentation," be reformatted to include a single check box to be checked if the court requests additional documentation.

Finally, the committee dedicated considerable discussion to whether to provide courts a statewide optional form to document completion of the training requirements. While newly added Welf. & Inst. Code section does not require creation of a form to track compliance with the mandates of the statute, the committee felt that such a form would be helpful to those courts that choose to do so. The committee considered creating a mandatory form but decided that creating an optional form would allow interested courts to use the form, without necessitating its use by all courts.

Implementation Requirements, Costs, and Operational Impacts

This proposal may result in minimal additional record keeping if the presiding judge of the juvenile court elects to request use of form JV-700 and therefore copies need to be stored. The committee intentionally did not provide a recommendation or requirement related to storage of the optional form precisely because it is optional. The practice in courts that use a similar form to track compliance with dependency attorney requirements varies: in some courts the juvenile presiding judge maintains the forms, and in others the court clerk keeps the forms. This document management issue is a decision best left to individual courts.

Attachments and Links

1. Cal. Rules of Court, rule 5.664, at pages 6–8
2. Form JV-700, at page 9
3. Chart of comments, at pages 10–43
4. Link A: Assembly Bill 703, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB703*

Rule 5.664 of the California Rules of Court is adopted, effective July 1, 2016, to read:

Rule 5.664. Training requirements for children's counsel in delinquency proceedings (§ 634.3)

(a) Definition

"Competent counsel" means an attorney who is a member, in good standing, of the State Bar of California, who provides representation in accordance with Welfare and Institutions Code section 634.3(a)(1)–(3), and who has participated in training in the law and practice of juvenile delinquency as defined in this rule.

(b) Education and training requirements

(1) Only those attorneys who, during each of the most recent three calendar years, have dedicated at least 50 percent of their practice to juvenile delinquency and demonstrated competence or who have completed a minimum of 12 hours of training or education during the most recent 12-month period in the area of juvenile delinquency, may be appointed to represent youth.

(2) Attorney training must include:

(A) An overview of delinquency law and related statutes and cases;

(B) Trial skills, including drafting and filing pretrial motions, introducing evidence at trial, preserving the record for appeal, filing writs, notices of appeal, and posttrial motions;

(C) Advocacy at the detention phase;

(D) Advocacy at the dispositional phase;

(E) Child and adolescent development, including training on interviewing and working with adolescent clients;

(F) Competence and mental health issues, including capacity to commit a crime and the effects of trauma, child abuse, and family violence, as well as crossover issues presented by youth involved in the dependency system;

(G) Police interrogation methods, suggestibility of juveniles, and false confessions;

(H) Counsel's ethical duties, including racial, ethnic, and cultural understanding and addressing bias;

(I) Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth;

(J) Understanding of the effects of and how to work with victims of human trafficking and commercial sexual exploitation of children and youth;

(K) Immigration consequences and the requirements of Special Immigrant Juvenile Status;

(L) General and special education, including information on school discipline;

(M) Extended foster care;

(N) Substance abuse;

(O) How to secure effective rehabilitative resources, including information on available community-based resources;

(P) Direct and collateral consequences of court involvement;

(Q) Fitness hearings and advocacy in adult court;

(R) Appellate advocacy; and

(S) Advocacy in the postdispositional phase.

(c) Continuing education requirements

(1) To remain eligible for appointment to represent delinquent youth, attorneys must engage in annual continuing education in the areas listed in (b)(2), as follows:

(A) Attorneys must complete at least 8 hours per calendar year of continuing education, for a total of 24 hours, during each MCLE compliance period.

(B) An attorney who is eligible to represent delinquent youth for only a portion of the corresponding MCLE compliance period must complete training hours in proportion to the amount of time the attorney was eligible. An attorney who is eligible to represent delinquent youth for only a portion of a calendar year must complete two hours of training for every three months of eligibility.

(C) The 12 hours of initial training may be applied toward the continuing training requirements for the first compliance period.

(2) Each individual attorney is responsible for complying with the training requirements in this rule; however, offices of the public defender and other agencies that work with delinquent youth are encouraged to provide MCLE training that meets the training requirements in (b)(2).

(3) Each individual attorney is encouraged to participate in policy meetings or workgroups convened by the juvenile court and to participate in local trainings designed to address county needs.

(d) Evidence of competency

The court may require evidence of the competency of any attorney appointed to represent a youth in a delinquency proceeding, including requesting documentation of trainings attended. The court may also require attorneys who represent youth in delinquency proceedings to complete Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court (JV-700).

ATTORNEY: STATE BAR NO:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	

DECLARATION OF ELIGIBILITY FOR APPOINTMENT TO REPRESENT YOUTH IN DELINQUENCY COURT

I *(name):* at *(office address):*

and *(phone number):* , am an attorney at law licensed to practice in the state of California. My state bar number is: . I declare that, in compliance with Welfare and Institutions Code section 634.3 and rule 5.664, I completed the minimum requirements for training, education, and/or experience as stated below.

1. ☐ **Initial Eligibility for Appointment**

I declare that

a. ☐ I am eligible for appointment to represent youth in delinquency proceedings because I have completed a minimum of 12 hours of training or education in the areas of juvenile law listed in rule 5.664(b)(2) *(list trainings, including dates):*

or

b. ☐ I have dedicated at least 50 percent of my practice each year during the most recent three calendar years to juvenile delinquency and have demonstrated competency in the practice of juvenile delinquency law, as described here *(describe trial work, including types; motion work, including types of motions drafted and argued; and other criminal law practice experience):*

2. ☐ **Continuing Eligibility**

I declare that in the past three years—from February 1, , to January 31, , which corresponds to my MCLE reporting cycle—I have completed eight hours per year of continuing education training that meets the requirements stated in rule 5.664(c) *(list trainings, including dates; attorneys who are eligible for appointment during a portion of their compliance period must complete proportional hours as stated in rule 5.664):*

Year 1 trainings:

Year 2 trainings:

Year 3 trainings:

3. Documentation

☐ The court has requested documentation *(attach documents)*. Number of pages attached:_____

I declare that I must complete this certification every three years, corresponding to my MCLE reporting cycle, as long as I represent any youth in a delinquency proceeding.

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

Executed this: day of *(month):* , *(year):* , at *(city):* , California.

Business Address:

Business Phone:

(Signature)

Form Approved for Optional Use
Judicial Council of California
JV-700 [New July 1, 2016]

Welfare and Institutions Code, § 634.3(a)(1)-(3);
Cal. Rules of Court, rule 5.664
www.courts.ca.gov

W16-09

Juvenile Law: Delinquency Defense Attorney Qualifications (adopt Cal. Rules of Court, rules 5.664; adopt form JV-700)

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

	Commentator	Position	Comment	Committee Response
1.	Gloria Brunswick Juvenile Division Manager Imperial County Probation Department	A	I think this is long overdue for attorney representing youth, and would like to see that district attorney and federal attorneys are required to have these types of training so they can better understand our responsibilities to the youth in not only representing them but delivering services for rehabilitation purposes.	No response required.
2.	East Bay Children's Law Offices Roger Chan, Executive Director	A	These comments are submitted on behalf of East Bay Children's Law Offices with respect to W16-09 (Delinquency Defense Attorney Qualifications). EBCLO, along with the Youth Law Center and the Pacific Juvenile Defender Center, was the co-sponsor of AB 703. Thank you for the opportunity to participate in the development of the proposed rule and form. Because of my involvement in the rulemaking process, I am in agreement with the proposed rule. I am providing responses to some of the questions posed in the Invitation to Comment. East Bay Children's Law Offices (EBCLO), a nonprofit law firm in Oakland, California, is court-appointed to represent children and youth in their delinquency, dependency, or probate guardianship proceedings in	

	Commentator	Position	Comment	Committee Response
			Alameda County. Our office represents more than 2,000 youth every year. In regard to the Request for Specific Comments: Are there knowledge areas integral to the practice of juvenile law that are not included in the enumerated training topic areas? I approached the list of required topics from the perspective of what a defense attorney must know prior to starting representation of a youth in juvenile court so as to avoid compromising a youth's defense. The enumerated areas are sufficiently broad so as to capture the myriad specific legal issues that arise in a juvenile case. For example, an understanding of child and adolescent development should include the impact of youthfulness in assessing the validity of a confession. An overview of delinquency law and procedure should include understanding available pre-adjudication diversion options. A primary objective is to ensure that defenses and arguments are not missed and prevent wrongful conviction or unnecessary/excessive detention. Understanding the effects of, and working	No response required.

	Commentator	Position	Comment	Committee Response
			with, victims of child trafficking and commercial sexual exploitation of children and youth is included. As California law and practice moves toward treating exploited youth as victims better suited for treatment in the child welfare system, this training topic has become even more important as a prerequisite area of training. Is 12 hours of initial training in the listed topics sufficient, and is it a standard that attorneys across the state can reasonably meet? Yes, 12 hours is minimally adequate but probably not sufficient. 16 hours would be preferable. Additional training is more desirable, but 12 hours is a reasonable minimum requirement given the number of required topics and consideration of the limited time and resources available to attorneys. A requirement of 16 hours would be even better though. Although the parallel rule for dependency attorneys, promulgated in 2001, requires only 8 hours of initial training, that requirement should not limit the committee's consideration of what a delinquency defense attorney should know	The committee acknowledges the commentator's concern about the sufficiency of 12 hours of training and appreciates that the commenter recognizes a more onerous hours requirement would overburden the limited time and resources of delinquency practitioners.

	Commentator	Position	Comment	Committee Response
			in 2016 and beyond. In addition, 8 hours would be insufficient to cover the training areas required by Welfare & Institutions Code Section 634.3. Is the experience alternative that allows attorneys who have dedicated at least 50 percent of their practice over the three most recent years to opt out of the initial training requirement sufficient to ensure the high standard of representation required by AB 703? And: Should item 1b on proposed Form JV-700 provide additional guidance to attorneys about what information should be provided? AB 703 and Welfare and Institutions Code Section 634.3 deliberately placed emphasis on not just the length of time an attorney practiced delinquency law, but whether during that time the attorney "demonstrated competence." The question of how to demonstrate competence is both subjective and objective. Potential objective measurements include the number of jurisdictional hearings involving the examination of witnesses, the number of contested	The committee agrees that item number 3 on proposed form JV-700 needs to be revised to include an additional checkbox that says "The court has requested documentation." The committee will make the suggested modification.

	Commentator	Position	Comment	Committee Response
			disposition hearings involving presentation of evidence, other criminal law practice experience, etc. Subjective measurements include evaluations by clients, family members, the court, and other counsel, etc. To that extent, I am in agreement with Item 1b on Form JV-700 allowing the attorney latitude in describing his or her competence, in combination with paragraph (d) of the rule that permits the court to "require evidence of the competency of any attorney." On Form JV-700, there may need to be an additional section at the bottom for a response from the court regarding whether the declaration is accepted or rejected or if additional documentation is required. What is the appropriate amount of ongoing training that should be required for attorneys who represent delinquent youth? I agree with the proposal to require continuing education of at least 8 hours per calendar year. While additional training requirements are desirable, it is appropriate for the minimum requirement to not exceed the state bar's requirement of 25 credit	No response required.

	Commentator	Position	Comment	Committee Response
			hours of MCLE activities every three years. Should proof of compliance with ongoing training requirements be required annually or every three years? If there is an annual ongoing training requirement, then there should be annual proof of compliance required. Is the format of item 3 on form JV-700 sufficient? As indicated above, there should be an additional box for situations where the court has requested additional documentation with a compliance date.	No response required As stated above, the committee agrees with this comment and will make the suggested modification to proposed form JV-700.
3.	Sydney Hollar, Attorney San Francisco, CA	AM	In order to comply with the training requirements, I would recommend that the JC provide the 12 hours per year - what happens if not enough courses are available to meet this requirement?	The committee appreciates this concern as did the promulgators of AB703; consequently, Welfare and Institutions Code section 634.3 encourages county public defender offices to extend their training opportunities to private practitioners. In addition, trainings that satisfy the 12 hour requirement are currently offered through the Pacific Juvenile Defender Center, as well as the National Association of Counsel for Children. Consequently, the committee is not concerned that a dearth of trainings will preclude compliance with the hours requirement.

W16-09

Juvenile Law: Delinquency Defense Attorney Qualifications (adopt Cal. Rules of Court, rules 5.664; adopt form JV-700)

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

	Commentator	Position	Comment	Committee Response
4.	Lisa Chorness Hovden, Attorney Long Beach, CA	N	I have had an opportunity to review the entirety of the Rule as proposed. I am amazed at the onerous and cumbersome requirements that are placed on Juvenile Delinquency attorneys. There are no such similar requirements for practicing family law, dependency law, or, for that matter, representing individuals charged with murder. I have represented clients in all three of these areas from nearly forty years. I do not consider those areas of law to be any less important, impactful, or intricate. Further, the cost factor for the individual attorney can be quite high and thus prohibit competent counsel from representing clients in this most important area. I am shocked and amazed at the brazen attempt to regulate an area of my profession that I have found is replete with dedicated, experienced, and highly professional individuals that do not, in any way, need this type of POLICING.	The proposed rule and form are necessitated by Assembly Bill 703, which enacted a new Welfare and Institutions Code section (section 634.3) that establishes training requirements for delinquency practitioners and required the Judicial Council to devise a concomitant Rule of Court. Welfare and Institutions Code section 634.3 and proposed Rule 5.664 reflect the legislative history, which emphasized the need for well-trained, competent counsel in this critical area of the law. Furthermore, precedent for establishing that minimum standards must be met is exists in the form of rule 5.660, which requires attorneys who represent parties in dependency proceedings to meet similar training standards.
5.	Orange County Bar Association Todd G. Friedland, President	AM	Welfare and Institutions Code section 634.3 only applies to counsel appointed pursuant to Welfare and Institutions Code section 634. Privately retained counsel who represent minors in section 601 or 602 actions are not within the purview of this legislation and accordingly, not bound by proposed Rule 5.664. Proposed form JV-	The committee agrees with this recommendation and will make the suggested modification.

W16-09
Juvenile Law: Delinquency Defense Attorney Qualifications (adopt Cal. Rules of Court, rules 5.664; adopt form JV-700)
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			700 should be entitled, "Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court" in order to clarify its purpose and who is to use it.	
			The suggested experience alternative of 50% juvenile representation over a three year period may be difficult to document and not a good substitute for the training requirement. Perhaps reducing the experience alternative to a two year period coupled with only a six hour initial training period would suffice.	The committee appreciates the commentator's concern about documenting the sufficient experience alternative and will provide additional guidance about what information should be included. The committee believes that annual continuing education requirements will provide experienced attorneys with appropriate training and therefore does not recommend shortening the experience requirement to 50% in the previous two years with six hours of required training.
			Request for Specific Comments	
			Does the proposal appropriately address the stated purpose?	
			The proposal adequately addresses the mandate of Welfare and Institutions Code section 634.3.	No response required.
			Are there knowledge areas integral to the practice of juvenile law that are not included in the enumerated training topic areas?	The committee agrees that these are important topics and will revise the rule to include these in the list of training topics.
			Police Interrogation Methods, Interrogative Suggestibility of Juveniles and False Confessions (which are separate topics from	

	Commentator	Position	Comment	Committee Response
			pretrial motions) should be considered for inclusion in the training topics. Is 12 hours of initial training in the listed topics sufficient, and is it a standard that attorneys across the state can reasonably meet? If 12 hours is not enough, please explain why and provide an alternative suggestion. If 12 hours is too much, please explain why it is excessive and provide an alternative suggestion. Although the initial 12 hours of training is an arbitrary number, it is not unreasonable. Naturally, the need for training hours will vary greatly based upon an attorney's actual experience with criminal/juvenile practice and procedure. There must be a starting point. There are many options available for attorney education in counties which do not have a public defender's office which offer this type of training. In an age of webinars, electronic self-study and statewide organizations such as the California Public Defender's Association, any attorney practicing in California should be able to meet the 12 hour standard. Is the experience alternative that allows attorneys who have dedicated at least 50	No response required. The committee appreciates the commentator's perspective, but must await legislative action

	Commentator	Position	Comment	Committee Response
			percent of their practice over the three most recent years to opt out of the initial training requirement sufficient to ensure the high standard of representation required by AB 703 and Welfare and Institutions Code section 634.3? No it is not. If the majority of practitioners were already fulfilling the educational standard of Welfare and Institutions Code section 634.3, then there would be no need for such legislation, a court rule or required training hours. Clearly, there are perceived serious deficiencies in counsel's competency which are sought to be remedied in topics listed in Rule 5.664(b)(D) through 2(b)(K). Sadly, the enactment of section 634.3 attempts to address these issues through a defense lawyer's representation. In most counties, defense counsel has faced an uphill battle by a lack of local available resources and a lack of issue sensitivity by probation, the prosecution and the judiciary. A corresponding section 634.3 educational standard is needed for the prosecution and juvenile probation officers. What is the appropriate amount of ongoing training that should be required for attorneys	to implement the changes suggested by the commentator. The committee acknowledges the importance of the practical application of skills learned in

	Commentator	Position	Comment	Committee Response
			who represent delinquent youth? The 8 hours per calendar year as proposed by Rule 5.664(c)(1) may be excessive. If attorneys are being appointed by the court to represent minors then these attorneys are gaining real experience. A minimum of 16 hours over a three year reporting period should suffice for ongoing training.	training. However, the committee believes that in an area of the law as dynamic and interdisciplinary as delinquency, 8 hours per year of ongoing training is necessary to insure competent representation.
			Should proof of compliance with ongoing training requirements be required annually or every three years? If it is required every three years, should that three-year cycle follow the attorney's MCLE compliance cycle or should it be three years from the date the attorney became eligible to represent delinquent youth? Proof of compliance with ongoing training should be required every three years and should follow the attorney's MCLE compliance cycle. Following the compliance cycle effectuates smooth transition of this new requirement for the court, the state bar, the attorney and MCLE providers.	The committee believes that proof of compliance should be required annually based on the date the attorney became eligible to represent delinquent youth. In this interdisciplinary, rapidly changing area of the law annual compliance insures that attorneys stay informed about changes to the practice area.
			Should item 1b. on proposed form JV-700 provide additional guidance to attorneys about what information to include?	The committee agrees that more specific instruction about the information item 1b. seeks may be necessary. As such, the

	Commentator	Position	Comment	Committee Response
			1b gives no guidance at all. How will the court determine the accuracy of counsel's statements? Is the format of item 3 on form JV-700 sufficient? Instead of having two check boxes, should it simply state that the court may request additional documentation? Item 3 should simply state that the court may request additional documentation.	committee modified the rule to state that competence can be established by providing information about litigation experience, motion practice, and other relevant criminal law experience. In addition, the court may confirm the accuracy of an attorney's statements by requesting documentation, as set forth in item number 3. The committee agrees that item number 3 needs to be revised and will include an additional checkbox that states "The court requests additional documentation."
6.	Pacific Juvenile Defender Center Sue Burrell, Policy Director Kasie Lee, Project Director	A	These comments are submitted on behalf of the Pacific Juvenile Defender Center, in response to Invitation to Comment W16-09, which will implement the provisions of AB 703 (Bloom) with respect to juvenile defense attorney qualifications. The Pacific Juvenile Defender Center (PJDC) is a regional affiliate of the Washington, D.C.-based National Juvenile Defender Center. PJDC works to build the capacity of the juvenile defense bar and to	

	Commentator	Position	Comment	Committee Response
			improve access to counsel and quality of representation for children in the justice system. It provides support to more than 500 juvenile trial lawyers, appellate counsel, law school clinical programs and non-profit law centers to ensure competent representation for children throughout California and around the country. Members of our Board drafted AB 703, and participated in the discussions that led to the proposed rule. AB 703 grew out of our first-hand knowledge about deficits in practitioner training, and some of what we have learned is relevant in developing this rule. PJDC has conducted several surveys of juvenile defense counsel revealing that close to half began representing children in delinquency proceedings with zero training on delinquency specific issues. We have also learned that many delinquency attorneys work in settings that do not provide in-house training. Questions posed on our organization's listserv have indicated widespread confusion about basic issues such as the duty of confidentiality to the client, the role of counsel to assert the expressed interests of the client, and the duty to provide post-disposition	

	Commentator	Position	Comment	Committee Response
			representation. In other words, simply having practiced for a long time has not necessarily resulted in competence in key areas. We are gratified to play a part in developing this rule to assist in addressing the need for increased knowledge among entry level, as well as "experienced" practitioners. Because we have been very involved in the legislative and rulemaking process so far, we agree with and do not have comments on most components of the proposed rule. These comments respond to a few of the questions in the Request for Specific Comments on page 4 of the Invitation to Comment. 1. Are there knowledge areas integral to the practice of juvenile law that are not included in the enumerated training topic areas? Comment: Yes. Despite our best efforts, a number of core issues in effective representation are not specifically mentioned in the list of training issues: • Advocacy on detention issues • Advocacy on disposition • Advocacy in relation to fitness and	The committee agrees that these are important topic areas and will revise the rule to include these topics.

	Commentator	Position	Comment	Committee Response
			youth in adult court These are things every lawyer representing a young person needs to know about from day one. Adding them would surely be within the broad statutory language of Welfare and Institutions Code section 634.3, and would provide helpful guidance for those developing training programs or seeking training in the core areas of practice. Recommendation: Add these issues to the list of training topic areas. 2. Is 12 hours of initial training in the listed topics sufficient, and is it a standard that attorneys across the state can reasonably meet? Comment: No and yes. Of course, if we were designing a system without resource limitations, we would want much more training. The State Bar of California Guidelines for Indigent Defense Service Systems (2006) specifically noted that "With the scope of representation continually expanding, counsel shall be encouraged to exceed the mandatory minimum required by the State Bar with special emphasis on training in the areas of juvenile practice" (at. page 23). Juvenile	The committee appreciates that more training hours would be better; however, the committee believes that 12 hours strikes the appropriate balance between adequate training and not overburdening attorneys who have limited time and resources.

	Commentator	Position	Comment	Committee Response
			law courses in law school are typically 24 or 36 hours in length. Juvenile probation officers must have 40 hours of training before beginning to care for youth in juvenile facilities. Police officers receive literally hundreds of hours of training before undertaking their duties. Also, as a practical matter, it will be challenging to provide even cursory instruction on each of the training topics listed in proposed rule 634.3(b)(2) in just 12 hours. At the same time, we recognize that many practitioners work in locations or settings that make it difficult for them to readily access training. Others work in offices that are stretched for person power, so they need to be able to get the training quickly. In the past both issues were made more difficult because practitioners needed to travel long distances to attend conferences or other training programs, and training was not available on demand. Both of these issues will be effectively addressed as on-line training is developed to meet the requirements of AB 703 and rule 5.664. If practitioners are able to participate in training from their home or office (as is the	

	Commentator	Position	Comment	Committee Response
			case with MCLE), many potential objections to the amount of hours will be effectively addressed. Also, our information from practitioners suggests that they are comfortable with a two day training requirement of 16 hours. In a 2015 PJDC survey on training, 27 of 31 defender offices said they could provide two days of training. In another section asking about what training *should* be, a number of responders said that it should be a week long, and another responder said that they wished the annual training put on by the California Public Defenders Association could be two days instead of one for delinquency practice. With increased attention to the requirements of AB 703, there will surely be greater availability of on line training, and more concerted efforts to provide in-person training through Beyond the Bench, PJDC, the Los Angeles County Public Defender's Office and the California Public Defender's Association. Two days will be a very reasonable and attainable amount of training. Recommendation: We urge the Council to consider increasing the amount of initial training to 16 hours. While that is still less	

	Commentator	Position	Comment	Committee Response
			than any of us would want in a world without resource limitations, it represents an achievable amount of training, particularly if the availability of on line training is factored in. 3. Is the experience alternative that allows attorneys who have dedicated at least 50 percent of their practice over the three most recent years to opt out of the initial training requirement sufficient to ensure the high standard of representation required by AB 703 and Welfare and Institutions Code section 634.3? Comment: Actually, the proposed rule also requires that those attorneys have "demonstrated competence during each of the most recent three calendar years." This is consistent with the language in AB 703 that the Judicial Council shall "Establish minimum hours of training and education, or sufficient recent experience in delinquency proceedings in which the attorney has demonstrated competence" as the requirement for appointment. The real question is whether the proposed language sufficiently protects against practitioners who have been doing it for a	The committee agrees that additional guidance regarding competence is required and will revise the rule to state that competence can be established by providing information about litigation experience, motion practice, and other relevant criminal law experience.

	Commentator	Position	Comment	Committee Response
			long time, but do not have the knowledge required for competent representation. Although the meaning of "has demonstrated competence" is vague, it does appear to give courts authority to deny appointment of experienced practitioners who have not performed competently in the past. The Council should consider whether the rule should suggest ways of determining competence. For example, the Bar Panel application in San Francisco provides that: Within the last three years, applicant must have handled as attorney of record (1) ten Juvenile Delinquency cases - five must have been contested jurisdictional hearings on the merits of the charges which involve the examination of witnesses; AND (2) five motions in delinquency cases for which substantive pleadings were filed; AND, (3) applicant must certify that at least thirty percent of applicant's practice is in juvenile delinquency law; AND (4) must further establish that applicant has a demonstrable working familiarity with the concepts of criminal defense law. (Bar Association of San Francisco, Application For Juvenile Delinquency Law Panel).	

	Commentator	Position	Comment	Committee Response
			Recommendation: Accept the proposed language, but consider adding additional language about how competence is to be determined. For example, there could be a sentence that competence may be determined through demonstrated skills in adjudication, motion practice, investigation, knowledge of juvenile and criminal law, and knowledge of the training issues set forth in section (b)(2) of this rule. It could also permit approval of attorneys who have provided training to delinquency attorneys on the enumerated topics. 4. What is the appropriate amount of ongoing training that should be required for attorneys who represent delinquent youth? Comment: As with the initial training, we would like to see this bumped up a little bit. With the ongoing changes in law, and broad array of areas they need to know about, people who represent young people in juvenile court need to have more than one-day-a-year of training. Probation officers must have 40 hours per year of training. Juvenile Court judges have multiple all-day trainings at least twice a year, plus Beyond the Bench. With the increasing availability of on-line training practitioners should have	The committee appreciates the importance of continuing education but believes that requiring 8 hours of continuing education per year is sufficient to maintain a high level of practice, while also being mindful of attorneys' limited time and resources.

	Commentator	Position	Comment	Committee Response
			no major barriers in accessing an additional day of training per year. Recommendation: Increase the annual amount of ongoing training to 16 hours per year. 5. Should proof of compliance with ongoing training requirements be required annually or every three years? If it is required every three years, should that three-year cycle follow the attorney's MCLE compliance cycle or should it be three years from the date the attorney became eligible to represent delinquent youth? Comment: The rule should call for annual reporting of compliance based on the attorney's initial eligibility to practice date. Our hope should be that counties will develop oversight systems to track appointment of counsel, and annual reporting will help to make such oversight more effective and timely. Also, having annual requirements will help to keep practitioners more engaged with the training requirements. Keeping track of training is not time consuming and does not require additional resources; it is just a matter of good practice, and they already keep track	The committee agrees that proof of compliance should be required annually based on the date the attorney became eligible to represent delinquent youth and modified the rule and form accordingly.

	Commentator	Position	Comment	Committee Response
			of their training for MCLE compliance. Many bar panels already require annual reporting, and defender offices surely look at performance, including training, on an annual basis. Recommendation: Require compliance to be demonstrated annually and have it based on the date of eligibility for appointment.	
			6. Should item 1b. on proposed form JV-700 provide additional guidance to attorneys about what information to include? Comment: Yes. The draft form calls for practitioners to report "trainings, including dates." If one of the purposes of the form is to assist courts in determining eligibility, we should also ask about training topics, length of each training, and training provider. Recommendation: Add additional components to the training records section, including training topics, length of training and training provider.	The committee agrees that more information may be required. The form has been revised to make it clear that the court may request additional information about the trainings completed.
			7. Is the format of item 3 on form JV-700 sufficient? Instead of having two check boxes, should it simply state that the court may request additional documentation?	The committee agrees that the form should contain a checkbox where the court can request more information and revised the form accordingly.

	Commentator	Position	Comment	Committee Response
			Comment: On the copy of the form on the Judicial Council web site, there is only one box – for when the court has not requested documentation. We believe there should be an additional box for situations where the court has requested additional documentation, with a space to describe what documentation was requested and a compliance date. There should also be space for the attorney to describe their compliance and when it was completed. Recommendation: Amend the form to provide space to describe and requested documentation and compliance period, as well as the documentation provided and date of compliance. The Pacific Juvenile Defender has very much enjoyed being a part of the efforts leading up to this proposed rule, and appreciates the excellent work of the Family and Juvenile Law Advisory Committee and Nicole Giacinti. Thank you for the opportunity to provide these comments; please let us know if we can provide further explanations about any of the comments in this document.	

7.	The State Bar of California Office of Legal Services Phong S. Wong, Chair, Standing Committee on Delivery of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, as to the number of hours required for specialized training in this area. The proposal helps ensure that juvenile clients are represented by competent attorneys who have received specialized training. However, on form JV-700, "Section 2. Continuing Attorney," the language is inconsistent with rule 5.664 of the California Rules of Court and should read "I declare that in the last calendar year,…" instead of "I declare in the past twelve months,..." Are there knowledge areas integral to the practice of juvenile law that are not included in the enumerated training topic areas? No. Is 12 hours of initial training in the listed topics sufficient, and is it a standard that attorneys across the state can reasonably meet? If 12 hours is not enough, please explain why and provide an alternative suggestion. If 12 hours is too much, please explain why it is excessive and provide an alternative suggestion.	The language on form JV-700 and rule 5.664 is consistent. Section 2 on form JV-700 refers to the required ongoing training and education hours for attorneys who have already complied with the initial eligibility requirements. The committee appreciates this comment as it highlights a potential source of confusion in the rule. The committee renamed section 2 on form JV-700 to provide clarity. No response required. No response required.

			Yes, 12 hours is sufficient for the initial training. Is the experience alternative that allows attorneys who have dedicated at least 50 percentof their practice over the three most recent years to opt out of the initial training requirement sufficient to ensure the high standard of representation required by AB 703 and Welfare and Institutions Code section 634.3? Yes. What is the appropriate amount of ongoing training that should be required for attorneys who represent delinquent youth? Yes. The proposed eight (8) hours for ongoing training is appropriate. Should proof of compliance with ongoing training requirements be required annually or every three years? If it is required every three years, should that three-year cycle follow the attorney's MCLE compliance cycle or should it be three years from the date the attorney became eligible to represent delinquent youth?	No response required. No response required. No response required.

			Proof of compliance should be required annually. Should item 1b. on proposed form JV-700 provide additional guidance to attorneys about what information to include? No, it is unnecessary. Is the format of item 3 on form JV-700 sufficient? Instead of having two check boxes, should it simply state that the court may request additional documentation? It should simply state that the court may request additional documentation.	No response required. No response required.
8.	Superior Court of Los Angeles County	A	No specific comment.	No response required
9.	Superior Court of Riverside County	A	No specific comment.	No response required.
10.	Superior Court of San Diego Mike Roddy, Court Executive Officer	A	No specific comment.	No response required.
11.	Youth Law Center Virginia Corrigan, Youth Law Center	AM	These comments are submitted on behalf of the Youth Law Center pursuant to Invitation to Comment W16-09, which will implement the provisions of AB 703 (Bloom) that deal with juvenile defense attorney qualifications.	

			The Youth Law Center is a national nonprofit with a longstanding interest in improving the quality of lawyering in the juvenile justice system. Youth Law Center attorneys have worked for many years with the National Juvenile Defender Center, the Pacific Juvenile Defender Center, and have worked with the California Judicial Council's Center for Families, Children and the courts on training, rulemaking and policy development for juvenile system professionals. YLC has also worked extensively on specific juvenile system issues, including competence to stand trial, collateral consequences of juvenile court involvement, and practice standards for juvenile counsel. The Youth Law Center appreciates the work and thought that have gone into the Council's proposed rules and forms, which represent an important step forward in ensuring that every young person who appears in juvenile court has competent representation. We offer several recommendations to refine the proposed rules. Recommendation 1: Additional Training Topics	The committee agrees that these are important topic areas and revised the rule to include

			The proposed list of training topics includes many of the most important topics with which a juvenile defender must be familiar. However, we believe that training in the following areas is also critical in order to provide competent representation to youth in the juvenile delinquency court: • Advocacy on Detention. The rules governing when a young person may be detained and the process and timeline for a case in which a young person is detained differ sharply from what is common in the adult criminal court. These differences can present a source of confusion for attorneys and can result in inadequate representation. • Advocacy at the disposition hearing. Just as the goals of juvenile delinquency differ from the goals of the criminal court, the dispositional options and the matters the court must consider at disposition vary from what an adult criminal court must consider. Disposition hearings entail individualized consideration of a young person's needs and how they can be met by available services. Training is required for	them.

			effective advocacy within this paradigm. • Extended Foster Care. A number of young people involved in the delinquency system are eligible to participate in extended foster care. Attorneys who represent young people must be aware of this program, its eligibility requirements, and the benefits it provides in order to effectively counsel clients and ensure that eligibility requirements are met. Training on these topics, as well as the topics already included in the proposed rule, is essential for attorneys representing young people in delinquency proceedings. We urge the committee to consider adding these matters to the list of required training topics. Recommendation 2: Additional Initial Training Hours The committee has requested comments on whether 12 hours of initial training on the listed topics is sufficient. The Youth Law Center understands that juvenile delinquency attorneys operate under time and resource constraints. Nevertheless, it is the view of the Youth Law Center that	The committee appreciates that more training hours would be better; however, the committee believes that 12 hours strikes the appropriate balance between adequate training and not overburdening attorneys who have limited time and resources.

			additional initial training hours are necessary to achieve the objectives of AB 703. The Youth Law Center proposes and initial training requirement of 16 hours. Additional training hours are needed to adequately cover the required topics contained in the proposed rule. As the proposed rule stands, attorneys will be required to obtain training in fifteen topics. Twelve hours is simply not enough time to give adequate attention to these important areas. Requiring sixteen hours of training will allow attorneys to receive at least an hour of training on each of these topics. Sixteen hours is not an overly-onerous requirement. All of the required training could be completed in two days – over the course of one weekend, for example. The development of online training materials and introductory training courses that the new requirements will undoubtedly encourage will further facilitate training for attorneys, reducing the difficulties associated with increased hour requirements. Recommendation 4: Additional Ongoing Trainings Hours and Requirements The committee has requested comment on	The committee appreciates the importance of continuing education but believes that requiring 8 hours of continuing education per year is sufficient to maintain a high level of

			the appropriate amount of ongoing training for attorneys who represent delinquent youth. Given the ongoing changes to juvenile delinquency law and the depth and breadth of knowledge required to effectively represent young people in delinquency court, Youth Law Center proposes an ongoing training requirement of 12 hours. Again, the development of training materials that will be prompted by the passage of AB 703 and by the issuance of the related court rule will make meeting this requirement feasible. We note that the proposed rule does not contain any requirement as to the topics that must be covered in ongoing training. The Youth Law Center agrees that attorneys should be free to pursue training on those topics that appear to them to be most relevant and useful to their practice. However, we propose that attorneys be required to obtain one hour of training on recent updates to delinquency law and practice .This modest substantive requirement will ensure that attorneys remain up-to-date on changes to the law that may affect their requirements while permitting attorneys ample opportunity to obtain training in other areas of their choosing.	practice, while also being mindful of attorneys' limited time and resources. Additionally, proposed rule 5.664 does address the topics that are to be covered in the 8 hours per year of ongoing education. Specifically, rule 5.664(c)(1) states that attorneys must complete "at least eight hours of continuing education in the areas listed in (b)(2)." One of the topic areas listed in (b)(2) is "an overview of delinquency law and related statutes and cases."

			Recommendation 5: Yearly Training Proof Compliance The committee has requested comment on whether proof of compliance with training requirements should be required yearly or every three years. The Youth Law Center believes that proof of compliance with training requirement should be required yearly. A yearly tracking will be simpler to manage for counties than a requirement of every three years based on initial eligibility data, which would require counties not only to track compliance, but also set different reporting dates for each attorney.	The committee agrees that proof of compliance with the ongoing education requirements should be required annually and revised the rule accordingly.
			Recommendation 6: Requirement to Demonstrate competence for Experience Alternative The committee has requested comment on whether permitting attorneys who have dedicated 50% of their practice to representing juveniles and have demonstrated competence to opt out of initial training requirements will maintain the high standards required by AB 703. The Youth Law Center agrees that attorneys who have devoted significant portions of their career to representing juveniles may, in	The committee agrees that additional guidance regarding competence is required and has revised the rule to state that competence can be established by providing information about litigation experience, motion practice, and other relevant criminal law experience.

			some cases, be sufficiently competent to be permitted to opt out of initial training requirements. We are convinced however, that length of experience alone is insufficient to permit an attorney to opt out of initial training - it is crucially important that attorneys also be required to demonstrate that such representation has been competent. In order to emphasize the importance of competence, the Youth Law Center suggests that language be included in the rule to explain how competence might be demonstrated. For example, a sentence could be added to the rule explaining that competence could be shown through demonstrated skills in adjudication, motion practice, and investigation, knowledge of juvenile and criminal law, and demonstrated competence with regards to issues set forth in section (b)(2) of this rule. Recommendation 7: Additional Guidance to Attorneys on Declaration of Eligibility The committee has requested comment on whether items on the proposed declaration of eligibility require additional clarification. We believe that items 1a and 2 of the Declaration of Eligibility should require	The committee agrees that item number three should contain an additional checkbox that allows the court to request additional information. With the addition of this checkbox, the committee does not believe it is necessary to ask for additional information about the trainings attended. Item 1a. currently requests the title of the training and

			attorneys to state not only trainings and dates, but also the topics covered by the training and the lengths of the trainings attended. Without this information, courts will lack the necessary information to determine whether attorneys have complied with the training requirements contained in the rule. In addition, we believe that item 3 should include a box to check if the court has requested additional documentation, as well as space to describe the requested documentation.	the date of attendance. The court can request additional information if it feels that is necessary.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Notice of Juvenile Hearings by Electronic Mail (Implementation of AB 879)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Diana Glick, 916-643-7012, diana.glick@jud.ca.gov and Tara Lundstrom, 415-865-7650, tara.lundstrom@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 Advisory Committee Agenda approved December 10, 2015

JCTC approved ITAC's Annual Agenda on January 11, 2016

Project description from annual agenda:
Family and Juvenile Law Advisory Committee Annual Agenda Item 1.
As directed by the Judicial Council, the Office of Governmental Affairs provided the committee with the following legislative proposals that may have an impact on family and juvenile law issues within the advisory committee's purview. Based on these referrals, the committee will review the legislation and propose rules and forms as may be appropriate for the council's consideration:
AB 879 (Burke) Juveniles: court proceedings: notice Chapter 219, Statutes of 2015 Summary: Allows service of notice of hearings in specified dependency matters to be done by electronic mail, provided that the county, court, and parties are all willing to accept service electronically.

Information Technology Advisory Committee Annual Agenda Item 7:
Modernize Rules of Court Modernize Trial and Appellate Court Rules to Support E-Business Major Tasks: (a) In collaboration with other advisory committees, continue reviwe of rules and statutes in a systematic manner and develop recommendations for comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

If requesting July 1 or out of cycle, explain:
This proposal amends rules and proposes a new form to implement the provisions of AB 879 (Burke, 2015), which took effect on January 1, 2016. Because the law has already gone into effect, the committees want to provide guidance and forms to local courts and social services agencies as soon as possible after that date.

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: April 14–15, 2016

Title
Juvenile Law: Notice of Juvenile Hearings by Electronic Mail (Implementation of AB 879)

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005

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

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 11, 2016

Contact
Diana Glick, 916-643-7012
diana.glick@jud.ca.gov

Tara Lundstrom, 415-865-7650
tara.lundstrom@jud.ca.gov

Executive Summary

Effective January 1, 2016, Assembly Bill 879 authorizes e-mailing notices of hearings in juvenile court under Welfare & Institutions Code sections 290.1–295. To implement AB 879, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee jointly propose (1) amending rules 5.524, 5.534, and 5.708 of the California Rules of Court; (2) adopting mandatory form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)*; and (3) renumbering form EFS-005 to EFS-005-CV. This proposal aligns notice provisions in the rules with this change in law and provides a form for obtaining consent to electronic notice of hearings from those persons entitled to notice of juvenile court hearings. This proposal would also make technical changes to rules 5.550 and 5.815 to update references to and eliminate inconsistencies with the statutes.

Recommendation

The Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee jointly recommend:

1. Amending rules 5.524, 5.534, 5.550, 5.708, and 5.815 of the California Rules of Court;

2. Adopting mandatory form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)*; and

3. Renumbering form EFS-005 to EFS-005-CV.

The text of the amended rules 5.524, 5.534, 5.550, 5.708, and 5.815 is attached at pages 6–9. New form EFS-005-JV/JV-141 and revised form EFS-005-CV are attached at pages 10–13.

Previous Council Action

The Judicial Council has authorized electronic filing, but not electronic service, in juvenile proceedings. It has not taken any prior action related to e-mailing notices of hearings in juvenile dependency cases.

Code of Civil Procedure section 1010.6 and trial court rules 2.250–2.261 authorize electronic filing and electronic service in civil matters. Effective July 1, 2014, the Judicial Council amended rule 5.522 to enable the electronic filing of juvenile court documents in accordance with the trial court rules, specifically rules 2.252, et seq. However, the council expressly excluded the application of trial court rule 2.251 to juvenile proceedings. (See Cal. Rules of Court, rule 5.522(b)(4) [“This rule does not incorporate the electronic service provisions in rule 2.251”].) Rule 2.251 authorizes electronic service and sets forth technical requirements for electronic service.

Rationale for Recommendation

In 2015, the Legislature enacted Assembly Bill 879 (Stats. 2015, ch. 219), which amends six statutory provisions that govern how probation officers, social workers, and juvenile courts provide notice of a variety of different hearings in juvenile proceedings. The amended statutes authorize notice of specified hearings by e-mail and allow persons entitled to notice in these hearings to provide an e-mail address to the court for this purpose.

AB 879 allows for notice by e-mail in the following types of juvenile dependency hearings: detention, jurisdiction, disposition, review, and termination of jurisdiction. In order to provide notice of hearing by e-mail, two conditions must be met: (1) the court and the agency providing notice must choose to allow notice by e-mail; and (2) those persons who are entitled to notice of the hearing must have affirmatively consented to receive e-mail notice.

AB 879 establishes several limitations on the use of e-mail for notices of hearings:

- Minors who are between the ages of 14 and 17 years old may provide consent to receive notices of hearings by e-mail, so long as their attorneys also consent. Minors who are 14 or 15 years old will receive e-mail notices of hearings *in addition to* the other forms of notice required by law.
- If the hearing is a "selection and implementation" (permanency) hearing at which a social worker will recommend the termination of parental rights, e-mail notice may only be provided *in addition to* the other forms of notice required by law.
- If the subject of the hearing is an Indian child, or the court has reason to know that an Indian child is involved, notice may only be given by registered or certified mail.
- If the child is detained and the persons entitled to notice are not present at the initial petition hearing, notice of the jurisdictional/dispositional hearing must be by personal service or certified mail.

This proposal implements AB 879 by amending rules 5.524, 5.534, and 5.708. To ensure the seamless implementation of AB 879's new notice provisions, this proposal amends rule 5.524(e) to require that, if the county and the court choose to offer notice of hearing by e-mail, the court must develop a process for obtaining consent from persons entitled to notice. In addition, this proposal amends rule 5.534(m) to indicate that those who are entitled to notice and want to receive notice of hearings by e-mail, must provide their consent by signing and filing the new mandatory form, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)* (form EFS-005-JV/JV-141). Lastly, in lieu of stating the notice requirements directly in the rule, this proposal adds to rule 5.708(n)(5) a reference to the revised notice provisions in Welfare and Institutions Code section 294 for "selection and implementation" (permanency) hearings under section 366.26.

The statute requires that consent to e-mail notice be provided on form EFS-005. This form is currently used in civil cases to allow parties to consent to electronic service and provide their electronic service address. This proposal renumbers the current civil form EFS-005 to EFS-005-CV[1] and adds a new mandatory form—titled *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)* (form EFS-005-JV/JV-141)—that is specifically designed to implement AB 879. The form was developed using plain language style and formatting features and satisfies the requirements of the legislation.

The new form recognizes that the limited authority to e-mail notices of hearing in AB 879 differs in scope from electronic service under the Code of Civil Procedure and its implementing trial court rule, which have not been extended to juvenile proceedings. (See Cal. Rules of Court, rule 5.522(b)(4).) Distinct from the current form EFS-005—which allows for consent only by parties

[1] A technical amendment was also made to revised form EFS-005-CV: the words "and not a party to this action" were eliminated from the Proof of Electronic Service on page 2 because they are not consistent with the statute and the rules on electronic service that permit parties to serve a document electronically.

and attorneys—the new form contemplates the full range of individuals who are entitled by statute to receive notice of juvenile dependency hearings. The new form provides a space for the signature of the attorney, which is required before minors may consent to receive e-mail notice of hearings. The new form also provides an option to withdraw consent to e-mail notice of hearings, which is not provided for on the current form EFS-005.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the winter 2016 invitation to comment cycle, from December 11, 2015, to January 22, 2016, 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. Eight organizations provided comment; three agreed with the proposal, four agreed if modified, and one commentator did not indicate an opinion. A chart with the full text of the comments received and the committees' responses is attached at pages 14–20.

The Superior Court of Orange County asked for guidance on whether social workers would be authorized to obtain consent to electronic notice of hearing, while the sponsor of the bill, the Los Angeles County Office of County Counsel, expressed a preference for obtaining consent to e-mail notice during an in-person court appearance on the record. AB 879 does not expressly address whether a social worker is authorized to obtain the consent to notice by e-mail, yet it does appear to contemplate such a practice because (1) only the social worker would have contact with the parent before the initial detention hearing and (2) Welfare and Institutions Code section 290.1, as amended by AB 879, authorizes notice of the initial detention hearing by e-mail. Based on further discussion following the comment period, the committees recommended revising rule 5.524(e)(2) to provide that the process developed by the court must comply with the notice statute and ensure that notice can be effectuated according to statutory timelines.

In addition, the Los Angeles County Office of County Counsel disagreed with the need for a new form, preferring instead to use the current civil form, *Consent to Electronic Notice and Notice of Electronic Service Address* (form EFS-005). After careful consideration of this comment, the committees recommend against pursuing this option. The current form EFS-005 is not specifically tailored to implement AB 879: (1) it does not reflect that AB 879 allows for consent to only e-mail notice of hearings in juvenile proceedings, not electronic service of all documents under the Code of Civil Procedure and its implementing trial court rule; (2) it does not allow for persons other than parties and attorneys to consent to e-mail notice; (3) it does not expressly provide the option of withdrawing consent to e-mail notice; and (4) it does not provide space for the attorney's signature where the person consenting to e-mail notice is a minor.

The new proposed form, EFS-005-JV/JV-141, was circulated for comment as an optional form, with a specific request for comment regarding whether the form should be mandatory or optional. The Orange County Bar Association commented that the form should be mandatory,

whereas the San Diego Superior Court preferred an optional form. After deliberation, the committees determined that because the statute requires the use of the form, it should be mandatory. Even though the overall process of e-mail notification is optional and based on consent of those involved, once there is an agreement by the county and court to offer e-mail notices of hearings, consent by persons entitled to notice must be given on the EFS-005-JV/JV-141, thereby requiring a mandatory form. A mandatory form would assist parties by standardizing how they may give consent and assist courts by making it easier to determine when consent has been given.

The committees considered an alternative proposal that would add language to the existing EFS-005 and EFS-010 to allow persons entitled to notice in juvenile hearings to provide consent to receive notice of hearing by e-mail, to provide an e-mail address to the court, and to change their e-mail address on file with the court. However, the committees ultimately decided that creating a separate version of form EFS-005 specifically designed for juvenile hearings was the most efficient and expedient way to ensure a workable process in the juvenile court, without unnecessarily impacting the current civil law forms.

There were also a number of suggestions for changes to improve the readability of the form, which were accepted by the committees.

Implementation Requirements, Costs, and Operational Impacts

Implementation may require changes in court procedures and training in those courts that choose to allow for notice of hearings by e-mail. Because the legislation contemplates consent being provided on a Judicial Council form, and in some cases entities other than the court issue the notices of hearings (e.g., the probation department or social services agency), it will be important for the court to coordinate with its justice partners to ensure communication about the consent provided and that each entity has an up-to-date e-mail address on file.

Attachments and Links

1. Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, and 5.815, at pages 6–9
2. Judicial Council forms EFS-005-JV/JV-141 and EFS-005-CV, at pages 10–13
3. Chart of comments, at pages 14–20
4. AB 879 (Stats. 2015, ch. 219), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB879*

Rules 5.524, 5.534, 5.550, 5.708, and 5.815 of the California Rules of Court are amended, effective July 1, 2016, to read:

Rule 5.524. Form of petition; notice of hearing

(a)–(d) * * *

(e) Notice of hearing—dependency (§§ 290.1, 290.2, 297, 338)

(1) When the petition is filed, the probation officer or social worker must serve a notice of hearing under section 290.1, with a copy of the petition attached. On filing of the petition, the clerk must issue and serve notice as prescribed in section 290.2, along with a copy of the petition. CASA volunteers are entitled to the same notice as stated in sections 290.1 and 290.2.

(2) If the county and the court choose to allow notice by electronic mail of hearings under sections 290.1–295, the court must develop a process for obtaining consent from persons entitled to notice that complies with the notice statute and ensures that notice can be effectuated according to statutory timelines.

(f)–(h) * * *

Rule 5.534. General provisions—all proceedings

(a)–(*l*) * * *

(m) Address of parent or guardian—notice (§ 316.1)

At the first appearance by a parent or guardian in proceedings under section 300 et seq., the court must order each parent or guardian to provide a mailing address.

(1) The court must advise that the mailing address provided will be used by the court, the clerk, and the social services agency for the purposes of notice of hearings and the mailing of all documents related to the proceedings.

(2) The court must advise that until and unless the parent or guardian, or the attorney of record for the parent or guardian, submits written notification of a change of mailing address, the address provided will be used, and notice requirements will be satisfied by appropriate service at that address.

(3) *Notification of Mailing Address* (form JV-140) is the preferred method of informing the court and the social services agency of the mailing address of the parent or guardian and change of mailing address.

(A) The form must be delivered to the parent or guardian, or both, with the petition.

(B) The form must be available in the courtroom, in the office of the clerk, and in the offices of the social services agency.

(C) The form must be printed and made available in both English and Spanish.

(4) If the county and the court allow notice of hearings under sections 290.1–295 by electronic mail, persons who are entitled to notice and who want to receive notice of hearings by electronic mail must indicate their consent by filing *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)* (form EFS-005-JV/JV-141).

(n)–(p) * * *

Rule 5.550. Continuances

(a) Cases petitioned under section 300 (§§ 316.2, 352, 354)

(1) The court must not continue a hearing beyond the time set by statute unless the court determines the continuance is not contrary to the interest of the child. In considering the child's interest, the court must give substantial weight to a child's needs for stability and prompt resolution of custody status, and the damage of prolonged temporary placements.

(2) Continuances may be granted only on a showing of good cause, and only for the time shown to be necessary. Stipulation between counsel of parties, convenience of parties, and pending criminal or family law matters are not in and of themselves good cause.

(3) If a child has been removed from the custody of a parent or guardian, the court must not grant a continuance that would cause the disposition hearing under section 361 to be completed more than 60 days after the detention hearing unless the court finds exceptional circumstances. In no event may the disposition hearing be continued more than six months after the detention hearing.

(4) In order to obtain a continuance, written notice with supporting documents must be filed and served on all parties at least two court days before the date set for hearing, unless the court finds good cause for hearing an oral motion.

(5) The court must state in its order the facts requiring any continuance that is granted.

~~(6) Failure of an alleged father to return a certified mail receipt of notice as described in rule 5.667 does not, in and of itself, constitute good cause to continue a hearing.~~

(b)–(c) * * *

Rule 5.708. General review hearing requirements

(a)–(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) The court must continue to permit the parent or legal guardian to visit the child, unless it finds that visitation would be detrimental to the child~~;~~.

(3) If the child is 10 years of age or older and is placed in an out-of-home placement for 6 months or longer, the court must enter any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child, consistent with the child's best interest. Specifically, the court:

(A) Must determine whether the agency has identified individuals, in addition to the child's siblings, who are important to the child and will maintain caring, permanent relationships with the child, consistent with the child's best interest;

(B) Must determine whether the agency has made reasonable efforts to nurture and maintain the child's relationships with those individuals, consistent with the child's best interest; and

(C) May make any appropriate order to ensure that those relationships are maintained.

(4) The court must direct the county child welfare agency and the appropriate county or state adoption agency to prepare an assessment under section 366.21(i), 366.22(c), or 366.25(b)~~;~~.

(5) The court must ensure that notice is provided as ~~follows:~~ required by section 294.

~~(A) Within 24 hours of the review hearing, the clerk of the court must provide notice by first-class mail to the last known address of any party who is not present at the review hearing. The notice must include the advisements required by rule 5.590(b).~~

~~(B) The court must order that notice of the hearing under section 366.26 not be provided to any of the following:~~

~~(i) Any parent-whether natural, presumed, biological, or alleged-who has relinquished the child for adoption and whose relinquishment has been accepted and filed with notice under Family Code section 8700; or~~

~~(ii) An alleged parent who has denied parentage and has completed item 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).~~

(6) The court must follow all procedures in rule 5.590 regarding writ petition rights, advisements, and forms.

(o) * * *

Rule 5.815. Appointment of legal guardians for wards of the juvenile court; modification or termination of guardianship

(a)–(c) * * *

(d) Notice (§ 728(c))

The clerk must provide notice of the hearing to the child, the child's parents, and other individuals as required by ~~Probate Code section 1511~~ section 294.

(e)–(g) * * *

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 NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS	DEPARTMENT:

1. ☐ The following party or ☐ the attorney for:
   - a. ☐ plaintiff *(name):*
   - b. ☐ defendant *(name):*
   - c. ☐ petitioner *(name):*
   - d. ☐ respondent *(name):*
   - e. ☐ other *(describe):*

consents to electronic service of notices and documents in the above-captioned action.

2. The electronic service address of the person identified in item 1 is *(specify):*

Date:

TYPE OR PRINT NAME

(SIGNATURE OF PARTY OR ATTORNEY

Form Approved for Optional Use
Judicial Council of California
EFS-005_CV [Rev. July 1, 2016]

CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS
(Electronic Filing and Service)

Cal. Rules of Court, rule 2.251
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

(Note: *If you serve* Consent to Electronic Service and Notice of Electronic Service Address *by mail, you should use form POS-030,* Proof of Service by First-Class Mail–Civil, *instead of using this page.)*

PROOF OF ELECTRONIC SERVICE

CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS

1. I am at least 18 years old.
   a. My residence or business address is *(specify):*

   b. My electronic service address is *(specify):*

2. I electronically served a copy of the *Consent to Electronic Service and Notice of Electronic Service Address* as follows:
   a. Name of person served:

   b. Electronic service address of person served:
      On behalf of *(name or names of parties represented, if person served is an attorney):*

   c. On *(date):*

   d. At *(time):*

☐ Electronic service of the *Consent to Electronic Service and Notice of Electronic Service Address* on additional persons is described in an attachment.

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

EFS-005-JV/ JV-141

E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to:

- Tell the court that you **agree to receive** hearing notices by e-mail and give the court your e-mail address;
- **Change** the e-mail address where you want to receive hearing notices; or
- Tell the court that you **do not want to receive** hearing notices by e-mail anymore.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1

☐ I agree to receive hearing notices by e-mail in this case. (This is the first time that I agree to receive hearing notices by e-mail.)

☐ I want to change the e-mail address where I can receive a hearing notice. I want to receive notices at the new e-mail address below starting *(date):*

☐ I want to stop receiving hearing notices by e-mail starting *(date):*

2

I have a right to notice in a juvenile court hearing because I am the (*choose one of the following*):

☐ Child or nonminor dependent who is the subject of the hearing, and I am: ☐ 14 or 15 years old ☐ 16 or 17 years old ☐ 18+ years old

☐ Parent or presumed/alleged parent

☐ Legal guardian

☐ Lawyer for *(name of party or person represented):*

_____

☐ Grandparent/other adult relative *(relationship to the child or nonminor dependent)* _____

☐ Caregiver for ☐ the child or nonminor dependent ☐ the sibling of the child *(name of sibling):* _____

☐ Sibling of the child *(age, if minor):* _____

☐ Other *(relationship to child or nonminor dependent):* _____

3

☐ I agree to receive hearing notices at this e-mail address *(please print carefully):*

_____

☐ Please keep my e-mail address confidential.

☐ I do not want to receive hearing notices by e-mail anymore. I am attaching a copy of the Judicial Council form, *Notification of Mailing Address* (JV-140), with my current mailing address.

Date: _____

_____ ▶ _____

Type or print name *Signature*

If you are a child (under 18 years old) filling out this form, your lawyer must also agree for you to receive e-mail hearing notices.

Date: _____

_____ ▶ _____

Type or print name of lawyer for child *Signature of lawyer for child*

→

Child's name: _____ **Case Number:**

If your court and social services agency offer e-mail notice of hearings, and you have a right to receive hearing notices:

- You can (but do not have to) **agree to receive** hearing notices by e-mail. If you want to receive hearing notices by e-mail, you must fill out and sign this form, the EFS-005-JV/JV-141, and return it to the court.
- The e-mail address you provide will be used to tell you about hearings unless and until you tell the court that you have changed your e-mail address.
- The court and social services agency will use your e-mail address to send you notices of hearings that are required when a social worker asks the court to open a case to protect a child from abuse or neglect. You can read more about this process and the different types of hearings that will be held in *What happens if your child is taken from your home?* (form JV-050-INFO) and on the California Courts website: *www.courts.ca.gov/selfhelp-childabuse.htm.*
- You may ask the court or social services agency to keep your e-mail address confidential by checking the box underneath your e-mail address.
- **If a social worker will recommend terminating parental rights over a child** at the hearing, you will still receive the hearing notice by mail or in person. You will also receive the hearing notice by e-mail.
- If you are a child **age 14 or 15** and agree to receive hearing notices by e-mail, **your lawyer must also sign this form** and agree for you to receive hearing notices by e-mail. If you and your lawyer agree, you will receive hearing notices by e-mail ***in addition*** to notice by regular mail.
- If you are a child **age 16 or 17** and agree to receive hearing notices by e-mail, **your lawyer must also sign this form** and agree for you to receive hearing notices by e-mail. **If you and your lawyer agree, you will receive hearing notices *only* by e-mail.**

- You may also use this form to tell the court when you **change your e-mail address**.
- You may also use this form to **stop** receiving hearing notices by e-mail. If you gave the court or social services agency an e-mail address and agreed to receive hearing notices by e-mail, you can use this form to tell the judge that you do not want to receive hearing notices by e-mail anymore. **If you decide to stop receiving hearing notices by e-mail, please fill out and attach a copy of the Judicial Council form *Notification of Mailing Address* (JV-140) with your current mailing address when you submit this form.**

W16-10

Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
1.	Los Angeles Dependency Lawyers, Incorporated By Robert Stevenson, Director of Policy	A	LADL concurs with Judicial Council's conclusion that a new form, EFS-005-JV, should be created to provide for the provision of an initial and a change of email address. This form parallels the logic behind the JV-140. The EFS-005-JV form should also allow for persons entitled to notice in a juvenile proceeding to provide their consent to receiving notice via electronic mail. Thank you for inserting in your comment chart that WIC § 316.1 (c), AB 879 and California Rule of Court 5.708(n)(5), need to be clarified so they are consistent as applied to a termination of parental rights recommendation.	The committees appreciate this support. AB 879 provides an exception to e-mail notice for hearings at which the termination of parental rights is recommended. The committees recognize that AB 879 is confusing to the extent that this exception appears twice in the Welfare and Institutions Code—once in section 294 for "selection and implementation" (permanency) hearings under section 366.26, and again in section 316.1(c) for any hearing where the county recommends termination of parental rights. In implementing AB 879, the committees recommend amending rule 5.708(n)(5)—the juvenile rule governing section 366.26 hearings—to reference only section 294. The reference to only section 294 was preferred for purposes of clarity and simplicity; because section 294 is specific to section 366.26 hearings; and because adding a reference to section 316.1(c) would be duplicative and would not add anything to the rule.

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Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
2.	Office of County Counsel, County of Los Angeles By Alyssa Skolnick, Principal Deputy County Counsel	AM	Los Angeles County sponsored this bill and has begun to implement the email notification process. We don't think new forms specifically for Juvenile Court are needed. In our opinion the existing forms are sufficient. In regards to who gets noticed of the party's election to receive email notice, we feel it should just be the court and child welfare agency. In Los Angeles County we are pushing to have consent given only when a party appears in court. There is a concern that if the social worker gets the consent in the field the parent may then appear in court and deny giving the consent. We feel the rules of court should specify that consent for electronic service shall be given in court and on the record.	The committees appreciate these comments. In addition to helping us properly shape the rules for this process, these comments will be helpful to other courts and agencies that are developing procedures for e-mail notices of hearings. AB 879 does not expressly address whether a social worker is authorized to obtain the consent to notice by e-mail; yet it does appear to contemplate such a practice because only the social worker would have contact with the parent before the initial detention hearing and because section 290.1, as amended by AB 879, authorizes notice of the initial detention hearing by electronic mail. Accordingly, at this time, the implementing rule amendments provide only that the process for obtaining consent is a local decision that must comply with statute. The committees also appreciate the other suggestions submitted by the Office of County Counsel, but have not recommended incorporating them into this proposal for the following reasons. First, the statute does not mandate that consent be provided in court and on the record; therefore, the committees have decided not to recommend that this requirement be part of the statewide rule. Second, the statute specifically requires the use of form EFS-005, which is currently a civil form developed to allow litigants in civil matters to provide consent to *electronic service* and an *electronic service address*. Neither is germane to juvenile dependency matters, where electronic

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Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
				service is not authorized by statute or rule. (See Cal. Rules of Court, rule 5.522(b)(4) [expressly declining to incorporate the trial court rule on electronic service].) In addition, the civil form provides for the consent of only parties and attorneys; it does not account for the multitude of persons who may be entitled to notice in a dependency matter and therefore provide consent to receive notices of hearings by e-mail. The proposed form EFS-005-JV/JV-141 was developed as a plain language form that allows for consent to receive notices of hearings by e-mail and can be filled out and submitted by any of the parties and persons statutorily entitled to notice.
3.	Orange County Bar Association By Todd G. Friedland, President	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Are the name "E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile)" and number "EFS-005-JV/JV-141" clear enough to signal that this is a juvenile form? **Yes**. • Is the EFS-005-JV/JV-141 as drafted, sufficiently clear for the use of all persons who may be entitled to notice in a juvenile court hearing, including children? **Yes**. • Is the information on the second page of the proposed EFS-005-JV/JV-141 sufficient to help those persons entitled to notice in a juvenile court hearing understand the	The committees appreciate this input.

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Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
			requirements for receiving notice by e-mail? **Yes**. • Is the proposed addition to rule 5.524(e) sufficient to ensure that courts will create a process and protocols for obtaining consent and communicating with justice partners, while still allowing for local court discretion in the exact parameters of the process? **It is sufficient.** • Should the proposed form EFS-005-JV/JV-141 be mandatory or optional? **The form should be mandatory to encourage consistency.**	The committees appreciate this feedback and after deliberation, have decided to make the form mandatory.
4.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) By Saul Bercovitch, Legislative Counsel	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) comments as follows: FLEXCOM agrees with all parts of the proposal but suggests modifying #2 on Form EFS-005-JV/JV-141. Specifically there should be more space between #2 and #3 to avoid confusion about where items of #2 end and the first item of #3 begins. FLEXCOM proposes consolidating items under #2 to create more space in one or both of the following ways: 1) have the first item of #2, second line, read "and I am ___ years old.", allowing the age to be written in. It may be necessary to add a little more space between that line and the one above for legibility's sake;	The committees appreciate this comment and agree that there should be additional space between items 2 and 3 on the form. Space has been added, using a slightly different approach to arranging the items on the form. The decision was made to retain the three checkbox options for age because: 1) only minors ages 14 and above may consent to electronic mail notices of hearings; 2) there are different notice requirements for minors ages 14 and 15, who may only receive e-mail notice in addition to other forms of legally required notice; and 3) the attorney must also provide consent if the form filer is a minor. From an operational standpoint,

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Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
				the committees determined that the checkboxes are the best way to signal this important information to the court and agencies providing notice. This is an excellent suggestion and the committees have edited the form to eliminate unnecessary repetition of the form filer's name.
			2) (with either directions to circle or a checkbox for each) linearly set out the various relationships to the child that are possible for the items following the one above about the child her/himself, separated by either commas or semi-colons. Only under "Other" does there need to be a line to describe the relationship. Otherwise the name is printed below, so doesn't need to be repeated for each type.	
5.	State Bar of California Standing Committee on the Delivery of Legal Services By Sharon Ngim, Program Developer	A	Does the proposal appropriately address the stated purpose? Yes. The proposal provides for a form for obtaining consent to electronic notice of hearings from those entitled to notice of juvenile court hearings. The form includes an opt-out option to stop receiving notifications by e-mail.	The committees appreciate this feedback.
6.	Superior Court of California, County of Orange By Blanca Escobedo Principal Administrative Analyst Family Law & Juvenile Court	NI	The proposal appropriately addresses the stated purpose. We recommend adding clarification on whether or not it would be acceptable for the social workers to obtain this form from the parties, since they have first contact with them. This clarification should be incorporated into the proposed ruled. The form's name makes it clear that it's a juvenile form. We recommend further clarifying that this form is to be used for	The committees appreciate this suggestion. Please see the committees' response above to the comment received from the Office of County Counsel of Los Angeles County. The committees agree and have changed the title of the form to: *E-mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change*

W16-10

Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

	Commentator	Position	Comment	Committee Response
			juvenile dependency cases only. EFS-005/JV141 is clear as drafted. We recommend the following changes: Provide clarification on the title of the form to reflect this form is to be used on juvenile dependency cases only. Move the last selection box to be its own line item to improve the flow of the form. Expand the case number box for minors with multiple cases (dependency and nonminor cases). Or, if there should be one form per case, add this clarification. We recommend revising form JV-050-INFO (What happens if your child is taken from your home?) to inform parties of their option to receive notices via e-mail.	*(Juvenile Dependency).* Please see above for clarification of the use of this form in dependency only. The committees agree that the final selection box was rather cramped at the bottom of the page; we have made some changes to increase the amount of white space on the page and improve the flow. The committees agree with this suggestion and have expanded the Case Number box on the form. This suggestion is outside the scope of this proposal as circulated. However, the committees will consider this suggestion in the future, which may be appropriate as more courts enter into agreements with their local social services agencies for e-mail notices of hearings.
7.	Superior Court of California, County of Riverside	AM	The name of the form is sufficient; however, suggest that the form be numbered EFS-005-JV.	The committees appreciate this comment and agree that the proposed form has a long number sequence associated with it. However, the committees believe it is important to have both a juvenile number, so the form may be stored electronically in sequence with other juvenile forms, and a civil number, in order to comport with the language of the statute.

W16-10

Juvenile Law: Notice of Juvenile Hearings by E-Mail (Implementation of AB 879) (Amend Cal. Rules of Court, rules 5.524, 5.534, 5.550, 5.708, 5.815; adopt form EFS-005-JV/JV-141; renumber form EFS-005)

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

8.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	AM	Our court is in favor of optional forms. The form number is kind of confusing, but we do understand why it was numbered that way. EFS-005-JV/JV-141 page 1, item 3: The form is missing a word. Please keep my e-mail address confidential. EFS-005-JV/JV-141 page 2, line 1: A letter is missing: e-mail notice of hearings (or hearing notices by e-mail) EFS-005-JV/JV-141 page 2, final bullet: A letter is missing: social services agency	The committees appreciate this comment, but after deliberation, have decided to make the form mandatory. The committees agree with the specific comments on the form and appreciate the feedback; the suggested changes have been made to the form.

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (July 1 cycle)**

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Title:
Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings

Proposed Rules, Forms, Standards, or Statutes: Amend rule 2.257

Committee or other entity submitting the proposal:
Family & Juvenile Law Advisory Committee (FJLAC)
Information Technology Advisory Committee (ITAC)

Staff contact (name, phone and e-mail):
Tara Lundstrom, 415-865-7650, tara.lundstrom@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: FJLAC Agenda approved on December 10, 2015

Judicial Council Technology Committee approved ITAC's Annual Agenda on January 11, 2016

Project description from annual agenda:
Family and Juvenile Law Advisory Committee's Annual Agenda Item 1:
As directed by the Judicial Council, the Office of Governmental Affairs provided the committee with the following legislative proposals that may have an impact on family and juvenile law issues within the advisory committee's purview. Based on these referrals, the committee will review the legislation and propose rules and forms as may be appropriate for the council's consideration.

AB 1519 (Committee on Judiciary) Judiciary omnibus: family support Chapter 416, Statutes of 2015 Summary: Amends Family Code section 17400(a)(3) to provide that local child support agencies (1) are required to maintain original signed pleadings only for the time period stated in Government Code section 68152(a); and (2) may maintain original signed pleadings by way of an electronic copy in the Statewide Automated Child Support System. AB 1519 requires the Judicial Council to develop implementing rules by July 1, 2016

Information and Technology Advisory Committee's Annual Agenda Item 7:
Modernize Rules of Court Modernize Trial and Appellate Court Rules to Support E-Business Major Tasks: (a) In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

If requesting July 1 or out of cycle, explain:
This rules proposal implements legislation enacted by the Legislature this year. AB 1519 instructs the Judicial Council to adopt implementing rules by July 1, 2016.

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 April 14–15, 2016

Title
Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.257

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 11, 2016

Contact
Tara Lundstrom, 415-865-7650
tara.lundstrom@jud.ca.gov

Executive Summary

To implement Assembly Bill 1519, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend amending California Rules of Court, rule 2.257, which governs the use of signatures on electronically filed documents. Effective January 1, 2016, AB 1519 amends Family Code section 17400(b)(3) to provide that local child support agencies (1) are required to maintain original signed pleadings only for the time period stated in Government Code section 68152(a), and (2) may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system. AB 1519 requires the Judicial Council to develop implementing rules by July 1, 2016.

Recommendation

The Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective July 1, 2016, amend rule 2.257(a)(2)

of the California Rules of Court to provide that local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a).

The text of amended rule 2.257 is attached at page 5.

Previous Council Action

Judicial Council–sponsored legislation resulted in the enactment in 1999 of Code of Civil Procedure section 1010.6, which governs electronic filing and service in the trial courts and contains provisions regulating the use of signatures on electronically filed documents. Since its enactment, section 1010.6 has required that an attorney or person who electronically files a document signed under penalty of perjury (1) sign a printed form of the document before, or on the same day as, the date of filing; (2) maintain the printed document bearing the original signature; and (3) make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed. (Code Civ. Proc., § 1010.6(b)(2)(B).)

The Judicial Council subsequently adopted rule 2.257 to implement Code of Civil Procedure section 1010.6(b)(2). Rule 2.257(a) provides that the following conditions apply to electronically filed documents signed under penalty of perjury:

(1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
(2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
(3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
(4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
(5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

Rationale for Recommendation

In enacting AB 1519 this year, the Legislature amended Family Code section 17400(b)(3) to provide as follows:

> Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.

In effect, AB 1519 carves out two exceptions to Code of Civil Procedure section 1010.6(b)(2)(B) for electronically filed pleadings that are signed by local child support agencies under penalty of perjury. First, whereas Code of Civil Procedure section 1010.6(b)(2)(B) requires that the printed document bearing the original signature be maintained in its paper form, Family Code section 17400(b)(3) authorizes local child support agencies to maintain original signed pleadings in electronic form through the statewide automated child support system.

Second, whereas Code of Civil Procedure section 1010.6(b)(2)(B) provides that the signed, printed form must be maintained and made available for review upon request without specifying when, if ever, the printed document may be destroyed, Family Code section 17400(b)(3) provides that local child support agencies need to maintain the original signed pleadings only for the statutory retention periods for trial court records stated in Government Code section 68152(a). The retention period, which begins on final disposition of the case, is 30 years for court records in family cases; for adoption and parentage cases, the records are maintained permanently. (Gov. Code, § 68152(a)(7)–(9).)

To implement AB 1519, this report amends subdivision (a)(2) of rule 2.257 to recognize the two limited exceptions for child support agencies stated in Family Code section 17400(b)(3). Rule 2.257(a)(2) currently provides that by electronically filing a document, the electronic filer certifies that he or she has complied with subdivision (a)(1), which requires that a printed form of the document be signed before filing, and also certifies that the original, signed document is available for inspection and copying at the request of the court or any other party.

This report adds the following language to subdivision (a)(2): “Local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.”

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment from December 11, 2015, to January 22, 2016, as part of the winter 2016 invitation-to-comment cycle. It was distributed to the standard mailing list for family and juvenile law proposals, which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Six organizations provided comment; five agreed with the proposal and one agreed if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 6–9.

The Superior Court of Los Angeles County recommended adding language to the rule amendment to clarify that local child support agencies need not retain the original signed pleading in paper form if they maintain an electronic copy in the statewide automated child support system. The advisory committees agreed with the recommendation and modified the rule amendment to make this exception clear.

Because the rule amendment is mandated by legislation, the advisory committees did not consider any alternatives.

Implementation Requirements, Costs, and Operational Impacts

The rule amendment is directed toward local child support agencies and governs how and for how long they maintain original, signed pleadings. The amendment is unlikely to result in any costs or operational impacts on the courts.

Attachments and Link

1. Cal. Rules of Court, rule 2.257, at page 5
2. Chart of comments, at pages 6–9
3. Link A: Assembly Bill 1519 (Stats. 2015, ch. 416), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1519*

Rule 2.257 of the California Rules of Court is amended, effective July 1, 2016, to read:

Rule 2.257. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury, the following applies:

(1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.

(2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party. Local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.

(3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

(4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

(5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b)–(e) * * *

W16-13

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (amend Cal. Rules of Court, rule 2.257)

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

	Commentator	Position	Comment	Committee Response
1.	Los Angeles County Bar Association (no name provided)	A	"**PROPOSAL:** AB 1519 proposes to amend subdivision (a) (2.257) to recognize two limited exceptions for child support agencies under Family Code § 17400(b)(3). Currently Rule 2.257(a)(2) requires that the electronic filer keep a printed form of the document signed before filing and that the original signed document is available for inspection and copying at the request of the court or any other party. The rule proposal would add a sentence to subdivision (a)(2) to recognize that local child support agencies may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for a period of time stated in Government Code §68152(a) which is 30 years. **REQUEST FOR COMMENTS:** The Advisory Committee is interested in receiving comments on whether this proposal addresses the stated purpose of AB 1519. LACBA Response: Yes"	No response required.
2.	Orange County Bar Association by Todd G. Friendland, President	A	"Does the proposal appropriately address the stated purpose? YES."	No response required.
3.	State Bar of California Family Law Section by Fariba R. Soroosh and Saul Bercovitch	A	"The Executive Committee of the Family Law Section supports this proposal."	No response required.

4.	Superior Court of Los Angeles County (no name provided)	AM	"Assembly Bill 1519 <u>The proposal appropriately addresses the stated purpose:</u> • Yes. Currently there is in place methodology for handling electronic filing of the Summons and Complaint by the local child support agency (LCSA) in accord with FC Sec 174000(3). The current practice is to receive the completed Summons and Complaint from the State in an electronic format. The documents are then printed and that documentation becomes the original. The documents are maintained for the statutory period provided. <u>Language Clarification of proposal:</u> • We agree with the proposed changes to implement AB 1519 with the following modification. By adding the Council's proposed language, e.g., a sentence to subdivision (a)(2), it clarifies the two limited exceptions for child support agencies. However, it does not promote consistency between the Code of Civil Procedures and Family Code. CCP section 1010.6(b)(2)(B) requires the documents bearing the original signature to be maintained in the paper form, the language added to the rule should explicitly state the electronic filing exception. The following additional	No response required. The committees agree with the court's recommendation and have added language to the rule to clarify that local child support agencies are not required to maintain the original signed pleadings in paper form if they maintain an electronic copy in the statewide automated child support system.

			language is proposed to eliminate any ambiguities, possible confusion and to promote consistency between CCP and the Family Code. o "Local child support agencies may maintain original signed pleading by way of an electronic copy in the Statewide Automated Child Support System, ***in lieu of the paper original***, and must maintain them only for the period of time stated in Government Code Section 68152(a)." o By adding the words "in lieu of a paper original," ambiguities are eliminated and consistency is promoted. <u>Forms:</u> • There are no new forms. <u>Costs/Operational Impact:</u> • No new costs or operational changes are associated as the proposed amendment to the rule is the current method of maintaining and receiving electronic filings by the LASC."	
5.	Superior Court of Riverside County (no name provided)	A	No specific comment.	No response required.

W16-13

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (amend Cal. Rules of Court, rule 2.257)

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

6.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	No specific comment.	No response required.

Item number:

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 3/18/16

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Guardianship: Wards 18–20 Years of Age

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/15
Project description from annual agenda: Develop rules of Court and Judicial Council forms as necessary to implement the provisions of AB 900 (Stats. 2015, ch. 694), which authorizes the superior court, with the consent of the proposed ward, to appoint a guardian of the person for a youth 18–20 years of age "in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure."

If requesting July 1 or out of cycle, explain:
Probate Code, section 1510.1(e), added by AB 900, section 3, requires the Judicial Council, by July 1, 2016, to adopt any rules and forms needed to implement that section.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
This report reflects the committee's decision, in response to public comment, to take a different approach from the proposal circulated for comment. The committee considered this alternative approach before circulation and determined that it was better to propose and circulate the other approach, which involved more radical changes to guardianship procedure and then, if comment warranted, to scale back and incorporate changes into existing procedures than to try to do the opposite.

This proposal has not yet been copyedited. The committee will make additional minor changes to improve the clarity and accuracy of this proposal before final submission to the Judicial Council.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14–15, 2016

Title
Probate Guardianship: Wards 18–20 Years of Age

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Ct., rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250

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

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 15, 2016

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends adopting one rule of court and one probate guardianship form, amending four rules of court, and revising four probate guardianship forms to implement Assembly Bill 900 (Stats. 2015, ch. 694), which authorized the superior court to establish or extend a guardianship of the person for a youth 18 years of age or older but not yet 21 who needs protection related to an application for Special Immigrant Juvenile status. The bill required the Judicial Council to adopt, by July 1, 2016, any rules and forms needed to implement its central provision.

Recommendation

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

1. Adopt rule 7.1002.5 to indicate how a ward or proposed ward who is at least 18 but not yet 21 years of age may give, modify, or withdraw consent to the establishment or extension of a guardianship of his or her person as well as to the guardian's performance of the duties of a guardian;

2. Amend rule 7.1002 to make a stylistic change;

3. Amend rule 7.1004 to implement AB 900's amendments to the standards and procedures in sections 1600 and 1601 of the Probate Code regarding termination of a guardianship;

4. Amend rule 7.1013 to limit the persons required to receive notice of a change of residence of a ward who is at least 18 but not yet 21 years of age;

5. Amend rule 7.1020 to permit a request for Special Immigrant Juvenile findings to be filed concurrently with a petition to extend a guardianship of the person past the ward's 18th birthday;

6. Adopt *Petition to Extend a Guardianship of the Person* (form GC-210(PE)) for mandatory use to petition for the extension of a guardianship of the person beyond the ward's 18th birthday;

7. Revise *Petition for Appointment of Guardian of Minor* (form GC-210) and *Petition for Appointment of Guardian of the Person* (form GC-210(P)) to permit their use to petition for the appointment of a guardian of the person for a proposed ward who is at least 18 but not yet 21 years of age;

8. Revise *Order Appointing Guardian or Extending Guardianship of the Person* (form GC-240) to allow its use to extend a guardianship of the person beyond the ward's 18th birthday; and

9. Revise *Letters of Guardianship* (form GC-250) to allow the form's use in guardianship's of the person for wards 18 years of age or older.

The text of the new and amended rules and the new and revised forms are attached at pages 9–26.

Previous Council Action

In spring 2015, the Probate and Mental Health Advisory Committee collaborated with the Family and Juvenile Law Advisory Committee to develop and circulate forms to implement section 155 of the Code of Civil Procedure, along with rule 7.1020 of the California Rules of Court to establish a procedural framework for filing and adjudicating a request for Special Immigrant

Juvenile (SIJ) findings in a probate guardianship proceeding.[1] The forms included a *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220) for use in probate guardianship proceedings, a *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) for use in family law custody proceedings, and a *Request for Special Immigrant Juvenile Predicate Findings* (form JV-356) for use in juvenile dependency and delinquency proceedings. Each form provides a distinct format suitable for requesting SIJ predicate findings in the proceedings to which it applies. All three forms solicit the information necessary for the superior court to determine whether the SIJ findings are warranted in the circumstances of the case before it. The committees also developed a joint SIJ findings form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357). The Judicial Council adopted rule 7.1020 and the forms discussed above at its October 27, 2015, business meeting. The rule and the forms took effect January 1, 2016.

Rationale for Recommendation

Background

Until January 1, 2016, the Probate Code authorized the superior court to appoint a guardian only for a person less than 18 years old. (Prob. Code, §§ 1510, 1514.) A guardianship terminated by operation of law on the ward's 18th birthday. (*Id.,* § 1600.) Effective January 1, 2016, however, Assembly Bill 900 (Stats. 2015, ch. 694) expanded the court's authority by enacting section 1510.1 of the Probate Code. This statute authorizes the court to appoint a guardian of the person for an unmarried person who consents and is at least 18 but not yet 21 years of age (that is, a person who is 18, 19, or 20 years old) "in connection with a petition to make the necessary findings regarding special immigrant juvenile status" under section 155(b) of the Code of Civil Procedure." (*Id.,* § 1510.1(a).) The new law also authorizes the court to extend an existing guardianship of the person beyond the ward's 18th birthday on the ward's request or consent "for purposes of allowing the ward to complete the application process with the United States Citizenship and Immigration Services [USCIS] for classification as a special immigrant juvenile" under section 101(a)(27)(J) of the Immigration and Nationality Act. (*Id.,* § 1510.1(b); see 8 U.S.C. § 1101(a)(27)(J).)

In seeming recognition of an 18-year-old youth's attainment of majority for most other purposes, the Legislature also specified that nothing in section 1510.1 authorizes "the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law" without the ward's express consent. (Prob. Code, § 1510.1(c).) The statute also requires the court to terminate the guardianship in response to a petition filed by a ward who is 18–20 years old. (*Id.,* § 1601.) Furthermore, the statute defines the terms "child," "minor," and "ward" for purposes of the Guardianship-Conservatorship Law[2] to include an unmarried person younger than 21 years of age who consents to the appointment of a guardian or the extension of a

[1] Classification as a Special Immigration Juvenile (SIJ) relieves the youth from the risk of removal (deportation) and permits him or her to apply for lawful permanent resident (LPR) status—a "green card."

[2] See Prob. Code, § 1400–2893.

guardianship after his or her 18th birthday. (*Id.*, §§ 1490, 1510.1(d).) Finally, the statute requires the Judicial Council to adopt any rules and forms needed to implement its provisions by July 1, 2016. (*Id.*, § 1510.1(e).)[3]

Forms

To incorporate wards 18 and older but not yet 21 years of age into the existing legal framework under which guardians of the person are appointed and overseen by the court, the committee recommends revising the *Petition for Appointment of Guardian of Minor* (form GC-210) to add a footnote indicating that section 1510.1(d) defines "child," "minor," and "ward" to include a youth 18–20 years of age. These terms would then be understood throughout the form to apply to all (proposed) wards until their 21st birthdays. The committee also recommends adding language to several items to indicate that they do not apply to youth or wards 18 years of age or older. These include item 1b for requesting a guardianship of the estate, item 5 indicating the proposed guardian's intent to adopt the ward, item 8 indicating that the petitioner need not request a finding that parental custody would be detrimental to the proposed ward, and item 12 regarding jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

To item 13, the committee recommends adding a check box to indicate that a *Petition for Special Immigrant Juvenile Findings* (form GC-220) is attached. In recognition of the age of the proposed wards and their statutory right to consent, the committee also recommends adding at the end of the form an instruction indicating that the proposed ward must sign the petition form and language above the signature block indicating that the proposed ward consents to the appointment of the person identified on the form as guardian of his or her person as well as to the guardian's performance of the duties inherent in the guardian-ward relationship. The committee recommends analogous revisions to the *Petition for Appointment of a Guardian of the Person* (form GC-210(P)).

To give wards approaching their 18th birthdays access to the opportunity to extend their guardianships of the person, the committee recommends adopting *Petition to Extend Guardianship of the Person* (form GC-210(PE)) as a plain-language form for mandatory use. This new petition would solicit information about the existing guardianship in item 5, request the extension of that guardianship in item 7, and provide for the ward's consent.

The committee also recommends revising the *Order Appointing Guardian of Minor* (form GC-240) so that it may be used to extend a guardianship of the person past a ward's 18th birthday. Recommended revisions include changing the form's title to *Order Appointing Guardian or Extending Guardianship of the Person*, adding item 4 to permit the court to find that an extension of a guardianship of the person past the ward's 18th birthday is necessary and convenient, adding item 8c to permit the court to order the extension of a guardianship of the

[3] The statute also made conforming amendments to section 1600 of the Probate Code to provide an exception to the termination of a guardianship by operation of law at the age of majority for a guardianship established or extended under section 1510.1

person past the ward's 18th birthday as authorized by section 1510.1(b) and the issuance of new *Letters of Guardianship.* The committee further recommends deleting, as inconsistent with the legislative intent, the circulated revision to item 13 that would have given the court the opportunity to order that no powers or duties under sections 2351–2358 be given to the guardian.

Similar recommended revisions to the *Letters of Guardianship* (form GC-250) include the addition of item 2 for the clerk to indicate that the guardian's appointment has been extended. This item might not be strictly necessary to implement the statute, but if the original date of appointment is before the ward's 18th birthday, the guardian and the ward are likely to need documentation that the guardianship remains in force after the ward's 18th birthday. The committee also recommends adding an item to specify the date on which the guardianship terminates by operation of law. For a ward under 18 years of age, that date is his or her 18th birthday. For a wards 18 years of age or older, that date is his or her 21st birthday. (See Prob. Code, § 1600.)

Rules

Amendments to the rules of court governing guardianship procedure are also needed to implement AB 900. First, the committee recommends adopting rule 7.1002.5 to implement the consent requirements in section 1510.1. That section appears to require two different types of consent. First, the youth must consent to the establishment or extension of the guardianship itself. (*Id.*, § 1510.1(a)–(b).) The committee recommends that rule 7.1002.5(a)–(b) condition the appointment of a guardian of the person for a proposed ward 18 or older or the extension of a guardianship past a ward's 18th birthday on the proposed ward's indication of consent on the appropriate petition form.

Second, the statutory language withholding from the guardian the authority "to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law . . . without the ward's express consent" appears to require the ward's further consent to the guardian's performance of his or her legal duties for the benefit of the ward. The committee recommends that rule 7.1002.5(c) specify that the ward's consent to the guardian's performance of enumerated duties also be indicated on the petition. Finally, staff recommends that rule 7.1002.5(d) specify mechanisms for the ward to withdraw or modify his or her consent.

The committee also recommends amending several other rules:

- Rule 7.1002 to emphasize the title of a form;
- Rule 7.1004(b) to conform to AB 900's amendments to section 1600 and 1601 of the Probate Code regarding termination of guardianships of the person by operation of law and on petition of the ward as well as to limit the persons to whom notice of a hearing to terminate a guardianship of a ward 18 years of age or older must be given;
- Rule 7.1013 by adding subdivision (g) to relieve the guardian of a ward 18 years of age or older from giving notice of a change of residence to the ward's parents; and
- Rule 7.1020(b) and (e) so that they apply to petitions to extend a guardianship under section 1510.1(b).

The committee recognizes that the recommended revisions do not address all open questions about guardianships for youth 18 years of age or older. They are intended to comply with the mandate in section 1510.1(e) to adopt rules and forms to implement AB 900 by July 1, 2016, in a workable manner that will allow for further clarification.

Comments, Alternatives Considered, and Policy Implications

Because of perceived tension between section 1510.1(a)–(b)'s authorization of guardianships for 18–20-year-old youth and section 1510.1(c)'s express withholding from a guardian the authority "to abrogate any of the rights that a person who has attained 18 years of age may have as an adult" without the ward's express consent, the committee was initially uncertain whether the Legislature intended to create a new type of guardianship, with limited powers and duties, or intended instead simply to make the same protections offered by a guardian of the person of a minor available to 18–20 year olds. Unable to make a clear determination, the committee considered two different approaches to implementing AB 900, each consistent with one possible interpretation of legislative intent. Recognizing the possibility that either interpretation might be inconsistent with the Legislature's intent, the committee chose to circulate a proposal that implemented the more radical interpretation, reasoning that it would be simpler to backtrack from that position in response to comment than it would to implement a more radical approach after having circulated a less radical proposal. Consistent with an intent to create a new type of guardianship, the committee developed and circulated for comment a new form that would have combined a petition for the appointment of a guardian for a person 18 to 20 years old with a petition to extend an existing guardianship past the ward's 18th birthday. This form included express references to the proposed ward's attainment of adulthood and requested information related to the ward's application for SIJ status. The circulated proposal also included conforming revisions to the existing *Order Appointing Guardian of Minor* (form GC-240) and *Letters of Guardianship* (form GC-250).

External comments

The proposal circulated for public comment from December 11, 2015, to January 22, 2016. Sixteen commentators responded to the invitation to comment by agreeing in principle that form revisions were needed to implement the statute. However, all but two commentators conditioned their ultimate agreement on significant modifications to the proposal. Commentators were essentially divided over whether the legislation created a new, separate type of guardianship and, depending on their views on this issue, whether the proposal effectuated or frustrated the Legislature's intent in enacting AB 900. A majority of the commentators—including the President pro Tempore of the California Senate, the Speaker of the California Assembly, and the bill's author—expressed concerns that the proposed forms were not consistent with legislative intent. These commentators made extensive recommendations to modify the proposal to remedy the identified inconsistencies.[4] The specific recommendations are discussed separately, below.

[4] A chart providing the full text of the comments and the complete committee responses is attached at pages 27–91.

More than half of the commentators indicated that the Legislature intended that guardianships under Probate Code section 1510.1 be fundamentally the same as the guardianships of the person already authorized by the Probate Code. Because the comments from the legislative leadership are representative of, and arguably more authoritative than, other comments expressing this position, this report specifically addresses those comments.

The legislative leadership commented that the circulated proposal was inconsistent with and, in some respects, undermined the Legislature's intent to expand access to youth 18–20 years of age to the protections and benefits of a guardianship of the person. They expressed their intent not to create a new type of guardianship, but to confer the same powers and duties on a guardian of a ward 18 years of age or older as are conferred on a guardian of a ward under 18 years of age. Based on this intent, the legislators requested that the committee withdraw the proposed new petition to appoint or extend a guardianship for a youth 18 years of age or older. The legislative leadership also objected to the use of the term "adult" in the other circulated forms to refer to 18–20-year-old wards. In light of this clarification of legislative intent, the committee no longer recommends the adoption of a new, separate petition for (proposed) wards 18 years of age or older or the use of the term "adult" in the forms to refer to (proposed) wards 18–20 years of age. Instead, the committee recommends changes to existing guardianship forms and the adoption of a petition to extend a guardianship of the person as outlined above.[5]

The legislative leadership also objected to the inclusion of items allowing a petitioner to request and a court to order the appointment of a guardian with no powers or duties. They explained that these items read too much into section 1510.1(c)'s withholding of authority from the guardian. Consistent with the intent that the guardian hold the same powers and duties as any guardian of the person, the commentators saw the limit in section 1510.1(c) as analogous to the bar on a guardian authorizing the performance of surgery on a ward 14 years of age or older without the ward's consent. Other commentators suggested that 1510.1(c) should only apply in the event of a dispute. In light of these comments, the committee added the consent provisions to the recommended petitions and developed rule 7.1002.5 specify the process through which a ward may give, modify, and withdraw his or her consent to the guardianship itself or to the guardian's performance of certain duties.

Along similar lines, the commentators also objected to items in the petition, order, and letters that allowed a petitioner to request and a court to order specific duties or limits thereto under sections 2351–2358 of the Probate Code. The committee does not recommend removing these items from the existing forms. The form provisions allowing a request for (e.g., form GC-210,

[5] Several courts objected to the inconsistency of creating a separate petition for guardianships of ward 18–20 years of age, but the inclusion of those wards in the existing forms for orders and letters. The withdrawal of the separate petition form and, except for the petition to extend, the incorporation into the existing petition forms of guardianships for wards 18–20 years of age reduces the possibility of confusion and the need for additions to the orders and letters.

item 1e) and issuance of (form GC-240, item 13) orders regarding specific duties under sections 2351–2358 of the Probate Code apply to all guardianships of the person, regardless of the ward's age. They have been elements of the forms for more than 20 years.[6] To the extent that the terms of these code sections authorize the court to expand or restrict the powers and duties of a *conservator* of the person, they do not apply to a guardianship proceeding.

The committee also requested specific comment on whether amendments to the rules of court were needed to implement AB 900. The commentators who responded to this request indicated that amendments to the rules of court were needed or would be helpful. The committee therefore reviewed the rules of court related to guardianship proceedings to ensure that they were consistent with the appointment, extension, and administration of guardianships of the person for ward 18 years of age and older. Recommended rule 7.1002.5 and the amendments to the other rules, above, are the result of this review.

Implementation Requirements, Costs, and Operational Impacts

AB 900's enactment of section 1510.1 and amendment of sections 1490, 1600, and 1601 of the Probate Code are likely to have a significant impact on the workload of both judicial officers and court staff in the superior courts. To the extent consistent with statute, the committee intends the rules and forms in this proposal to mitigate that impact by allowing the courts to use existing guardianship procedures and case management systems to process petitions for guardianships of the person for wards 18–20 years of age. Some procedural variance will be required. This will impose indeterminate costs on the courts depending on the volume of filings.

Attachments and Links

1. Cal. Rules of Court, rules 7.1002, 7.1002.5, 7.1004, 7.1013, and 7.1020, at pages 9–11
2. Forms GC-210, GC-210(P), GC-210(PE), GC-240, and GC-250, at pages 12–26
3. Chart of comments, at pages 27–91
4. AB 900 (Stats. 2015, ch. 694) is available online at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB900

[6] See Judicial Council of Cal., Task Force Rep., *Probate Forms—Decedents' Estates, Guardianships, and Conservatorships* (Nov. 3.1997, at p. 5 and attachments (recommending revision of, among others, forms GC-210, GC-240, and GC-250).

Rule 7.1002.5 of the California Rules of Court is adopted and rules 7.1002, 7.1004, 7.1013, and 7.1020 are amended, effective July 1, 2016, to read:

Rule 7.1002. Acknowledgment of receipt of *Duties of Guardian*

Before the court issues letters, each guardian must execute and file an acknowledgment of receipt of the *Duties of Guardian* (form GC-248).

Rule 7.1002.5 Guardianship of ward 18–20 years of age

(a) Authority

The court may extend an existing guardianship of the person past a ward's 18th birthday or appoint a new guardian of the person for a ward who is at least 18 but not yet 21 years of age if the ward is the petitioner or has given consent as provided in section 1510.1 of the Probate Code and this rule.

(b) Consent to appointment of guardian of the person

The court may appoint a new guardian of the person under this rule only if the ward has given consent, both to the appointment and to the guardian's performance of the duties of a guardian, by signing the petition.

(c) Consent to extension of guardianship of the person

The court may extend a guardianship of the person under this rule only if the ward has given consent, both to the extension and to the guardian's continued performance of the duties of a guardian, by signing the *Petition to Extend a Guardianship of the Person* (form GC-210(PE)).

(d) Dispute

In the event of a dispute over an action proposed by a guardian in performance of his or her duties, the guardian may not act against the ward's desires without the ward's express consent unless the proposed action is required by the guardian's fiduciary duties to the ward.

(e) Modification of consent

(1) A ward may withdraw his or her consent to the establishment or extension of a guardianship under this rule by filing a petition to terminate the guardianship under rule 7.1004(b)(2)(B).

(2) In addition to any other petition authorized by section 2359(a), the ward may file a petition at any time during a guardianship established or extended under this rule to withdraw or modify his or her consent to the guardian's performance of a specific duty or duties.

Rule 7.1004. Termination of guardianship

(a) * * *

(b) Guardian of the person

(1) Under Probate Code section 1600 a guardianship of the person terminates by operation of law, and the guardian of the person need not file a petition for its termination, when the ward attains majority except as provided in (2), dies, is adopted, or is emancipated.

(2) If the court has appointed a guardian of the person for a ward 18 years of age or older or extended a guardianship of the person past the ward's 18th birthday, the guardianship terminates:

(A) By operation of law when the ward attains 21 years of age, marries, or dies; or

(B) By order of the court when the ward files a petition under Probate Code section 1601.

(c) * * *

Rule 7.1013. Change of ward's residence

(a)–(f) * * *

(g) Wards 18–20 years of age

For a ward who is at least 18 but not yet 21 years of age, a copy of any notice under this rule must be mailed only to the ward and the ward's attorney of record.

Rule 7.1020. Special Immigrant Juvenile Findings in Guardianship Proceedings

(a) * * *

(b) Request for findings

(1) *Who may file request*

Any person or entity authorized under Probate Code section 1510 or 1510.1 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)–(B) * * *

(2) *Form of request*

(A) * * *

(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 or for extension of a guardianship of the person past the 18th birthday of the minor must be prepared and filed as a separate petition, not as an attachment to the petition for appointment.

(c)–(d) * * *

(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 or extension of a guardianship of the person past the 18th birthday of that minor may be heard and determined together.

(2)–(5) * * *

(f) * * *

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:	
GUARDIANSHIP OF *(name):*	CASE NUMBER:
PETITION FOR APPOINTMENT OF GUARDIAN OF ☐ MINOR* ☐ MINORS* **☐ Person** ☐ Estate****	HEARING DATE AND TIME: DEPT.:

1. **Petitioner** *(name each):*

requests that

a. ☐ *(Name):*
(Address):
(Telephone):
be appointed guardian of the PERSON of the minor or minors named in item 2 and *Letters* issue upon qualification.

b. *(not applicable to proposed wards 18 years of age and older)*
☐ *(Name):*
(Address):
(Telephone):
be appointed guardian of the ESTATE of the minor or minors named in item 2 and *Letters* issue upon qualification.

c. (1) ☐ bond not be required ☐ because the petition is for guardian of the person only ☐ because the proposed guardian is a corporate fiduciary or an exempt government agency ☐ for the reasons stated in Attachment 1c.

(2) ☐ $ bond be fixed. It will 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 Prob. Code, § 8482.)*

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

d. ☐ authorization be granted under Probate Code section 2590 to exercise the powers specified in Attachment 9.

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

f. ☐ an order dispensing with notice to the persons named in Attachment 10 be granted.

g. ☐ other orders be granted *(specify in Attachment 1g).*

2. Attached is a copy of *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) for each minor for whom this petition requests the appointment of a guardian. The full legal name and date of birth of each minor is:

a. Name: Date of Birth *(month/day/year):*

b. Name: Date of Birth *(month/day/year):*

c. Name: Date of Birth *(month/day/year):*

d. Name: Date of Birth *(month/day/year):*

☐ The names and dates of birth of additional minors are specified on Attachment 2 to this petition.

***Under section 1510.1(d) of the Probate Code, the terms *child, minor,* and *ward* include a youth 18–20 years of age.**
****You MAY use this form or form GC-210(P) for a guardianship of the person. You MUST use this form for a guardianship of the estate or of the person and estate. Do NOT use this form for a temporary guardianship.**

Form Adopted for Mandatory and Alternative Mandatory Use Instead of Form GC-210(P)
Judicial Council of California
GC-210 [Rev. July 1, 2016]

PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1510, 1510.1;
Cal. Rules of Court, rule 7.101
www.courts.ca.gov

GUARDIANSHIP OF *(name):*	CASE NUMBER:

3. Petitioner is
   a. ☐ related to the minor or minors named in item 2, as shown in item 7 of each minor's attached form GC-210(CA).
   b. ☐ the minor named in item 2, who is 12 years of age or older.
   c. ☐ another person on behalf of minor or minors named in item 2, as shown in item 7 of each minor's attached form GC-210(CA).

4. The proposed guardian is *(check all that apply):*
   a. ☐ a nominee *(affix a copy of nomination as Attachment 4a or file* Nomination of Guardian (form GC-211, items 2 and 3) with this petition.
   b. ☐ related to the minor or minors named in item 2, as shown in item 3 of each minor's attached form GC-210(CA).
   c. ☐ other, as shown in item 3 of each minor's attached form GC-210(CA).
   d. ☐ a professional fiduciary within the meaning of the Professional Fiduciaries Act.The proposed guardian's license status is shown 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.)*

5. ☐ Petitioner, with intent to adopt, has accepted or intends to accept physical care or custody of the minor.

6. ☐ A person other than the proposed guardian has been nominated as the guardian of the minor by ☐ will ☐ other writing. A copy of the nomination is affixed as Attachment 6. *(Specify name and address of nominee in item 2 of minor's attached form GC-210(CA).)*

7. ☐ Character and estimated value of property of the estate *(complete if petition requests appointment of a guardian of the estate or the person and estate):*
   a. Personal property: $
   b. Annual gross income from all sources, including real and personal property, wages, pensions, and public benefits: $
   c. **Total:** $ _____
   d. Real property: $

8. Appointment of a guardian of the ☐ person ☐ estate of the minor or minors named in item 2 is necessary or convenient for the following reasons:

☐ Continued in Attachment 8. ☐ Parental custody would be detrimental to the minor or minors named in item 2. *(not applicable to proposed wards 18 years of age and older)*

9. ☐ Granting the proposed guardian 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 guardianship estate. Reasons for this request and the powers requested are specified in Attachment 9.

10. ☐ Notice to the persons named in Attachment 10 should be dispensed with under Probate Code section 1511 because
    ☐ they cannot with reasonable diligence be given notice *(specify names and efforts to locate in Attachment 10).*
    ☐ giving notice to them would be contrary to the interest of justice *(specify names and reasons in Attachment 10).*

GUARDIANSHIP OF *(name):*	CASE NUMBER:

11. ☐ (Complete this item if this petition is filed by a person who is not related to a minor named in item 2 and is not a petition for appointment of a guardian of the estate only.)
    a. ☐ Petitioner is the proposed guardian and will promptly furnish all information requested by any agency referred to in Probate Code section 1543.
    b. ☐ Petitioner is not the proposed guardian. A statement by the proposed guardian that he or she will promptly furnish all information requested by any agency referred to in Probate Code section 1543 is affixed as Attachment 11b.
    c. The proposed guardian's home ☐ is ☐ is not a licensed foster family home.
    d. ☐ The proposed guardian has never filed a petition for adoption of the minor ☐ except as specified in Attachment 11d.

12. ☐ Attached to this petition is a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form GC-120) concerning each child under 18 years of age listed in item 2. *(guardianship of the person or person and estate only)*

13. Filed with this petition are the following *(check all that apply):*
    ☐ *Consent of Proposed Guardian* (form GC-211, item 1)
    ☐ *Nomination of Guardian* (form GC-211, items 2 and 3)
    ☐ *Consent to Appointment of Guardian and Waiver of Notice* (form GC-211, item 4)
    ☐ *Petition for Appointment of Temporary Guardian* (form GC-110)
    ☐ *Petition for Appointment of Temporary Guardian of the Person* (form GC-110(P))
    ☐ *Confidential Guardianship Screening Form* (form GC-212)
    ☐ *Petition for Special Immigrant Juvenile Findings* (form GC-220)
    Other *(specify):*

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

Date:

(SIGNATURE OF ATTORNEY*)

***(All petitioners and—if he or she is at least 18 years of age but not yet 21 and not a petitioner—the proposed ward must also sign.)**

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)

I consent to the appointment of the person named in item 1a as guardian of my person and to his or her performance of the duties of a guardian on my behalf.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PROPOSED WARD)

GC-210(P) Petition for Appointment of Guardian of the Person

Guardianship of the person of *(all children's names):* _____

_____

_____

Clerk stamps date here when form is filed.

***You may use this form or the* Petition for Appointment of Guardian of Minor *(form GC-210) to petition, or ask, the court to appoint a guardian of the person.* (You must use form GC-210 to ask the court to appoint a guardian of the estate or of both the person and the estate.)**

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in information below when form is filed.

Case Number:	
Hearing Date and Time:	**Dept.:**

1 **Your name** *(include the names of all persons who are requesting the court to appoint them or the person named in 4 as guardian for the child* or children* named above and in 8. All must sign this form.):*

a. _____
b. _____
c. _____

2 **Your address and telephone number:**

Street: _____ *Apt.:* _____
City: _____
State: _____ *Zip:* _____ *Phone:* _____

3 ☐ **Your Lawyer** *(if you have one):*

Name: _____ *Bar No.:* _____
Firm name, if any: _____
Street: _____ *Suite:* _____
City: _____ *State:* _____ *Zip:* _____
Telephone: _____ *Fax:* _____ *E-mail:* _____

4 ☐ **I/We want to be guardian of the child or children named in 8** *(Go to 5.)*

☐ **I/We want the person or persons named here to be the guardian of the child or children named in 8.** *Tell the court about the proposed guardian(s) below.*

Name(s):

Street: _____ *Apt.:* _____
City: _____ *State:* _____ *Zip:* _____
Phone: _____ *E-mail:* _____

☐ **I am the child or one of the children named in 8 and a person named in 1. I am at least 12 years old. I want the person or persons named here to be my guardian.**
My date of birth is *(month/day/year):* _____ *Tell the court about the proposed guardian(s) below.*

Name(s):

Street: _____ *Apt.:* _____
City: _____ *State:* _____ *Zip:* _____
Phone: _____ *E-mail:* _____

***Under section 1510.1(d) of the Probate Code, the terms *child, minor,* and *ward* include a youth 18–20 years of age.**

Guardianship of the person of *(all children's names):*	**Case Number:**

5 **The proposed guardian named in 1 or 4 is** *(check all that apply)*:

a. ☐ related to the child or children named in 8, as shown in item 3 of the child's or children's attached *Guardianship Petition—Child Information Attachment* (form(s) GC-210(CA)).

b. ☐ not related to the child or children named in 8.

c. ☐ a nominee of a parent of one or more of the children named in 8, as shown in item 5 of the child's or children's attached *Guardianship Petition—Child Information Attachment* (form(s) GC-210(CA)).

6 ☐ **Check this box if you checked the box in item 5b (guardian unrelated to child or children).** *Answer the question in item a and check the box in item b or c. If you check the box in c, provide the signed statement of the proposed guardian on a separate sheet of paper. Write "Form GC-210(P)—Attachment 6: Statement of Unrelated Guardian" at the top of the paper and attach it to this form.*

a. Does the proposed guardian run a licensed foster family home? ☐ Yes ☐ No

b. ☐ I am the proposed guardian. I will promptly furnish any information requested by an agency investigating an adoption or a local agency designated by the county to provide public social services.

c. ☐ I am **not** the proposed guardian. The signed statement of the proposed guardian agreeing to promptly furnish any information requested by an agency investigating an adoption or a local agency designated by the county to provide public social services is attached to this form as Attachment 6.

7 ☐ **A person other than the proposed guardian(s) named in 1 or 4 has been nominated in a will or other writing as guardian of the child or children named in 8. A copy of the written nomination is attached.** *Write "Form GC-210(P)—Attachment 7: Nomination of Another Person as Guardian" at the top of the writing and attach it to this form. Fill in the nominated person's name and address in item 2 of the* Guardianship Petition—Child Information Attachment (*form GC-210(CA)) for each child for whom the person was nominated as guardian.*

8 **Tell the court about the child or children who need a guardian:**

Fill out and attach to this form a separate copy of Guardianship Petition—Child Information Attachment *(form GC-210(CA)) for* each *child named below. Show all children's names at the top of all pages of this form. Fill out and attach to this form a* Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) *(form FL-105/GC-120) concerning all children under 18 years of age listed below.*

The full legal name and date of birth of each child who needs a guardian is *(specify):*

a. Name: _____ (*First*) _____ (*Middle*) _____ (*Last*) Date of birth: _____ (*Month/Day/Year*)

b. Name: _____ (*First*) _____ (*Middle*) _____ (*Last*) Date of birth: _____ (*Month/Day/Year*)

c. Name: _____ (*First*) _____ (*Middle*) _____ (*Last*) Date of birth: _____ (*Month/Day/Year*)

d. Name: _____ (*First*) _____ (*Middle*) _____ (*Last*) Date of birth: _____ (*Month/Day/Year*)

e. Name: _____ (*First*) _____ (*Middle*) _____ (*Last*) Date of birth: _____ (*Month/Day/Year*)

☐ *Check here if there are additional children. Continue this list on a separate sheet of paper. Write "Form GC-210(P)—Attachment 8: Additional Children" at the top of the paper and attach it to this form.*

Guardianship of the person of *(all children's names):*	**Case Number:**

9 **The guardianship is necessary or convenient for the reasons given below.**
(Explain why each child listed in **8** *needs a guardian.)*

☐ *Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(P)—Attachment 9: Need for Guardian" at the top of the paper and attach it to this form.*

10 **I/We ask the court to** *(check all that apply):*

a. Appoint the person named in **1** or **4** guardian of the person of the child or children named in **8** and issue Letters of Guardianship.

b. ☐ Excuse me/us from having to give notice of the hearing on this petition to one or more relatives or other persons listed in item 2 of the attached *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) for the reasons given below. *(Specify (1) the name of each child, (2) the name and relationship to the child of each of the persons to whom you want the court to excuse you from giving notice, and (3) the reasons for your request, including the steps, if any, you have taken to find each person.):*

☐ *Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(P)—Attachment 10b: Request for Waiver of Notice" at the top of the paper and attach it to this form.*

The relatives and other persons listed in item 2 of each child's* Guardianship Petition—Child Information Attachment *(form GC-210(CA)) must be given notice of the hearing on your petition for appointment of a guardian for that child unless the court excuses you from giving notice. The court may waive (excuse) this requirement if you can show the court that you do not know where the relative or other person is located after making reasonable efforts to find him or her or if giving notice to that person may harm the child or otherwise be contrary to the interests of justice. See rule 7.52 of the California Rules of Court for information on making reasonable efforts to find a person.

Guardianship of the person of *(all children's names):*	**Case Number:**

10 c. ☐ Make the following additional orders *(specify)*:

☐ *Check here if you need more space. Continue your request for additional orders on a separate sheet of paper. Write "Form GC-210(P)—Attachment 10c: Additional Orders" at the top of the paper and attach it to this form.*

11 **Filed with this petition are the following** *(check all that apply):*

- ☐ *Consent of Proposed Guardian* (form GC-211, item 1)
- ☐ *Nomination of Guardian* (form GC-211, items 2 and 3)
- ☐ *Consent to Appointment of Guardian and Waiver of Notice* (form GC-211, item 4).
- ☐ *Petition for Appointment of Temporary Guardian or Conservator* (form GC-110)
- ☐ *Petition for Appointment of Temporary Guardian of the Person* (form GC-110(P))
- ☐ *Confidential Guardian Screening Form* (form GC-212)
- ☐ *Petition for Special Immigrant Juvenile Findings* (form GC-220)
- ☐ Other *(specify)*:

12 All attachments are made part of this form as though included here. There are _____ pages attached to this form.

Date: _____ ▶ _____

Petitioner's attorney types or prints name here — *Petitioner's attorney signs here*

All petitioners and—if he or she is at least 18 but not yet 21 years of age and not a petitioner—the proposed ward must read and sign below.

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

Date: _____ ▶ _____

Petitioner types or prints name here — *Petitioner signs here*

Date: _____ ▶ _____

Petitioner types or prints name here — *Petitioner signs here*

I consent to the appointment of the person named in 1 or 4 as guardian of my person and to his or her performance of the duties of a guardian on my behalf.

Date: _____ ▶ _____

Proposed ward types or prints name here — *Proposed ward signs here*

GC-210(PE) Petition to Extend Guardianship of the Person

Guardianship of the person of *(all wards' names):*

_____

_____

_____

Clerk stamps date here when form is filed.

You may use this form to petition, or ask, the court to extend an existing guardianship of the person past a ward's* 18th birthday.

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in information below when form is filed.

Case Number:	
Hearing Date and Time:	**Dept.:**

(1) Your name *(include the names of all persons who are asking the court to extend the appointment of the person named in (4) as guardian for the ward named in (5). Everyone making the request must sign this form.):*

a. _____
b. _____
c. _____

(2) Your address and telephone number:

Street: _____ *Apt.:* _____
City: _____
State: _____ *Zip:* _____ *Phone:* _____

(3) ☐ **Your Lawyer** *(if you have one):*

Name: _____ *Bar No.:* _____
Firm name, if any: _____
Street: _____ *Suite:* _____
City: _____ *State:* _____ *Zip:* _____
Telephone: _____ *Fax:* _____ *E-mail:* _____

(4) ☐ **I/We want to continue as guardian of the ward named in (5) after the ward's 18th birthday.**

☐ **I/We want the person or persons named here to continue as the guardian of the ward named in (5) after the ward's 18th birthday.** *Tell the court about the guardian(s) below.*

Name(s):

Street: _____ *Apt.:* _____
City: _____ *State:* _____ *Zip:* _____
Phone: _____ *E-mail:* _____

☐ **I am the ward named in (5) and a person named in (1). I am not yet 18 years old. I want the person(s) named here to continue as my guardian(s) after my 18th birthday.**

My date of birth is *(month/day/year):* _____ *Tell the court about the proposed guardian(s) below.*

Name(s):

Street: _____ *Apt.:* _____
City: _____ *State:* _____ *Zip:* _____
Phone: _____ *E-mail:* _____

***Under section 1510.1(d) of the Probate Code, the terms *child, minor,* and *ward* include a youth 18–20 years of age.**

Guardianship of the person of *(wards' names):*	**Case Number:**

5 **The guardian named in 1 or 4 was appointed guardian of the person of**
name of ward: _____ *(date of birth, if not in 4):* _____
by the court on *(date):* _____ **.**

☐ *Letters of Guardianship* (form GC-250) were issued on *(date):* and remain in full force and effect.

☐ An updated copy of *Guardianship Petition—Child Information Attachment* (form GC-210(CA)), showing the ward's name at the top of each page, is attached to this petition.

6 **The extension of the guardianship is necessary or convenient for the reasons given below.**
(Explain why the ward named in 5 will continue to need a guardian beyond his or her 18th birthday.)

☐ *Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(PE)—Attachment 6: Need for Guardian" at the top of the paper and attach it to this form.*

7 **I/We ask the court to** *(check all that apply)*:

a. Extend the appointment of the person named in 1 or 4 as guardian of the person of the ward named in 5 past the ward's 18th birthday and issue new *Letters of Guardianship* (form GC-250).

b. ☐ Make orders relating to the powers and duties of the guardian of the person under Probate Code sections 2351–2358, as specified in Attachment 7b *(specify orders, facts, and reasons in the attachment).*

c. ☐ Excuse me/us from having to give notice of the hearing on this petition to the following person(s) for the reasons given below *(specify (1) the name and relationship to the ward of each of the persons to whom you want the court to excuse you from giving notice, and (2) the reasons for your request, including the steps, if any, you have taken to find each person):*

☐ *Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(PE)—Attachment 7c: Request for Waiver of Notice" at the top of the paper and attach it to this form.*

Notice of the hearing on this petition must be given to the following persons unless they are petitioners: the ward, the ward's attorney, the guardian, the guardian's attorney, and any person who was nominated as a guardian of the person in the initial guardianship proceeding. The court may dispense with (excuse) this requirement if you can show that you do not know where the person is located after making reasonable efforts to find him or her or if giving notice to that person might harm the ward or otherwise be contrary to the interests of justice. See rule 7.52 of the California Rules of Court for information on making reasonable efforts to find a person.

Guardianship of the person of *(all wards' names):*	**Case Number:**

7 d. ☐ Make the following additional orders *(specify)*:

☐ *Check here if you need more space. Continue your request for additional orders on a separate sheet of paper. Write "Form GC-210(PE)—Attachment 7d: Additional Orders" at the top of the paper and attach it to this form.*

8 **Filed with this petition are the following** *(check all that apply):*

☐ *Consent of Proposed Guardian* (form GC-211, item 1)
☐ *Petition for Special Immigrant Juvenile Findings* (form GC-220)
☐ Other *(specify)*:

9 All attachments are made part of this form as though included here. There are _____ pages attached to this form.

All persons named in 1 (petitioners), their attorney (if they have one), and the ward must read and sign below.

Date: _____ ▶ _____
Petitioner's attorney types or prints name here *Petitioner's attorney signs here*

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

Date: _____ ▶ _____
Petitioner types or prints name here *Petitioner signs here*

Date: _____ ▶ _____
Petitioner types or prints name here *Petitioner signs here*

Date: _____ ▶ _____
Petitioner types or prints name here *Petitioner signs here*

I consent to the extension past my 18th birthday of the appointment of the person named in 1 or 4 as guardian of my person and to his or her performance of the duties of a guardian on my behalf.

Date: _____ ▶ _____
Ward types or prints name here *Ward signs here*

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:	
GUARDIANSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):*	
ORDER APPOINTING GUARDIAN OR EXTENDING GUARDIANSHIP OF THE PERSON	CASE NUMBER:

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. The petition for appointment of a guardian or extension of a guardianship of the person came on for hearing as follows *(check boxes c, d, and e to indicate personal presence):*
   a. Judge *(name)*:
   b. Hearing date: Time: ☐ Dept.: ☐ Room:
   c. ☐ Petitioner *(name)*:
   d. ☐ Attorney for Petitioner *(name)*:
   e. ☐ Attorney for (proposed) ward *(name, address, e-mail, and telephone)*:

THE COURT FINDS

2. a. ☐ All notices required by law have been given.
   b. ☐ Notice of hearing to the following persons ☐ has been ☐ should be dispensed with *(names)*:

3. ☐ Appointment of a guardian of the ☐ person ☐ estate of the proposed ward is necessary and convenient. ***(NOTE:** The Probate Code does not authorize the appointment of a guardian of the estate for a proposed ward 18 years of age or older.)*

4. ☐ Extension of the guardianship of the person past the ward's 18th birthday is necessary and convenient.

5. ☐ Granting the guardian powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and is in the best interest of the guardianship estate.

6. ☐ Attorney *(name)*: has been appointed by the court as legal counsel to represent the (proposed) ward in these proceedings. The cost for representation is: $

7. ☐ The appointed court investigator, probation officer, or domestic relations investigator is *(name, title, address, and telephone)*:

Do NOT use this form for a temporary guardianship.

Form Adopted for Mandatory Use
Judicial Council of California
GC-240 [Rev. July 1, 2016]

Probate Code, §§ 1510.1, 1514, 2310

GUARDIANSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name)*:	CASE NUMBER:

THE COURT ORDERS

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

is appointed guardian of the PERSON of *(name)*:
and *Letters* shall issue upon qualification.

8. b. *(not applicable to a proposed ward 18 years of age or older)*
☐ *(Name)*:
(Address): *(Telephone)*:

is appointed guardian of the ESTATE of *(name)*:
and *Letters* shall issue upon qualification.

8. c. ☐ The appointment of
(Name):
(Address): *(Telephone)*:
as guardian of the PERSON of *(name)*:
is extended past the ward's 18th birthday and new *Letters* shall issue forthwith.

9. ☐ Notice of hearing to the persons named in item 2b is dispensed with.

10. a. ☐ Bond is not required.
b. ☐ Bond is fixed at: $ to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: $ are ordered to be placed in a blocked account at *(specify institution and location):*
and receipts shall be filed. No withdrawals shall be made without a court order.
☐ Additional orders in Attachment 10c.
d. ☐ The guardian is not authorized to take possession of money or any other property without a specific court order.

11. ☐ For legal services rendered on behalf of the (proposed) ward ☐ parents of the (proposed) ward
☐ (proposed) ward's estate shall pay to *(name)*:
the sum of: $
☐ forthwith ☐ as follows *(specify terms, including any combination of payers):*

12. ☐ The guardian of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in Attachment 12 ☐ subject to the conditions provided.

13. ☐ Orders are granted relating to the powers and duties of the guardian of the person under Probate Code sections 2351–2358 as specified in Attachment 13.

GUARDIANSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):*	CASE NUMBER:

14. ☐ Orders are granted relating to the conditions imposed under Probate Code section 2402 upon the guardian of the estate as specified in Attachment 14.

15. ☐ Other orders as specified in Attachment 15 are granted.

16. ☐ The probate referee appointed is *(name and address):*

17. Number of boxes checked in items 9–16:

18. Number of pages attached:

Date:

JUDGE OF THE SUPERIOR COURT

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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:	
GUARDIANSHIP OF *(name):*	
LETTERS OF GUARDIANSHIP ☐ **Person** ☐ **Estate**	CASE NUMBER:

LETTERS

1. ☐ *(Name):* is appointed guardian of the ☐ person ☐ estate of *(name):*
2. ☐ The appointment of *(name):* as guardian of the person of *(name):* is extended past the ward's 18th birthday as of *(date):*
3. ☐ Other powers have been granted and conditions have been imposed as follows:
   a. ☐ Powers to be exercised independently under Probate Code section 2590 are specified in attachment 3a *(specify powers, restrictions, conditions, and limitations).*
   b. ☐ Conditions relating to the care and custody of the property under Probate Code section 2402 are specified in attachment 3b.
   c. ☐ Conditions relating to the care, treatment, education, and welfare of the ward under Probate Code section 2358 are specified in attachment 3c.
   d. ☐ Other powers granted or conditions imposed are ☐ specified on attachment 3d. ☐ specified below.
4. ☐ The guardian is not authorized to take possession of money or any other property without a specific court order.
5. The guardianship of the person terminates by operation of law on *(date):* _____
6. Number of pages attached: _____

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)

Date:

Clerk, by _____ , Deputy

Form Adopted for Mandatory Use
Judicial Council of California
GC-250 [Rev. July 1, 2016]

LETTERS OF GUARDIANSHIP
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 2310, 2311, 2890–2893
www.courts.ca.gov

GUARDIANSHIP OF *(name):*	CASE NUMBER:

NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS

(Probate Code sections 2890–2893)

When these *Letters of Guardianship* (Letters) are delivered to you as an employee or other representative of an *institution* or *financial institution* (described below) in order for the guardian of the estate (1) to take possession or control of an asset of the minor named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the guardianship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The guardian should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public website free of charge. The Internet address (URL) is *www.courts.ca.gov/forms.htm.* Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter (nonfillable form) or may be filled out online and printed out ready for signature and filing (fillable form).

An *institution* under California Probate Code section 2890(c) is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the minor or conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, trust (including a Totten trust account but excluding other trust arrangements described in Probate Code section 82(b)), savings and loan association, savings bank, industrial bank, or credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe-deposit box held by the financial institution. A single form may be filed for all affected accounts or safe-deposit boxes held by the financial institution.

LETTERS OF GUARDIANSHIP

AFFIRMATION

I solemnly affirm that I will perform according to law the duties of guardian.

Executed on *(date)*: , at *(place):*

(TYPE OR PRINT NAME) (SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by _____ , Deputy

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
1.	Hon. Kevin De León, President Pro Tempore, California Senate; Hon. Toni G. Atkins, Speaker of the California Assembly; Hon. Mark Levine, Assemblymember, California Assembly California Legislature Sacramento	AM	On October 9th, 2015, Governor Edmund G. Brown signed AB 900, a bill introduced and passed as part of the "Immigrants Shape California" legislative package. Specifically, AB 900 made changes to the California Probate Code by adding Section 1510.1 and amending Sections 1490, 1600, and 1601. Through those changes, AB 900 expanded access for youth ages 18–20 to the protections and benefits of a probate legal guardianship and to Special Immigrant Juvenile findings issued in accordance with state and federal law. The purpose of AB 900 is articulated in the legislative intent section of the bill. In particular, the legislature identified the importance of a legal guardianship for these youth as providing a "custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment."[1] [1] Assem. Bill No. 900 (2015–2016 Reg. Sess.) § 1(a)(6). Additionally, we highlighted our intent to align California law with federal law by ensuring access to the specific findings, as described in California Code of Civil Procedure Section 155, issued by the superior court necessary for a	No response required.

1

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

	Commentator	Position	Comment	Committee Response
			youth to seek Special Immigrant Juvenile Status ("SIJS")—an important form of humanitarian immigration relief for certain abused, abandoned, or neglected youth—and the immigration relief it affords.[2] [2] Assem. Bill No. 900 (2015–2016 Reg. Sess.) § 1(a)5 To ensure uniformity, clarity, and accessibility, the bill includes a mandate that Judicial Council shall, by July 1, 2016, adopt any rules and forms needed to implement Probate Code Section 1510.1. Accordingly, on December 11, 2015, the Judicial Council published proposed forms for comment. We thank the Judicial Council for its efforts to quickly implement a process for handling new petitions for over-18 guardianships and extensions of guardianships for youth ages 18–20, pursuant to AB 900. However, we have serious concerns about these forms as proposed and in particular fear that they may undermine the substance and goals of the legislation. Thus, we submit these comments to the proposed forms with the hope that the final forms can better reflect the language and purpose of AB 900. **Guardianships established under Probate Code Section 1501.1 are of the same fundamental form and substance as all other probate legal guardianships.**	

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			We intended that guardianships under Probate Code 1510.1 be fundamentally the same as other guardianships authorized under the Probate Code.[3] [3] INVITATION TO COMMENT, W16-14. Probate Guardianships: A New Guardianship for Wards 18 to 21 Years Old and Extension of Existing Guardianships Beyond the Wards' 18th Birthday, page 4. "The committee concluded that new Letters should be issued in these cases because the powers of the guardian of an adult are considerably different from those of a guardian of a minor."	The committee understands the Legislature's intent to protect undocumented youth who have suffered abuse, neglect, or abandonment by expanding the superior court's authority to appoint guardians or extend guardianships for those youth until they reach 21 years of age. The committee further understands that the Legislature intends for guardianships of these wards to have the same legal structure, powers, and duties as any other guardianship in as many respects as possible. Accepting that a guardianship of the person of an 18–20-year-old youth may be necessary or convenient to protect the youth's interests in the circumstances identified in section 1 of AB 900, the committee has tried, through the proposed rules and forms, to fashion a relationship that will perform that function while recognizing and respecting the youth's rights as an adult as required by section 1510.1(c) of the Probate Code. In particular, the committee has modified its recommendation in response to this and the preponderance of other comments received to withdraw the proposed separate petition form for wards 18 years of age or older. The committee proposes incorporating revisions to the existing guardianship petition forms, GC-210 and GC-210(P), and adopting a new form, GC-210(PE), to petition for extension of a guardianship of the person past the ward's 18th birthday.
			While there are differences in the types of guardianships within the Probate Code (e.g., joint guardianships, co-guardianships, etc.), and	The committee agrees that, no matter the age of the ward, a guardianship is a fiduciary relationship subject to the regulation and control of the court.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			some variance in the rights impacted, authorities afforded, and duties assigned depending on numerous factors including the age of the ward (e.g., authorization for surgery, right to seek medical services regarding sexually transmitted diseases, pregnancy, mental health, and substance abuse, etc.), what is consistent for all guardianships is the fundamental relationship between guardian and ward. In passing AB 900, we recognized that many of the recent unaccompanied immigrant children who suffered parental abuse, abandonment, or neglect had been released to family members and other adults in California. As such, AB 900 was introduced to extend the protection of probate legal guardianship to these youth in light of their vulnerability and in keeping with California's values regarding child welfare. Legal guardianships established in California's Probate Courts confer duties and authorities upon the guardian in order for the guardian to adequately address the needs of the ward to whom they are appointed. Thus, AB 900 provides jurisdiction for California Probate Courts to appoint legal guardians to members of this population, whose needs are potentially extensive given the history of abuse, abandonment, and neglect in their lives, and who are often adjusting to a new culture, language, and educational and medical systems. AB 900 ensures that probate legal guardianships are available to youth aged 18-20 years old; it	(Prob. Code, §§ 2101, 2102.) A guardian must perform certain duties for the benefit of the ward and is subject to general fiduciary duties, including a duty of loyalty. The committee has tried to harmonize the guardian's authority to perform his or her duties with the ward's status as a legal adult. The committee shares the values highlighted by the commentator and agrees that a legal guardianship confers powers and duties on the guardian to act to meet the needs of the ward. The committee initially understood section 1510.1(c) to place extensive limits on the guardian's powers, but now understands that the Legislature intended narrower limits that would apply only in the event of a dispute between the guardian and the ward.

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			does not create a new substantive type of guardianship.	
			The use of the word "ADULT" throughout proposed GC-210(ADLT) form and proposed revised forms GC-240 (Order Appointing Guardian) and GC-250 (Letters of Guardianship) is unnecessary and incongruent with AB 900. Section 1510.1(d) of the Probate Code incorporates youth over the age of 18 who consent to a guardianship pursuant to that section into the definition of the terms "child," "minor," and "ward" as used in guardianship provisions of the Probate Code. There is no need or benefit in adding the word "ADULT" on these forms and in fact doing so is contrary to the plain language of Section 1510.1(d); there is, however, a cost to doing so, as it implies that there is a difference between these guardianships and others issued by the Probate Court. However, from its initial draft, through the legislative process and enactment, AB 900 has consistently created in its intent and substance a legal guardianship fundamentally the same as other guardianships authorized under the Probate Code.	The committee agrees that the term "adult" in the circulated forms does not accurately capture the legislative intent. The term could have the additional unintended consequence of implying that a guardianship might be established or extended for any adult, no matter how old. The committee has removed the use of the term to refer to a ward from the proposed forms.
			Similarly, there are items throughout the proposed forms that request information unnecessary for the adjudication of the guardianship itself. For instance, Item 2 of proposed form GC-210(ADLT) highlights the foreign birth of the ward or proposed ward; this	The committee agrees that the forms do not need to highlight the (proposed) ward's place of birth and, as part of its withdrawal of form GC-210(ADLT), has removed the request for that information from the proposal.

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

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

	Commentator	Position	Comment	Committee Response
			information is unnecessary for the court to make a determination about whether the guardianship is in the child's best interests. Item 4.c involves extensive information about the ward or proposed ward's petition for Special Immigrant Juvenile Findings; this information is similarly not relevant to the court's determination about the guardianship. Item 10 requests information regarding the progress of the ward's application to the United States Citizenship & Immigration Services requesting Special Immigrant Juvenile Status. This information is also unnecessary for the court to make a determination about whether the guardianship is in the child's best interests. While Probate Code Section 1510.1 authorizes the court to appoint a guardian "in connection with a petition to make the necessary findings regarding special immigrant juvenile status," Item 11 of the proposed form GC-210(ADLT) adequately inquires about the status of the petition for Special Immigrant Juvenile Findings. The forms as currently proposed not only distinguish guardianships pursuant to Probate Code Section 1510.1 from other probate guardianships; in numerous ways, they undermine the very guardianships they are designed to create. For example, proposed form GC-210(ADLT), Items 4.d and 13, require the petitioner to specify the orders, facts, and	The committee understood, based on the express language of section 1510.1(a)–(b), that the court was authorized to establish or extend a guardianship for a ward 18 or older only "in connection with a petition for" SIJ findings or "for purposes of allowing the ward to complete" the process of applying for SIJ status. Based on that understanding, the committee concluded that information about the ward's SIJ petition would be critical both to determining whether the court had authority to appoint or extend *and* whether the guardianship would be necessary or convenient. Because of this and other comments, however, the committee has reconsidered the need for such detailed information on the petition. The petitioner may still find it necessary to include information about the status of the ward's SIJ application on form GC-210(CA) to persuade the court of its authority. The committee has removed items 4d and 13 as part of withdrawing form GC-210(ADLT) from the proposal. The committee does not, however, recommend removing item 1e, which corresponds in part to items 4d and 13, from revised form GC-210. First, this item applies to all guardianships of the person, regardless of the ward's age. It affirms the court's statutory authority to regulate the

	Commentator	Position	Comment	Committee Response
			reasons that certain powers and duties should be granted to the proposed guardian. Nowhere within the text of AB 900 is the role of the guardian dissected in this way. Nothing in the bill suggests that petitioners, proposed guardians, or wards must provide such information, and nothing in the bill suggests that the court should parse out the powers and duties of the guardian in this manner.	guardianship under sections 2102, 2351, and 2358 and has been an element of the form for more than 20 years. Second, the check box signifies that the item may be completed at the petitioner's option. It is not required. It might, however, be especially useful for guardianships of wards 18 or older, in that it will permit the guardian and the ward to specify any limits to the ward's consent and, thereby, the guardian's authority, at the outset of the relationship. For similar reasons, the committee also recommends retaining that option in item 7b on proposed form GC-210(PE), the petition to extend a guardianship.
			Probate Code Section 1510.1(c) states that "(t)his section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent." In other words, the law does not direct the court to determine in advance which of these rights the guardian may have; rather, the ward, not the court, determines whether the guardian may exercise authority where the ward's rights as an adult would otherwise be determinative. Such provisions are not unique to AB 900 and do not require any additional language on the application for guardianship forms. In fact, similar conditions or limits on the authority of a guardian are routinely exercised in guardianships involving	Unlike the guardian of a child under 18—who stands in the shoes of the child's parent holding legal and physical care, custody, and control of the ward—the guardian of a youth 18 or older cannot rely on legally transferred parental authority. Decision-making authority belongs to and remains with the youth. In apparent recognition of this authority, Probate Code section 1510.1(a)–(c) requires the ward's consent in two separate respects. First, the youth must consent to the establishment or extension of the guardianship itself. (*Id.*, at § 1510.1(a)–(b).) Second, the youth must give express consent to any action by the guardian that abrogates the youth's rights as an adult. (*Id.*, § 1510.1(c).) The committee has chosen to solicit the ward's consent both to the guardianship and to the guardian's performance of the duties of a guardian on the petition by adding a statement and signature line to the last page of

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			wards less than 18 years of age; this occurs as a matter of law and without special orders or findings.[4] [4] For example, Probate Code Section 2353(b), provides that if the ward is 14 years of age or older, no surgery may be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order obtained pursuant to Section 2357 specifically authorizing such treatment. In other words, a guardian may not authorize a surgery to be performed on a ward over the age of 13 years old without the consent of the minor or, where the minor does not consent, the guardian must seek a court order for the surgery to be performed.	forms GC-210, GC-210(P), and new form GC-210(PE). Proposed rule 7.1002.5 provides that, in the event of a dispute over an action proposed by the guardian in performing his or her duty, the guardian may not act against the ward's desires without the ward's express consent. The rule further provides that the ward may petition the court to modify consent at any time during the guardianship. The committee intends these requirements to implement the consent requirements in section 1510.1 of the Probate Code.
			Finally, Items 4.e and 14 of the proposed form GC-210(ADLT) allow a petitioner to request that a guardian be appointed with no powers or duties whatsoever. However, there is no provision within AB 900 for a guardian to be appointed without any powers or duties over the ward. In fact, as our legislative intent for the bill makes clear, we contemplated an active and robust role for guardians appointed pursuant to AB 900, as discussed above. **AB 900 aligns California law with federal immigration law to allow for the maximum number of eligible youth in California to receive immigration relief as Special**	The committee has removed from the forms all items that provide an opportunity to request or appoint a guardian without any duties.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			Immigrant Juveniles. Our "Immigrants Shape California" legislative package was an effort by the California legislature in recognition of the past, current, and future contributions of immigrants to this state. AB 900 was introduced and passed as part of that package not only to provide 18 to 21 year old immigrant youth with the protections of our state's guardianship laws but also to correct a misalignment between California law and federal immigration law. We specifically intended to ensure such youth had access to a juvenile court as described in California Code of Civil Procedure 155, which in turn would allow them to apply for Special Immigrant Juvenile Status, a humanitarian form of immigration relief for abandoned, abused or neglected children under the age of 21. In other words, AB 900 was passed to protect immigrant youth and preserve their immigration remedies where applicable. In this regard, the proposed GC-210(ADLT) and the proposed revised GC-240 (Order Appointing Guardian) and GC-250 (Letters of Guardianship) work against the purpose of AB 900. The forms as proposed imply, directly and indirectly, that a guardianship pursuant to Probate Code Section 1510.1 is fundamentally different than a guardianship for a youth under the age of 18. The most problematic example of this is the use of the word "ADULT" throughout, including	The committee understands the legislative intent to protect immigrant youth and preserve their immigration remedies where applicable. It has modified its recommendation to emphasize the fundamental features of all guardianships of the person, whether the ward is 18–20 years old or under age 18. The committee intends these modifications to promote the purpose of AB 900. Among the committee's modifications is the deletion, consistent with section 1510.1(d) of the

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			the "(ADLT)" reference in the title of the proposed petition form. Inclusion of such language is unnecessary given the addition of Section 1510.1(d) of the Probate Code, and it implies that the Probate Court, in adjudicating the matter, is not sitting as a juvenile court. In cases arising in other states, U.S. Citizenship & Immigration Services ("USCIS," the federal agency that adjudicates applications for immigration benefits) has denied applications for Special Immigrant Juvenile Status based upon concerns that the applicant is not a "child" under state law, and that the order regarding his or her eligibility for SIJS findings was not made by a "juvenile court." We believe the forms, as proposed, will leave applicants in this state susceptible to the same fate. Another potential issue could include the fact that the proposed forms contemplate that the court will parse out the powers and duties of the guardian, or that the guardian will have no powers and duties, despite being appointed guardian. Either of these circumstances could be problematic to the child's ultimate eligibility for a Special Immigrant Juvenile visa because USCIS may be concerned that the guardianship was initiated in state court solely to allow the youth to seek an immigration benefit, a basis on which USCIS can and will deny SIJS.	Probate Code, of the term "adult" to describe wards who are 18 or older. A note has been added to the petition forms to indicate that the terms *child*, *minor*, and *ward* include an 18–20 year old youth as described in section 1510.1(d). The committee has removed from the forms all items that provide an opportunity to request or appoint a guardian without any duties. Furthermore, the committee has not added to the forms any opportunity to request or order any duties other than those that may by statute apply to any guardianship of the person, regardless of the ward's age. The form provisions authorizing the request for (e.g., form GC-210, item 1e) and issuance of (e.g., form GC-240, item 13) orders regarding specific duties under sections 2351–2358 of the Probate Code apply to all guardianships of the person and have been elements of the forms for more than 20 years. To the extent that the terms of these code sections

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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				authorize the court to expand or restrict the powers and duties of a *conservator* of the person, they have no application in a guardianship.
			Because the issues with the proposed forms that we have highlighted in this letter could result in AB 900 guardianships not providing the robust protection and support for newcomer immigrant youth in our state that we contemplated, and because they could result in this population not being successful in seeking Special Immigrant Juvenile visas – both of which would undermine the intent of the bill – we respectfully request that revisions be made to the forms which would correct these problematic areas. In particular, we suggest that the existing forms for guardianships may be used for AB 900 guardianships with only slight modifications to address differences (for example, adding a box or attachment where the youth consents to the appointment or extension of the guardianship as required by Section 1510.1).	The committee has modified its recommendation to address the issues identified by the commentators.
			We have enclosed a mocked up sample form that we feel appropriately reflects the intent of the legislature. Please do not hesitate to contact us with any questions or concerns; we very much appreciate your attention to this matter.	The committee's modifications are intended to conform substantially to the suggestions indicated by the commentators. Committee staff has consulted with legislative staff in drafting revisions to the existing forms.
2.	Immigration Center for Women and Children by Liz C. Gonzalez, Supervising Attorney	AM	I. The proposed GC-210(ADLT) Form is superfluous and convoluted. The already existing GC-210 could serve the purpose of the proposed GC-210(ADLT) with a few additions	The committee agrees that form GC-210 could serve the intended purposes of proposed form GC-210(ADLT) and has withdrawn proposed form GC-210(ADLT) from its recommendation.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Los Angeles		to it. a) AB 900 states that a proposed ward must consent to the appointment of a guardian if the ward is between the ages of 18 and 21. The current form GC-210 could simply include a line on page 3, Item 13 that the ward is submitting a declaration consenting to the appointment of a guardianship. b) AB 900 allows the court to extend an existing guardianship of the person for a ward past 18 years of age. It would be most prudent to create a new Petition for existing guardianships, requesting an extension of the guardianship, with an opportunity to list the reasons why the appointment of an over 18 guardianship is necessary and prudent. Having a separate GC-210 for wards 18-21 requesting a guardianship for the first time suggests that their petition is different than that of a minor child, which would undermine the purpose of AB 900. c) AB 900 states that a petition for guardianship for a ward between 18 and 21 must be filed in conjunction with a Petition for SIJS findings. Another box could be included in page 3, Item 13 asking whether a Petition for SIJS findings has been filed. Further, Question 2 of GC-210(ADLT) requests extensive information about the ward that obviously implies the ward is requesting SIJS. Simply stating whether the ward is requesting SIJS, without actually listing	The committee has modified its recommendation to include provisions on forms GC-210, GC-210(P), and new form GC-210(PE) for the ward to indicate his or her consent to the guardianship and the guardian's performance of duties on the ward's behalf. The committee has modified its recommendation to include new form GC-210(PE), a petition to request the extension of an existing guardianship of the person past the ward's 18th birthday. The committee agrees and has added a check box to each petition form so the petitioner may indicate that a petition for SIJ findings is attached. No other information regarding nationality or immigration status is expressly solicited.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			nationality, etc. regarding the ward would make the application seem less convoluted and would satisfy the requirement that the applicant request an extension of the petition in conjunction with a SIJS Petition. Since a separate SIJS Petition is filed in conjunction, and that information is on that form, it is unnecessary for the GC-210 Form to have to include such information. II. The proposed GC-210(ADLT) Form could create problems for the ward when filing for SIJS with USCIS. The Form refers to the ward as an adult in the very title of the Form itself and in the GC-250. It is unnecessary to refer to the ward as an adult as the Probate Code defines child, minor and ward (PC 1510.1(d)). More importantly, USCIS defers the findings of fact to the juvenile courts because the courts have the experience and knowledge necessary to make findings related to juveniles. There is a big possibility that calling the potential wards "adults" would lead USCIS to conclude that the probate court is not a juvenile court, which could in turn lead to a denial of a SIJS Petition. III. The proposed GC-210(ADLT) Form asks the ward to list specific orders, facts and reasons certain powers and duties should be granted to the proposed guardian of the person in questions 4d and 13. It is unnecessary to have to list specific powers and duties the guardian will have over the ward as the text of AB 900 does not require the court to list in advance what	The committee agrees and has withdrawn proposed form GC-210(ADLT) from its recommendation. Although the committee has withdrawn proposed form GC-210(ADLT), it does not recommend deleting items that provide opportunities to request or order specific powers and duties authorized by statute from the existing forms. These items, which have been elements of the forms for more than 20 years, reflect the court's statutory authority to regulate guardianships of the

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	Commentator	Position	Comment	Committee Response
			rights the guardian may have over the ward. The Bill simply states that the ward him/herself can continue to be seen as an adult under state law, which includes the ability to make certain decisions regarding his/her medical treatment, education, etc. In the event the ward and the guardian differ as to what is in the best interest of the ward, the two parties can return to court to request termination or modification of the guardianship. IV. Part 4e and 14 of GC-210(ADLT) alarmingly give the option that the guardian be appointed with no powers or duties of the ward. The legislative intent of AB 900 was for the guardian to have a big role in the life of the ward, as many of the wards who could benefit from this new Bill need the presence and guidance of a guardian to navigate their new life in a new country, where they have no parents and little to no family, having traversed many hundreds of miles to reach safety, housing, food, and other basic necessities. It is dangerous to assume that a guardian would have no powers as that would imply that the guardianship was simply for the purpose of SIJS, which USCIS explicitly has stated that it would not approve. That would undermine the entire reasoning behind AB 900, which was to help this population of applicants under 21.	person under section 2102 and the identified sections of the Probate Code. Nothing in these items is intended to preclude the guardian or the ward from petitioning to modify the terms of the guardianship. Proposed rule 7.1002.5 also expressly authorizes the ward to petition the court to modify the scope of his or her consent. The committee has modified its recommendation to delete all opportunities to request or order the appointment of a guardian with no powers or duties.
3.	Immigrant Legal Resource Center (ILRC) and Bet Tzedek Legal Services	AM	We thank the Judicial Council for its efforts to quickly implement a process for handling new	See the comments of Senate President pro Tem De León, Assembly Speaker Atkins, and

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	by Rachel Prandini, Unaccompanied Minor Law Fellow/Attorney, Immigrant Legal Resource Center, and Erikson Albrecht, Kinship Attorney, Bet Tzedek Legal Services		petitions for over-18 guardianships and extensions of guardianships for youth ages 18-20, pursuant to AB 900. We write in support of the recommendations set forth in the enclosed letter by Senate President pro Tempore Kevin de León, Speaker of the Assembly Toni Atkins, and Assemblymember Marc Levine. We strongly encourage you to make the changes the legislative leaders and bill author suggest. If you have any questions, please do not hesitate to contact us.	Assemblymember Levine and the Committee's responses, above.
4.	Kids In Need of Defense (KIND), by Cory W. Smith, Vice President, Policy, Advocacy & Communications San Francisco	AM	1) Although there are benefits and drawbacks to both consider in having a separate guardianship petition for youth ages 18-20, in consultation with other partners that work with youth and based on our case experience, KIND believes that the goals could be better met by making minor modifications to the existing GC-210 and/or GC-210(P) and including an additional form for the extension of an existing guardianship. Should the Judicial Council decide to proceed with a new GC-210(Adlt) form, KIND still recommend removing the word "Adult" throughout the Petition. 2) The use of the word "Adult" in the GC-210 petition contradict AB900's statutory intent and language: KIND's main concerns about the separate GC-210(Adlt) primarily center around the use of the word "Adult" throughout the Petition. We believe this conflicts with AB900 and Probate Code section 1510.1(d), which	The committee agrees, has withdrawn proposed form GC-210(ADLT), and has modified its recommendation to propose revisions to forms GC-210 and GC-210(P) and adopting a new form, GC-210(PE), to petition for the extension of an existing guardianship of the person. The committee has modified its recommendation to withdraw proposed form GC-210(ADLT) and to delete the term "adult" in reference to a ward in the other forms.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			specifically defines a "child," "minor," and "ward" for purposes of the Guardianship-Conservatorship Law (Division 4 of the Probate Code) to include an unmarried individual who is younger than 21 years of age and, who pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age. KIND understands the importance of differentiating between minors and non-minors in probate legal guardianships for purposes of consent and maintaining adult decision-making authority under state law. However, there are ways of recognizing this difference which do not conflict with the statutory language and legislative intent, and so the term "Adult" should not be used on the Petition. 3) The use of the word "Adult" on the GC-210 petition could lead to unnecessary confusion with U.S. Citizenship and Immigration Services processing of SIJS applications: The wording of the petition using the word "Adult" would likely raise significant concerns and confusion with the U.S. Citizenship and Immigration Service ("USCIS") if these petitions are seen as purely a vehicle for adults to obtain Special Immigrant Juvenile Status, contravening the intent of both the creation of SIJS and AB900 section 1 paragraph 6 to recognize and provide legal protections that already exist in the law to vulnerable immigrant youth who have suffered abuse, abandonment, and neglect to receive or	The committee has proposed revised petition forms that do not use the term "adult" to refer to the ward. Where certain items or provisions do not apply because of the ward's age, the committee has used language limiting their application to wards under 18 years of age.

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			continue receiving support through a custodial relationship with a responsible adult. This could lead to unnecessary delays, and at worst, denials with immigrant youth who are qualified to apply and receive SIJS.	
			4) Modify the existing GC-210 form without using the word "Adult" to indicate "minors under 18" and "minor aged 18-20:" If the Court would like to be able to easily identify AB900 cases, rather than creating a separate box for "adult 18–21 years of age" (which conflicts with the statutory language and may be confusing for USCIS[1]) the caption could be amended in the current GC-210 form to include two options: "minor under 18" AND "minor aged 18–20." [1] Although in general, USCIS does not require a copy of the entire guardianship petition when adjudicating an I-360 Special Immigrant Juvenile Status, in some cases they do require evidence from the underlying state court proceedings and issue a request for evidence for records.	The committee agrees and has not used the term "adult" in its revisions to form GC-210.
			5) Any GC-210 form should not have a court issue specific orders similar to a conservatorship nor imply that guardianships have no power past the ward's 18th birthday: KIND has significant concerns about questions 13–14 on proposed GC-210(Adlt). We recommend that these questions be stricken from the form. Although we understand the Judicial Council's goal of	The committee has modified its recommendation to delete all opportunities to request or order the appointment of a guardian with no powers or duties. The committee does not, however, recommend deleting the items for requesting and ordering specific duties or limits on those duties from the existing petition and order forms. These items, which have been elements of the forms for

	Commentator	Position	Comment	Committee Response
			clarifying that the non-minor ward ages 18–20 continue to have all the rights of an adult, we believe having a court issue specific orders similar to a conservatorship is unnecessary and contrary to the intent of AB900. AB900 and Probate Code 1510.1(c) make clear that a guardian of a youth age 18–20 is not authorized to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the wards medical treatment, education, or residence, without the ward's express consent. However, this does not mean that a guardianship has no effect. A guardian continues to have the responsibilities of a guardian to assume certain duties and obligations including providing for the ward's food, clothing, shelter, education, medical and dental needs, and ensuring his safety, protection and physical and emotional growth. Given the vulnerability unaccompanied youth face navigating systems in the United States, having this kind of responsible adult to help is especially valuable. KIND is concerned that, as written, question 14 appears to anticipate a guardianship where the guardian has no powers or duties past the ward's 18th birthday. If that were the case, we fear that USCIS could systematically deny the ward's SIJS petition. We would recommend a consent form similar to	more than 20 years, reflect the court's statutory authority to regulate guardianships of the person under section 2102 and the identified sections of the Probate Code. Furthermore, nothing in the forms does or could authorize the court to issue orders in a guardianship under those parts of the enumerated statutory provisions that apply only to conservatorships or limited conservatorships. In addition, nothing in these items is intended to preclude the guardian or the ward from petitioning to modify the terms of the guardianship. Proposed rule 7.1002.5 also expressly authorizes the ward to petition the court to modify the scope of his or her consent. The committee recognizes that a guardian has duties and responsibilities. The committee has attempted to reconcile the guardian's authority to perform those duties with the ward's rights as an adult through rule 7.1002.5 and the consent provisions on the petition forms.

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			the GC-211 but specifically for minors ages 18-20.	
			6) The proposed GC-210[(ADLT)] form is dense and complicated, which may exacerbate the ability of many immigrant youth, who often cannot access legal counsel, to use and file these forms: Additionally, the density and confusing wordiness of the proposed petition will make the application process more difficult for youth and proposed guardians who must proceed pro per. Throughout California, there are many SIJS eligible youth who are unable to afford legal representation and who cannot access pro bono services, often because they live far from the majority of non-profits or due to funding or capacity issues of pro bono providers. This is particularly the case in rural locations that are primarily served by organizations that have Legal Services Corporations immigration-restrictions on them. Through our direct service work, we have heard of numerous cases of unaccompanied youth 18 and under in California who have been unable to secure counsel, especially on a pro bono basis, due to these challenges.	The committee has withdrawn the proposed petition from its recommendation. It intends it revisions to the existing petition forms as well as the new petition for extension to be as clear as possible. The revisions include the possibility of using the plain-language form GC-210(P) to petition for a guardianship of the person if the ward is over 18 years old. The separation of the petition for extension from the petitions for appointment is also intended to reduce confusion.
			7) A new GC-210(Adlt) is not likely to provide cost savings, may be more difficult to implement and train staff with, and could cause more confusion among communities and court staff: Complicated forms, even with the availability of Self-Help Centers and website	The committee has withdrawn the proposed GC-210(ADLT) from its recommendation.

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			explanations, will still be difficult for immigrant youth to use and file if they cannot speak or read English or Spanish, speak only indigenous languages, cannot access courthouses easily, and cannot access computers easily. This could potentially be chilling to the filing of GC-210 and SIJS applications. For all of these reasons, having a new GC-201(Adlt) form in KIND's opinion is not likely to provide cost savings, may be more difficult to implement and train staff (particularly at Self-Help Centers), and could cause more confusion among communities and court staff.	
5.	Legal Advocates for Children and Youth, by Neha Marathe, Senior Attorney San Jose	AM	1. LACY believes minor modifications can be made to the existing Form GC-210(P) to allow youth ages 18 to 20 years old to use Form GC-210(P) for AB 900 petitions, rather than the use of a separate Form GC-210(ADLT). 2. LACY supports Legal Services for Children's (LSC) recommendation to create a new Judicial Council form for Consent of the Ward/Consent of the Guardian for the reasons stated in LSC's letter. Alternatively, LACY proposes amending the existing Form GC-210(P) to include signatures by the ward/proposed ward and the guardian/proposed guardian consenting to the guardianship or extension of guardianship at the end of Form GC-210(P), as is done in the proposed Form GC-210(ADLT). 3. If the Judicial Council continues to	The committee agrees, has withdrawn proposed form GC-210(ADLT) from its recommendation, and added revisions to forms GC-210 and GC-210(P) to accommodate guardianships for 18–20-year-old youth. See the committee's response to LSC's comments, below. The committee agrees in part with the alternative suggestion and has added a consent provision and signature block for the ward on forms GC-210 and GC-210(P). The committee believes that form GC-211, item 1, is sufficient to indicate the guardian's consent regardless of the ward's age. If necessary, the committee may consider revising that form in the future. The committee has withdrawn proposed form GC-

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			recommend the use of the separate Form GC-210(ADLT), LACY proposes the changes outlined below.	210(ADLT) from its recommendation.
			4. LACY proposes the changes below to the amended Forms GC-240 and Forms GC-250.	See responses to specific suggestions, below.
			Proposed Modifications to Existing Form GC-210(P)	
			1. Add sentence to the end of the Preface: "You must use Form GC-210(P) to ask the court to appoint a guardian of a minor aged 18 to 20, or to extend an existing guardianship of the person of a minor aged 18 to 20."	The committee does not recommend the suggested change. The committee has modified its recommendation to revise forms GC-210 and GC-210(P) as well as to adopt new form GC-210(PE) to serve the same purpose as this suggestion.
			2. In Item 4, add a sentence with an adjacent checkbox stating: "The child named in (8) is a minor aged 18 to 20 years old. A Petition for SIJS Findings (GC-220) is being filed with this Petition."	The committee does not recommend the suggested change. The committee has modified its recommendation to include a check box on forms GC-210, GC-210(P), and GC-210(PE) so the petitioner may indicate that a petition for SIJ findings is attached.
			3. Add an Item with an adjacent checkbox stating: "The child named in (8) is a minor aged 18 to 20 years old. The child's legal guardian is/are (name(s)): _____. The order appointing the guardian was filed in this case on (month/day/year): _____. Letters of Guardianship were issued on (month/day/year) _____. A person on behalf of the child named in (8) requests, or the child named in (8) requests and/or consents,	The committee has included an analogous item on form GC-210(PE), the petition to extend a guardianship of the person.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			to extend the guardianship past the child's 18th birthday and end on the child's 21st birthday, or on an earlier-dated court order." 4. In Item 8, add "under the age of 18 years old" to the end of the existing sentence of the instruction such that it reads: "Fill out and attach to this form a Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (form FL-105/GC-120) concerning all children below under the age of 18 years old." 5. Add two signature lines to the end of Form GC-210(P), with the language in the last two signature lines of proposed Form GC-210(ADLT), to indicate the consent of the ward/proposed ward and the guardian/proposed guardian to the guardianship or extension of guardianship. Proposed Changes to GC-210(ADLT) If the Judicial Council continues to recommend the use the proposed GC-210(ADLT) form, LACY proposes the following changes: 1. Replace all references to "Adult" with "Ward." Probate Code section 1510.1(d) states that the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he	The committee agrees and has added language to forms GC-210 and GC-210(P) to clarify that the UCCJEA applies only to youth under age 18. The committee agrees in part and has included a provision for the ward's consent and signature at the end of forms GC-210, GC-210(P), and GC-210(PE). Form GC-211, item 1, remains sufficient to indicate the guardian's consent, regardless of the ward's age. No response required. The committee has withdrawn proposed form GC-210(ADLT) from its recommendation.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			or she attains 18 years of age." LACY agrees with the concerns in LSC's letter regarding use of the term "Adult" in the forms. 2. Remove Sections 2 and 3. This information is provided in Form GC-220 Petition for Special Immigrant Juvenile Findings. Alternatively, replace Sections 2 and 3 with a sentence and adjacent checkbox stating: "The proposed ward is a minor aged 18 to 20 years old. A Petition for SIJS Findings (GC-220) is being filed with this Petition." 3. Remove Section 4 (c). We believe 4(c) is not needed, as a guardianship will give the guardian the authorization to perform the acts in 4(c). 4. Remove Section 4(d) or reword to state: "orders relating to the powers and duties of the proposed guardian of the person under Probate Code sections 2351-2358 be granted, subject to Probate Code section 1510.1(c)." LACY agrees with the concerns in LSC's letter regarding section 4(d). 5. Remove Section 4(e). LACY agrees with the concerns in LSC's letter regarding section 4(e). 6. Remove Sections 10 and 11. 7. Amend Section 12 to read: "Petitioner requests that the guardianship of the person of the ward named in item 2 be extended past the	

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			ward's 18th birthday under Probate Code section 1510.1, to end on the date of the ward's 21st birthday or on an earlier-dated order of this court terminating the guardianship under Probate Code sections 1600 and 1601 on the petition of the ward, or of petitioner or the guardian with the consent of the ward." 8. Remove Sections 13 and 14, or replace Section 13 with "Petitioner requests that orders relating to the powers and duties of the guardian of the person under Probate Code sections 2351-2358, effective from and after the ward's 18th birthday, be granted, subject to Probate Code section 1510.1(c)." Proposed Changes to GC-240 LACY proposes the following changes to GC-240 (as amended by the Judicial Council): 1. Replace all references to "Adult" with "Ward." Probate Code section 1510.1(d) states that the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age." 2. Remove Section 13, or replace with: "Orders are granted relating to the powers and duties of the guardian of the person under Probate Code	The committee agrees with the suggested change and has modified its recommendation accordingly. The committee does not recommend modifying item 13, which applies to all guardianships of the person and has been on the form for more than 20

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			sections 2351 – 2358, subject to Probate Code section 1510.1(c)." Proposed Changes to GC-250 LACY proposes the following changes to GC-250 (as amended by the Judicial Council): 1. Replace all references to "Adult" with "Ward." Probate Code section 1510.1(d) states that the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age." 2. Remove Section 3d, or replace with: "The guardian of the person of the ward has been granted powers under Probate Code sections 2351-2358, subject to Probate Code section 1510.1(c)."	years. The consent provision on the petition forms, the provision in rule 7.1002.5 for the ward to petition the court to modify or withdraw consent to the performance of a specific duty, along with the ward's statutory right to terminate the guardianship, are intended to provide adequate protection to the ward in the event of a dispute with the guardian. The committee agrees with the suggested change and has modified its recommendation accordingly. The committee does not recommend modifying item 3d, which applies to all guardianships of the person and has been on the form for more than 20 years. The consent provision on the petition forms, the provision in rule 7.1002.5 for the ward to petition the court to modify or withdraw consent to the performance of a specific duty, along with the ward's statutory right to terminate the guardianship, are intended to provide adequate protection to the ward in the event of a dispute with the guardian.
6.	Legal Aid Foundation of Los Angeles, by Daliah Setariah, Senior Attorney	AM	**To Incorporate AB 900 Provisions for Guardianship Proceedings, the Current**	The committee agrees, has withdrawn proposed form GC-210(ADLT) from its recommendation,

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
	Los Angeles		**Guardianship Form Should Simply Be Amended to Reflect AB 900 Instead of Creating a Separate Guardianship Form.** The intent of AB 900 is to protect immigrant youth who have been abused, abandoned, or neglected by their parents. AB900 added Probate Code Section 1510.1 and amended Sections 1490, 1600, and 1601. These changes enable immigrant youth aged 18 to 21 to obtain a guardian and also provide the youth access to a state juvenile court authorized to make Special Immigrant Juvenile (SIJ) findings. Such findings are necessary predicate orders allowing the youth to apply for Special Immigrant Juvenile Status (SUS) immigration status with the U.S. Citizenship & Immigration Services (USCIS), the federal agency adjudicating SUS applications. The creation of an entirely new petition for appointment of a guardian pursuant to AB 900 is unnecessary and poses a danger of undermining the purpose of AB 900 as it may lead to USCIS denying SUS immigration status to youth. It is in the interest of judicial economy and in the interest of the youth that, rather, the existing guardianship petition be modified to incorporate the new provisions under AB 900 guardianships. The current form GC-210 can simply be amended to add a provision allowing the ward or proposed ward to consent to the appointment or extension of a guardianship, rather than creating an entirely new from solely	and has included revisions to the existing guardianship petitions consistent with the language and the intent of AB 900. The committee agrees and has withdrawn proposed form GC-210(ADLT) from its recommendation.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			for this purpose. **a. The Term "ADULT" Throughout the Proposed Forms "GC-210(ADLT), Revised GC-240 (Order Appointing Guardian) and GC-250 (Letters of Guardianship) May Cause SUS Petitions to be Denied by USCIS.** The inclusion of the term "adult" in the proposed guardianship forms may lead to denials of SUS applications by USCIS. Specifically, USCIS will not grant SUS immigration benefits to applicants who were not treated as juveniles under state law when petitioning for guardianships and SU findings. Thus, the inclusion of the term "adult," may lead USCIS to determine that a California Probate Court was not treating the applicant as a "youth" when making the predicate SIJ findings during a Sec. 1510.1 guardianship proceeding. Consequently, one of the primary goals of AB 900, which is to provide greater access to SIJS benefits for eligible youth, would be undermined. Moreover, section 1510.1(d) of the Probate Code already incorporates "youth over the age of 18" who consent to a guardianship into the definition of the terms "child," "minor," and "ward." Therefore, the term "adult" is problematic and poses an unnecessary risk to the youth's stability and opportunity for obtaining SUS immigration benefits from USCIS.	The committee agrees, has withdrawn proposed form GC-210(ADLT) from its recommendation, and has removed references to the ward as an adult from the other proposed forms.

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

	Commentator	Position	Comment	Committee Response
			b. AB 900 Does Not Empower the Court to Specify or Otherwise Limit the Powers and Duties of a Guardian, as a Limited Guardianship is Contrary to the Intent of AB 900. It is clear that the intent of the legislature in introducing and passing AB 900 was to authorize a robust role for guardians of immigrant youth aged 18 to 21, one that matched, to the greatest extent, the role legal guardians have traditionally held for younger minors in this state. The legislative intent of the bill provides a thorough justification for providing guardians appointed pursuant to Probate Code Section 1510.1 with the full powers and duties of a probate legal guardian in order to provide protection, stability, and guidance to these youth.	The committee agrees that AB 900 does not authorize the court to specify or otherwise limit the powers and duties of a guardian. Neither, however, does it restrict the court's existing statutory authority to do so.
			The option on the proposed GC-210(ADLT) in questions 4.e and 14 allowing for a guardian to be appointed with no powers and duties over the ward poses two risks for eligible youth. First, providing probate courts with an option to appoint guardians with limited or no powers and duties renders the ward without the protection, stability, and guidance envisioned by the legislature. The purpose of the guardianship is to assist immigrant youth who have experienced parental abandonment, abuse, or neglect, navigate our culture and social systems with the help of a responsible adult. It is therefore,	The committee has removed from its recommendation all opportunities to request or order the appointment of a guardian with no powers or duties.

	Commentator	Position	Comment	Committee Response
			essential that such a guardian is held to the highest standard with all the usual powers and duties of a guardian. Second, as the text and purpose of AB 900 make clear, these guardianships are not designed merely to provide an immigration benefit. A stripped down version of a guardianship is not only contrary to the language and intent of AB 900, but it would likely lead to USCIS denials of SIJS applications. USCIS will only grant SIJS immigration benefits to a youth if it determines that the state court action was not initiated solely for an immigration benefit. Thus, where the guardianship is essentially in name only, because no powers or duties were conveyed, USCIS could rightly question the purpose of the state court action granting a guardianship and consequently deny a SIJS petition. Similarly, questions 4.d and 13 on the GC-210(ADLT) pose the same problem, as they allow for limitations to be placed on the duties a guardian owes the ward. AB 900 does not require the court to determine specific powers and duties of the guardian or otherwise minimize the role of the guardian. In fact, as stated above, a stripped down version of guardianship is contrary to the envisioned role of such guardians and may result in a denial of SUS immigration benefits by USCIS. **c. Information Regarding a Minor's Birth in a Foreign Country is Irrelevant to the**	The committee has withdrawn proposed form GC-210(ADLT) from its recommendation, but does not recommend removing these items from the existing petition forms. These items reflect the court's existing statutory authority under section 2102 and the specified code sections over all guardianships of the person, regardless of the ward's age. They have been elements of the petition, order, and letters for more than 20 years. The committee has not included any requests for that information in its recommendation.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			Standard for Adjudicating Guardianship Petitions. The proposed form solicits information about the foreign birth of the ward or proposed ward (e.g. question 2 on the GC-210(ADLT)), and requests extensive and superfluous information about the ward or proposed ward's petition for Special Immigrant Juvenile Findings (e.g. question 4.c on the GC-210(ADLT)). A court does not require this information, because it is immaterial to the question of whether the guardianship is in the proposed ward's best interest. While Probate Code Section 1510.1 is meant to assist immigrant youth, it does not require that the children be foreign born. Furthermore, the precise country of the youth's birth is not relevant to the court's determination if the child was abused, abandoned or neglected and requires a guardian. Nor, is a determination of the country of birth required by the statute. AB 900 was passed to address the needs of abused, abandoned, or neglected immigrant youth and to align California law with federal immigration law in terms of Special Immigrant Juvenile Status. To that end, AB 900 extended the access to the protections of probate legal guardianship to youth aged 18 to 21 years old. This legislative change ensures that such youth may benefit from the care and advocacy of a legal guardian and create the opportunity to have a state juvenile court make findings	No further response required.

	Commentator	Position	Comment	Committee Response
			pursuant to California Civil Code of Procedure Section 155. We urge the Judicial Council to modify the proposed forms as described above in other to comply with and further the goals of AB 900. Creating further differences between guardianships pursuant to Probate Code Section 1510.1 and those established under other sections of the Probate Code may undermine the very intent of AB 900, namely to help immigrant youth obtain a guardian and obtain immigration status.	
7.	Legal Services for Children, by Hayley Upshaw Senior Staff Attorney/Immigration Project Director Anjuli Arora Dow Senior Staff Attorney/Guardianship Project Director San Francisco	AM	We thank the Judicial Council for its thoughtful efforts to quickly implement a process for handling new petitions for non-minor guardianships and extensions of guardianships for youth ages 18-20, pursuant to AB 900.Through both our individual clients and our consultations with other advocates around California, we have seen too many youth in California who meet the federal SIJS eligibility requirements and could benefit from a supportive caregiver but who are unable to access state court jurisdiction or obtain the state court predicate order necessary to apply for SIJS. **I. Overall comments about guardianship petitions for AB900 youth** The first question to be decided by the Judicial Council is whether it makes sense to have a separate guardianship petition specifically for	No response required. The committee agrees and has withdrawn proposed form GC-210(ADLT) from its recommendation, added revisions to forms GC-

	Commentator	Position	Comment	Committee Response
			youth ages 18-20. There are benefits and drawbacks to having a separate petition but on balance, **Legal Services for Children believes that the goals could be better met by making minor modifications to the existing GC-210 and/or GC-210(P) and including an additional form for the extension of an existing guardianship.** If the Judicial Council continues to recommend the use of a separate guardianship petition for AB900 youth, we have some concerns and suggested edits to the current GC-210(Adlt) as drafted and will make suggested amendments in Section III below.	210 and GC-210(P), and propose new form GC-210(PE) to extend an existing guardianship.
			Our main concerns about the GC-210(Adlt) as drafted are: A. First, the use of the word "Adult" throughout the Petition. We believe this conflicts with AB900 and Probate Code section 1510.1(d), which specifically defines a "child," "minor," and "ward" for purposes of the Guardianship-Conservatorship Law (Division 4 of the Probate Code) *to include an unmarried individual who is younger than 21 years of age and, who pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age.* 1. We understand the importance of	No further response required.

	Commentator	Position	Comment	Committee Response
			differentiating between minors and non-minors in probate legal guardianships for purposes of consent and maintaining adult decision-making authority under state law but believe that there are ways of recognizing this difference which do not conflict with the statutory language and legislative intent. 2. We are also concerned that the wording of the petition might raise concerns at the U.S. Citizenship and Immigration Service ("USCIS") level if these petitions are seen as purely a vehicle for adults to obtain Special Immigrant Juvenile Status rather than being recognized as a way for this particular class of vulnerable youth who have suffered abuse, abandonment, and neglect to receive or continue receiving support through a custodial relationship with a responsible adult, as outlined in the legislative intent in AB 900 section 1 paragraph 6. B. Secondly, the density/wordiness of the proposed petition will make the application process more difficult for youth and proposed guardians who must proceed pro per. Throughout California, there are many SIJS eligible youth who are unable to afford legal representation and who cannot access pro bono services, often because they live far from the majority of non-profits or due to funding or capacity issues of pro bono providers. Through our direct service work and legal advice line, we	

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			have heard of numerous cases of unaccompanied youth 18 and under in California who have been unable to secure counsel due to these challenges. In addition, due to funding restrictions that some sources (including state funding from SB 873) impose, youth over 18 may be even less likely to find pro bono counsel. If the Judicial Council wishes to maintain the GC-210(Adlt), we have made suggestions in section III below on how to streamline the existing form to make it more client friendly. **II. Proposal/Recommendations to Amend Existing GC-210 and/or GC-210 (P) petition** Recommendation: Legal Services for Children recommends making minor amendments to the existing GC-210 and/or GC-210(P) petitions that would allow youth ages 18-20 to use it for AB900 petitions along with creating 2 separate 1-page forms, one for the youth's consent and the other for an extension of an existing guardianship. A. <u>Proposed Changes to GC-210 and/or GC-210(P)</u> Because AB900 specifically defines a "child," "minor," and "ward" for purposes of the Guardianship-Conservatorship Law (Division 4 of the Probate Code) to include unmarried youth under age 21, who consent to the appointment	The committee agrees and has modified its recommendation to revise forms GC-210 and GC-210(P) to allow its use in guardianships of the person when the ward is 18–20 years old.

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

	Commentator	Position	Comment	Committee Response
			of a guardian, we believe only minor changes would be needed to make the existing GC-210 work well for AB900 cases. These changes are as follows: 1. If the Court would like to be able to easily identify AB900 cases, rather than creating a separate box for "adult 18–21 years of age" (which conflicts with the statutory language and may be confusing for USCIS[1]) the caption could be amended to include 2 options: "minor under 18" AND "minor aged 18–20." [1] Although in general, USCIS does not require a copy of the entire guardianship petition when adjudicating an I-360 Special Immigrant Juvenile Status, in some cases they do require evidence from the underlying state court proceedings and issue a request for evidence for records. 2. In number 1, a section (h) could be added saying an order making "Special Immigrant Juvenile Findings" be granted, as requested in the GC-220 a. This information could also be included in section 1 (g) as an attachment but adding it as a separate box may be helpful for courts to easily ensure that the guardianship is being filed in connection with a GC-220 Petition for Special Immigrant Juvenile Findings, as required by AB900 Section	The committee does not recommend distinguishing between wards under age 18 and wards 18–20 years old in the caption box. The committee does not recommend modifying item 1 for refer to SIJ findings. Instead, the committee recommends adding a check box to item 13 for the petitioner to indicate that a petition for SIJ findings is filed concurrently.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			1510.1(a)(1). 3. The parenthetical after number 12 could be amended to clarify that the UCCJEA is only required for guardianships of the person under 18. 4. Number 13 could be amended to include three extra boxes for possible forms filed in conjunction: a. Petition for Special Immigrant Juvenile Findings (GC-220) i. Alternatively, this could also be written in by the Petitioner under the existing "other" box but including it as a separate box might be helpful for Courts to verify that the petition was filed in connection with the Petition for SIJS findings as required by AB 900 Section 1510.1(a)(1) and would also make it clearer for pro per applicants. b. Petition for Extension of Guardianship Beyond the Ward's 18th Birthday (new GC #)—new proposed form—see below c. Consent of Ward (new GC #)—new	The committee agrees and has modified its recommendation accordingly. The committee agrees and recommends adding a check box to item 13 for the petitioner to indicate that a petition for SIJ findings is filed concurrently. The committee does not recommend adding the suggested check box. The committee believes that a petition to extend a guardianship past the ward's 18th birthday will rarely be filed in conjunction with a petition for appointment of a guardian. In those rare cases, the petitioner may so indicate by checking and completing the "Other" box. The committee does not recommend the suggested

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	Commentator	Position	Comment	Committee Response
			proposed form—see below	change. See the response to comment 5, immediately below.
			5. Consent of Ward – although LSC recommends creating a new Judicial Council form for consent of the ward for reasons outlined below, if the Judicial Council chooses not to create a separate form for this purpose, the existing GC-210 and/or GC-210(P) could be amended to include a signature by the ward/proposed ward consenting to the guardianship at the end of the petition (as is done in the proposed GC-210(Adlt)).	The committee agrees and has added a consent provision and signature block at the end of revised forms GC-210 and GC-210(P).
			B. Proposed New Forms for AB 900 Cases In the event that the Judicial Council chooses to amend the existing Petition form, one or two additional forms would be needed but both could be shorter than the existing proposed GC-210(Adlt) to avoid the density of the proposed GC-210(Adlt). The additional forms that would be needed are:	
			1. Petition for Extension of Guardianship Beyond the Ward's 18th Birthday a. This form would only need to be used in cases where a guardianship was in place for a minor and that minor needed to extend the guardianship past age 18.	The committee agrees with the suggestion and has modified its recommendation to add proposed form GC-210(PE) for a petition to extend a guardianship of the person past the ward's 18th birthday.

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			i. Note: This is generally not necessary for immigration purposes, as under the class action Perez Olano settlement agreement, if a minor has an existing guardianship that later terminates based on age, as would normally be the case at age 18, that minor is still eligible for Special Immigrant Juvenile Status. However, given the vulnerable nature of the class of unaccompanied youth that AB900 is designed to protect, youth may wish to extend the guardianship for purposes of continuing to receive support from their guardian/caregiver. b. This form could mirror the Questions 1(b), and 10-12 on proposed GC-210(Adlt). **2. Consent of Ward/Consent of Guardian** a. While this could be added as a separate signature on the petition itself, we believe it would be beneficial to have a separate form for the ward to sign consenting to the guardianship for the following reasons: i. It would make it clear to the guardian and the ward that the ward's consent is needed for the guardianship to be in effect thus recognizing the non-minor's adult decision making authority when they turn 18 years old. ii. It could serve as an authorization for the	The committee does not recommend the suggested form. Instead, the committee has added a consent provision and signature block at the end of revised forms GC-210 and GC-210(P). The committee intends the directions and the consent provision on the petition forms to make clear that the consent of a ward 18 or older is necessary. The committee intends the consent provision on

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	Commentator	Position	Comment	Committee Response
			guardian to speak and act on the ward's behalf in matters where the guardian and the ward agree. 1. This could be especially beneficial as one of the main purposes of this bill is to provide an avenue for youth to receive the support and guidance of a responsible adult as they undergo their immigration process, acculturate to the United States, and learn how to navigate systems and begin to recover from the trauma of the abuse, neglect, or abandonment they have suffered.	the petition forms and the procedure for the ward to withdraw or modify his or her consent in rule 7.1002.5 to authorize the guardian to act on the ward's behalf in the absence of a dispute and to protect the ward's rights under section 1510.1(c).
			b. Note: We have significant concerns about questions 13–14 on proposed GC-210(Adlt). We recommend that these questions be stricken from the form.	The committee has removed all opportunities to request or order the appointment of a guardian with no duties. The committee does not, however, recommend removing from the forms the opportunity to request or order additional duties or limits on those duties. The court has held this authority with respect to all guardianships of the person for more than 20 years under sections 2102 and 2351–2358.
			iii. Though we understand the Judicial Council's goal of clarifying that the non-minor ward ages 18–20, continues to have all the rights of an adult, we believe having a court issue specific orders similar to a conservatorship is unnecessary and contrary to the intent of AB900.	The committee intends the provisions on the forms for requesting and issuing specific orders to apply to all guardianships of the person. To the extent that a statute applies only to conservatorships (see, e.g., Prob. Code, § 2351(b)–(c)), the court does not have authority under it to issue orders in a guardianship. But where a statute authorizes the court to issue orders

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Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
				in guardianships (see, e.g., § 2351 (a), (d)), that authority extends to all guardianships.
			iv. AB900 and Probate Code 1510.1(c) make clear that a guardian of a youth age 18–20 is not authorized to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the wards medical treatment, education, or residence, without the ward's express consent. However, this does not mean that a guardianship has no effect. A guardian continues to have the responsibilities of a guardian to assume certain duties and obligations including providing for the ward's food, clothing, shelter, education, medical and dental needs, and ensuring his safety, protection, and physical and emotional growth. Given the vulnerable nature of this class of unaccompanied youth and the challenges they face navigating systems in the United States, having this kind of responsible adult to help is especially valuable. Though the guardian does not maintain the same decision making power over these non-minor wards (such as educational placement and services, and residence), this kind of limitation on decision-making power of a guardian is not without precedent in the Probate Code. For example, Probate Code section 2353 relating to medical treatment provides that guardians have the right to consent to medical treatment	The committee believes that section 1510.1(c) is open to the interpretation that every decision or act of the guardian must be expressly approved by the ward regardless of the existence of a disagreement. The committee understands that the guardian has the same duties as any guardian of the person; the committee's concern was that the guardian had no authority to perform those duties. By interpreting section 1510.1(c) to apply only in the event of a dispute, the committee has tried to further the legislative intent by reconciling the guardian's powers and duties with the statutory language limiting them.

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			for a ward but requires that for minors ages 14 and older, the ward must also consent to the surgery or the court must authorize it and clarifies that the guardian's consent is not required where the ward otherwise could consent to the treatment alone (e.g., in certain family planning or sexual health matters).	
			v. We are concerned that, as written, question 14 appears to anticipate a guardianship where the guardian has no powers or duties past the ward's 18th birthday. If that were the case, USCIS could rightly deny the ward's Special Immigrant Juvenile Status petition as the only purpose of the guardianship would be for an immigration benefit.	The committee has removed all opportunities to request or order the appointment of a guardian with no duties.
			c. We would recommend a consent form similar to the GC-211 but specifically for minors ages 18-20. The consent form could say something like: vi. Consent of Ward/Proposed Ward Age 18–20 vii. Pursuant to Probate Code Section 1510.1, I consent to have [name of guardian/proposed guardian] serve as guardian of my person. viii. By signing this, I authorize _____ to speak/act on my behalf in matters involving residence, education, work, legal representation, however I understand that if my guardian and I disagree, I	The committee agrees that the consent of the ward to the establishment or extension of the guardianship is necessary, but has chosen to provide to that consent on the petition forms. The directions and statement on those forms, combined with the procedures in rule 7.1002.5(c) for withdrawing or modifying consent, are intended to provide the ward with the same options as those suggested by the commentator.

	Commentator	Position	Comment	Committee Response
			can revoke this consent at any time and/or terminate the guardianship. ix. Consent of Guardian/Proposed Guardian x. I agree to serve as guardian of the person of _____. xi. I understand that after turning 18, _____ will have the rights of an adult to make decisions and I agree to only act on behalf of _____ to the extent that he/she so consents. **III. Recommended Changes to Proposed Forms** If the Judicial Council continues to recommend the use of a separate guardianship petition for AB900 youth, the following are our recommended changes: **Changes to Proposed GC-210(Adlt)** 1. Refer to the 18-20 year old Petitioner as "child" or "non-minor" and replace all references to adult with respect to the ward including in the caption and form title. The word "adult" conflicts with the language and intent of AB900 and specifically Probate Code section 1510.1(d), which defines a "child," "minor," and "ward" for purposes of the Guardianship-Conservatorship Law (division 4	The committee does not recommend creating a new, separate form for consent of the guardian. Existing form GC-211 provides one opportunity for the guardian to consent. The guardian must also sign the Letters (form GC-250) to affirm his or her acceptance of the legal duties of a guardian. To the extent that the ward's age qualifies the duties of the guardian, that information would properly be reflected on *Duties of Guardian* (form GC-248). If probate courts or guardians of ward 18 and older report confusion or uncertainty about the scope of the guardian's duties, the committee is likely to consider clarifying revisions in the future. The committee has removed form GC-210(ADLT) from its recommendation.

	Commentator	Position	Comment	Committee Response
			of the Probate Code) to include an unmarried individual who is younger than 21 years of age and, who pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age. 2. Remove Sections 2 and 3. We believe these are unnecessary, as this information is provided in the GC-220 Petition for Special Immigrant Juvenile Findings and makes the guardianship petition unnecessarily long and wordy which may be confusing for pro per applicants. If the Judicial Council wants to include a question to confirm that a SIJS petition is being filed in connection with the guardianship petition pursuant to AB 900 Section 1510.1(a)(1), we suggest including a box stating that Minor has filed concurrently or intends to file a "Petition for Special Immigrant Juvenile Findings, GC-220." 3. Remove question 4 sections (c)–(e) and replace with a separate consent of ward form (as illustrated above in Section II.B(2)). Or reword to be clear that guardian continues to have duties of guardian. As described above (see section II.B(2)), we have concerns about these sections as worded in a way that is contrary to the legislative intent of AB900. a. Additionally, question 4(e) appears to anticipate a guardianship where the guardian	

	Commentator	Position	Comment	Committee Response
			has no powers or duties past the ward's 18th birthday. If that were the case, USCIS could rightly deny the ward's Special Immigrant Juvenile Status petition as the only purpose of the guardianship would be for an immigration benefit.[2] [2] In fact, there are numerous non-immigration benefits to a continued guardianship including the guardian's continued support of the minor, medical benefits and benefits for financial aid. Although it is true that most youth do not have a legal right to these continued financial supports after the age of 18 or 19, the legislature in this case has identified unaccompanied youth as a particularly vulnerable class that would benefit from continued support. By agreeing to a post-18 guardianship, the guardian would be entering a voluntary agreement to provide this role of providing continued support for a member of this vulnerable class. Having a guardianship established will enable youth to access different financial aid benefits through the FAFSA system. If a legal guardian has private health care coverage, an unaccompanied youth can be added to their health care plan under the Affordable Care Act. Also, as unaccompanied youth, these youth would all benefit from having a guardian in the event of a medical emergency to make next-of-kin related	

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			decisions b. To address the need for consent, utilize a separate consent form to be signed by the ward/proposed ward and guardian/proposed guardian, as outlined in section II. 2(c) above. 4. Question 8: Instructions in Question 8 could be addressed in a Rule of Court resulting in less text. 5. For Question 9, we would recommend adding: a. Petition for Special Immigrant Juvenile Findings (GC-220) i. This could also be written in by the applicant under the existing "other" box but including it as a separate box might be helpful for courts to verify that the petition was filed in connection with the Petition for SIJS findings as required by AB 900 Section 1510.1(a)(1) and would also make it clearer for pro per applicants. b. Consent of Ward (new GC #) – new proposed form – see above section II. 2(b)(2)) 6. Remove or Reword Questions 13-14 on proposed GC-210(Adlt) for reasons noted above in Section II.B, and II. 2(b)(2)).	

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			a. We are concerned that, as written, question 14 appears to anticipate a guardianship where the guardian has no powers or duties past the ward's 18th birthday. If that were the case, USCIS could rightly deny the ward's Special Immigrant Juvenile Status petition as the only purpose of the guardianship would be for an immigration benefit. b. We believe that the best option would be to have this information included in a separate consent form to be signed by the ward/proposed ward and guardian/proposed guardian, as outlined in section II.2(b)(2)) above. **Changes to Proposed GC-240 & 250** Legal Services for Children recommends that the Judicial Council proceed by amending the general GC-210 in which case, additional orders and letters of guardianship would not be needed. In that event, the Judicial Council could create a separate order for extending guardianship of a minor age 18-20, which could include questions 1 and 4 from the proposed GC-240. However, if the Judicial Council chooses to issue a separate petition for AB900 applicants, we strongly recommend that the word "adult" be removed from the proposed GC-240 and GC-250 captions and replaced with "child" or	The committee does not recommend creating new, separate forms for orders and letters for guardianships of wards 18 and older. The committee agrees and has modified its recommendation to include form GC-210(PE), a petition to extend a guardianship of the person. The committee has modified its recommendation to avoid using the term "adult" to refer to wards or proposed wards.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			"minor" pursuant to the definition of those terms in Probate Code section 1510.1(d). Further, we recommend that question 13 be deleted from the proposed GC-240, and question 3.d be deleted from the proposed GC-250 for the reasons stated above in Section II.B, and II. 2 (b)(2)). **IV. Rule of Court** We appreciate that given the expedited time frame required for proposed forms, the Probate and Mental Health Advisory Committee did not draft any rule of court in time for this proposal but we do believe that given the novelty of this practice and concerns by both practitioners and the courts about the procedures in these cases, that a rule of court specifically addressing AB900 would be helpful. The rule could specifically address: 1. What forms are required for a guardianship with a minor post 18 2. What notice if any is required and to whom 3. What the procedure should be for returning to court if the guardianship falls apart and the minor no longer consents to the guardian acting on his or her behalf	The committee agrees and has deleted item 13a from form GC-240 and item 3d from form GC-250. These forms no longer provide the option to indicate that the guardian has been appointed with no powers or duties. The committee agrees in part and has modified its recommendation to include a new rule addressing the consent of an 18–20-year-old ward and amendments to other rules to indicate circumstances in which the procedures or requirements for guardianships for wards 18 years of age or older diverge from those applicable to other guardianships.

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			4. What should the procedure be if there is a dispute regarding a specific decision or action by the guardian 5. What reporting if any there should be to the court while the guardianship is ongoing (should the minor and guardian submit annual status reports?) 6. When the guardianship would terminate (age 21 or when minor is granted Adjustment of Status through SIJS?) automatically	
8.	Office of Legal Services Standing Committee on the Delivery of Legal Services State Bar of California San Francisco	AM	**Does the proposal appropriately address the stated purpose?** Partially. The stated purpose of the proposal is to implement section 1510.1 of the Probate Code by adopting rules and forms needed to implement the creation of new and extended guardianships in connection with Special Immigrant Juvenile Status applications. The proposal addresses this purpose in part. SCDLS suggests that a new rule of court be adopted to clarify the process and to mirror, with appropriate modifications, the rule of court (rule 7.1020) recently adopted in response to SB 873. Absence of a rule to account for the change provided by the addition of section 1510.1 would only create ambiguity. Alternatively, rule 7.1020 could be modified to account for the extension of the law provided by section 1510.1. SCDLS agrees with the approach taken to	The committee agrees that rules of court would help to clarify the incorporation of these section 1510.1 guardianships into the existing procedural scheme and to highlight the respects in which they differ from that scheme. The committee does not, however, recommend a rule that parallels rule 7.1020, which addresses requests for SIJ findings, not petitions for guardianship. The SIJ findings depend in part on the appointment of a guardian of the person; they are not an alternative to a guardianship. In light of the weight of comment and the

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			combine into a single form (GC-210 ADLT) the two petitions authorized by Section 1510.1. However, for purposes of clarification, SCDLS suggests the following modification to Form GC-210 (ADLT):	clarification of legislative intent, the committee has modified its recommendation to withdraw form GC-210(ADLT). Instead, the committee recommends incorporating petitions for appointment of a guardian for a youth 18 or older into the existing petition forms, GC-210 and GC-210(P). The committee also recommends adopting a new form, GC-210(PE), for a petition to extend a guardianship.
			At page 1, after paragraph 2, the directions state that if the petitioner is requesting an extension of the guardianship, to go to "item 11" on page 3. It appears that the reference to "11" is a typo and should be replaced with "10."	No response required.
			Also, SCDLS suggests that these same directions indicate that items 3 through 9 should be skipped and specify that the extension petition is available only if the proposed guardian is to remain the same so that the sentence should state as follows: "(If you are requesting the extension of an existing guardianship of the ward named in item 2 with no proposed change in guardian, skip items 3 through 9, and go to item 10 on page 3.)"	No response required.
			Also, at the bottom of page 2 after item 9, it is suggested that the following statement be added:	No response required.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			"(If you completed items 3 through 9 for an initial petition, skip items 10-15 and go to item 16.)"	
			Additional Comments By virtue of the nature of Special Immigrant Juvenile Status, many of the wards or guardians filing petitions under section 1510.1 will be low-income and limited or non-English speakers. The entire probate guardianship process itself can be complicated for the self-represented litigant. Thus, not limited to the specific proposal presented herein, plain language forms and instructions (or informational forms), particularly when the [guardianship*] is only over a person, would improve the ability of self-represented low income litigants to access the process.	The committee agrees in principle with the suggested change. The proposed new form GC-210(PE) is recommended in the plain-language format. Form GC-210(P), which applies to all guardianships of the person, including those under section 1510.1, is also a plain-language form. As time and resources become available, the committee may consider converting other appropriate forms to plain language.
			For this particular proposal, translation of GC-210 to Spanish (similar to translation of GC-220) may help LEP litigants and those that may be assisting LEP litigants complete the forms.	The committee's modified recommendations include revisions to form GC-210(P), which is currently available in Spanish translation. The committee anticipates that the revisions will be translated and incorporated into the existing translation.
			Additionally, it would be helpful to have a rule of court that specifies how a petitioner requesting Special Immigrant Juvenile Findings under form GC-220 may request a hearing or request for order on the GC-220 (by submitting, for example, a GC-020).	The committee does not recommend the suggested change. Under section 1041 of the Probate Code, the clerk is required to set for hearing any petition that requires a hearing, including petitions for SIJ findings.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
9.	Orange County Bar Association, by Todd G. Friedland, President, Newport Beach	A	No specific comment.	No response required.
10.	San Diego Volunteer Lawyer Program, Inc., by Amy Fitzpatrick, Esq. Chief Executive Officer San Diego	AM	**1. Comments on Proposed Form GC-210(ADLT) and Revised Forms GC-240 and GC-250** We request that the Judicial Council remove the word "ADULT" on all Forms: All proposed/revised forms include a box for "ADULT 18-21 YEARS OF AGE." Probate Code section 1510.1(d) states that the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21. In the California Legislature findings and declarations, the Legislature refers to individuals between the ages of 18-21 not as "adults" but as "unaccompanied immigrant youth" (see 2015 Note(a)(5) and (a)(6) following Probate Code section 1490) and "youth" (see 2015 Note(a)(7) following Probate Code section 1490). The intent of the Legislature was to align Federal law, allowing undocumented immigrant youth under 21 to apply for SIJS, with state law, which prior to the addition of PC 1510.1, prohibited guardianships past age 18. There is no legal basis to categorize the individuals between the ages of 18-21 as "ADULTS" and our fear is that it will cause unnecessary confusion or denials of legal status when these immigrant youth apply to United States Citizenship and Immigration Services (USCIS) for SIJS.	The committee agrees and has eliminated inappropriate use of the term "adult" to refer to a ward who is 18–20 years of age from the recommended forms.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			Recommendation: When referring to the proposed ward who is between the ages of 18-21, remove any reference to "ADULT." Continue to use the headings from GC-210 (7/1/09), GC-240 (1/1/98), and GC-250 (1/1/09) which refer to "minor" and per PC 1510.1(d), would already include a proposed ward between the ages of 18-21. In the alternative, refer to the immigrant youth as "minor age 18-20." **2. Comments on Revised Form GC-240** We ask the Judicial Council to either eliminate or revise Number 13a on Page 2 of the Revised Form GC-240. GC-210(ADLT), Number 4d aligns with GC-240, Number 13b; however, GC-210(ADLT), Number 4e does not align with GC-240, Number 13a. Currently, Number 13a reads, "No powers under Probate Code sections 2351-2358 are granted to the guardian of the person of the ward 18-21 years old." It is recommended that 13a be revised or eliminated completely. If 13a were to be selected as it is currently written, the guardian would have no powers. United States Citizenship and Immigration Services would not grant an SIJS petition where the guardian had no powers or duties, as the only purpose of the guardianship would be for immigration purposes. The Legislature intended that the guardian retain some powers to protect the vulnerable immigrant youth when stating youth would benefit from a "custodial relationship" with a	The committee agrees and has eliminated item 13a from form GC-240.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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	Commentator	Position	Comment	Committee Response
			responsible adult. See 2015 Note(a)(6) following Probate Code section 1490. *Recommendation:* Number 13a on Page 2 of the proposed revised GC-240 should be eliminated or revised to read, "No orders concerning the power and duties of the guardian of the person of the ward are made at this time. Under Findings listed on Page 1, the following finding should be included: "Petitioner, the guardian, and the ward understand that the guardianship order does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law." **3. Comments on Proposed Form GC-210(ADLT)** Ensuring continuous legal guardianship & ensuring an efficient and userfriendly process is important, especially for this vulnerable group of individuals, as they may or may not have legal representation or easy access to the courts. We recommend eliminating Proposed Form GC-210(ADLT) and instead amending GC-210 to request guardianship for immigrant youth under age 21. Revising GC-210, instead of adding proposed form GC-210(ADLT), could be more efficient than navigating a new and separate petition for self-represented litigants, legal services organizations, and the court. In cases where a minor is 17 when the petition for	The committee does not recommend the suggested change. The committee has determined that specification in rule 7.1002.5 and consent on the petition better serve the statutory purpose. The committee agrees, has removed proposed form GC-210(ADLT) from the proposal, and recommends adopting form GC-210(PE) and revising forms GC-210, GC-210(P) to implement AB 900.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			guardianship is filed, but 18 when the guardianship is granted, the proposed GC-210(ADLT) would require the minor to file a new, separate petition for an extended guardianship. This could lead to a gap in timing where the immigrant youth does not have a legal guardian, it could initiate a second separate hearing, and the second petition would have to be noticed and served. Probate Code 1510.1 does not require that a new and separate petition be used to request guardianship past the age of 18. Where a guardianship is requested for a minor who is under 18, but soon will be turning 18, and for the purposes of allowing the ward to complete the application process with USCIS for classification as a SIJS per 1510.1(b)(1), it appears a separate petition is not required either. *Recommendation:* Revise GC-210 instead of creating the new CS-210(ADLT). On the GC-210 heading, add a box for "minor under 18" and a box for "minor aged 18-20." On the GC-210 add a section with the following: If the guardianship is granted, petitioner, [Insert name of petitioner], requests that the court extend the guardianship of the person of the ward, [Insert name of ward], past the ward's 18th birthday. This extension would not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law,	The committee does not recommend the suggested change. Instead, the committee recommends adopting form GC-210(PE) for mandatory use to petition the court to extend a guardianship of the person past the ward's18th birthday.

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			including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent. On the GC-210 add a note that the FL-105 (Declaration Under UCCJEA) is only necessary for minors under 18. Revise GC-210, noting that Form GC-220 (Petition for Special Immigrant Juvenile Findings) will be filed. **4. Comments on Consent of Minor Age 18-20** We ask the Judicial Council to consider drafting a consent to guardianship form for immigrant youth age 18-20. If there is a form for immigrant youth to review and sign, it takes the burden off of the youth to create their own forms or declarations. Many youth will not have legal representation and will be unable to create an appropriate consent. *Recommendation:* We recommend a consent form similar to the GC-211, but specifically for immigrant youth age 18-20. This consent form could include language relating to the rights of the youth as well as the youth's desire to have the support of the guardian. In addition, this form could include language regarding the youth's right to request termination.	The committee agrees and has modified form GC-210 accordingly. The committee agrees in principle and has added a check box to form GC-210 to indicate that form GC-220 has also been filed. The committee does not recommend the suggested change. Instead, the committee has incorporated provisions for consent into the petition forms and recommends adopting rule 7.1002.5 to specify the consent requirements and procedures.
11.	Superior Court of Los Angeles County	A	No specific comment.	No response required.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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12.	Superior Court of Riverside County Riverside	AM	This proposal implements AB900, which permits a new type of guardianship of the person for an individual between the ages of 18 and 21. We agree that creation of a new form for the petition to establish this new type of guardianship is appropriate. However, the proposal does not implement a new order and letters related to the new petition. Instead, it modifies the order and letters used for guardianship of a minor to accommodate this new procedure as well. Use of the same order and letters for both procedures will create confusion. We request that no revisions be made of the existing minor guardianship order and letters, but instead a new order and letters be created to accommodate the needs of this new procedure. The order and letters for the new procedure would be much shorter and simpler than the combined documents.	In light of the Legislature's manifest intent to incorporate these guardianships into the existing guardianship scheme, the committee no longer recommends a separate form to petition for the appointment of a guardian for a youth 18 or older. Instead, the committee recommends revisions to incorporate these guardianships into the existing petition, order, and letters forms. However, the committee believes that a separate form to petition to extend a guardianship is necessary to maintain an adequate distinction between this petition and a petition for initial appointment.
13.	Superior Court of Sacramento County Sacramento	AM	Page 4, GC-240—The title of the form is much too long. The form is doing one of two things and really should be two separate forms. Form GC-210(ADLT)—This should be two petitions. There is one form per minor. Therefore, the check box for "minors" this should be removed. Asterisk at the bottom of the page, remove opening phrase, and begin at "Prepare a separate petition for each ward. Form [GC]-240—This should be two orders. There is one order per minor. Therefore, the	The committee agrees and has shortened the recommended title of form GC-240. The committee has removed proposed form GC-210(ADLT) from its recommendation. The committee does not recommend the suggested change. Section 2106 of the Probate Code

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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			check box for "minors" should be removed.	authorizes the court to appoint a single guardian for multiple wards on an initial petition.
14.	Superior Court of San Diego County, by Michael M. Roddy Court Executive Officer San Diego	AM	• Would the proposal provide cost savings? **No.** • What are implementations requirements for courts? **New filings and hearings will need to be added to the Case Management System. Training will be required for front-line staff, Probate Examiners, Courtroom Clerks and Judicial Officers.** • Would two months from JC 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? **Unable to determine.** • Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? **No, but as stated in the Implementation Requirements, Costs, and Operational Impacts section, the majority of the petitions for appointment/extension will be filed by counsel. Plain-language forms would not be a benefit here.** Q: Does the proposal appropriately address the	No response required. The committee intends the modified recommendation to minimize that the training and workload impact on courts to the extent possible consistent with statute. No response required. No response required. No response required. No response required.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			stated purpose? **Yes.**	
			Form GC-210—PETITION FOR APPOINTMENT OF GUARDIAN OF THE PERSON OF AN ADULT 18 TO 21 YEARS OF AGE OR FOR EXTENSION OF EXISTING GUARDIANSHIP OF THE PERSON BEYOND WARD'S 18TH BIRTHDAY	In response to the weight of comment, the committee has withdrawn form GC-210(ADLT) from the proposal.
			• Form title is lengthy. Propose: PETITION FOR APPOINTMENT OF GUARDIAN OR EXTENSION OF GUARDIANSHIP OF THE PERSON FOR AN ADULT 18 TO 21 YEARS OF AGE	No response required.
			• Case title caption has a check-box for "AND ESTATE," this is presumably to capture the correct title of an existing Guardianship of the Person and Estate Case, but this will confuse litigants into thinking they can petition for appointment of a guardian of the estate with this form.	No response required.
			• Case title caption also has a check-box for "MINORS," also presumably to capture the correct title of an existing Guardianship, but this will also confuse litigants into thinking they can include multiple minors on one petition.	No response required.
			• Should "Minor" be replaced with "Ward" throughout, for consistency?	No response required.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			Form GC-240—ORDER APPOINTING GUARDIAN OF MINOR OR ADULT 18 TO 21 YEARS OF AGE, OR EXTENDING GUARDIANSHIP OF THE PERSON OF THE WARD PAST HIS OR HER 18TH BIRTHDAY	
			• Form title is lengthy and awkward. Propose: ORDER APPOINTING GUARDIAN OF MINOR OR EXTENDING GUARDIANSHIP OF THE PERSON FOR ADULT 18 TO 21 YEARS OF AGE	The committee agrees and has modified its recommendation to abbreviate the form title.
			• There is very little room in the case title caption for the minor or adult's name. Propose replacing the two options with "Ward." This would also be consistent with how the Letters of Guardianship were revised to read.	The committee agrees that more space is needed and has revised the caption box to remove the specification of the ward's age.
			• Should "Minor" be replaced with "Ward" throughout, for consistency?	The committee does not recommend replacing "minor" with "ward" in light of the Legislature's manifest intent to incorporate wards under section 1510.1 into the guardianship law's definition of "minor."
			Form GC-250—LETTERS OF GUARDIANSHIP	
			• "LETTERS" is off-center at the top of the form.	The committee agrees and has modified its recommendation accordingly.
			• Should "Minor" be replaced with "Ward" throughout, for consistency?	The committee does not recommend replacing "minor" with "ward" in light of the Legislature's manifest intent to incorporate wards under section

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
				1510.1 into the guardianship law's definition of "minor."
			• For consistency, the statement at item 3d could be changed to read in the affirmative (i.e. The guardian of the person of the adult ward has been granted powers under Probate Code sections 2351–2358). Every other item under item 3 lists additional powers/conditions that were granted, not powers that were not granted.	The committee has modified its recommendation to delete item 3d.
			•This comment by JCC re: GC-250 seems to negate the necessity of the including adult guardianships in the letters form: "As noted there, the guardian could not exercise those powers without the consent of the ward; the ward's power to exercise these powers independently, as can every other adult, would not be impaired by the guardianship appointment." Issuance of letters in these "adult guardianship" cases seems futile.	The committee has modified its recommendation by removing the item in question from form GC-250. The ward's consent on the petition to the guardian's performance of the duties of a guardian authorizes the guardian to act on behalf of the ward in the absence of a dispute. Rule 7.1002.5 prescribes a process for resolving issues and modifying consent in the event of a dispute.
15.	The Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) by Herb Stroh, Sinsheimer, Juhnke, McIvor & Stroh, LLP; Saul Bercovitch, State Bar Legislative Counsel San Francisco	AM	**A. Petition for Appointment of Guardian or Extension of Existing Guardianship. GC-210 (ADLT)** 1. Item 1.c. To avoid confusion, TEXCOM recommends separating out "or other person" from a "relative." This could be accomplished by creating a new box "1.e. Other person (not a	In response to the weight of comment, the committee has withdrawn form GC-210(ADLT) from the proposal.

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

	Commentator	Position	Comment	Committee Response
			relative) on behalf of the ward or proposed ward named in item 2." 2. Item 3 First, Probate Code Section 1510.1(a)(1) authorizes the court to appoint a guardian "in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure." But item 3 of the proposed Petition says: "The proposed ward, or petitioner on his or her behalf, desires to file a petition in this court for Special Immigrant Juvenile Findings . . . ." It is unclear how a "desire to file" a petition for SIJ Findings is alone sufficient. It seems that section 1510.1(a)(1) requires more, that is, the petition for SIJ Findings must be filed at the same time as the petition for guardianship. A simultaneous SIJ Findings petition is allowed by Rule 7.1020 of the California Rules of Court because "[a]ny person or entity authorized under Probate Code section 1510 to petition for the appointment of a guardian of the person of a minor . . . . may file a request for [SIJ] findings regarding the minor under this rule." Otherwise the statutory "in connection with" a petition for SIJ Findings is not really satisfied by a mere desire to file a petition for SIJ Findings. Second, TEXCOM recommends that the following clarifying sentence be added: "If the petitioner is not the proposed ward, then the	The committee agrees that this language was ambiguous. The proposed revisions to forms GC-210 and GC-210(P) as well as proposed new form GC-210(PE) to extend a guardianship include the option of attaching a *Petition for Special Immigrant Juvenile Findings* (form GC-220). Because the committee finds "in connection with" ambiguous as to whether the petition for findings be existing or intended, it leaves to judicial discretion whether concurrent filing of that petition is required to appoint a guardian of the person for an 18 year old youth. The committee's proposed form GC-210(PE) and revisions to forms GC-210 and GC-210(P) include the opportunity for the ward to consent to the

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			proposed ward nevertheless consents to the petition."	petition and appointment or extension.
			3. Item 4, boxes c–e First, Item 4 on page 2 (top) appears to allow the Petitioner to select none or up to three (3) different requests (boxes c-e) by checking none or one or more of three (3) boxes. Is that what is intended? If it is intended that the Petitioner must select at least one box but may select more, most Judicial Council forms state, "Petitioner must select one or more boxes." Item 4 is silent.	No response required, as this item has no direct analog on the revised forms.
			Second, Item 4.c. The Petitioner does not need an order to authorize him or her to petition for SIJ Findings. Rule 7.1020 of the California Rules of Court already provides that "[a]ny person or entity authorized under Probate Code section 1510 to petition for the appointment of a guardian of the person of a minor . . . . may file a request for [SIJ] findings regarding the minor under this rule." Is there another purpose for the Order granting the Petition for Guardianship to provide authority that is already granted by Rule 7.1020? And, if a petition for SIJ Findings is required (for reasons discussed above) to be filed simultaneously with the Petition for Guardianship then this box 4.c would appear to implicitly contradict that requirement.	No response required, as this item has no direct analog on the revised forms.
			4. Item 6 TEXCOM questions the relevance of whether a	The committee recommends retaining item 6 on

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			person has been nominated by a "will" or by some "other writing" in the context of this new petition for guardianship that is connected to a petition for SIJ Findings. This new petition does require the consent of the proposed ward with respect to the nomination of the proposed guardian. If someone else's nomination contradicts the nomination that is consented to by the proposed ward, is it relevant in this context? If not relevant perhaps it should be removed.	revised form GC-210, as that petition applies to all types of guardianship.
			5. Possible typographical issues At item 4d., the text in parentheses references Attachment 5d and it should be Attachment 4d. At item 5a., the text in parentheses references Attachment 6a and it should be Attachment 5a. At item 7, all references to Attachment 8 should be to Attachment 7. At item 13, all references to Attachment 14 should be to Attachment 13.	The committee has sought to address all typographical issues in the proposed forms.
			B. Forms GC-240 and GC-250 Because the extension of the existing guardianship or the establishment of the 18-21 guardianship is for such a limited purpose, it seems to make more sense to have separate orders and separate letters for that type of a guardianship.	The committee does not recommend the adoption of separate orders or letters for guardianships of youth 18 or older. Consistent with the Legislature's intent, the committee recommends accommodating guardianships for 18–20 year old youth on the existing orders and letters.

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

W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			The petition to extend/establish is three pages long and combining the order and letters on that type of guardianship with a standard guardianship is potentially confusing. If a lay person is going to complete the forms for the extension/establishment guardianship, they likely would have difficulty navigating through an order and letters which combine matters relating to a general guardianship, especially if they are using the petition as a guide.	In response to the weight of comment, the committee has withdrawn form GC-210(ADLT) from the proposal. It has incorporated 18–20 year olds into the existing petition forms, GC-210 and GC-210(P) and now recommends the adoption of a separate form, GC-210(PE) to petition to extend a guardianship past a ward's 18th birthday.
16.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee San Francisco	AM	1.The creation of a new form for the petition to establish a new type of guardianship as set forth in the proposal is appropriate. However, modification of the order and letters used for guardianship of a minor to accommodate this new procedure will create confusion. It is requested that no revisions be made of the existing minor guardianship order and letters, but instead a new order and letters be created to accommodate the needs of this new procedure. The order and letters for the new procedure would be much shorter and simpler than the combined documents. 2. The Joint Rules Subcommittee suggests that "ward" be replaced with "dependent/ward" on forms GC-210(ADLT), GC-240, and GC-250.	In light of the weight of comment, including clear expression of the Legislature's intent in enacting AB 900, the committee no longer recommends a separate petition for guardianships of youth 18 or older. The committee recommends incorporating these guardianships into the existing petition, order, and letters forms. To avoid confusion, however, the committee does recommend the adoption of a separate form to petition for extension of an existing guardianship. The addition of a single item to the orders should accommodate extensions, so no separate order form is recommended. The committee does not recommend the suggested change. It seems to refer to dependents or wards of the juvenile court under the Welfare and Institutions Code. The wards referred to in the recommended rules and forms are wards of a legal guardian in a guardianship of the person established under the Probate Code.

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W16-14

Probate Guardianship: Wards 18–20 Years of Age (Adopt Cal. Rules of Court, rule 7.1002.5; amend rules 7.1002, 7.1004, 7.1013, and 7.1020; adopt form GC-210(PE); revise forms GC-210, GC-210(P), GC-240, and GC-250)

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

	Commentator	Position	Comment	Committee Response
			Regarding the impact on existing automated systems: Courts will likely have to modify case management programming to create action codes, and calendar controls for the new petition. Further, Courts will be required to keep guardianship cases active for an additional three year period.	The committee intends the withdrawal of the new petition to simplify incorporation of these cases into existing guardianship modules.
			Regarding additional training: Moderate training costs as each court will be required to commit staff and associated court resources to train judicial officers, probate staff, courtroom staff, and clerical staff on the new forms and procedures. Many courts will also prepare desk procedures or other written materials concerning best practices for processing the new petition.	The committee intends the modifications in response to comments to reduce and simplify training requirements for judicial officers and court staff. To the extent practicable, the Center for Judiciary Education and Research will include these elements in its training for probate court judicial officers and staff.
			Regarding increases to court staff's workload: There will be increased hearings for the new procedure and a concomitant increase in workload for judicial officers, courtroom staff, clerical staff, and probate examiners. It is difficult to quantify the increase in workload because the number of petitions filed is unknown.	By incorporating the changes required by section 1510.1 into existing guardianship proceedings, the committee intends the proposal to minimize increases to court workload to the extent possible consistent with statute.

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

Item number: 15

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Rules and 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:
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).)

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: April 14–15, 2016

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rule 10.67 and Appendix F; revise forms CR-160, CR-161, CR-165, EPO-002, JV-100, and POS-040(P); revoke form SUM-140

Recommended by
Judicial Council staff
Susan R. McMullan, Senior Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
February 25, 2016

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 forms resulting from inadvertent omissions, typographical errors, and changes resulting from legislation. Judicial Council staff 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 July 1, 2016:

1. Amend the title of rule 10.67 of the California Rules of Court to add the word “Program”;

2. Amend Appendix F of the California Rules of Court to replace outdated references to “Serranus” with the new name, “Judicial Resources Network,” and the corresponding direct links;

3. Revise form CR-160, *Criminal Protective Order—Domestic Violence (CLETS-CPO)*, item 11, and form CR-161, *Criminal Protective Order—Other Than Domestic Violence (CLETS-CPO)*, item 10, to replace the citation to Penal Code section 136.2(a)(7)(D) with a citation to section 136.2(a)(1)(G)(iv). These revisions ensure that both of these heavily used protective order forms accurately reference the appropriate authority for ordering electronic monitoring of the restrained person;

4. Revise form CR-160, *Criminal Protective Order—Domestic Violence (CLETS-CPO)*, and form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding*, to reference Penal Code section 368(*l*) in the caption and footer of both forms. These revisions ensure that both of these heavily used protective order forms accurately reference the appropriate authority for a postconviction protective order in cases involving abuse of an elder or a dependent adult;

5. Revise form EPO-002 to delete the last sentence of the fourth paragraph of page 2 (both English and Spanish sections), which incorrectly tells the respondent that he or she could file to terminate the emergency protective order;

6. Revise form JV-100, *Juvenile Dependency Petition (Version One)*, to correctly alphabetize the items on page 1, item 1;

7. Revise form POS-040(P), *Attachment to Proof of Service—Civil (Persons Served)*, to delete references to electronic service; and

8. Revoke form SUM-140, *Summons (Storage Lien Enforcement)*. This special summons form was originally adopted in 2004 to implement an amendment to Business and Professions Code section 21710, which provided that a defendant in an action to enforce a storage lien had only 10 days in which to respond to the complaint. That statute has since been amended again, to delete the special shortened time frame for responding to a complaint. Form SUM-140 is therefore inconsistent with current law, and should be revoked. The traditional summons form, notifying a defendant that he or she has 30 days in which to respond to the complaint, is now appropriate for use in storage lien enforcement actions.

Copies of the amended rule and appendix and the revised forms are attached at pages 4–17.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rule 10.67 and Appendix F, at pages 4–6
2. Forms CR-160, CR-161, CR-165, EPO-002, JV-100, POS-040(P), and SUM-140, at pages 7–17

Rule 10.67 of the California Rules of Court is amended, effective July 1, 2016, to read:

Rule 10.67. Judicial Branch Workers' Compensation Program Advisory Committee

(a)–(b) * * *

Appendix F.

Guidelines for the Juvenile Dependency Counsel Collections Program (JDCCP)

1.–4. * * *

5. Determination of Cost of Legal Services

The court is charged with determining the cost of dependency-related legal services. In doing so, the court may adopt **one** of the three methods in (a)–(c). In no event will the court seek reimbursement of an amount that exceeds the actual cost of legal services already provided to the children and the responsible person in the proceeding. The court may update its determination of the cost of legal services on an annual basis, on the conclusion of the dependency proceedings in the juvenile court, or on the cessation of representation of the child or responsible person.

(a) * * *

(b) Cost Model

The court may determine the cost of legal services provided to a child or responsible person in a dependency proceeding by applying the Uniform Regional Cost Model available on ~~*serranus.courtinfo.ca.gov*~~ *jrn.courts.ca.gov* or from *jdccp@jud.ca.gov.* Use of the cost model as described in this section will ensure that the court seeks reimbursement of an amount that most closely approximates, but does not exceed, the actual cost incurred by the court.

(1)–(3) * * *

(c) * * *

6.–9. * * *

10. Collection Services

(a) * * *

(b) Outside Collection-Services Providers

When appropriate and consistent with policy FIN 10.01, a court may use an outside collection-services provider.

(1) * * *

(2) Collection Services Provided by Private Vendor

A court that uses a private collection service should use a vendor that has entered into a master agreement with the Judicial Council to provide comprehensive collection services. A court that uses such a vendor should complete a participation agreement and send it to Judicial Council staff via e-mail to *jdccp@jud.ca.gov*. A court may contract directly with a private vendor only on terms and conditions substantially similar to those set forth in the master agreements for comprehensive collection services available at ~~*http://serranus.courtinfo.ca.gov/programs/collections/mva.htm*~~ *jrn.courts.ca.gov/programs/collections/mva.htm*.

(3) * * *

(c) * * *

11. Recovery of Program Implementation Costs

A court may recover, from the money it has collected, its eligible program implementation costs before remitting the balance of the collected funds to the state in the manner required by Government Code section 68085.1. Eligible costs are limited by statute to the cost of determining responsible persons' ability to repay the cost of court-appointed counsel and to the cost of collecting delinquent reimbursements. If a court's eligible costs in any given month exceed the amount of revenue it has collected in that month, the court may carry the excess costs forward within the same fiscal year until sufficient revenue is collected to recover the eligible costs in full. Any program costs recovered by the court must be documented by the court and reported monthly by e-mail to *jdccp@jud.ca.gov*in a format consistent with the Cost Recovery Template available on ~~*serranus.courtinfo.ca.gov*~~ *jrn.courts.ca.gov* or from *jdccp@jud.ca.gov*.

(a) * * *

12.–15. * * *

Appendix F amended effective July 1, 2016; adopted effective January 1, 2013; previously amended effective September 23, 2013, and January 1, 2016.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA *VS.* DEFENDANT:	
CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE **(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 136.2(i)(1), 273.5(j), 368(*l*), and 646.9(k))** ☐ **ORDER UNDER PENAL CODE, § 136.2** ☐ **MODIFICATION** ☐ **PROBATION CONDITION ORDER (Pen. Code, § 1203.097)** **ORDER UNDER:** ☐ **PENAL CODE, § 136.2(i)(1)** ☐ **PENAL CODE, § 273.5(j)** ☐ **PENAL CODE, § 368(*l*)** ☐ **PENAL CODE, § 646.9(k)**	CASE NUMBER:

This Order May Take Precedence Over Other Conflicting Orders; See Item 4 on Page 2.

PERSON TO BE RESTRAINED *(complete name):*

Sex: ☐ M ☐ F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

1. This proceeding was heard on *(date):* at *(time):* in Dept.: Room: by judicial officer *(name):*
2. **This order expires on *(date):* . If no date is listed, this order expires three years from date of issuance.**
3. ☐ Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. FULL NAME, AGE, AND GENDER OF EACH PROTECTED PERSON:
5. ☐ For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:
6. ☐ The court has information that the defendant owns or has a firearm or ammunition, or both.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

7. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
8. **must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
   - ☐ The court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control and sets a review hearing for *(date):* to ascertain whether the defendant has complied with the firearm relinquishment requirements of Code Civ. Proc., § 527.9. (Cal. Rules of Court, rule 4.700.)
   - ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f).The defendant is not required to relinquish this firearm *(specify make, model, and serial number of firearm)*:
9. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
10. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. ☐ The court finds good cause not to make the order in item 10.
11. ☐ must be placed on electronic monitoring for *(specify length of time):* . (Not to exceed 1 year from the date of this order. Pen. Code, § 136.2(a)(1)(G)(iv) and Pen. Code, § 136.2(i)(2).)
12. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
13. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
14. ☐ must not come within yards of the protected persons and animals named above.
15. ☐ must not take, transfer, sell, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in item 5.
16. ☐ may have peaceful contact with the protected persons named above, as an exception to the "no-contact" or "stay-away" provision in item 12, 13, or 14 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
    - a. ☐ the Family, Juvenile, or Probate court order in case number: issued on *(date):*
    - b. ☐ any Family, Juvenile, or Probate court order issued *after* the date this order is signed.
17. ☐ The protected persons may record any prohibited communications made by the restrained person.
18. ☐ Other orders including stay-away orders from specific locations:

Executed on: _____ _____ Department/Division:

(DATE) (SIGNATURE OF JUDICIAL OFFICER)

Form Adopted for Mandatory Use
Judicial Council of California
CR-160 [Rev. July 1, 2016]
Approved by Department of Justice

CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE (CLETS—CPO)

Penal Code, §§ 136.2, 166, 1203.097(a)(2), 273.5(j), 368(*l*), 646.9(k), and 136.2(i)(1)
www.courts.ca.gov

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).

2. **NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.**

   Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 8 on page 1 of this order. *The court must check the box under item 8 to order an exemption from the firearm relinquishment requirements*. If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

3. **ENFORCING THIS ORDER IN CALIFORNIA**
   - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
   - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

4. **CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT**
   If more than one restraining order has been issued, the orders must be enforced according to the following priorities:
   a. *Emergency Protective Order:* If one of the orders is an Emergency Protective Order (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, § 136.2(c)(1)(A).)
   b. *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.
   c. *Criminal Order:* If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
   d. *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.

5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
   - These orders are effective as of the date they were issued by a judicial officer.
   - These orders expire as ordered in item 2 on page 1 of this order**, or as explained below.**
   - Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
   - Orders issued under Penal Code sections 136.2(i)(1), 273.5(j), 368(*l*), and 646.9(k) are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation.
   - Orders under Penal Code section 1203.097(a)(2) are probationary orders, and the court has jurisdiction as long as the defendant is on probation.
   - To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS).*

7. **CHILD CUSTODY AND VISITATION**
   - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
   - Unless box a or b in item 16 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
   - If box a or b in item 16 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA *vs.* DEFENDANT:	
CRIMINAL PROTECTIVE ORDER—OTHER THAN DOMESTIC VIOLENCE (CLETS - CPO) (Pen. Code, §§ 136.2, 136.2(i)(1), and 646.9(k)) ☐ **ORDER UNDER PENAL CODE, § 136.2** ☐ **MODIFICATION** **ORDER UNDER:** ☐ **PENAL CODE, § 136.2(i)(1)** ☐ **PENAL CODE, § 646.9(k)**	CASE NUMBER:

PERSON TO BE RESTRAINED *(complete name):*
Sex: ☐ M ☐ F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

1. This proceeding was heard on *(date):* at *(time):* in Dept.: Room:
   by judicial officer *(name):*
2. **This order expires on *(date):* . If no date is listed, this order expires three years from date of issuance.**
3. ☐ Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. FULL NAME, AGE, AND GENDER OF EACH PROTECTED PERSON:

5. ☐ The court has information that the defendant owns or has a firearm or ammunition, or both.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. **must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
   ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f). The defendant is not required to relinquish this firearm (*specify make, model, and serial number of firearm*):
   .
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. ☐ The court finds good cause not to make the order in item 9.
10. ☐ must be placed on electronic monitoring for *(specify length of time)*: . (Not to exceed one year from the date of this order. Pen. Code, § 136.2(a)(1)(G)(iv), and Pen. Code, § 136.2(i)(2).)
11. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
12. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
13. ☐ must not come within yards of the protected persons named above.
14. ☐ may have peaceful contact with the protected persons named above, as an exception to the "no-contact" or "stay-away" provision in item 11, 12, or 13 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
    a. ☐ the Family, Juvenile, or Probate court order in case number: issued on *(date):*
    b. ☐ any Family, Juvenile, or Probate court order issued *after* the date this order is signed.
15. ☐ The protected persons may record any prohibited communications made by the restrained person.
16. Other orders including stay-away orders from specific locations:

Executed on: _____ _____ Department/Division:
(DATE) (SIGNATURE OF JUDICIAL OFFICER)

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a felony, a misdemeanor, or contempt of court.

2. **NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.**

   Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 7 on page 1 of this order. *The court must check the box under item 7 to order an exemption from the firearm relinquishment requirements.* If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

3. **ENFORCING THIS ORDER IN CALIFORNIA**
   - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
   - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Code Civil Proc., § 527.6.)

4. **CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT**
   If more than one restraining order has been issued, the orders must be enforced according to the following priorities:
   a. *Emergency Protective Order:* If one of the orders is an Emergency Protective Order (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, § 136.2(c)(1)(A).)
   b. *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.
   c. *Criminal Order:* If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
   d. *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.

5. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
   - These orders are effective as of the date they were issued by a judicial officer.
   - These orders expire as ordered in item 2 on page 1 of this order, **or as explained below**.
   - Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
   - Orders issued under Penal Code sections 136.2(i)(1) and 646.9(k) are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation.
   - To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS).*

6. **CHILD CUSTODY AND VISITATION**
   - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
   - Unless box a or b in item 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
   - If box a or b in item 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
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), 368(*l*), 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 *(check one)*
   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)
   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.

Department/Division:

Executed on: _____ _____
(DATE) (SIGNATURE OF JUDICIAL OFFICER)

Form Adopted for Mandatory Use
Judicial Council of California
CR-165 [Rev. July 1, 2016]
Form Approved by Department of Justice

NOTICE OF TERMINATION OF PROTECTIVE ORDER IN CRIMINAL PROCEEDING (CLETS–CANCEL)

Penal Code, §§ 136.2, 166, 273.5(j), 368(*l*), 646.9(k), 1203.097, and 136.2(i)(1)
www.courts.ca.gov

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 or store them with a licensed gun dealer **within 24 hours** of being served with this order. You must then **file a receipt proving surrender, sale, or storage 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 or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms Turned In, Sold, or Stored* 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.

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 o guardarlas con 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, vendido, o guardado. 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.

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.

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:

CHILD'S 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.

SHORT TITLE:	CASE NUMBER:

ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

(This attachment is for use with form POS-040.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

Name of Person Served	**Where Served**	**Time of Service**
(If the person served is an attorney, the party or parties represented should also be stated.)	*(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For service by fax, provide fax number.)*	*(Complete for service by fax transmission.)*
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:
		Time:

SUMMONS
(CITACION JUDICIAL)
STORAGE LIEN ENFORCEMENT
(CUMPLIMIENTO DE EMBARGO DE BIENES ALMACENADOS)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

You have 10 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center *(www.courtinfo.ca.gov/selfhelp)*, your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site *(www.lawhelpcalifornia.org)*, the California Courts Online Self-Help Center *(www.courtinfo.ca.gov/selfhelp),* or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*Tiene 10 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DATE:
(Fecha)

Clerk, by
(Secretario) _____ , Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-140 [Rev. January 1, 2010]

SUMMONS—STORAGE LIEN ENFORCEMENT

Code of Civil Procedure, §§ 412.20, 465
Business and Professions Code, § 21710
www.courtinfo.ca.gov

Item number: 16

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Adopt Rule 2.895, Recommend form, Request for Interpreter (Civil), as a model form, effective July 1, 2016 and as an optional form, effective 1/1/18

Committee or other entity submitting the proposal:
Court Interpreters Advisory Panel

Staff contact (name, phone and e-mail): Anne Marx, 415-865-7690, anne.marx@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: Consult with the Civil and Small Claims Advisory Committee on the new form for requesting an interpreter. The Court Interpreters Advisory Panel assumed full responsibilty for the project shortly after the 2015 Annual Agenda was approved.

If requesting July 1 or out of cycle, explain:
The Judicial Council first requested this rule and form in January 2014. The Civil and Small Claims Advisory Committee developed the proposal and it circulated for comment in the winter 2015 cycle. Following circulation, finalizing the form was postponed to await the adoption of the Language Access Plan and creation of the Language Access Plan Implementation Task Force (LAPITF). The LAPITF asked that CIAP finalize the rule and form. This proposal, which circulated on the urgent cycle to be effective July 1, 2015, remains urgent.

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

This proposal has not yet been copyedited.

As a result of working closely with RUPRO staff, it has come to CIAP's attention that this rule and form breaks new ground in a number of areas. The subcommitee engaged deeply in considering how best to accomplish the purpose which the Judicial Council first laid out in January 2014, bringing each of these suggestions forward knowing they may represent the following new ideas:

1) Approval of the form as a model form that automatically becomes an optional form after a year and a half;
2) Providing a "model" form, one which can guide and inspire courts, but does not require them to accept it; and
3) Inclusion of other languages, in the form of one critical question, on the ofifical version of this form.

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: April 15, 2016

Title
Language Access: Interpreter Request Rule and Form (Civil)

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 2.895;
Approve form INT-300

Recommended by
Court Interpreters Advisory Panel
Hon. Steven K. Austin, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 14, 2016

Contact
Anne Marx, Senior Analyst
415-865-7690 anne.marx@jud.ca.gov

Executive Summary

The Court Interpreters Advisory Panel (CIAP) recommends the adoption of a new rule requiring courts to publish procedures for filing, processing, and responding to requests for interpreters in civil actions. CIAP also recommends the approval of a new form to track and help facilitate requests for interpreters in civil actions and recommends the form be approved as a model form effective July 1, 2016 and, without further action by the Judicial Council, as an optional form effective January 1, 2018. This proposal will benefit Limited English Proficient (LEP) court users, and the courts who serve them, by helping to establish structure for an expanding area of language access.

Recommendation

The Court Interpreters Advisory Panel (CIAP) recommends that the Judicial Council, effective July 1, 2016:

1. Adopt Rule 2.895 to establish requirements for courts to publish their procedures and track requests for interpreters. The Rule also requires the attorney of a represented party to inform the court if an LEP court user who has requested an interpreter will not be in court, in order to avoid unnecessary expenses.

2. Approve *Request for Interpreter (Civil)* form INT-300 as a model form. The model form will serve as a sample for courts who are establishing procedures pursuant to Rule 2.895 over the next 20 months while the Strategic Plan for Language Access in the California Courts is in its initial phases of implementation.

The Court Interpreters Advisory Panel (CIAP) recommends that the Judicial Council, effective January 1, 2018:

1. Approve *Request for Interpreter (Civil)* form INT-300 as an optional form.

The text of the proposed rule and the new form are attached at pages 10-12.

Previous Council Action

On January 23, 2014, the Judicial Council took action on recommendations related to providing interpreters to indigent parties in civil actions. As part of that action, the Judicial Council directed the Civil and Small Claims Advisory Committee to create a new form for parties requesting interpreters in civil matters. The council directed that the form include space for the party to indicate the language in which an interpreter is required, and to indicate whether a waiver of court fees and costs has been granted. (The task was subsequently transferred to CIAP, as discussed in the rationale section below.)

The Judicial Council also sponsored legislation to authorize courts, subject to available funding, to provide interpreters to parties in civil actions at no cost, regardless of the income of the parties. This legislation led to the adoption of Evidence Code section 756, which allows courts to provide interpreters in civil matters, and outlines a priority case order in which to do so if sufficient funding is not available for all cases.

In January 2015, the Judicial Council adopted the Strategic Plan for Language Access in the California Courts (LAP) and created the Language Access Plan Implementation Task Force to begin the work of creating a workable roadmap for implementation of the LAP.

Rationale for Recommendation

In January 2014, the Judicial Council directed the creation of a form to be used to request an interpreter in civil cases and related rule of court as one step toward the goal of expanding interpreter access in civil matters. The Civil and Small Claims Advisory Committee began this important work.

The Civil and Small Claims Advisory Committee developed a proposal containing a form and rule, which circulated for public comment during the winter 2015 comment cycle. Following circulation, at the request of the chairs of the Joint Working Group for the Language Access Plan, which was developing *the Strategic Plan for Language Access in the California Courts* ("Language Access Plan"), the Civil and Small Claims Advisory Committee postponed finalizing the form to await the adoption of the Language Access Plan and creation of the Language Access Plan Implementation Task Force (LAPITF). The LAPITF asked that CIAP review the public comments and finalize the rule and form consistent with the Language Access Plan.

LEP court users are the primary beneficiaries of this proposal. This rule and form will facilitate better access to justice and allow LEP court users to be informed about how to request an interpreter in a civil matter. Ultimately, the rule and form will facilitate the timely provision of an interpreter in all civil actions. Judicial officers and court staff also benefit from the rule and form in that it will assist in the early identification of language access needs. Requests for an interpreter in a civil matter will be more streamlined, decisions can be made earlier regarding the provision or denial of requests, and courts will be able to develop systems to efficiently provide interpreters. This will lead to decreased delays and continuances.

Following circulation of this proposal, CIAP added a requirement that an attorney notify a court when a represented LEP party will not attend a specific proceeding. The purpose is to avoid unnecessarily scheduling interpreters and thereby save resources.

The rule requires courts to publish their procedures, including their procedures for responding to requests for interpreters. It also requires courts to track requests received and whether an interpreter was provided consistent with the request. As a result, better information will be available statewide for planning, needs assessments, and cost forecasting regarding the needs for interpreters in civil matters.

The proposed rule and form were developed to provide direction and guidance needed to ensure courts have assistance adhering to the spirit and letter of the Language Access Plan so that LEP litigants have equal access to justice. Approval of the form as an optional form effective January 1, 2018, will allow litigants to request an interpreter in any way, require courts to accept this standardized form, and ensure flexibility for courts in accepting other methods of requests or creating other processes. The goal was to develop an interpreter request form that would be easy to understand, with multiple languages on the body of the form itself, to encourage requests.

CIAP determined that initially the form should be adopted as a model form because some courts are still developing their request processes and currently there may not be sufficient funding to grant all requests. However, CIAP felt strongly that effective January 1, 2018 the form should become optional because some level of uniformity is required and courts will need to accept this form, even while courts will not be precluded from continuing with their other methods. Some courts may find it difficult to track incoming requests or their responses to those requests, however, this kind of tracking and data collection is required by the Language Access Plan.

The rule and form will provide LEP court users with a clear path for increased language access and know how to request interpreter assistance. Information and data related to LEP need will be more readily available and will help to inform statewide and local planning as well as to monitor compliance with the Language Access Plan. Specifically, better tracking and information will help identify funding needs for the continued expansion of interpreter services in civil matters.

Comments, Alternatives Considered, and Policy Implications

External Comments

The proposal circulated during the winter 2015 comment cycle. Eleven comments were received. CIAP considered the comments, the directions and spirit of the Language Access Plan, and made revisions to the rule and form.

Below is a summary description of the comments and CIAP's response:

- Many commentators noted that LEP litigants should be able to submit requests for interpreters at any time, in any manner, and those requests should be able to be made by any person, including court staff or judicial officers. Although there appeared to be considerable misunderstanding about the difference between an optional and a mandatory form, the comments seemed to clearly indicate a mandatory form would not be the appropriate solution, either for the litigants or the courts.
    - CIAP chose to recommend an interim adoption of the form as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018, effective date of the request form as optional. CIAP chose this path because as an "optional" form, while other methods of taking requests are not precluded, the courts must accept the request form if submitted. Likewise, litigants will not be *required* to use the form as their method for requesting an interpreter. CIAP believes this approach is consistent the goal of most commentators.

- Several commentators also indicated that courts need flexibility to implement processes at the local level and need time to come into compliance with the Language Access Plan, particularly while funding may be low. Courts indicated they would not need extensive time to implement the rule unless the form is made mandatory.

- With the interim ‘model form’ approach being recommended, courts will have the necessary time to develop, formalize, and finalize their processes and be ready to accept the optional form by January 1, 2018.

- Nearly all commentators were concerned about the language of the instructions on the form, noting that instructions for those filling out the form must be simple and in plain language.
  - CIAP spent a good deal of time restructuring the form and reconsidering language in the form and its instructions. The form was also reviewed by plain language experts and legal services providers. CIAP also changed to a plain language template. The form includes check boxes for the state’s top 10 languages, in those languages. CIAP believes the form is easy to use.

- Many commentators raised issues with the form regarding listing case type priorities and asking litigants to list their case type themselves. Commentators felt that removing the lists of case types from the form and its instructions was critical to reducing confusion for LEP litigants.
  - CIAP removed the lists of case types from the form and its instructions and instead referenced the Evidence Code section 756, which includes the priority order for courts to follow should there be insufficient funding available to fill all requests for interpreters.

- More than two-thirds of the commentators noted that it is critical that an interpreter request form set an encouraging tone and include language choices which do not discourage LEP litigants from making requests.
  - CIAP made many changes to the form, both to what was included and in word choice, in order to set a more straight forward and positive tone. Much of this came from CIAP’s decision to design the form for a time when courts would be able to be in full compliance, instead of designing the form for an interim period. By publishing it first as a model form, courts will have guidance and an example as they develop their processes and procedures.

- A few commentators recommended including a court response on the form. Others recommended providing a limited amount of text in multiple languages on the form. (Comments on additional items to add to the form were specifically requested in the invitation to comment.)
  - CIAP considered including a response as part of the form but found it to be logistically very challenging to do at a statewide level. Without knowing what response times and processes courts would develop locally, the proper response was not clear. CIAP will consider whether a separate response is appropriate over the coming year. In lieu of a response on the form, CIAP added language to the Rule making it clear that the court must provide a response.

- CIAP considered adding a check box for the name of a language, in that language or adding a full sentence in the language being requested and decided that it was more effective include the check boxes. CIAP was able to include the state's top 10 spoken languages.

- A few commentators also discussed the importance of separating out one-time requests related to interpreters for witnesses from ongoing requests for interpreters for an LEP party which must be carried out through the life of a case.
    - An important part of CIAP's restructuring of the form was to separate out the request for an LEP party to have an interpreter (ongoing for all hearings the party would attend), and the request for an interpreter for any of their witnesses (for specific scheduled hearings). In order to prevent resources being wasted at appearances where only a represented party's attorney is appearing, the rule includes a requirement that the attorney notify the court when the party would not be present and thus no interpreter would be needed.

- Roughly one-half of the commentators specifically noted that the responsibility for tracking that a litigant in a particular case requires an interpreter most properly belongs with the court. These commentators noted that once parties made the initial request, they should not be required to make subsequent requests.
    - CIAP agreed and, in its restructuring of the form, eliminated the requirement on the form that litigants indicate a hearing date to which their request for an interpreter applied (leaving the hearing date only for witnesses).

Internal comments

The Civil and Small Claims Advisory Committee recommended a model form, which would serve as a sample only. Courts would not be required to accept a particular statewide form. CIAP, however, recommended the present approach – a model form for an interim period that would become an optional form at a specific date. CIAP felt that ultimately creating a form that would be available statewide, and well known to legal services providers, was required for consistency with the Language Access Plan.

Alternatives

The Subcommittee considered many alternatives, and fully engaged in rich discussion on the many points raised in more than 53 pages of comments. These include:

- CIAP considered keeping the form as a model indefinitely, but believe increased standardization and establishing a form that would be available statewide, and could be translated into multiple languages, or guaranteed inclusion of multiple languages, was critical to meeting the intent of the Language Access Plan.
- CIAP considered including a response section on the Instructions side of the form, as well as on the front side of the form. The former created confusion, and possibly

discouraged litigants from making requests at all, and it was determined that the second alternative would create difficulties in processing the requests.
- CIAP considered not including multiple languages on the front of the form, but believed including them would greatly enhance access to justice.
- CIAP considered including additional instructions, however, every additional instruction that was considered seemed to increase confusion.

Changes in the Rule
There are two main differences from the version of the rule which circulated for comment. One is that the rule now requires courts to track requests, consistent with the Language Access Plan. This is important for planning purposes and for securing sufficient human and financial resources in the future. The other is that the rule, in subdivision (c), requires attorneys of represented LEP litigants to inform the court if their LEP client will not be at a particular proceeding. This is important to help prevent hiring an interpreter and finding out that only the attorney is attending the court hearing.

Policy Implications
This proposal supports the implementation of *the Strategic Plan for Language Access in the California Courts*, which was adopted by the Judicial Council January 22, 2015. *Recommendations 1, 2, 4 and 5 listed below support the need for a request form and for tracking the provision of interpreters in civil matters:*

1. Courts will identify the language access needs for each LEP court user, including parties, witnesses, or other persons with a significant interest, at the earliest possible point of contact with the LEP person. The language needs will be clearly and consistently documented in the case management system and/or any other case record or file, as appropriate given a court's existing case information record system, and this capability should be included in any future system upgrades or system development.

2. A court's provision or denial of language services must be tracked in the court's case information system, however, appropriate given a court's capabilities. Where current tracking of provision or denial is not possible, courts must make reasonable efforts to modify or update their systems to capture relevant data as soon as feasible.

4. Courts will establish mechanisms that invite LEP persons to self-identify as needing language access services upon contact with any part of the court system (using, for example, "I speak" cards [see page 49 for a sample card]). In the absence of self-identification, judicial officers and court staff must proactively seek to ascertain a court user's language needs.

5. Courts will inform court users about the availability of language access services at the earliest points of contact between court users and the court. The notice must include,

where accurate and appropriate, that language access services are free. Courts should take into account that the need for language access services may occur earlier or later in the court process, so information about language services must be available throughout the duration of a case. Notices should be in English and up to five other languages based on local community needs assessed through collaboration with and information from justice partners, including legal services providers, community-based organizations, and other entities working with LEP populations. Notice must be provided to the public, justice partners, legal services agencies, community-based organizations, and other entities working with LEP populations.

The committee extensively debated whether the form should be a mandatory, model, or optional. Arguments in favor of a mandatory form were that it would lead to statewide consistency in usage and in format, which would be helpful to court users across jurisdictions. Arguments in favor of a model or optional form were court discretion.

The committee also debated including the instructions on the form, and whether the Evidence Code section 756 order of priorities should be incorporated into the instructions. Ultimately, it was decided this was more confusing than helpful to the court users.

The chart of comments and the advisory panel's responses are attached at pages 1368.

Implementation Requirements, Costs, and Operational Impacts

This rule and form will require the development of new processes for many courts, and therefore, could have significant operational impacts in some courts and require training of judicial officers and court staff.

There are three elements to this proposal:

1) Rule 2.895 *Requests for Interpreters*.

   This rule will require courts to create and publish their procedures for requesting an interpreter for civil matters. In addition, it will require courts to track requests for interpreters and whether those requests were met. Costs will vary depending on the methods that local courts choose to use for tracking purposes. Courts may choose to utilize print copies of forms and published procedures or develop online request systems. Statewide savings may result for the trial courts as they will have better information about when a party or witness will be present in court and will require the services of an attorney. By requiring a party's attorney to notify the court if the party will be appearing at various proceedings, the court may save resources that would otherwise have spent on securing an interpreter for such matters.

2) Form INT-300 *Request for Interpreter (Civil)* as a model form through December 31, 2017.

As a model form, this is not required to be used. Courts that do choose to use it will need to make it available to court users (perhaps in hard copy and online) and establish a place where requests are to be submitted.

3) Adoption of Form INT-300 *Request for Interpreter (Civil)*, as an optional form, effective January 1, 2018.

   Courts must accept the optional form if submitted. Courts must establish a place where requests are to be submitted.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal supports Goal I of the Strategic Plan, Access, Fairness, and Diversity. This goal emphasizes that all persons will have equal access to the courts and court proceedings and programs, and that court procedures will be fair and understandable to court users. Equal access depends on being able to understand the proceedings. This Rule and form proposal requires the court to inform the public how to request an interpreter in civil matters, and helps courts plan for the need to provide interpreters in specific court proceedings. The proposal is directly in line with Goal I policy statement 9 which raises the need to "[i]mplement, enhance, and expand multilingual and culturally responsive programs… and interpreter services."

Attachments and Links

1. Cal. Rules of Court, rule 2.895, at page 10
2. Form INT-300, at pages 11--12
3. Chart of Comments, at pages 13--68
4. Attachment A: Cal. Rules of Court, rule 2.895 as circulated for comment, at page 69
5. Attachment B: Form ## (aka INT-300) as circulated for comment, at pages 70--71.

Rule 2.895 of the California Rules of Court is adopted, effective July 1, 2016, to read:

Title 2. Trial Court Rules

Division 6. Appointment by the Courts or Agreement of the Parties
Chapter 4. Court Interpreters

Rule 2.895. Requests for Interpreters

(a) Publish procedures

Each court must publish procedures for filing, processing and responding to requests for interpreters consistent with the *Strategic Plan for Language Access in the California Courts* (adopted January 2015). Each court must publish notice of these procedures in English and up to five other languages based on local community needs.

(b) Tracking requests

Each court must track all requests for language services and whether such services were provided. Tracking must include all requests for a Court Interpreter in Civil Actions, as well as approvals and denials of such requests.

(c) Represented party notification

If a party who has requested an interpreter for him or herself is represented by counsel, the attorney must notify the court in advance whenever the party will not be appearing at a noticed proceeding.

Advisory Committee Comment

The *Request for Court Interpreter (Civil Action)* (form INT-300) is concurrently approved as a model form which will become an optional form, effective January 1, 2018. Until that time, the form can serve as a model which courts may use as part of their procedures, as required under this rule.

"Local community needs," as referenced in subdivision (a) is described in recommendation five of the *Strategic Plan for Language Access in the California Courts* (adopted January 2015).

The committee recommends electronic processing of civil interpreter requests, to aid the court in data collection about the provision or denial of language services.

This Rule shall not be construed in a way that conflicts with Evidence Code section 756.

INT-300 Request for Interpreter (Civil)

Clerk stamps date here when form is filed.

Fill out this form if you, or a witness in your case, needs an interpreter when you are in court.

See instructions on page 2 of this form for more information.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 **Your Information** (person requesting an interpreter). *If you have a lawyer, give your lawyer's information.*

Name: _____

State Bar No.: _____

Firm Name: _____

Address: _____

City: _____ State: ___ Zip: _____

Telephone: _____

E-Mail Address: _____

2 **I am a party in this case** *(check one item below)*

☐ Plaintiff/Petitioner ☐ Defendant/Respondent ☐ Other *(describe):* _____

3 ☐ **I need an interpreter in the following language when I am in court:**

☐ español (Spanish) ☐ Tiếng Việt (Vietnamese) ☐ 한국어 (Korean) ☐ 普通话 (Mandarin)

☐ 广东话 (Cantonese) ☐ فارسی (Farsi/Persian) ☐ русский (Russian) ☐ Tagalog (Tagalog)

☐ العربية (Arabic) ☐ ਪੰਜਾਬੀ (Punjabi) ☐ Other: _____

Include town of origin if you speak an indigenous language: _____

4 ☐ **I have a witness who needs an interpreter for the following court date:**

(Complete a separate form for each witness.)

a. Date: _____ Time: _____

Department and judicial officer, if known: _____

☐ No date is set yet.

b. The witness needs an interpreter in *(check one):*

☐ The same language as marked above **OR**

☐ Other *(list the language the witness speaks):* _____

Date: _____

▶ _____

Signature of party or attorney

INSTRUCTIONS

- Court proceedings are in English. If a party or witness does not speak or understand English well, he or she may need an interpreter. The interpreter will allow him or her to testify, to speak to the judge, and to understand what others are saying in court. Certified and registered court interpreters are trained to interpret in court. If you need language help, you can ask the court to provide a court interpreter by filling out the first page of this form.

- You should complete this form if you or a witness in your case need an interpreter. A witness is someone who provides information in court, under oath. You should complete a separate form for every witness who needs language help. Complete the first page and file it with the court. Check with your local court to find out how far in advance you must file a request for an interpreter. You can also find out when the court will answer your request.

- Courts try to provide an interpreter in every language and in every civil case. The court will provide you with a response to let you know if your request was granted. Sometimes, a court cannot provide an interpreter in every case.

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.)

W15-03

Court Interpreters: Request for Interpreter

Adopt Cal. Rules of Court, rule 2.895; recommend model local court form

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

	Commentator	Position	Comment	Committee Response
1.	California Commission on Access to Justice By: Hon. Mark A. Juhas, Chair	AM; N	The California Commission on Access to Justice is pleased to provide comments on W15-03, *Court Interpreters: Request for Interpreter* form, to the Civil and Small Claims Advisory Committee. The Commission was established in 1997 as a collaborative effort involving all three branches of government. It includes judges, lawyers, professors, business, labor, faith, and other community leaders. The Access Commission is dedicated to finding long-term solutions to the chronic lack of legal assistance available to low and moderate income Californians. The Commission's goals include increasing resources for legal services for the poor, expanding pro bono and language assistance, and increasing the availability of self-help assistance and limited scope representation. We reviewed the proposed form with these goals in mind. **[1a]** First, the draft *Strategic Plan for Language Access in the California Courts* is before the Judicial Council for approval; it is our understanding that, if approved, an Implementation Task Force will be formed to carry out the recommendations. We recommend that the Civil and Small Claims Advisory Committee collaborate with the Language Access Plan Implementation Task Force, to ensure that the form aligns with the Plan's recommendations.	CIAP agrees with the commentator and has modified the form consistent with these recommendations except as noted. **1a.** CIAP agrees that this Rule and Form should be consistent with the *Strategic Plan for Language Access in the California Courts ("the Language Access Plan" or "LAP")* and that could be accomplished by collaboration with the task force. The Task Force directed CIAP to lead the finalization of this rule and form. CIAP has done so in alignment with the LAP.

	Commentator	Position	Comment	Committee Response
			[1b] Second, to help ensure language access to the entirety of the proceedings, the Commission recommends that courts be notified about language service needs at the outset of civil actions. An interpreter request form should be filed at the earliest point in a proceeding because it will help with early identification of the language access needs and also play a critical role in tracking the ability to meet language access needs across the state, consistent with the draft Language Access Plan.	**1b. Early identification of language access needs** CIAP agrees that early identification of language access needs is a priority, consistent with the Language Access Plan. CIAP believes that the broad availability of an optional request form will assist in early identification. Additionally, CIAP modified the form to allow it to be submitted at any time, not simply in advance of a particular hearing with a date scheduled. However CIAP does not believe the form should be modified to require its completion at the earliest stage in the proceeding because CIAP does not want to imply that a litigant cannot have an interpreter simply because they filed the form too late. The Implementation Task Force will be further addressing ways to accomplish early identification of language access needs.
			[1c] Even if the courts are not able to meet all of the need, it is important to quantify the need, and document where the courts are succeeding and where they are falling short, in order to secure and direct the necessary resources to expand language access around the state. Finally, in response to your request for comments on specific questions, we submit the following:	**1c. Response and tracking** CIAP agrees that documenting language assistance need is important. The modifications to the Rule include the requirement for a response and data tracking, consistent with The Language Access Plan.

	Commentator	Position	Comment	Committee Response
			Would parties benefit from having any additional instructions included on the model form? **[1d]** We believe that the instructions could be written so that they are easier to understand: • The language in paragraph 2 on the back side of the form is difficult to understand, and the priorities may be applied differently from county to county. We suggest less detailed information, such as the following: *"Courts are not always able to provide or pay for an interpreter in every language or in every civil case. If a court cannot provide an interpreter to everyone, the Legislature has set priorities for which types of cases will be provided interpreters first. Contact your local court to find out the case types in which they provide interpreters."* • The language in paragraph 3 also could be shortened to say: *"In some cases, preference will be given to parties who have qualified for a fee waiver. If you do not already have a fee waiver, you should ask for a Request to Waive Court Fees (Civil Actions) (form FW-001), and look at the form to see if you might qualify for a fee waiver. Be sure to fill out item 7 of this form regarding fee waivers."*	**1d. Plain language, simplified structure and tone** CIAP agrees that certain modifications were needed to further enhance access and reduce barriers for Limited English Proficient (LEP) litigants. The committee's modifications include simplified language and structure in the form and instructions, including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests.

	Commentator	Position	Comment	Committee Response
			• In paragraph 4, delete "your case falls within one of the categories of cases listed in paragraphs 2 or 3 above, and". • Paragraph 5 as written appears to invite parties to bring friends and family to act as interpreters. Consistent with the draft Language Access Plan, the goal is to use friends and family as a last resort, and only when they meet the requirements for provisional qualification. Accordingly, we suggest that paragraph 5 be modified, as follows: *"If the court is unable to provide an interpreter, the court may have a list of interpreters in your area who you could hire. You may bring a qualified person, who must be an adult, to act as an interpreter at the proceeding. It must be someone who can understand, speak, and read both your language and English. The court will make sure that person is qualified to interpret for you or the witness before the proceeding begins and will require the person to take an oath, swearing to interpret as completely and accurately as possible. If you bring your own interpreter and he or she is not on the State's master list of interpreters, you should give him or her a copy of the form Foreign Language Interpreter's Duties – Civil and Small Claims (form INT-200), which is available on the California Courts website at www.courts.ca.gov/documents /int200.pdf.*	

	Commentator	Position	Comment	Committee Response
			Would the council's adoption of the Request for Court Interpreter (Civil Actions) form as a statewide mandatory form be a better alternative at this time than its recommending a model local form?	
			[1e] It is our view that this form should be mandatory, and not just a model form. We have concerns that different counties will develop different forms to be filed at different points in the litigation. This may cause confusion and/or inadvertently limit language access.	**1e. Optional form** CIAP does not believe that the request for an interpreter form should be mandatory because it would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. A mandatory form means that the litigant may not use any other method to request an interpreter and the court must only accept this method. Instead, CIAP recommends that the request form ultimately become optional. **Interim adoption as a model form** CIAP recommends an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. Optional means the courts must accept the request form but the litigant will not be required to use it.
			[1f] Additionally, while we support the recommendation that "translations (be) in the five major languages used in California", we	**1f.** CIAP agrees that the language in the Rule related to the "five major languages used in California" needed to be modified to be consistent

	Commentator	Position	Comment	Committee Response
			recommend that wherever possible courts follow the recommendation in the Strategic Plan for Language Access and provide translation in "the top five languages spoken in that court's county, and, if applicable, in every other language spoken by 5 percent or more of the county's population." (Recommendation 35) The California Commission on Access to Justice appreciates the opportunity to provide these comments.	with the LAP and the Rule was modified accordingly.
2.	California Federation of Interpreters By: Mary Lou Aranguren, Legislative Chair	AM; N	These comments are submitted on behalf of the California Federation of Interpreters. We represent more than 800 staff interpreters working in the trial courts in Regions 1, 2, 3 and 4. As a professional association we also have members who provide freelance services in the courts and private sector, and we provide education and professional development activities for interpreters and other stakeholders who need language access services. We have commented extensively in the process to develop the Strategic Plan for Language Access (LAP) approved yesterday by the Judicial Council of California. We also join in the comments being submitted on this item by Joann Lee on behalf of a coalition of legal services and community organizations. We thank you for the opportunity to comment on the proposed rule and form, and welcome	

	Commentator	Position	Comment	Committee Response
			any questions or further discussions that may help clarify our perspective. These comments are informed by our years of experience working with Limited-English proficient court users and practical knowledge of how interpreter services are coordinated and deployed on the ground in the thousands of cases that our members currently cover on daily basis. We would note that while expansion is very much needed and many more cases will be covered based on the statutory changes underway, many civil cases are already being covered by our members on a day-to-day basis. One of our biggest concerns is that the implementation process and new rules and procedures not have the unintended consequence of reducing services that are already being provided ad hoc if the new rules and forms appear to limit available services or create new hurdles that LEP court users or court administrations, judges or line staff would misunderstand as creating limitations that are not intended by the LAP and are not currently in place in many courts. We understand that the proposed form and rule of court are designed for an interim period when courts are phasing in these services and there is some uncertainty about whether courts will be able to fill all requests and whether resources will be available. **[2a]** Our perspective is that	**2 a Plain language, simplified structure and**

	Commentator	Position	Comment	Committee Response
			both litigants and court staff must clearly understand from the forms and procedures that language access is a right and that courts will make every effort to provide interpreters in every case. A simple and straightforward approach to this will result in a more streamlined process and better understanding for all involved. The main purpose of the form should be to collect information from litigants as early as possible to identify and schedule needed interpreters, and to track requests granted and denied. We do not believe it is necessary for the form or instructions to emphasize the limitations or procedural concerns that litigants cannot control, are unlikely to understand and that will potentially discourage a request or result in continued ambiguity over whether or not they will be receive language access services, or whether or not they need to make arrangements to provide their own language access.	**tone (applies to comments 2 a, b, d, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters. **2 a Optional form (applies to 2 a and f)** CIAP does not believe that the request for an interpreter form should be mandatory. A mandatory form would limit in the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. Being an optional form will also allow anyone to make a request, as the commentator suggests. A mandatory form means that the litigant may not use any other method to request an interpreter and the court must only accept this method. Instead, CIAP recommends that the request form ultimately become optional. CIAP agrees that courts must retain flexibility in

	Commentator	Position	Comment	Committee Response
				applying a rule about requesting interpreters. CIAP believes that an optional form which allows the court to implement different ways of taking requests, but which requires the court to accept the form, is the best approach.
			[2b] The system for currently covered cases is that anyone may identify the need and request an interpreter- the litigant, the judge, an attorney or court staff serving the public. Likewise, anyone should be able to fill out and submit the form to request an interpreter for a civil case, whether that is two weeks in advance, the day before or the day of. The form and request process should not create an impediment to providing an interpreter. For example, we would not want to have a clerk in the courtroom or a judge continue a case because a request was not made when an interpreter may be available with a phone call to the coordinator's office or to the interpreter office within the building. The procedures currently in place in many courts statewide allow for ongoing efforts to locate and schedule an interpreter, up to and including the day of the proceeding. While every effort should be made to schedule interpreters in advance, it would not be appropriate for local courts to require certain time frames and deny services and access on that basis. The nature of interpreter scheduling is that it is often last minute, and an interpreter	**2 b. Plain language, simplified structure and tone (applies to comments 2 a, b, d, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters.

	Commentator	Position	Comment	Committee Response
			may be available the day of a proceeding even though one could not be located a week before the proceeding. We also find the tone and approach of the form to be overly tentative and cautious, even discouraging, and it is unnecessarily complicated. These factors are contrary to the specific recommendations of the LAP which states, "[b]y 2017, *and beginning immediately where resources permit*, qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and in all court-ordered, court-operated events."[1] (Emphasis added). **[2c]** Given the clear intention of the plan and the fact that the new statute and intended expansion are not discretionary and must be accomplished in a relatively short time frame, we urge you to focus on developing forms and procedures that build the framework necessary to reach the end goal of full access for all limited-English proficient (LEP) litigants.	**2c. Interim adoption as a model form** CIAP agreed that the Rule and form should stay focused on reaching the end goal of full language access, and both were modified to that end. CIAP recommends an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. Optional means the courts must accept the request form but the litigant will not be required to use it.

[1] California Judicial Branch, Strategic Plan for Language Access in the California Courts, Revised Draft, January 6, 2015 (LAP), at 36.

	Commentator	Position	Comment	Committee Response
			[2d] The instructions should state that the courts provide competent interpreters upon request and free of charge in all cases whenever possible. During the implementation period, a very simple disclaimer should state simply that the court will make every effort to provide an interpreter for the date(s) needed and that the availability of interpreters is not guaranteed, depending on factors such as advance notice of the need and case priorities established by law.	**2 d. Plain language, simplified structure and tone (applies to comments 2 a, b, d, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters.
			[2e] We do not believe that litigants should be instructed about the option of bringing their own interpreters. The very reason for the LAP is that it is burdensome for litigants and we believe this kind of instruction creates more confusion and lack of clear direction for courts, legal services providers and litigants.	**2 e. Plain language, simplified structure and tone (applies to comments 2 a, b, d, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters.

	Commentator	Position	Comment	Committee Response
			[2f] Rather than providing a model form for courts to consider and adopt, the Judicial should adopt a mandatory form and procedures as part of the rule. We do not believe that differences by court or region justify the inefficiencies and complexity of having each court develop its own approach. The rule of court and mandatory form should be simple and straightforward, and allow for local flexibility in its application. In other words, local courts will have to develop internal procedures for dealing with those circumstances where they cannot provide interpreters in a case or situations where they must prioritize cases, but the form and basic procedures for all courts should set forth the expectation that as soon as an interpreter need is known, the court will engage in efforts to provide an interpreter. This basic procedure can be the same for all courts and should be modeled after and consider incorporating existing statewide forms and procedures for appointing interpreters (see forms adopted pursuant to Rule of Court 2.893). This will provide consistency as contemplated by the LAP and has the benefit of being a familiar process to the courts that can be incorporated into the current protocols for scheduling and coordinating interpreters. We would note that other rules of court and forms on providing interpreters have been adopted as statewide forms and procedures	**2 f. Plain language, simplified structure and tone (applies to comments 2 a, b, d, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters. **2 f. Optional form (applies to both 2 a and f)** CIAP does not believe that the request for an interpreter form should be mandatory. A mandatory form would limit in the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. Being an optional form will also allow anyone to make a request, as the commentator suggests. A mandatory form means that the litigant may not use any other method to request an interpreter and the court must only accept this method. Instead, CIAP recommends that the request form ultimately become optional.

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			pursuant to statute and we think this is the most practical and effective approach. We would also note that the funding for interpreter services is managed on a reimbursement basis on a statewide level from a separate fund that is not part of the local court's budget. As such, it is unclear how local courts can even assess availability of funds in order to prioritize cases. Additionally, variability in the availability of interpreters does not necessarily justify having different forms and procedures in each court. Current forms, procedures and rules of court adopted by statute for appointment of interpreters in criminal, juvenile and dependency proceedings are uniform throughout the state and they address court efforts to find and appoint interpreters. Courts need and will appreciate this kind of guidance when it comes to expansion of interpreter services, and the Judicial Council and its advisory committees will be doing a great service to the courts by eliminating the need for each court to "figure it out" and develop its own forms and procedures. We would welcome further opportunities to engage in this process. Please contact me if I can provide further information or clarification.	CIAP agrees that courts must retain flexibility in applying a rule about requesting interpreters. CIAP believes that an optional form which allows the court to implement different ways of taking requests, but which requires the court to accept the form, is the best approach.
3.	Eviction Defense Collaborative San Francisco, CA By: Hilda Chan, Staff Attorney		Thank you for the opportunity to provide feedback on the Model Form for interpreter requests.	**Elimination of case types and fee waiver hearings** CIAP disagrees with including fee waivers among

	Commentator	Position	Comment	Committee Response
			The court would benefit from including additional items in the Model Form. In its current state, the form doesn't make it obvious that a person should also ask for an interpreter for a fee waiver hearing. Fee waiver isn't one of the classes under #6, "Types of Cases," for which a person can request an interpreter. Arguably it can be hand written in under #4, but given the frequency with which interpreters for fee waiver hearings would be requested, it would be helpful to include a box to check off under #6 to ensure it is requested. In addition, or alternatively, under #7, it may be helpful to include a fourth box that says "I have a pending fee waiver hearing on _____[date] and I need an interpreter for that hearing." It would also be helpful to include in the instructions (1) whether litigants are likely to be granted interpreters for fee waiver hearings and (2) whether a party can bring an informal interpreter if the Court is unable to provide one.	the list of case types; CIAP found that including the list of case types was confusing and may have created a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756.
4.	Joint Rules Subcommittee of Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	AM	**[4a]** *Model Request for Court Interpreter Form* The Joint Rules Subcommittee *strongly* recommends that the *Request for Court Interpreter* form be made available to the courts as a model local form, and not as a mandatory form. The procedures related to requests for	**4a Interim adoption as a model form** CIAP agrees that on an interim basis this form should be adopted as a model form, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. CIAP also agrees that the form should not

	Commentator	Position	Comment	Committee Response
			court interpreters in civil matters vary significantly across the state and courts need the flexibility to modify the form to meet their needs and practices. Even though there is an advisement at the top of the form stating that interpreters will not be available for all hearings or in all languages, providing this form to litigants when a court *knows* that no interpreter can be provided is confusing and may lead a litigant not to bring his or her own interpreter for a hearing. **[4b]** *Proposed Rule 2.895. Request for interpreters* The Joint Rules Subcommittee recommends that the second sentence of the proposed rule be stricken as shown below: Each court must have and publish procedures for parties to file and the court to process requests for interpreters. ~~Each court must publish notice of these procedures in the major languages used within the court's jurisdiction.~~ Reference to "major languages used within the court's jurisdiction" is ambiguous, and in some jurisdictions a wide variety of languages may be used without one or two languages being dominant. In this period of extreme fiscal constraints, courts, especially smaller courts, may not have the funds or staff resources to draft, translate and create signs in a variety of languages regarding the procedures.	be mandatory, however CIAP believes that after the interim period, the form should become optional, effective January 1, 2018. **4b.** CIAP agreed that the language about publishing in "major languages" was ambiguous and deleted that language. CIAP, however felt it was important to provide direction about the publication of procedures in multiple language consistent with the Language Access Plan which requires relevant notices be in English and "up to five other languages based on local community needs."

W15-03
Court Interpreters: Request for Interpreter
Adopt Cal. Rules of Court, rule 2.895; recommend model local court form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Responses to Request for Specific Comments 1. *Does the proposal appropriately address the stated purpose*? Yes, if the proposed rule is modified as suggested above and the form is distributed as a model local form and not as a mandatory form. 2. *Would courts benefit from having any additional items included on the model form?* No. 3. *Would parties benefit from having any additional instructions included on the model form?* No. *4. Would the council's adoption of the Request for Court Interpreter (Civil Actions) form as a statewide mandatory form be a better alternative at this time than its recommending a model local form?* No, the Joint Rules Subcommittee strongly recommends that the form be provided as a model local form. 5. *Would the proposal provide costs saving?* No.	

	Commentator	Position	Comment	Committee Response
			6. *What would the implementation requirements be for courts?* If the proposed rule amendments are accepted and the form is provided as a model form, then implementation requirements will not be significant. 7. *Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes, if the proposed rule is amended as suggested above, and if the form is not made mandatory. If the converse is the outcome, then the courts will need significantly more time to implement. 8. *How well would the proposal work in courts of different sizes?* The amendments suggested above will make it easier for courts of differing sizes to implement.	
5.	Legal Aid Foundation of Los Angeles By: Joann H. Lee, Directing Attorney		We write on behalf of the undersigned groups to provide public comments to the Judicial Council and the Civil and Small Claims Advisory Committee, as it considers Proposed California Rule of Court 2.895 and the model form, *Request for Court Interpreter (Civil Actions)* created pursuant to the proposed rule. This document continues the dialogue between California-based legal services and community	CIAP agrees with the commentator that significant changes were needed to the Rule and form in order to create consistency with the Language Access Plan.

	Commentator	Position	Comment	Committee Response
			organizations and the Judicial Council, and builds upon previous comments submitted by legal services and community organizations on April 9, 2014 and September 29, 2014. With the goal of the Strategic Plan for Language Access in the California Courts being full access for all limited-English proficient (LEP) litigants, we believe that it must be made clear that this Proposed Rule and form are part of an **interim process** as local courts expand their language services in varying phases. This form, in its current state, is unnecessarily complicated and incorporates concepts that should eventually be eliminated, such as prioritization of cases and the courts' limited ability to provide interpreters. As courts phase-in expansions of language services, the need for prioritization and limited services should be reduced, making such language in an interpreter request form unnecessary and confusing for litigants. Also as expansion occurs, the Implementation Committee of the Strategic Plan for Language Access in the California Courts must monitor the use of this form, local court policies, complaints that arise, and other data to determine a better and more enhanced process for courts to efficiently identify language needs at the inception of every case. Our comments below reflect our concerns regarding both the proposed California Rule of Court 2.895 and the proposed form. We believe	

	Commentator	Position	Comment	Committee Response
			they are inconsistent with the content and spirit of the Strategic Plan for Language Access in the California Courts, newly enacted California Evidence Code § 756 and Government Code § 68092.1, and obligations under other legal mandates, such as Title VI of the Civil Rights Act of 1964 and California Government Code § 11135. **<u>Comments on Proposed Rule 2.895</u>** **[5a]** Proposed Rule 2.895 requires each court to have published procedures for processing requests for interpreters. Proposed Rule 2.895 does not require any particular content of such procedures. It only requires that each court have a procedure. The Proposed Rule allows courts complete discretion when to provide and not provide interpreters as long as the court does so pursuant to a published procedure. Under the Proposed Rule, a court could have a policy of denying interpreters in all civil cases as long as that procedure is published. The Proposed Rule should not be implemented as written for three reasons. **[5b]** First, the Proposed Rule is inconsistent with the revised draft of the California Judicial Branch, Strategic Plan for Language Access in the California Courts, January 6, 2015 (LAP). Under the LAP, providing interpreters in civil cases is not discretionary. Although the LAP	**5a Sufficient Guidance and Consistency with the LAP (applies to 5a and b.)** CIAP does not believe that the combination of the Rule, as now proposed, and the modified form gives the courts complete discretion, but agrees that additional guidance was needed and modifications were made accordingly. Modifications to the Rule include the addition of references to the need for a response as well as requirements to track requests and responses. CIAP agrees that this Rule and form should be consistent with the *Strategic Plan for Language Access in the California Courts ("the Language Access Plan" or "LAP"* and all modifications were made with that in mind. **5b Sufficient Guidance and Consistency with the LAP (applies to 5a and b.)** CIAP does not believe that the combination of the Rule, as now proposed, and the modified form gives the courts complete discretion, but agrees that additional guidance was needed and

	Commentator	Position	Comment	Committee Response
			includes timeframes for implementation and phasing-in of recommendations, the LAP requires implementation of its recommendations by certain deadlines and that such implementation happen immediately whenever resources are available. The LAP states "[b]y 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and, by 2020, in all court-ordered, court-operated events."[2] The LAP continues "[r]egardless of which phase a recommendation falls under, every recommendation in this plan should be put in place as soon as the resources can be secured and the necessary actions are taken for implementation."[3] The completely discretionary nature of the Proposed Rule is therefore fundamentally inconsistent with the LAP. The LAP is the product of over a year of work by a committee and input by stakeholders throughout the state. The Proposed Rule must be changed to be consistent with the LAP and must require the development of local procedures for interpreters in all civil cases. **[5c]** Second, the Proposed Rule is inconsistent with Evidence Code § 756 and Government Code § 68092.1. Contrary to the Proposed Rule, these code sections are not	modifications were made accordingly. Modifications to the Rule include the addition of references to the need for a response as well as requirements to track requests and responses. CIAP agrees that this Rule and form should be consistent with the *Strategic Plan for Language Access in the California Courts ("the Language Access Plan" or "LAP"* and all modifications were made with that in mind. **5c. Case type listings and prioritization (applies to 5c, e and s.**) CIAP agrees Evidence Code 756 should guide courts as to priorities of where to provide interpreters in the early years where

[2] California Judicial Branch, Strategic Plan for Language Access in the California Courts, Revised Draft, January 6, 2015 (LAP), at 36.
[3] *Id.* at 18.

	Commentator	Position	Comment	Committee Response
			completely discretionary. Government Code § 68092.1 states that "[t] he Legislature finds and declares that it is imperative that courts provide interpreters to all parties who require one, and that both the legislative and judicial branches of government continue in their joint commitment to carry out this shared goal." Evidence Code § 756 requires that "[t]o the extent required by other state or federal laws" the Judicial Council reimburse courts for interpreters in every civil case, but if sufficient funds are not available, requires prioritization of interpreters in civil cases by case type.[4] If funds are not available in all priority cases, then priority must be given to fee waiver cases for certain case types.[5] Evidence Code § 756 does not allow courts complete discretion in whether to provide interpreters at all and does not allow courts to comply by simply publishing a policy. Evidence Code § 756 requires providing interpreters at least in the priority areas and in fee waiver cases as resources allow. The LAP reflects this understanding of Evidence Code § 756: "The plan therefore recommends a strategy for phasing in the expansion of spoken language interpreter services in all court matters consistent with new Evidence Code § 756, where existing resources prohibit immediate expansion to all cases."[6] The Proposed Rule	resources may be limited. CIAP agrees that understanding these priorities, tracking them and considering them is not the responsibility of the LEP requestor and including lists of case types on the form can be confusing and discourage language access. Instead, references are included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. The list of case types was eliminated.

[4] Cal. Evid. Code § 756(b).
[5] Cal. Evid. Code § 756(c)(1).
[6] LAP, at 16 – 17.

	Commentator	Position	Comment	Committee Response
			must reflect the priorities in Evidence Code § 756 and cannot give courts complete discretion in deciding whether or not to provide interpreters. **[5d]** Third, the Proposed Rule violates the intent and spirit of the LAP. The justification for Proposed Rule 2.895 is "courts have different preferences as to how long before a hearing an interpreter should be requested in order to facilitate scheduling of interpreters, and different time frames as to when the court will be able to tell a party whether the request can be fulfilled. Because of these differences and because the Judicial Council did not direct the committee to develop statewide rules regarding such procedures, at this time the advisory committee recommends only that each court develop its own procedures and make them available to the public."[7] This justification is fundamentally inconsistent with the LAP, which states it "is the intent of this Plan that all of its recommendations be applied consistently across all 58 trial courts."[8] With the LAP in mind, although flexibility in implementation is allowed, the Proposed Rule must require a consistent standard for interpreter access throughout California. **[5e]** We suggest the following language	**5d.** CIAP agrees that this Rule and form should be consistent with the *Strategic Plan for Language Access in the California Courts ("the Language Access Plan" or "LAP"* and all modifications were made with that in mind. The proposed Rule, as modified, provides consistent expectations about tracking, translation of procedures into other languages and about providing responses, in line with the Language Access Plan. **5e. Case type listings and prioritization (applies**

[7] Judicial Council of California, Invitation to Comment W15-03, Court Interpreters: Request for Interpreter, at 2.
[8] LAP, at 14.

	Commentator	Position	Comment	Committee Response
			(additions in red): ***Rule 2.895. Requests for interpreters*** *Each court must have and publish procedures for parties to file and the court to process requests for interpreters.* ***If insufficient funds exist to provide interpreters in all civil cases, such policies must incorporate the priorities for providing interpreters in civil cases in Evidence Code § 756 and must require providing interpreters in accordance with those priorities.*** *Each court must publish notice of these procedures in the major languages used within the court's jurisdiction.* **[5f]** ***This rule is to be interpreted to be consistent with California Judicial Branch, Strategic Plan for Language Access in the California Courts, January 6, 2015. In the event of any inconsistency between this rule or any court procedure published in accordance with this rule, and the California Judicial Branch, Strategic Plan for Language Access in the California Courts, January 6, 2015, the California Judicial Branch, Strategic Plan for Language Access in the California Courts, January 6, 2015, shall govern.*** In addition, the Executive Summary of the Proposed Rule should be amended to acknowledge the LAP and to state that the new rule is intended to be in compliance with the	**to 5c, e and s.**) CIAP agrees Evidence Code 756 should guide courts as to priorities of where to provide interpreters in the early years where resources may be limited. CIAP agrees that understanding these priorities, tracking them and considering them is not the responsibility of the LEP requestor and including lists of case types on the form can be confusing and discourage language access. Instead, references are included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. The list of case types was eliminated. **5f.** While CIAP agrees that consistency with the LAP is required, CIAP has modified the Rule and form to create the required consistency and do not agree to include interpretation preference language.

	Commentator	Position	Comment	Committee Response
			LAP, as well as Title VI and other applicable laws that guarantee meaningful language access for LEP persons. This is critical because the LAP should be the governing document for interpreter policy in California Courts, and the court rule cannot be read as superseding the LAP. **<u>Comments on Model Form: Request for Court Interpreter (Civil Actions)</u>** **A. Overall Tone** **[5g]** *The language conveying a negative and discouraging tone should be removed.* The instructions accompanying the model form convey an unnecessarily negative tone. Specifically, the instructions place too much emphasis on the fact that interpreters may not be available in every case. For example, section 2 of the instructions states, "Courts are not always able to provide or pay for an interpreter in every language or in every civil case." A few lines later, the text states: "Even in those [priority] cases, interpreters will not always be available for all hearings or in all languages." Similarly, section 3 begins with the statement, "Courts *may* be able to provide interpreters in *some* languages in *some* other civil cases" (emphasis added). Additionally, the Request for Interpreter Form itself begins with the statement, "IMPORTANT: Interpreters will not be available for all hearings or in all languages."	**5g. Tone and simplification (applies to 5g, h, j and r.)** CIAP agrees that modifications were needed to further enhance access, improve tone and reduce barriers for Limited English Proficient (LEP) litigants. Modifications to incorporate plain language, reduce confusion and eliminate warnings were made throughout the form.

	Commentator	Position	Comment	Committee Response
			Taken together, these statements will discourage LEP court users from taking the time to complete the form, as these statements impress upon the requester that the chances of receiving assistance are minimal at best. In turn, this will diminish the efficacy of the form, and may result in courts having an inaccurate or incomplete understanding of the need for language assistance at a particular location. We realize that meaningful language assistance in all civil cases cannot be accomplished instantaneously, and are cognizant of the current resource constraints. The staggered implementation structure found in the LAP and Evidence Code § 756 are a reflection of this reality. The LAP states that by 2017, "and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to LEP court users in all courtroom proceedings and, by 2020, in all court-ordered, court-operated events."[9] That said, the courts continue in the meantime to have obligations under Title VI to provide meaningful language access to LEP court users. The LAP states, "The provision of meaningful language access to all Californians who need it, and equal access to justice, are and should be considered a core court function."[10] Thus, the provision of meaningful language access is not	

[9] LAP, at 36.
[10] LAP, at 18.

	Commentator	Position	Comment	Committee Response
			only a goal for courts to strive for, but it is also a fundamental function of the courts. Accordingly, this belief should be reflected in the language included in both the model form as well as its accompanying instructions. *Therefore, we propose rewriting the instructions in a manner that conveys a strong commitment and understanding by the courts to providing full language coverage to all LEP litigants*. The language should encourage (rather than discourage) LEP individuals to request interpreters when needed. Thus, the language should give the sense that the courts are working towards full compliance with Title VI and LAP obligations, even if they currently cannot do so in all cases. For example, it is only necessary for the instructions to mention the limited availability of interpretation assistance one time. We propose that section 5 begin with the following: "While every effort will be made to provide interpretation assistance when needed, please be aware that interpreters may not be available for all hearings or in all languages. The State of California has a goal of providing interpreters for all litigants in all proceedings by 2017. If the court is unable to provide an interpreter . . . ." This should be the only reference to resource constraints on the form and instructional page, and the remaining language regarding these constraints should be removed.	**5h. Tone and simplification (applies to 5g, h, j**

	Commentator	Position	Comment	Committee Response
			[5h] The form also needs to be dramatically simplified so that it can be understood by as many litigants as possible—especially those with lower literacy skills. This is written at a graduate reading level—the court should aim for a 3rd - 5th grade reading level. We recommend the use of online tools to simplify the form.* *One online tool can be found at: http://www.online-utility.org/english/readability_test_and_improve.jsp **B. The Form Should Not be a Requirement to Receive Language Services** **[5i]** The use of this form should facilitate requests for interpreters, but litigants who fail to file the form should not be denied language services if interpreters can otherwise be provided. For example, if a litigant appears for her/his hearing without having filed this interpreter request form, all efforts should be made by court staff to facilitate the provision of language services. If there are interpreters already assigned to other matters or one can be easily requested to the department, court staff should do so. **C. Specific Comments to Page 1** **[5j]** The following language that precedes **Item (1)** should be removed: "IMPORTANT: Interpreters will not be available for all hearings or in all languages. See instructions on the back of this form for more information about	**and r.)** CIAP agrees that modifications were needed to further enhance access, improve tone and reduce barriers for Limited English Proficient (LEP) litigants. Modifications to incorporate plain language, reduce confusion and eliminate warnings were made throughout the form. **5i. Form should not be a requirement** CIAP agrees that the form should not be a requirement to receive language services which is why CIAP is proposing an optional form. As optional form provides a uniform way in which interpreters may be requested across the state, without limiting the ability of LEP court users to make such requests in other ways, or limiting the courts ability to establish other primary alternatives for accepting requests. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. **5j. Tone and simplification (applies to 5g, h, j and r.)** CIAP agrees that modifications were needed to further enhance access, improve tone and reduce barriers for Limited English Proficient (LEP) litigants. Modifications to incorporate plain

	Commentator	Position	Comment	Committee Response
			requesting an interpreter in a civil action." As described in more detail above, we feel that this disclaimer language unnecessarily discourages litigants from completing this form. **[5k]** On **Item (2)**, the word "describe" should be removed. It is unclear what the witness description should include. Also, litigants who request interpreters for themselves require them for the duration of their entire legal case and at all proceedings. Courts should use this form to capture the litigant's language needs, ideally at the inception of the case. The litigant should only be required to file this form one time, and courts should adapt their internal procedures so that the submission of this form alerts court staff that an interpreter should be requested before each hearing or proceeding without further involvement of the litigant. **[5l]** The information requested in **Items (4) and (5)** is only necessary as it relates to an interpreter request for a non-party witness. Accordingly, **Items (4) and (5)** should be removed, and this section should be revised to include the following after "witness:" a. If for a **witness**, please complete the items below: i. The court hearing or proceeding is scheduled for: □ No date is set yet. □ Date: _____ Time: _____ Department: ____	language, reduce confusion and eliminate warnings were made throughout the form. **5k. One request for an LEP party; separate requests for witnesses (applies to 5k and l)** CIAP agrees that litigants who request interpreters for themselves require them for the duration of their entire legal case, whenever they will be in court and litigants should only be required to file this form once for themselves, while the courts must determine how to continue to provide language access services. CIAP believes that the litigant should make separate requests for witnesses. CIAP agrees that modifications were needed to clarify the request as related to the LEP party and any LEP witness they may have. The form has been modified accordingly. **5l. One request for an LEP party; separate requests for witnesses (applies to 5k and l)** CIAP agrees that litigants who request interpreters for themselves require them for the duration of their entire legal case, whenever they will be in court and litigants should only be required to file this form once for themselves, while the courts must determine how to continue to provide language access services. CIAP believes that the litigant should make separate requests for witnesses. CIAP agrees that modifications were needed to clarify the request as related to the LEP party and any LEP witness they may have. The form has been modified accordingly.

W15-03

Court Interpreters: Request for Interpreter

Adopt Cal. Rules of Court, rule 2.895; recommend model local court form

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

	Commentator	Position	Comment	Committee Response
			[5m] Item (3) should be revised to read: "The language(s) in which I need an interpreter are (check all)." Also, this sentence should be repeated in different languages, followed by checkboxes with the different languages listed. This part should include a separate request for language related requests. **[5n]** Further, it is important to ensure that individuals requiring American Sign Language interpreters, other communication-related accommodations, auxiliary aids, or similar services are directed to the appropriate form to receive those services, as required under the Americans with Disabilities Act. This form should not be used for interpreters for individuals with disabilities, as those interpreters are covered separately and are mandatory, and the form should make that clear. There should also be an explanation directing those requesting disability accommodations to the proper procedure under California Rule of Court 1.100. **[5o]** Here is an example of our suggested changes to Item (3): The language(s) for which I need an interpreter are (check all): Los idiomas para que necesito un intérprete son	**5m. Including multiple languages (applies to 5m and o)** CIAP agrees and modified the official form to include key language about requesting an interpreter in the State's top 10 languages. **5n. ADA Requests** A reference to the MC-410 for ADA requests was included in the form. **5o. Including multiple languages (applies to 5m and o)** CIAP agrees and modified the official form to include key language about requesting an interpreter in the State's top 10 languages.

	Commentator	Position	Comment	Committee Response
			(marque todos): Các ngôn ngữ mà tôi cần thông dịch (hãy đánh dấu): ภาษาที่ฉันต้องการล่ามคือ (เช็คได้ทั้งหมด): 내가 필요로하는 통역 언어(들)은 (모두 선택) 입니다 : 我需要以下語言的翻譯人員(請選擇所有適用的語言): □ **粵語** (Cantonese) **[LIST IN MORE LANGUAGES HERE]** □ Other _____ □ Other Language Related Requests _____ [If you need a disability accommodation, please use Form MC-410 and/or follow your local court's process under California Rule of Court 1.100] As stated above, **items (4) and (5)** should be removed entirely. **[5p] Item (6)** should be removed entirely. The list of case types is confusing even to seasoned attorneys. For example, distinguishing between a "Domestic violence case" and a "Family law case in which there is a domestic violence claim" can result in confusion and frustration	**5p**. CIAP agrees that the list of case types could be confusing for LEP court users and eliminated that list.

	Commentator	Position	Comment	Committee Response
			among those using the form. We believe that pro per litigants would not meaningfully distinguish between the different options. Court staff should be able to determine the type of proceeding from the case file and pleadings. **[5q]** The form itself should be changed to include a section to allow the court to grant or deny the request, similar to these examples: - Request for Accommodations by Persons with Disabilities and Response http://www.courts.ca.gov/documents/mc410.pdf (incorporated into the form) or - Order on Fee Waiver: http://www.courts.ca.gov/documents/fw003.pdf (as a separate form). ***Action should be prompt and a hearing should be held on all denials.*** The decision to grant or deny the request should be provided to the litigant within 10 days of filing. If there is no decision within 10 days, the request should be deemed granted. Any denial should include a right to a hearing within 10 days and explanation of the complaint process. This should be similar to the fee waiver process, with a form to request such a hearing (http:// www.courts.ca.gov/documents/fw006.pdf). For your convenience, we have attached a mock-up of the fillable portion of the form, incorporating the changes recommended above.	**5 q. Response** CIAP does not believe that a response should be incorporated in the form. A form with an embedded response creates processing issues about which copy of the form becomes official and how to handle a form which must be completed by the court and then returned to a court user who is no longer present. However CIAP agrees that a response is important and modified the Rule to include the requirement for a response. By incorporating this in the Rule, courts will have sufficient flexibility develop response procedures appropriate for their court.

	Commentator	Position	Comment	Committee Response
			D. Specific Comments to Page 2 (Instructional Page) **[5r]** In **Item (2)** of the instructional page, the first sentence "Courts are not able to provide or pay for an interpreter in every language or in every civil case", should be removed. Similarly, the last sentence, "Even in those cases, interpreters will not always be available in all hearings or in all languages", should be removed. Also in **Item (3)**, the sentence, "Courts may be able to provide interpreters in some languages in some other civil cases", should be removed. As explained above, this language is unnecessary and discouraging to litigants. **[5s]** The list of proceedings in Item (2) and Item (3) is basically a reiteration of Evidence Code § 756 and does not provide a meaningful explanation to an individual litigant. Local courts should be required to amend these sections according to their actual phases of expansion. For example, some courts may have decided that they can comply with providing interpreters in proceedings listed in items "a" through "g". They should list those proceedings together and state they are providing interpreters in those proceedings, according to the legislature under Item (2). For Item (3), they	**5r. Tone and simplification (applies to 5g, h, j and r.)** CIAP agrees that modifications were needed to further enhance access, improve tone and reduce barriers for Limited English Proficient (LEP) litigants. Modifications to incorporate plain language, reduce confusion and eliminate warnings were made throughout the form. **5r.** CIAP agrees that the instructions needed simplification and modification and made changes consistent with the comment. **5s. Case type listings and prioritization (applies to 5c, e and s.)** CIAP agrees Evidence Code 756 should guide courts as to priorities of where to provide interpreters in the early years where resources may be limited. CIAP agrees that understanding these priorities, tracking them and considering them is not the responsibility of the LEP requestor and including lists of case types on the form can be confusing and discourage language access. Instead, references are included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. The list of case types was eliminated.

	Commentator	Position	Comment	Committee Response
			can list items "h" through "j" as those with the explanations that preference will be given to those with fee waivers. **[5t] Item (4)** of the instructional page, the text reading: "If your case falls within one of the categories of cases listed in paragraphs 2 or 3 above" should be replaced with "If your case is any type of civil or small claims action." While the case types in paragraphs 2 and 3 include a catch-all category of "all other civil actions, including small claims cases" (item j), referring form users to a list of specific case types may create unnecessary complication or confusion and discourage them from using the form if their case is not one of those that is specifically named. **[5u]** Further, under Item (4), all local courts should be required to list their actual processes and local rules. This section should include an explanation of where the request can be filed, a timeline for when a decision will be made, the right to request a hearing, a point of contact to field questions, and the method for filing a complaint with the court. This will ensure uniformity across the State and create proper accountability for local courts that may be reluctant or unwilling to comply. As part of this process and also to comply with the LAP, local courts should be instructed to create all of these procedures to be articulated and placed on the instructional page. **[5v]** A complaint procedure,	**5t.** CIAP agrees that including the various categories for prioritization in the instructions created confusion, and they were removed, while a reference to Evidence Code 756 was instead included in the Rule. **5u.** CIAP does not believe that including local rules and details as part of the form is appropriate. A statewide form doesn't allow the flexibility to include each court's local rules and processes. **5v.** A complaint procedure is required under the Language Access plan and will be addressed by

	Commentator	Position	Comment	Committee Response
			even if interim in nature, will be especially important and critical to data collection and monitoring efforts, as implementation of the LAP moves forward. It will provide invaluable guidance and insight into creating a practical and efficient process for LEP litigants. **[5w] Item (5)** should begin with the following: "While every effort will be made to provide interpretation assistance when needed, please be aware that interpreters may not be available for all hearings or in all languages. The State of California has a goal of providing interpreters for all litigants in all proceedings by 2017. If the court is unable to provide an interpreter . . . ." Further, Item (5) should include additional changes that ensure LEP individuals who are not provided an interpreter by the court still receive quality, accurate, and unbiased interpretation. This should include language prohibiting the use of children as interpreters. For example, the language should affirmatively prohibit the use of minors as interpreters. The language should state, "You may ask a friend or relative to act as an interpreter, but that individual must be an adult. Children are not permitted to act as interpreters in court-operated or court-ordered activities under any circumstances." The LAP includes a recommendation that minors "will not be appointed to interpret in courtroom proceedings	the LAP Implementation Task Force. **5w. (applies to 5w and x.)** CIAP agrees that the original Item 5 needed modification, and it has mostly been eliminated, including in its references to the use of family and friends as interpreters. As such, the need to explain the issues of using family and friends to interpreter in court is no longer relevant and so CIAP has not incorporated those changes.

	Commentator	Position	Comment	Committee Response
			nor court-ordered and court-operated activities."[11] Thus, the instructional page should include a stronger statement that does not include permissive language on this issue (*i.e.*, "it should be an adult"). Instead, the prohibition against use of minors as interpreters should be made unequivocally clear. **[5x]** The instructional page should also consider adding additional language that explains some of the potential issues associated with having a friend or relative act as an interpreter. The LAP includes the following observations: "It should be noted here that, in addition to the absence of quality control, there are other factors that should preclude the use of friends and family as interpreters in court proceedings: they are not neutral individuals, and so, they have an inherent conflict or bias; they may have a personal interest in misinterpreting what is being said; and, if minors, they may suffer emotionally from being put in 'the middle' of conflict between or on behalf of their parents."[12] A similar statement should be included on the instructional page, such as, "You should consider the fact that a friend or family member is not a neutral party, and may know the other party in this matter. This can impact their ability to interpret in a way that is unbiased." The language here also informs the LEP individual	**5x. (applies to 5w and x.)** CIAP agrees that the original Item 5 needed modification, and it has mostly been eliminated, including in its references to the use of family and friends as interpreters. As such, the need to explain the issues of using family and friends to interpreter in court is no longer relevant and so CIAP has not incorporated those changes.

[11] LAP, at 53.
[12] LAP, at 52.

	Commentator	Position	Comment	Committee Response
			that the court will make a determination of whether the individual is qualified to interpret. However, as the LAP articulates, "Overall, relying on unqualified interpreters can result in serious and potentially dangerous consequences, such as necessary protective orders not being issued."[13] **[5y]** Thus, to the extent that non-qualified interpreters are permitted during implementation of these language assistance policies, courts themselves must be trained how to ensure that non-trained interpreters can assume these important duties, or that any underlying biases would not interfere with neutral interpretation. Training judges on this issue is crucial to ensure that interpretation by untrained individuals still retains the aims of providing interpretation that is unbiased and accurate. **<u>Importance of Evaluation and Next Steps</u>** **[5z]** As mentioned above, we believe it is imperative that this form be viewed as an interim measure as the LAP is implemented. It should be an important tool for the courts and the LAP Implementation Committee to collect data, receive feedback on the process, and thoughtfully consider the best method of capturing language needs going forward to provide appropriate and quality language services. In evaluating the use of this form, the	**5y.** Instructions related to provisional qualification of interpreters is beyond the scope of this Rule and form related to requests for interpreters in civil actions **5z. Interim adoption as a model form** CIAP agrees that the Rule and form are important tools, especially during the early years of full expansion of interpreters into civil cases. CIAP believes that it should stay focused on reaching the end goal of full language access, and so has modified both the Rule and form to that end. By recommending an interim adoption of the forms as model, courts who are beginning to create their related processes and publish the relevant notices will have time to fully consider

[13] LAP, at 38.

	Commentator	Position	Comment	Committee Response
			Implementation Committee and Judicial Council should also consider simpler, less formal alternatives, such as the form used by the Los Angeles Superior Court (LASC) after their May 2014 expansion. As indicated above, the current draft is unnecessarily complicated and will be difficult for many litigants to use. LASC's form, though not perfect, offers a different model of capturing interpreter requests. A simpler form would also allow the court to include many more languages within the same document. The form itself could even be as simple as: "I need an interpreter who speaks (insert language)." Other concepts to be explored in accordance with the case management capacities of the local courts include developing methods to properly code and identify the language needs within the case or stamp the language needed on all pleadings. We understand that this will be a nuanced and layered process that will develop over time, and the courts must invest the appropriate resources and evaluation necessary to find the most efficient process. Thank you very much for your time and consideration in reviewing our comments. We appreciate the opportunity to contribute to this process. We look forward to working collaboratively with you to make the LAP a meaningful reality in California and to provide access to justice for all Californians. If you have any questions, please feel free to contact	what will work in their court, develop best practices while ensuring flexibility for the litigants. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional which will mean that courts will be required to accept the form (along with other methods the court may put in place), but litigants will be allowed to make requests in other ways if they wish..

	Commentator	Position	Comment	Committee Response
			Joann Lee at jlee@lafla.org or (323) 801-7976, or any of the undersigned organizations.	
6.	Orange County Bar Association By: Ashleigh E. Aitken, President	AM	The following suggestions are made relative to the form proposed: 1. **[6a]**We believe the form should be approved as a statewide, mandatory form rather than a model local form because the form can then be available on a uniform basis on the Court website, ensuring consistent format of the requests, and facilitating possible translation of the form or instructions, which we suggest. 2. **[6b]**Consideration should be given to editing the introductory language so as to indicate: "*IMPORTANT: Interpreters will not be made available by the court for all hearings or in all languages*…." 3. **[6c]** Box 6 (Type of Case) and the Instructions should include reference to Civil Harassment claims in order to reference all types of cases identified in *Evidence Code* §756(b)(1).	**6a. Optional form** CIAP does not believe that the request for an interpreter form should be mandatory because it would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. CIAP recommends an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. **6b. Modifications** CIAP agrees that certain modifications were needed to further enhance access and reduce barriers for Limited English Proficient (LEP) litigants and referenced language was deleted. **6 c. Elimination of case types (applies to 6 c and d.)** CIAP decided not to include a list of case types because it could be confusing and create a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756.

	Commentator	Position	Comment	Committee Response
			4. **[6d]** At Box 6 and the corresponding Instructions, consideration should be given to ordering the specified types of cases to track the priority stated in *Evidence Code* §756(b)(1) (e.g., in the Instructions, Unlawful detainer or eviction cases are grouped with what are otherwise "first priority" cases but are not referenced in (b)(1) but in (b)(2)). 5. **[6e]** Spelling of "dependant" versus "dependent" at what was proposed as section "h" of part "6".	**6 d. Elimination of case types (applies to 6 c and d.)** CIAP decided not to include a list of case types because it could be confusing and create a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. **6e.** The referenced spelling error was deleted in its entirety.
7.	Standing Committee on the Delivery of Legal Services San Francisco By: Maria Livingston, Chair	AM	<u>General Comments</u> SCDLS supports removing language barriers and improving language access in all court proceedings and other points of contact with the courts for all litigants, but especially for those who are low- and moderate-income Limited English Proficient (LEP). This proposal, to adopt rule 2.895 and recommend a model local court form to request a court interpreter in civil actions, is a critical step in ensuring meaning[ful] access to the courts and implementing Goal II of the Strategic Plan for Language Access in the California Courts, to provide language access services in all judicial proceedings. **[7a]** We have some overall concerns with the proposed model form and accompanying	**7a. Plain language, simplified structure and tone (applies to 7a, c, e and f.)**

	Commentator	Position	Comment	Committee Response
			instructions in that an LEP litigant may not understand how to fill it out in the first place even if translated. There are too many questions that ask the LEP litigant to describe and to actually write something down when the assumption is that the litigant needs an interpreter. In addition, the instructions as set forth indicate that an interpreter may not be provided even though the litigant may be entitled to one (e.g., domestic violence cases). The resulting unintended consequence is that the litigant may be too intimidated or frustrated to request an interpreter at all. The instructions page should be simplified so that it is more user-friendly for LEP litigants. Specific Comments • *Does the proposal appropriately address the stated purpose?* Partially. **[7b]** Having either a mandatory statewide form or a model template would make it easier for litigants to understand the process for requesting an interpreter.	CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters. **7b. An optional form (applies to 7b, h and i.)** CIAP agrees that the request for an interpreter form should ultimately be either mandatory or optional and has chosen to go with an optional form. This will be after an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance,

	Commentator	Position	Comment	Committee Response
				which will inadvertently limit language access to justice. As an optional statewide form the commentator's concerns about availability in multiple languages and accessibility will be addressed. Ultimately making the form optional will assure that courts who have already developed effective processes will not be precluded from continuing those processes, so long as they also accept this newly developed form.
			[7c] The language on priorities attempts to make it clear that certain litigants in certain cases may have priority over others. However, the language is confusing and should state directly that the goal is to provide interpreters in all cases, but due to limited funding, some cases may have priorities over others. Litigants may need to know quickly whether they will be granted an interpreter at no cost and may be waiting to learn the status of the request when they should be seeking an interpreter at low-cost. Because of that, it must be clear to litigants early on when they will learn whether they have been provided an interpreter.	**7c. Plain language, simplified structure and tone (applies to 7a, c, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters.
			[7d] We recommend having a form with the request and response on the same page, similar	**7d. Response**

	Commentator	Position	Comment	Committee Response
			to Judicial Council form MC-410 (Request for Accommodations by Persons with Disabilities and Response). The court's response should make it clear whether 1) an interpreter will be provided at no cost, 2) an interpreter will be provided at cost (allowing the litigant to opt-out, if appropriate and bring his/her own interpreter), or 3) no interpreter will be provided, and the litigant should bring a family member, friend, or seek other resources. The court should also make available in the self-help centers potential resources for court-certified interpreters in the event litigants have no appropriate family members or friends to interpret. • *Would courts benefit from having any additional items included on the model form?* **[7e]** No. However, the questions presented on the form may not be clear to LEP readers and they may not be answered correctly. Please see proposed modifications below. • *Would parties benefit from having any additional instructions included on the model form?*	CIAP does not believe that a response should be incorporated in the form. A form with an embedded response creates processing issues about which copy of the form becomes official and how to handle a form which must be completed by the court and then returned to a court user who is no longer present. However CIAP agrees that a response is important and modified the Rule to include the requirement for a response. **7e. Plain language, simplified structure and tone (applies to 7a, c, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references

	Commentator	Position	Comment	Committee Response
				to litigants bringing their own interpreters.
			[7f] Instructions included in the model form will be very intimidating for LEP populations in need of an interpreter. It is not likely that they will be read unless the language is easier to understand. The words "witness" and "fee waiver" should be defined and a form number for the fee waiver provided.	**7f. Plain language, simplified structure and tone (applies to 7a, c, e and f.)** CIAP agrees that certain modifications were needed. The committee's modifications include simplified language and structure including eliminating the case type listing, references to fee waivers, prioritizations and suggestions about bringing friends to court as interpreters. The committee agreed that providing too many details may set the wrong tone or confuse LEP litigants and could discourage interpreter requests. As a result, CIAP amended the form to eliminate language that could serve to discourage a request, made clear that interpreters will be provided at no cost whenever possible and eliminated references to litigants bringing their own interpreters.
			[7g] Parties will also benefit from having a list of community resources in counties where there may be volunteer interpreters available. The instructions also should clarify if a new form should be completed for each hearing in a case, and whether a new form is required if a hearing date is continued. • *Would the council's adoption of the Request for Court Interpreter (Civil Actions) form as a statewide mandatory form be a better alternative at this time than its recommending a model local form?*	**7g.** CIAP does not believe that the form should include a list of community resources. This kind of assistance would be very localized and thus not appropriate for a statewide form. CIAP believes this would be more appropriate as an informational handout, than something on the form which the LEP litigants submits to the court.

	Commentator	Position	Comment	Committee Response
			[7h] The proposed model form may have unintended consequences if it is published as a "model" form rather than a "mandatory" or "optional" form. SCDLS would support a form that is available in multiple languages so it is accessible to its intended audience. As a model form, with presumably the ability to edit as a template model, the form itself may not be made accessible to many LEP litigants who must file in courts that have not adopted such a form or, in courts that have edited a model template, available translated versions from the Judicial Council may not be an exact match. Because the form is only requesting an interpreter, there should not be an extensive need to reformulate the questions on this form. As a mandatory form, the form may be widely available in multiple languages as the Judicial Council will translate it into at least five languages. One possible unintended consequence of making it a required form is that local forms that are concise and have already been translated (and work effectively in those courts) may no longer be accepted. **[7i]** We would propose that the Judicial Council consider implementing the form as an optional form, recognizing the implementation of the forthcoming statewide Language Access Plan may mean that a future form would be mandatory. If the form were an optional form, it would be made more widely available through	**7h. An optional form (applies to 7b, h and i.)** CIAP agrees that the request for an interpreter form should ultimately be either mandatory or optional and has chosen to go with an optional form. This will be after an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. As an optional statewide form the commentator's concerns about availability in multiple languages and accessibility will be addressed. Ultimately making the form optional will assure that courts who have already developed effective processes will not be precluded from continuing those processes, so long as they also accept this newly developed form. **7i. An optional form (applies to 7b, h and i.)** CIAP agrees that the request for an interpreter form should ultimately be either mandatory or optional and has chosen to go with an optional form. This will be after an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes

	Commentator	Position	Comment	Committee Response
			the Judicial Council, translated into multiple languages, and also may be adopted by local courts. Community-based nonprofits would be able to translate the form and instructions into many other languages and help litigants understand the process to request an interpreter. If the Judicial Council adopts this form as an optional form, it must be clear to all courts that it is mandatory that they have some form to request an interpreter, and if the courts do not have an adequate form already, the optional form is the preferred form. The Judicial Council should also require local courts to accept the optional form, in addition to a preferred local form, so that litigants are not restricted to one request form, especially if they cannot find the local form online. In line with these comments, the proposed Rule of Court 2.895 should be revised **[7j]** to require local courts to accept the Judicial Council optional form and translations of these sample forms. **[7k]** In addition to publishing the rules, local courts should also notify LEP litigants of the availability of translators through strategic signage throughout courthouses.	and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. As an optional statewide form the commentator's concerns about availability in multiple languages and accessibility will be addressed. Ultimately making the form optional will assure that courts who have already developed effective processes will not be precluded from continuing those processes, so long as they also accept this newly developed form. **7j. Translations and Multiple Languages** CIAP does not believe that the Rule should be modified to require acceptance of translated forms. However, CIAP has modified the official form to include key language about requesting an interpreter in the State's top 10 languages. **7k. Signage** CIAP agrees that signage is important for establishing language accessibility but signage is beyond the scope of this rule and form. The Implementation Task Force is further addressing ways to use signage to increase language access

	Commentator	Position	Comment	Committee Response
				consistent with the Language Access Plan.
			Proposed Modifications to the Model Form	
			[7l] Page 1, Request for Court Interpreter (Civil Actions) #2: Remove query to "describe" in the witness category. Also define what "witness" means in the instructions. Any definition for the term "witness" used should also be simplified yet accurate (i.e., "a person who speaks in court under oath").	**7l. LEP party/ witness request language** CIAP agrees that modifications were needed to clarify the request as related to the LEP party and any LEP witness they may have. The form has been modified accordingly.
			[7m] #3: Reword the question to ask what primary and secondary languages spoken are. The way that the question is written is confusing and ambiguous. (i.e., "I need an interpreter for a) Spanish, b) Mandarin, c) Cantonese, d) Tagalog, e) other: _____)	**7m.** CIAP agrees this language was confusing and it has been eliminated.
			[7n] #5: Include an option for a case that is continued or the litigant/witness may need an interpreter for future dates as well. Otherwise, it is unclear whether the litigant would need to file an additional form.	**7n. One request for an LEP party; separate requests for witnesses** CIAP agrees that clarification was needed around whether or not a request was for a specific date or not. Litigants who request interpreters for themselves require them for the duration of their entire legal case, whenever they will be in court and litigants should only be required to file this form once for themselves, while the courts must determine how to continue to provide language access services. CIAP believes that the litigant should make separate requests for witnesses. The language has been modified, and the form

	Commentator	Position	Comment	Committee Response
				restructured, accordingly.
			[7o] #6: Remove this question as the litigant may not be aware of the type of case. Since the case number is being submitted the court will know what type of case it is. The terms used for case types are too complicated for LEP litigants. For example, the litigant may not know what the terms "domestic violence" or "conservator" means.	**7 o. Elimination of case types (applies to 7 o and p)** CIAP agrees that including the list of case types was confusing and may have created a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. As such, CIAP disagrees with including Fee Waivers claims among the list of case types, since the list was removed in its entirety.
			[7p] #7: Fee waiver status is not applicable for all cases and leads the litigant to believe that a fee waiver is required. For example, a fee waiver is not required for Domestic Violence or Elder Abuse cases. An additional field that states whether the interpreter will be granted or denied would be very helpful. This field should include the timeline that the litigant should wait before contacting the court or making alternate arrangements for an interpreter. See form MC-410 as an example of how a request to the court for an accommodation can include a response on the same form. We would support a simple form similar to the MC-410.	**7 p. Elimination of case types (applies to 7 o and p)** CIAP agrees that including the list of case types was confusing and may have created a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756. As such, CIAP disagrees with including Fee Waivers claims among the list of case types, since the list was removed in its entirety.
			Page 2, Instructions **[7q]** #5: Although it may be permitted for a	**7q.** This language was eliminated in its entirety.

	Commentator	Position	Comment	Committee Response
			litigant to ask a friend or family member to interpret for them, there should be more language to stress that minors are not appropriate interpreters in any case.	
8.	The State Bar of California's Committee on Administration 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 generally supports the adoption of the proposed form, subject to the comments below. **[8a]** First, CAJ believes the purpose of including the term "describe" in question 2 of the form (regarding witnesses) should be clarified. It is not clear whether this seeks the name of the witness, additional information concerning the subject of the proposed testimony, or some other information. **[8b]** Second, CAJ believes that some explicit distinction should be made between a request for an interpreter for a party and a request for an interpreter for a particular hearing date for a witness. If an interpreter is sought for a party, CAJ suggests that the court's file could be identified as one with a standing request for an interpreter, so that the form need not be re-filed before every hearing. That could also be clarified on the form. If an interpreter is sought for a witness who will testify at a particular	**8a.** CIAP agrees that the referenced language needed clarification and it was removed and replaced with a differently structured set of questions. **8b. One request for an LEP party; separate requests for witnesses** CIAP agrees that modifications were needed to clarify the request as related to the LEP party and any LEP witness they may have. Litigants who request interpreters for themselves require them for the duration of their entire legal case, whenever they will be in court and litigants should only be required to file this form once for themselves, while the courts must determine how to continue to provide language access services.

	Commentator	Position	Comment	Committee Response
			hearing, the date, time, and department could be identified, as provided in question 5 of the proposed form. **[8c]** Third, CAJ suggests that consideration be given to modifying the form to allow a party to specify a need for an interpreter for oral communications, written communications, or both, if it is determined that this information would be helpful to the court. **[8d]** With respect to the question of whether a statewide form or a model form to be adapted locally should be provided, the potentially cumbersome nature of obtaining accurate and consistent translations of the form and instructions in many languages weighs in favor of having one mandatory statewide form, translated into many languages and centrally available online at the California courts website. As reflected by proposed California Rule of Court 2.895, circulated with the proposed form, the form should include instructions in multiple languages and the form itself should be available in multiple languages. This would not preclude local rules (not incorporated in the Judicial Council Form) regarding where or when the request should be filed. The lead time to be required for the provision of interpreters is a separate consideration not addressed in these comments, but CAJ notes that this could have a significant practical impact depending on the hearing or trial involved (e.g., in the context of	CIAP believes that the litigant should make separate requests for witnesses. The form has been modified accordingly. **8c.** CIAP considered the suggested change but found it might create confusion for LEP litigants, and the language to distinguish between oral and written communications was not included. **8d. Optional form** CIAP does not believe that the request for an interpreter form should be mandatory. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. CIAP recommends an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. CIAP has modified the official form to include key language about requesting an interpreter in the State's top 10 languages which addresses commentator's concerns regarding access to the form in multiple languages.

	Commentator	Position	Comment	Committee Response
			unlawful detainers, where trials can be set on short notice).	
9.	Superior Court of Los Angeles County	AM	The Los Angeles Superior Court supports measures that improve language access for limited English proficient court users. However, the Court strongly opposes making mandatory the proposed form, *Request for Court Interpreter (Civil Actions).* The manner in which we improve language access has not yet been determined and the process of identifying necessary and appropriate measures may require experimentation. In identifying changes to language services, it is critical to address the actual needs of litigants locally to ensure that scarce resources are properly deployed. In the Invitation to Comment, the authors write: *Ultimately, the advisory committee concluded that, at this point, it would recommend circulation of the proposed form for comment as a model local form. However, the committee requests that courts and others provide specific comments on whether a statewide mandatory form, in the format of the attached form with the modification to Instruction paragraph 4 described above, including only Alternative A, would be a better alternative for the committee to recommend to the council.*	**An optional form** CIAP agrees that the courts are in a time of transition and recommends an interim adoption of the forms as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. CIAP also agrees that the request for an interpreter form should not be mandatory. A mandatory form would limit the ways in which LEP litigants may request interpreting assistance, which will inadvertently limit language access to justice. A mandatory form means that the litigant may not use any other method to request an interpreter and the court must only accept this method. CIAP recommends that the request form ultimately become optional after the interim period. The effective date would be January 1, 2018 for the optional form.

	Commentator	Position	Comment	Committee Response
			At this early stage in expansion of interpreter services, any form, even if amended, is unsuitable for mandatory implementation. In the past year, policy and legislative changes significantly changed courts' obligation to provide interpreters in non-mandated areas. As reflected in the language of AB 1657, policy makers anticipate that expansion of interpreter usage would be varied given the wide-ranging differences in local language needs and local court resources. The authors recognize this, as they write: *Courts have different preferences as to how long before a hearing an interpreter should be requested in order to facilitate scheduling of interpreters, and different time frames as to when the court will be able to tell a party whether the request can be fulfilled. Because of these differences and because the Judicial Council did not direct the committee to develop statewide rules regarding such procedures, at this time the advisory committee recommends only that each court develop its own procedures and make them available to the public.* We should not mandate a form without first having consistency in the procedures the form is meant to support. The courts are not in a situation in which best practices have emerged	

	Commentator	Position	Comment	Committee Response
			that provide the foundation for a mandatory form. Statutory priorities are not dispositive of all the procedural variation that might still appropriately occur. There is no pressing need for a mandatory form; the potential for confusion outweighs the benefits of apparent consistency. The varied use of fee waivers illustrates the problems of using a single mandatory form. Statute and rule state that a court may give preference to indigent parties (as demonstrated by the granting of a fee waiver) in a certain area if the court lacks the resources to completely serve that area. For such a court, a form that reminds the litigant of the significance of a fee waiver is helpful. For courts which do not use fee waivers as screening information, however, such a reminder can distract and confuse the litigant.	
10.	Superior Court of Riverside County By: Marita Ford, Senior Management Analyst	AM	**[10a]** The Riverside Superior Court agrees with the form, however we propose that it be a statewide model form to be used at a court's discretion (with modification/s) instead of a statewide mandate.	**10a. Optional form** CIAP does not believe that the form should be ultimately be a model form, but recommends an interim adoption of the form as model, serving as an example for courts who are beginning to create their related processes and publish the relevant notices. CIAP also agrees that the request for an interpreter form should not be mandatory. By

	Commentator	Position	Comment	Committee Response
				ultimately adopting an optional form, courts will be able to use alternative methods of accepting interpreter requests
			[10b] We also would suggest that Civil Harassments be identified separately and not combined with Domestic Violence matters.	**10b. Elimination of case types** CIAP disagrees with identifying either Civil Harassment claims or Domestic Violence matters among the list of case types. CIAP found that including the list of case types was confusing and may have created a barrier to language access. All case types were eliminated. Instead references were included in the Rule instructing the courts to prioritize, if needed, according to Evidence Code 756.As such, there is no need to separate Civil Harassments from Domestic Violence matters.
11.	Superior Court of San Diego County By: Mike Roddy, Executive Officer	AM	In answer to the request for specific responses, our court provides the following: • Does the proposal appropriately address the stated purpose? Yes. • Would courts benefit from having any additional items included on the model form? **[11a]**Yes. Items 2 and 4 could use revisions. Item 2 – It is not clear what is expected to be described if the party checks the box "witness." Whose witness, the party's witness or someone else's witness? Character witness, expert witness, or something else? Having an example of what is expected to be described would be helpful.	**11a. Plain language, simplified structure and tone** CIAP agrees that certain modifications were needed. The committee's modifications include clarifying the language about interpreter requests for witnesses and LEP litigants and restructuring those questions.

	Commentator	Position	Comment	Committee Response
			Item 4 – Same problem. Either have an example or maybe even put check boxes for hearings such as trial, long cause hearing, Request for Order, Other: • Would parties benefit from having any additional instructions included on the model form? **[11b]** Yes. A cite to Paragraph 5 of the Instructions provides the parties with additional resources to review if they can't afford a certified interpreter and one will not be made available. Perhaps a reference to GC section 68092.1(b) could also be included. • Would the council's adoption of the Request for Court Interpreter (Civil Actions) form as a statewide mandatory form be a better alternative at this time than its recommending a model local form? **[11c]** No. Adopting this form as an Optional draft local form is best. By doing so, if a local court wants to develop its own form it can and if not, it can use the statewide optional form. This is important because, until interpreters are fully funded, courts will need to have their own rules on how they provide interpreters and the form will need to be adaptable to match each court's abilities. **[11d]** If and when interpreters are fully funded, a uniform statewide mandatory form would be best.	**11b.** The referenced section has been removed in its entirety, so the proposed code references is no longer needed. **11c. Optional form** CIAP agrees that the request for an interpreter form should ultimately be optional. This will be after an interim adoption of the form as model, creating the local flexibility which the commentator recommends. This interim model period will be followed by a January 1, 2018 effective date of the request form as optional. **11d.** CIAP does not believe that the form should ultimately become mandatory because it would limit the ways in which LEP litigants may request

W15-03

Court Interpreters: Request for Interpreter

Adopt Cal. Rules of Court, rule 2.895; recommend model local court form

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

	Commentator	Position	Comment	Committee Response
				interpreting assistance, which will inadvertently limit language access to justice. As such, CIAP is recommending that the form ultimately be optional.

Rule 2.895 of the California Rules of Court would be adopted, effective July 1, 2015, to read:

Title 2. Trial Court Rules

Division 6. Appointments by the Court or Agreement of the Parties

Chapter 4. Court Interpreters

Rule 2.895. Requests for interpreters

Each court must have and publish procedures for parties to file and the court to process requests for interpreters. Each court must publish notice of these procedures in the major languages used within the court's jurisdiction.

Advisory Committee Comment

A model form that courts may use as a basis for a local *Request for Court Interpreter (Civil Actions)* is available from the Judicial Council.

MODEL FORM

Form ##

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 11/20/14
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
REQUEST FOR COURT INTERPRETER (CIVIL ACTIONS)	CASE NUMBER:

IMPORTANT: Interpreters will not be available for all hearings or in all languages. See instructions on the back of this form for more information about requesting an interpreter in a civil action.

1. I *(name):* am a party in this case *(check one item below):*
   ☐ Plaintiff/Petitioner ☐ Defendant/Respondent ☐ Other *(describe):*
2. I need an interpreter for *(check all that apply)* ☐ me ☐ a witness *(describe)*:
3. The language(s) in which I need an interpreter are *(list all):*
4. The court hearing or proceeding for which I need an interpreter is *(describe)*:

5. The court proceeding is going to take place on *(date):* at *(time):*
   in *(department):* before *(name of judicial officer, if known):*
   ☐ No date is set yet.

6. **Type of case** *(check one)*
   a. ☐ Domestic violence case
   b. ☐ Family law case in which there is a domestic violence claim
   c. ☐ Elder or dependent adult physical abuse case
   d. ☐ Unlawful detainer or eviction action
   e. ☐ Case to terminate parental rights
   f. ☐ Guardianship or conservator action
   g. ☐ Sole custody or visitation rights case
   h. ☐ Elder or dependant adult abuse case *not* involving physical abuse
   i. ☐ Family law case *not* involving domestic violence or sole custody or visitation rights
   j. ☐ Any other civil action, including Small Claims cases

7. **Fee waiver status** *(check one)*
   a. ☐ I received a fee waiver in this case on *(give date of order granting fee waiver; attach copy of order if available):*
   b. ☐ I applied for a fee waiver in this case on *(date application was filed):*
   c. ☐ I have not received and am not seeking a fee waiver.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Form Approved for _____ Use
Superior Court of _____ County
XXX---### [New _____ 1, 2015]

INSTRUCTIONS

1. Court proceedings are conducted in English. If a party or a witness does not speak English well, he or she may need an interpreter to testify, to speak to the judge, and to understand what others are saying in the proceeding. Certified and registered court interpreters are specifically trained to interpret in court proceedings. If you need language assistance, you should ask the court if it can provide a court interpreter by filling out this form.

2. Courts are not always able to provide or pay for an interpreter in every language or in every civil case. The Legislature has set priorities for which cases courts with limited funds are to try to provide court interpreters. The first priority is to try to provide interpreters in the following kinds of cases:

    a. Domestic violence cases,
    b. Family law cases in which there is a domestic violence issue,
    c. Elder or dependent adult physical abuse cases, and
    d. Unlawful detainer or eviction cases.

    Even in those cases, interpreters will not always be available for all hearings or in all languages.

3. Courts may be able to provide interpreters in some languages in some other civil cases. The Legislature has set priorities in these cases also, providing that the court should try to provide interpreters for cases in the following order:

    e. Actions to terminate parental rights,
    f. Actions relating to conservatorships or guardianships,
    g. Actions for child custody or visitation,
    h. Elder abuse cases and dependant adult abuse cases that do not involve domestic violence,
    i. Actions relating to family law other than those relating to domestic violence or child custody or visitation, and
    j. All other civil actions, including small claims cases.

    In these types of cases, preference will be given to parties with financial need who have qualified for a fee waiver, so if you need a court interpreter *and* need financial assistance, you should apply for a fee waiver if you do not already have one. To do so, complete and file a *Request to Waive Court Fees (Civil Actions)* (form FW-001). You should note in item 7 of this form whether you have a fee waiver already, have applied for one, or do not intend to apply for one.

4. If your case falls within one of the categories of cases listed in paragraphs 2 or 3 above, and you would benefit from having an interpreter during your court proceedings, you should use this form to request a court interpreter. Complete the first page and file it with the court. [**Alternative A:** Check with your local court to find out about any local rules it has regarding requests for an interpreter, including how long before the hearing you must file the request and when the court will act on it. OR **Alternative B:** *Court to add description of its procedures or rules here.*]

5. If the court is unable to provide an interpreter, you may bring a person who can speak English with you to act as an interpreter at the proceeding. The court may have a list of interpreters in your area whom you could hire. You may ask a friend or relative (it should be an adult) to act as an interpreter. It must be someone who can understand, speak, and read both your language and English. The court will need to make sure that person is qualified to interpret for you or the witness before the proceeding begins and will require the person to take an oath, swearing to interpret as completely and accurately as possible. If you are going to use a noncertified court interpreter, you should give him or her a copy of the form *Foreign Language Interpreter's Duties--Civil and Small Claims* (form INT-200), which is available on the California Courts website at *www.courts.ca.gov/documents/int200.pdf*.

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (out of cycle)**

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, and Assessments (Adopt amended rule 4.105 and new rule 4.106)

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

Staff contact (name, phone and e-mail): Kim DaSilva (415) 865-4534, kim.dasilva@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 12, 2015
Project description from annual agenda: Traffic: Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.
Criminal: Bail in Non-Traffic Infraction Cases. Consider recommendations, consistent with rule 4.105, to provide for appearances at arraignment and trial without the deposit of bail in non-traffic infraction cases; Consider rule, form, or other recommendations necessary to promote access to justice in all infraction cases, including recommendations related to post-conviction proceedings or after the defendant has previously failed to appear or pay.

If requesting July 1 or out of cycle, explain:
In connection with adopting rule 4.105 on June 8, 2015, the Judicial Council directed advisory committees to consider proposals necessary to promote access to justice in all infraction cases. Adoption of amended rule 4.105 is proposed to improve notice of court procedures by requiring the local website for trial courts to include a link to statewide self-help information posted on the California judicial branch website for traffic cases. Adoption of rule 4.106 is recommended to standardize and improve court procedures related to failure to appear or pay for infraction offenses.

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/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP16-02

Title
Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, and Assessments

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 4.105; adopt rule 4.106

Proposed by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Action Requested
Review and Submit Comments by April 20, 2016

Proposed Effective Date
October 1, 2016

Contact
Kim DaSilva, Attorney
Criminal Justice Services
415-865-4534
kim.dasilva@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee and Criminal Law Advisory Committee propose amendment of California Rules of Court, rule 4.105, regarding procedures related to deposit of bail for infraction offenses and adoption of rule 4.106, regarding procedures after failure to appear or pay for an infraction offense. Amendment of rule 4.105 is proposed to improve notice of court procedures by requiring the local website for trial courts to include a link to statewide self-help information posted on the California judicial branch website for traffic cases. Adoption of rule 4.106 is recommended to standardize and improve court procedures related to failure to appear or pay for infraction offenses. The proposed amended rule and new rule were developed in response to Judicial Council directives that the advisory committees continue to explore recommendations necessary to promote access to justice in all infraction cases.

Background

Recent criticisms aimed at state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures for the deposit of bail before defendants appear for arraignment and trial and after defendants fail to appear or pay. In response, the Judicial Council adopted rule 4.105 on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to

notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of the rule and promote access to justice in all infraction cases.

In response, rule 4.105 was amended on an expedited basis in December 2015 to apply to all infractions. In addition, to ensure that courts consider whether the deposit of bail before trial would create undue hardship on defendants, the rule was also amended to require courts to consider the "totality of the circumstances" when determining whether bail is appropriate, and an advisory committee comment was added to explain that the "totality of the circumstances" includes "whether compliance with the order setting bail would impose an undue hardship on the defendant." Application of rule 4.105 is limited to cases in which the defendant appears in court as promised and does not address circumstances in which the defendant has failed to appear or pay for an infraction offense.

The Proposal

Amended rule 4.105

Rule 4.105 prohibits courts from requiring infraction defendants to deposit bail in order to appear at either arraignment or trial unless a specified exception applies. Under the rule, courts may only require infraction defendants to deposit bail prior to a first appearance when:

- The defendant elects a statutory procedure (such as trial by written declaration) that requires the deposit of bail;

- The defendant at arraignment refuses to sign a written promise to appear for future court proceedings; or

- The court determines that the particular defendant is unlikely to appear as ordered without a deposit of bail and states its reasons for that finding on the record.

To promote procedural fairness for infraction cases, the committees propose amendment of rule 4.105(d) to facilitate the notice provisions. The amended rule would require that the local website of trial courts must include a link to the statewide traffic self-help information posted on the California judicial branch website at: *http://www.courts.ca.gov/selfhelp-traffic.htm*. In addition to information on appearance at court for arraignment and trial, the self-help information includes guidance on other subjects such as traffic violator school, payment plans, community service, correctable violations, trial by written declaration, and consequences for failure to appear or pay.

Proposed Rule 4.106

The Traffic Advisory Committee and Criminal Law Advisory Committee have continued to examine court procedures for infraction cases and develop ways to improve access to justice as directed by the council. As part of that effort, the committees propose a new rule of court to

standardize and improve the imposition of bail, fines, and assessments when the defendant has failed to appear or pay in an infraction case.

Proposed rule 4.106 seeks to standardize and improve procedures:

- When courts impose a civil assessment for failure to appear or pay and a defendant requests that the court modify or vacate a civil assessment without payment to schedule a hearing and consider circumstances that may indicate good cause for failure to appear or pay;

- When courts refer unpaid bail to a comprehensive collection program as delinquent debt and a defendant requests adjudication of an underlying charge without payment to schedule a hearing;

- When courts schedule a hearing without payment for a defendant's request to modify or vacate a judgment after failure to pay under an installment plan;

- When a defendant requests that a court consider ability to pay for court procedures relating to unpaid bail referred to collection programs or a default on payment of installment payment plans; and

- When courts process a request by a defendant for a trial de novo after a judgment in a trial by written declaration in absentia.

Additionally, the advisory committee comment for rule 4.106 provides guidance for implementation of the rule by including examples of circumstances that may establish good cause for failure to appear or pay when a defendant requests that a court modify or vacate a civil assessment.

In general, the rule proposals are designed to promote procedural fairness for infraction cases, reduce confusion about the scope of the rules, enhance guidance in the advisory committee comments, and clarify circumstances where consideration of ability to pay is appropriate.

Alternatives Considered

The committees have considered other alternatives provided by legislative proposals and related revision and creation of forms. Those proposals, however, involve a process that must be pursued independently in an expedited but different time frame and have other implications that are distinct from the procedures addressed in an expedited fashion by the current rule proposal. Accordingly, the committees are separately considering recommendations to promote access to justice by additional proposals.

Implementation Requirements, Costs, and Operational Impacts

Courts will need to update local websites and court notices and provide training for court staff and judicial officers regarding changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the rules are designed to ensure that infraction defendants have access to courts without prior deposit of bail, fines, or assessments unless limited exceptions apply, as explained above, the rules are not intended to change or interfere with the various statutory alternatives to formal appearances in court. Similarly, although the proposal sets forth additional considerations for courts, the committees believe that those considerations can be accomplished without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness. In addition, although the rules would require courts to modify procedures for infraction cases, because courts will have until October 1, 2016, to implement the rules, the committees do not anticipate significant implementation issues.

Attachments

1. Proposed amendment to rule 4.105 of the Cal. Rules of Court, at pages 5-6.
2. Proposed rule 4.106 of the Cal. Rules of Court, at pages 6-8.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- 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.
- Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 4.105 of the California Rules of Court would be amended, and rule 4.105 would be adopted, effective October 1, 2016, to read:

Rule 4.105. Appearance without deposit of bail in infraction cases

(a) Application

This rule applies to any infraction for which the defendant has received a written notice to appear.

(b) Appearance without deposit of bail

Except as provided in (c), courts must allow a defendant to appear for arraignment and trial without deposit of bail.

(c) Deposit of bail

(1) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail.

(2) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court.

(3) Courts may require a deposit of bail before trial if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

(4) In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances.

(d) Notice

Courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for infractions, including any website information, written instructions, courtesy notices, and forms. The website for each trial court must include a link to the traffic self-help information posted at: *http://www.courts.ca.gov/selfhelp-traffic.htm*.

Advisory Committee Comment

Subdivision (a). The rule is intended to apply only to an infraction violation for which the defendant has received a written notice to appear and has appeared by the appearance date or an

approved extension of that date. The rule does not apply to postconviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay.

Subdivision (c)(1). Various statutory provisions authorize infraction defendants who have received a written notice to appear to elect to deposit bail in lieu of appearing in court or in advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have received a written notice to appear to declare the intention to plead not guilty and deposit bail before the notice to appear date for purposes of electing to schedule an arraignment and trial on the same date or on separate dates]; 40519(b) [authorizing defendants who have received a written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in person]; and 40902 [authorizing trial by written declaration].)

This rule is not intended to modify or contravene any statutorily authorized alternatives to appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].) The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided above.

Subdivision (c)(2). As used in this subdivision, the phrase "written promise to appear as required by the court" refers to a signed promise, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.

Subdivision (c)(3). In exercising discretion to require deposit of bail on a particular case, courts should consider, among other factors, whether previous failures to pay or appear were willful or involved adequate notice.

Rule 4.106. Failure to appear or failure to pay for a notice to appear issued for an infraction offense

(a) Application

This rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay.

(b) Definitions

As used in this rule, “failure to appear” and “failure to pay” mean failure to appear or failure to pay as those terms are used in subdivision (a) of Penal Code section 1214.1.

(c) Procedure for consideration of good cause for failure to appear or pay

(1) When notice of a civil assessment has been given under subdivision (b) of Penal Code section 1214.1, a defendant may, within 20 days of mailing of the notice, move to modify or vacate the assessment by showing good cause to excuse the failure to appear or failure to pay by written petition or court appearance as directed by the court. Courts must permit a defendant to present such a showing without requiring receipt of the payment of any bail, fines, penalties, fees, or assessments. A request to modify or vacate an assessment does not stay the operation of any order requiring the payment of any bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

(2) In exercising discretion to determine the amount of an assessment under section 1214.1, courts should consider in ruling on a request to modify or vacate an assessment, a defendant's diligence in appearing or paying after notice of the assessment has been given under section 1214.1(b)(1).

(d) Procedure for unpaid bail referred to collection as delinquent debt

When unpaid bail is referred to a comprehensive collection program as provided in subdivision (b)(1) of Penal Code section 1463.007, courts must allow a defendant to appear by written petition or court appearance as directed by the court regarding adjudication of the underlying charges without payment of the bail amount. A request to adjudicate the underlying charges does not stay the operation of any order requiring the payment of bail unless specifically ordered by the court. When a court adjudicates an underlying charge under this subdivision for a violation of the Vehicle Code, the defendant may request that the court consider the defendant's ability to pay as provided in Vehicle Code section 42003.

(e) Procedure for failure to pay an installment payment plan

When a defendant fails to make a payment under an installment plan as provided in Penal Code section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, courts must permit the defendant to present a petition to modify or vacate a judgment or order under those sections without requiring payment of any fines, penalties, fees, or assessments to consider the petition. The request to modify or vacate a judgment or order does not stay the operation of any order requiring the payment of any bail, fines, penalties, fees, or assessment unless specifically ordered by the court. When a court agrees to modify or vacate a judgment for a violation of the Vehicle Code, the defendant may request that the court consider the defendant's ability to pay as provided in Vehicle Code section 42003.

(f) Procedure after a trial by written declaration in absentia for a traffic infraction

When the court issues a judgment under Vehicle Code section 40903 and the defendant requests a trial de novo within the time permitted, courts may require the defendant to deposit bail at the time the request is filed and upon receipt of the bail deposit shall vacate the judgment after the trial by written declaration.

Advisory Committee Comments

Subdivision (a). The rule is intended to apply only to an infraction offense for which the defendant has received a written notice to appear citation and been released for a signed promise to appear, and has failed to appear by the appearance date or an approved extension of that date or failed to pay as required.

Subdivision (c)(1). Circumstances that indicate good cause may include, but are not limited to: hospitalization or incapacitation of the defendant; incarceration of the defendant; military duty required of the defendant; death or hospitalization of a dependant or immediate family member of the defendant; caregiver responsibility for a sick or disabled dependant or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, which prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

Item number: 18

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (out of cycle)**

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees (Revise forms TR-300 and TR-310)

Committee or other entity submitting the proposal:
Traffic Advisory Committee

Staff contact (name, phone and e-mail): Kim DaSilva (415) 865-4534, kim.dasilva@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 12, 2015
Project description from annual agenda: Traffic: Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.

If requesting July 1 or out of cycle, explain:
In connection with adopting rule 4.105 on June 8, 2015, the Judicial Council directed advisory committees to consider proposals necessary to promote access to justice in all infraction cases. Adoption of revised forms TR-300 and TR-310 is proposed to improve court procedures for payment by installments and advisement of rights for traffic infraction cases.

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/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP16-03

Title
Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees

Proposed Rules, Forms, Standards, or Statutes
Revise forms TR-300 and TR-310

Proposed by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Action Requested
Review and Submit Comments by April 20, 2016

Proposed Effective Date
October 1, 2016

Contact
Kim DaSilva, Attorney,
415-865-4534,
kim.dasilva@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes revision of forms TR-300 and TR-310 for installment payments for traffic infractions. Revision of the forms is recommended to standardize and improve court procedures related to installment payment plans for infraction offenses and advise defendants of rights to request community service or consideration of ability to pay when appearing in court. The proposed revised forms were developed in response to Judicial Council directives to promote access to justice in all infraction cases.

Background

Recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 of the California Rules of Court on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of rule 4.105 and develop other proposals to promote access to justice in all infraction cases.

The Proposal

Vehicle Code sections 40510.5 and 42007 authorize court clerks to accept bail forfeitures and traffic violator school fees in installments for traffic infractions. Sections 40510.5 and 42007 also

authorize the Judicial Council to adopt forms for court clerks to use for processing the installment payments. Courts are not required to offer installment payment plans, but courts that allow clerks to offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

The Traffic Advisory Committee has examined court procedures for infraction cases to develop ways to improve access to justice as directed by the council. As part of that effort, the committee proposes revision of forms to further standardize and improve the imposition of bail, fines, and assessments when the defendant wishes to pay by installment. The Traffic Advisory Committee proposes adoption of revised forms TR-300, *Agreement to Pay and Forfeit Bail in Installments*, and TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*, for use by court clerks to process installment payment plans with expanded advisement of rights in traffic infraction cases.

Form TR-300

As provided in Vehicle Code section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory court appearance. Under current law, a court that uses the form is authorized to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles as a conviction on the date of the initial payment. (Veh. Code, § 40510.5(b) and (d).) No trust account is required and payments are distributed when received. (Veh. Code, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the Department of Motor Vehicles, issue a warrant, or send a notice that a civil assessment would be imposed if the defendant does not show good cause for the failure to pay. (Veh. Code, §§ 40509.5 and 40510.5(e).) For a failure to pay, the court may also impound the defendant's driver's license and order the person not to drive for up to 30 days. (Veh. Code, § 40508(d).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as bail that is deposited for other criminal cases. (Veh. Code, § 40510.5(c).)

Because the installment payment procedure does not require an arraignment or an appearance before a judicial officer in court and there are significant legal consequences for failure to make an installment payment, the form includes an express written advisement of rights and signed waiver of rights by the defendant. The form includes advisements and signed acknowledgements of the consequences for failure to pay or failure to appear at a court hearing, if required.

To enhance procedural fairness for infraction cases, the committee proposes revision of form TR-300 to provide an expanded advisement and waiver of rights. Page 2 of the revised form provides expanded notice of the defendant's rights: "To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case." By signing form TR-300, the defendant elects to waive the rights in the advisement and pay and forfeit bail in installments.

Additional minor changes to clarify and update form TR-300 include:

- Section 2 is revised to use plain language and state that the appearance date "has not passed."
- Section 3 is revised to remove as unnecessary the statement by the defendant that: "I am not able to pay the entire amount at the present time. I ask the court to allow me to pay in installments."
- Section 4 is revised to clarify that: "each violation that is reportable to the Department of Motor Vehicles and has no proof of correction will be reported as a conviction."
- Section 5 is modified and partially shaded in grey as optional, depending on local court practices, regarding the requirement that: "If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment." The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment.
- Section 5 is revised to clarify the list of possible actions by the court for failure to pay as agreed.

Form TR-310

Form TR-310 is used by court clerks to accept installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements on form TR-310 are limited to a maximum length of 90 days. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Id*.) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (Veh. Code, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (Veh. Code, § 42007(a)(3).)

To further enhance procedural fairness for infraction cases, the committee proposes revision of form TR-310 to provide an expanded advisement and waiver of rights. In accordance with the changes proposed for form TR-300, revised form TR-310 provides notice of the defendant's rights: "To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case." In addition, the advisement is also updated to be consistent with rule 4.105 and state that defendants may "request and have a court trial without deposit of bail, unless the court orders bail." By signing form TR-310, the defendant elects to waive the rights in the advisement and pay and forfeit the traffic violator school fees in installments.

Additional minor changes to clarify and update form TR-310 include:

- Section 2 is revised to use plain language and state that the appearance date "has not passed."
- Section 3 is revised to remove as unnecessary the statement by the defendant that: "I am not able to 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 the fees in installments."
- Section 4 is modified and partially shaded in grey as optional, depending on local court practices, regarding the requirement that: "If I do not make my payments by each due

date, I will see the clerk on the next court day after the due date of the missed payment." The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment.
- Section 4 is revised to clarify the list of possible actions by the court for failure to pay as agreed.

Alternatives Considered

The committee has considered other alternatives offered by legislative proposals and creation of related new forms. Those proposals, however, typically involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current rule proposal. Accordingly, the committee is separately considering recommendations to promote access to justice by additional proposals.

Implementation Requirements, Costs, and Operational Impacts

Courts may need to provide training for court staff and judicial officers regarding changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the proposal includes advisements of additional procedures available in court, the committee believes that those notices can be provided without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness. In addition, although the forms may require courts to modify procedures for infraction cases, because courts will have until October 1, 2016, to implement the forms, the committee does not anticipate significant implementation issues.

Request for Specific Comments

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?

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.
- 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.
- Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Revised form TR-300, *Agreement to Pay and Forfeit Bail in Installments,* at pages 5–6.
2. Revised form TR-310, *Agreement to Pay Traffic Violator School Fees in Installments,* at pages 7–8.

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

FOR COURT USE ONLY

DRAFT

PEOPLE OF THE STATE OF CALIFORNIA
vs.
DEFENDANT:

CITATION NUMBER:

CASE NUMBER:

AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)

TO BE FILLED OUT BY A COURT CLERK

Read carefully and, if you agree, sign and return the form to the clerk.

1. I am the defendant in this case and I have been charged with the following infraction violation of the Vehicle Code that does not require me to go into court:

   a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed and I am providing proof of correction for correctable violations.

3. I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.

4. I understand that by signing below each violation that is reportable to the Department of Motor Vehicles and has no proof of correction will be reported as a conviction.

5. **TERMS OF THE AGREEMENT:**
   The total bail (including penalties plus an administrative fee of $___ to pay in installments) is $_____
   I agree to pay the total amount as follows:

   $ _____(10 percent or more) immediately and installments of at least $ _____ due:

   ( ) each month, starting *(date):* _____ and by the _____ day of each month until paid in full.

   ( ) Other *(explain):* _____

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.
   [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

   I understand that if I do not make the payment by each due date the court may:
   Charge me with a misdemeanor under Vehicle Code section 40508 and impound my driver's license.
   Charge a civil assessment of up to $300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report the failure to pay to the Department of Motor Vehicles, which may place a hold on my driver's license.
   Assign my case to a collection agency or the State Franchise Tax Board for collection.

   I understand that my case will continue to be open until the date that my last installment is paid. On _____, if I pay as agreed, all amounts due will be paid. At that time, if proof of correction has been filed with the clerk as required, my bail forfeiture will be complete and no further proceedings will be held in this matter.

By signing below I declare that I have read and understand my rights printed on the reverse side, which I now choose to give up, and that I have read, understand, and accept the terms and conditions stated above.

_____ (SIGNATURE OF DEFENDANT)

_____ (DATE)

_____ (TYPE OR PRINT NAME)

_____ (ADDRESS)

_____ (DRIVER'S LICENSE/ID NUMBER)

_____ (EXP. DATE)

_____ (CITY, STATE, AND ZIP CODE)

CLERK OF THE SUPERIOR COURT

ACCEPTED *(date):* _____

BY: _____ (DEPUTY CLERK)

ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case;
- To request and have a court trial without deposit of bail, unless the court orders bail, and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	
AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS **(Vehicle Code, § 42007)**	CITATION NUMBER: CASE NUMBER:

TO BE FILLED OUT BY A COURT CLERK

Read carefully and, if you agree, sign and return the form to the clerk.

1. I am the defendant in this case and I have been charged with the following infraction violation that does not require me to go into court and is eligible for a confidential conviction for completion of traffic violator school:

   a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed and I am providing proof of correction for any correctable violations.

3. I want to pay the traffic violator school fees for the violation listed above. I understand that the court does not have to allow me to make installment payments.

4. **TERMS OF THE AGREEMENT:**
   The total fee, including an administrative fee of $____ to pay in installments, is $ _____ .
   I agree to pay the total amount within 90 days as follows:

   $ _____(10 percent or more) immediately and installments of at least $ _____ due:

   ( ) each month, starting *(date):* _____ and by the _____ day of each month until paid in full.

   ( ) Other *(explain):* _____

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.
   [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

   I understand that if I do not complete my payment plan the court may:
   Charge me with a misdemeanor under Vehicle Code section 40508.
   Charge a civil assessment of up to $300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report convictions to the Department of Motor Vehicles.
   Assign the case to a collection agency or the State Franchise Tax Board for collection.

   I understand that my case will continue to be open until the date that my last installment is paid. On _____ , if I pay as agreed and if my proof of completion is reported, a confidential conviction will be reported and no further proceedings will be held.

By signing below I declare that I have read and understand my rights printed on the reverse side, which I now choose to give up, and that I have read, understand, and accept the terms and conditions stated above.

_____ (SIGNATURE OF DEFENDANT)

_____ (DATE)

_____ (TYPE OR PRINT NAME)

_____ (ADDRESS)

_____ (DRIVER'S LICENSE/ID NUMBER)

_____ (EXP. DATE)

_____ (CITY, STATE, AND ZIP CODE)

CLERK OF THE SUPERIOR COURT

ACCEPTED *(date):* _____

BY: _____ (DEPUTY CLERK)

ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine penalties and fees for the case;
- To request and have a court trial without deposit of bail, unless the court orders bail, and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you, and
- To remain silent and not testify.

Item number: 19

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (out of cycle)**

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees (Adopt forms TR-305 and TR-315)

Committee or other entity submitting the proposal:
Traffic Advisory Committee

Staff contact (name, phone and e-mail): Kim DaSilva (415) 865-4534, kim.dasilva@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 12, 2015
Project description from annual agenda: Traffic: Rules and Forms for Access to Justice in Infraction Cases. Consider development of rules and forms to promote access to justice in all infraction cases, including recommendations related to courtesy notices, payment plans, community service, post-conviction proceedings or procedures after a defendant has previously failed to appear or pay, such as imposing civil assessments or placing holds on a driver's license.

If requesting July 1 or out of cycle, explain:
In connection with adopting rule 4.105 on June 8, 2015, the Judicial Council directed advisory committees to consider proposals necessary to promote access to justice in all infraction cases. Adoption of forms TR-305 and TR-315 is proposed to improve court procedures for online installment payment agreements and advisement of rights for traffic infraction cases.

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/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP16-04

Title
Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees

Proposed Rules, Forms, Standards, or Statutes
Adopt forms TR-305 and TR-315

Proposed by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Action Requested
Review and Submit Comments by April 20, 2016

Proposed Effective Date
October 1, 2016

Contact
Kim DaSilva, Attorney
415-865-4534
kim.dasilva@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes adoption of forms TR-305 and TR-315 for online installment payments for traffic infractions. Adoption of the forms is recommended to standardize and improve court procedures related to online installment payment plans for infraction offenses and advise defendants of rights to request community service or consideration of ability to pay when appearing in court. The proposed forms were developed as part of the modernization project for rules and forms and in response to Judicial Council directives to promote access to justice in all infraction cases.

Background

The Judicial Council's Information Technology Advisory Committee (ITAC) is leading a multi-year, collaborative effort to comprehensively review and modernize statutes, rules, and forms to facilitate electronic filing and service and foster modern e-business practices. Last year, the Judicial Council's advisory committees completed phase I—an initial round of technical amendments to address language in rules and forms that were incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. The Traffic Advisory Committee is now participating in phase II to identify statutes, rules, and forms that may hinder electronic filing and modern e-business practices and develop recommendations for ways to promote and improve e-business practices. ITAC's Rules and Policy Subcommittee provided input on this proposal.

Additionally, recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of

bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 of the California Rules of Court on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of rule 4.105 and develop other proposals to promote access to justice in all infraction cases.

The Proposal

Vehicle Code sections 40510.5 and 42007 authorize the Judicial Council to adopt forms for court clerks to use for processing installment payments. Courts are not required to offer installment payment plans, but courts that allow clerks to offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

The Traffic Advisory Committee has examined court procedures for infraction cases to develop ways to improve access to justice as directed by the council. As part of that effort, the committee proposes revision of forms to further standardize and improve the imposition of bail, fines, and assessments when the defendant wishes to pay by installment. The Traffic Advisory Committee proposes adoption of forms TR-305, *Online Agreement to Pay and Forfeit Bail in Installments,* and TR-315, *Online Agreement to Pay Traffic Violator School Fees in Installments*, to process installment payment plans online with advisement and waiver of rights in traffic infraction cases.

Form TR-305

As provided in Vehicle Code section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory appearance in court. Under current law, a court that uses form TR-300 is authorized to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles as a conviction on the date of the initial payment. (Veh. Code, § 40510.5(b) and (d).) No trust account is required and payments are distributed when received. (Veh. Code, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the Department of Motor Vehicles, issue a warrant, or send a notice that a civil assessment will be imposed if the defendant does not show good cause for the failure to pay. (Veh. Code, §§ 40509.5 and 40510.5(e).) For a failure to pay, the court may also impound the defendant's driver's license and order the person not to drive for up to 30 days. (Veh. Code, § 40508(d).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as bail that is deposited for other criminal cases. (Veh. Code, § 40510.5(c).) Proposed form TR-305 is drafted to follow similar procedures when the court allows defendants to request installment payments online without having to appear in person at the court for a clerk to process the request. This procedure would facilitate payment plans for many defendants, including those who live in different counties or other states.

Because an online installment payment procedure does not require an arraignment or an appearance before a judicial officer in court and there are significant legal consequences for failure to make an installment payment, the form includes an express written advisement of rights and waiver of rights by the defendant to enhance procedural fairness for infraction cases.

Form TR-305 provides an advisement and waiver of rights on page 2 with express notice of the defendant's rights: "To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case." The form also includes an advisement that a defendant may "request and have a court trial without deposit of bail, unless the court orders bail." By filing form TR-305, the defendant elects to waive the rights in the advisements and pay and forfeit bail in installments.

Form TR-305 includes the following additional provisions:

- Section 2 has optional shaded text regarding proof of correction for correctable violations. When websites are programmed for online installment payments, there may be systems that are unable to process or track proof of correction for correctable violations. The form includes grey-shaded text in brackets as optional text for courts with systems that must exclude correctable violations from online installment payments.

- Section 5 is partially shaded in grey as optional, depending on local court practices, regarding the requirement that: "If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment." The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment.

- The form includes an optional provision to request electronic notifications about the installment payments. The shaded text is intended to be optional so that courts can omit the option if the court's system is not able to provide electronic notices.

Form TR-315

Form TR-315 is used for online requests for installment payment of traffic violator school fees for eligible traffic infractions. Installment payments processed by a clerk at the court on form TR-310 are limited to a maximum length of 90 days. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Id*.) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (Veh. Code, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (Veh. Code, § 42007(a)(3).) Form TR-315 is drafted to follow similar procedures when the court allows defendants to request installment payments online without having to appear in person at the court for a clerk to process the request. This procedure would facilitate payment plans for many defendants, including those who live in different counties or other states.

To further enhance procedural fairness for infraction cases, the committee proposes adoption of form TR-315 with an advisement and waiver of rights. In accordance with proposed form TR-305, form TR-315 provides notice of the defendant's rights: "To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case." The form also includes an

advisement that a defendant may "request and have a court trial without deposit of bail, unless the court orders bail." By filing form TR-315, the defendant elects to waive the rights in the advisements and pay traffic violator school fees in installments.

Form TR-315 includes the following additional provisions:

- Section 2 has optional shaded text regarding proof of correction for correctable violations. When websites are programmed for online installment payments, there may be systems that are unable to process or track proof of correction for correctable violations. The form includes grey-shaded text in brackets as optional text for courts with systems that must exclude correctable violations from online installment payments.

- Section 4 is partially shaded in grey as optional, depending on local court practices, regarding the requirement that: "If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment." The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about a missed payment.

- The form includes an optional provision to request electronic notifications about the installment payments. The shaded text is intended to be optional so that courts can omit the option if the court's system is not able to provide electronic notices.

Alternatives Considered

The committee has considered other alternatives such as legislative proposals and creation of additional new forms. Those additional proposals, however, involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current forms proposal. Accordingly, the committee is separately considering recommendations to promote access to justice by additional proposals in the future.

Implementation Requirements, Costs, and Operational Impacts

Courts may need to provide training for court staff and judicial officers regarding changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the proposal includes advisements of additional procedures available in court, the committee believes that those notices can be provided without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness. In addition, although the forms may require courts to modify procedures for infraction cases, because courts will have until October 1, 2016, to implement the forms, the committee does not anticipate significant implementation issues.

Request for Specific Comments

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?
- Are there any additional forms, procedures, or instructions that should be added to the proposal?
- Should the signature and name lines be merged on the forms to read: "(Name/Signature of the Defendant)"?

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.
- 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.
- Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Proposed form TR-305, *Online Agreement to Pay and Forfeit Bail in Installments*, at pages 6–7.
2. Proposed form TR-315, *Online Agreement to Pay Traffic Violator School Fees in Installments*, at pages 8–9.

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

FOR COURT USE ONLY

DRAFT

PEOPLE OF THE STATE OF CALIFORNIA
vs.
DEFENDANT:

ONLINE AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)

TICKET NUMBER:

CASE NUMBER:

Read carefully and, if you agree, complete and submit the form.

1. I am the defendant in this case and I have been charged with the following infraction violation of the Vehicle Code that does not require me to go into court:

   a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed [and I have provided proof of correction for correctable violations].

3. I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.

4. I understand that by completing this agreement each violation that is reportable to the Department of Motor Vehicles will be reported as a conviction.

5. **TERMS OF THE AGREEMENT:**
   The total bail (including penalties and administrative fee of $ ____) is $____ Initial Payment (10% minimum): $ ____
   Remaining balance after first payment: $ ____
   Online transaction fee (if applicable): $ ____
   Total amount due today: $ ____

   I agree to pay the balance due in monthly installments of at least $____ due each month, starting __/__/__ and to have the balance paid in full on or before __/__/__ .

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.
   [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.]

   I understand that if I do not complete my payment plan the court may:
   Charge me with a misdemeanor under Vehicle Code section 40508.
   Charge a civil assessment of up to $300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report the failure to pay to the Department of Motor Vehicles, which may place a hold on my driver's license.
   Assign the case to a collection agency or the State Franchise Tax Board for collection.

   I understand that if I pay as agreed my bail forfeiture will be complete and at that time[, if proof of correction has been filed with the court as required,] the case will be closed.
   I understand my rights explained in this agreement and attachment, which I now choose to give up, and I have read, understand, and agree to the terms and conditions. (See Attachment 1)
   I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

_____ (SIGNATURE OF DEFENDANT) _____ (NAME) _____ (DRIVER'S LICENSE/ID NUMBER)

_____ (ADDRESS) _____ (CITY, STATE, ZIP CODE) _____ (TELEPHONE NUMBER)

☐ **[I authorize the court to send me electronic notices regarding payments due by me under this agreement.] [Optional]**

_____ (E-MAIL ADDRESS)

ACCEPTED *(date):* _____ BY: _____ (CLERK OF THE SUPERIOR COURT)

ATTACHMENT 1

ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case;
- To request and have a court trial without deposit of bail, unless the court orders bail, and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	TICKET NUMBER: CASE NUMBER:
ONLINE AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS **(Vehicle Code, § 42007)**	

Read carefully and, if you agree, complete and submit the form.

1. I am the defendant in this case and I have been charged with the following infraction violation of the Vehicle Code that does not require me to go into court:

   a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed [and I have provided proof of correction for correctable violations].

3. I want to pay the traffic violator school fees for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.

4. I understand that by completing this agreement a violation that is reportable to the Department of Motor Vehicles will be reported as a confidential conviction.

5. **TERMS OF THE AGREEMENT:**
   The total fee (including an administrative fee of $ ____) is: $ ____

   $ ____ Initial Payment (10% minimum): $ ____
   Remaining balance after first payment: $ ____
   Online transaction fee (if applicable): $ ____
   Total amount due today: $ ____

   I agree to pay the balance due in monthly installments of at least $____ due each month, starting __/__/__ and to have the balance paid in full on or before __/__/__ .

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.
   [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.]

   I understand that if I do not complete my payment plan the court may:
   Charge me with a misdemeanor under Vehicle Code section 40508.
   Charge a civil assessment of up to $300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report the failure to pay to the Department of Motor Vehicles, which may place a hold on my driver's license.
   Assign the case to a collection agency or the State Franchise Tax Board for collection.

   I understand that if I pay as agreed [and proof of correction has been filed with the court as required] the case will be closed.

   I understand my rights explained in this agreement and attachment, which I now choose to give up, and that I have read, understand, and agree to the terms and conditions. (See Attachment 1)

   I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

_____ (SIGNATURE OF DEFENDANT) _____ (NAME) _____ (DRIVER'S LICENSE/ID NUMBER)

_____ (ADDRESS) _____ (CITY, STATE, ZIP CODE) _____ (TELEPHONE NUMBER)

☐ **[I authorize the court to send me electronic notices regarding payments due by me under this agreement.] [Optional]**

_____ (E-MAIL ADDRESS)

ACCEPTED *(date):* _____ BY: _____ (CLERK OF THE SUPERIOR COURT)

ATTACHMENT 1

ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school, or the fine, penalties, and fees for the case;
- To request and have a court trial without deposit of bail, unless the court orders bail, and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

Item number: 20

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise Judicial Council forms GC-320, GC-330, and GC-331

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, (2015 annual agenda)
Project description from annual agenda: Review and consider recommendations for changes in law, practice, and procedures in limited conservatorships for the developmentally disabled.

If requesting July 1 or out of cycle, explain:
This project concerns three conservatorship forms that were revised by the Judicial Council on December 11, 2015 (Proposal 15-420), effective January 1, 2016, subject to post-adoption circulation for public comment in the Winter 2016 comment cycle. These forms were revised again based on comments received, to be effective July 1, 2016, replacing the versions of the forms that were revised in December.

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: April 15, 2016

Title
Probate Conservatorships: Voting Capacity of Conservatees

Rules, Forms, Standards, or Statutes Affected
Forms GC-320, GC-330, and GC-331

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair
Douglas C. Miller, Attorney
JCC Legal Services

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Date of Report
March 14, 2016

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council revise *Citation For Conservatorship* (form GC-320), *Order Appointing Court Investigator* (form GC-330), and *Order Appointing Court Investigator (Review and Successor Conservator Investigations)* (form GC-331), which are three of four conservatorship forms that the council revised, effective January 1, 2016, to reflect changes in the law concerning a conservatee's capacity to vote. All of these forms, plus an additional conservatorship form revised by circulating order effective January 15, 2016, were circulated for public comment in the winter 2016 comment cycle. Forms GC-320, GC-330, and GC-331 are proposed for additional revisions in response to comments received. These revisions would be effective on July 1, 2016.

Recommendation

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

1. Revise the *Citation For Conservatorship* (form GC-320) by:

    a) Moving items 6 and 7 from the bottom of page 1 of the form to the top of page 2 and placing a statement on the bottom of page 1 that the text is continued on page 2. This change is recommended to ensure that some of the text appears on the same page as the clerk's seal, to reduce the opportunity for fraud that would be presented by a page containing only the clerk's seal;

    b) Changing the second sentence in item 4 on page 1 to read: "You will not be disqualified from voting on the basis that you do, or would need to do, any of the following to complete an affidavit of voter registration: . . . [followed by a list of four types of assistance or accommodations in completing the affidavit that would not be disqualifying]; and

2. Revise the *Order Appointing Court Investigator* (form GC-330) and the *Order Appointing Court Investigator (Review and Successor Conservator Investigations)* (form GC-331) by adding the following text at the beginning of item 1e of form GC-330 and item 1c on page 1 of the forms:

    "A person is presumed competent to vote regardless of his or her conservatorship status. In determining whether this presumption is overcome, you must determine . . ."

The revised forms are attached at pages 8–15.

Previous Council Action

These three forms and a fourth form, *Petition for Appointment of Conservator* (form GC-310), were approved by the Judicial Council on December 11, 2015 (Proposal 15-420) for revisions made necessary because of the 2015 enactment of Senate Bill 589 (Stats. 2015, ch. 736), effective January 1, 2016. This legislation completely changed the standard for determining whether a conservatee retains, has lost, or has regained, the capacity to vote.

A fifth conservatorship form, the *Order Appointing Conservator* (form GC-340) was revised by circulating order on January 14, 2016, effective on January 15, 2016, also to reflect the new standard for determining a conservatee's capacity to vote.

Rationale for Recommendation

All five conservatorship forms revised effective January 2016 were revised in response to the legislation noted above, Senate Bill 589 in the 2015 Legislature. That legislation replaced the former standard for a conservatee's incapacity to vote, an inability to complete an affidavit of

voter registration,[1] with an entirely new standard: an inability to express, with or without reasonable accommodations, a desire to participate in the voting process. Four of the five revised forms clearly reflect the new standard. The fifth, the *Petition for Appointment of Probate Conservator* (form GC-310) does not refer to the new standard because the proposed conservatee's capacity to vote under any standard is not part of the petitioner's case in chief.[2]

The review investigation in a conservatorship is the focus of Elections Code section 2209 and Probate Code section 1851(a)(1)(D), which were also amended by SB 589. Amended section 2209 applies the new standard for determining a conservatee's incapacity to vote, but also emphasizes that in review investigations, investigators must deal both with conservatees who have and have not previously lost their right to vote. The amended section requires investigators in the latter case to determine whether conservatees have lost the ability to communicate a desire to participate in the voting process, and in the former case to determine whether they continue to lack that ability.[7] Thus the reference to "now incapable of communicating," and "if previously was found incapable of communicating that desire, continues to be incapable of doing so . . ." in item 1c of form GC-331. (Underlining added.)

In either situation, the standard is the same: an inability, with or without accommodations, to communicate a desire to participate in the voting process, with the caveat that the four methods of completing an affidavit of voter registration with assistance listed in the statute are not disqualifying.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal circulated for public comment in the 2016 winter comment cycle, which ran from December 11, 2015 to January 22, 2016. Nine comments were received. All commentators approved the forms (5) or approved them with modifications (4).

Form GC-320

Two commentators, a probate examiner from the Superior Court of Fresno County; and the Executive Officer, Superior Court of San Diego County, noticed that the *Citation For Conservatorship* (form GC-320), which was expanded from two to three pages (including a proof of service), contained no text on the second page other than the clerk's seal and the

[1] An earlier change in Elections Code section 2208 effective January 1, 2015 specified three types of assistance in completing the voter's affidavit that would not disqualify a conservatee from voting, but retained the basic standard of inability to complete the affidavit. See Assembly Bill 1311 in the 2013–2014 legislative session (Stats. 2015, ch. 591).

[2] Item 4c of form GC-310 formerly called upon the petitioner for the appointment of a conservator to state an opinion as to whether the proposed conservatee could complete a voter's affidavit. The revision of the form approved by the council in December eliminated that item entirely instead of modifying it to reflect the new voting capacity standard. This was done on the ground that the proposed conservatee's capacity to vote is not properly part of the petitioner's case. The two commentators on this proposal that addressed this change approved the complete deletion of a voting capacity question from form GC-310. See comment nos. 1 and 8.

standard notice advising persons with disabilities how to request accommodations for their court appearances.

Both commentators pointed out that this arrangement would encourage fraud by permitting someone to substitute a modified page 1 for the first page of the form actually issued by the court or by permitting the page with the clerk's seal to be attached to an entirely different document. The committee agrees with these comments, and has revised the form by moving items 6 and 7 from the bottom of the first page to the top of the second, and placing the following statement at the bottom of page 1:

> "CONTINUED ON PAGE 2. THE CLERK'S SEAL IS ALSO ON THAT PAGE."

The committee made one additional change. The second sentence of item 4 on page 1 of the form, immediately after statement of the new standard for a conservatee's capacity to vote, reads as follows: "But the proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration . . . [followed by the four types of assistance in completing the affidavit listed in Elections Code section 2208(d) that would not disqualify a voter]."

The change consists of elimination of the word "[B]ut" at the beginning of the sentence because that sentence is not a contrast to, limitation of, or negative comment upon the preceding sentence, which states the new standard for voting capacity.

Forms GC-330 and GC-331

The legislation created the following presumption in Elections Code section 2208(a): "A person is presumed competent to vote regardless of his or her conservatorship status." One of the commentators, the ACLU of California Voting Rights Project (ACLU), requested placement of the new statutory presumption in forms GC-330 and GC-331, the orders appointing court investigators for initial and review investigations in conservatorship proceedings under, respectively, Probate Code sections 1826 and 1851. The committee agrees with this change. In form GC-330, used for initial investigations, the revised sentence reads as follows:

> *A person is presumed competent to vote regardless of his or her conservatorship status. To determine whether this presumption is overcome, you must d*etermine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. (Italicized for emphasis.)

The revised first sentence of item 1c of form GC-331, used for review investigations, reads:

> *A person is presumed competent to vote regardless of his or her conservatorship status. In determining whether this presumption is overcome, you must d*etermine if the proposed conservatee is now incapable of communicating, with or without reasonable

accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. (Italicized for emphasis.)

In form GC-331, an error was made in the revision of item 1c that was adopted in December 2015. Twice in that item, the conservatee is referred to as the "*proposed* conservatee." But this form is used only for review investigations or for successor conservator investigations, after a conservator has been appointed. The word "proposed" has been eliminated in this item.

The ACLU also made the following request concerning the identical text of item 1e in form GC-330 and item 1c in item 331:

Delete:
"The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations."

- Explanation:

While it is true that a conservatee may not be disqualified based on needing a reasonable accommodation to register to vote, the court appointed investigator does not need to consider the conservatee's ability to register to vote to determine competence. The court investigator only needs to determine whether the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. A court investigator may be able to make that determination with a simple question, for example by asking the conservatee whether he or she wants to vote.

The reference to voter registration could be confusing because the standard that SB 589 replaced was based on whether a "person is not capable of completing an affidavit of voter registration. . ." By including the list of reasonable accommodations that a conservatee is entitled to, a court investigator might incorrectly suppose that he or she should still consider a conservatee's ability to fill out a voter registration form, perhaps as the standard for expressing a desire to participate in the voting process.

The committee has considerable sympathy with the ACLU's position. It is a fact that a (proposed) conservatee's inability to complete a voter's affidavit, with or without the four specific reasonable accommodations or types of assistance listed in the form, has little to do with the new standard of incapacity, and neither a court investigator nor the court itself is likely to test

the proposed conservatee's capacity to vote by having him or her attempt to fill out a voter's affidavit.

But the committee decided not to remove this language from either form because Senate Bill 589 repeats this text in sections 8, 9, 10, 11, and 12 of the legislation, amending, respectively, Probate Code sections 1823 (concerning issuance and contents of the *Citation for Conservatorship*); 1826 (concerning duties of the court investigator in an initial investigation); 1828 (concerning the court's duty to inform the proposed conservatee about the proceeding and its consequences at the hearing); 1851 (concerning the duties of the court investigator in a review investigation after the appointment of a conservator); and 1910 (concerning the duty of the court to order the conservatee's disqualification from voting if it determines that he or she fails to meet the standard for capacity to vote).

Amended section 1823 specifically requires the citation to "state the substance of all the following," including the statement concerning completion of the voter's affidavit (in section 1823(b)(3)(B)). Section 1826(a)(2) requires the court investigator to "[i]nform the proposed conservatee of the contents of the citation" . . . , presumably including the information about the voter's affidavit amended section 1823 requires to be placed there. The legislation also added a fourth type of non-disqualifying assistance to or accommodation for a person completing a voter's affidavit to the three types of assistance or accommodation added to Elections Code section 2208 in 2014.[3]

All of these facts convinced the committee that the Legislature intended that there should be a significant emphasis and reemphasis on these provisions in any forms the Judicial Council creates or revises to reflect the new law.

Other Comments

A judge of the Superior Court of Orange County requested that the *Order Appointing Probate Conservator* (form GC-340) be revised to include the court's conclusion that the conservatee is disqualified from voting in Finding No. 8 on page 1 of the form ("the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process"). The committee believes that this conclusion belongs where it now is, in the order portion of the form, in item 22 on page 3 and therefore, declined to make this change.

The Superior Court of Riverside County had no specific comments concerning this proposal, but urged that the Judicial Council take the opportunity presented by it to also revise the portions of the *Petition for Appointment of Probate Conservator* (form GC-310) and the *Order Appointing Probate Conservator* (form GC-340) that address the possible disqualification of the spouse or domestic partner of a proposed conservatee from appointment as conservator because of the actual or possible dissolution of their marriage or termination of their partnership under Probate Code section 1813.

[3] See footnote 1 on page 2, above.

The committee will look at the issue presented, an asserted lack of coordination between the language of the petition and the order concerning this issue and its effect on the court's self-help automation, in future meetings. It does appear at first glance that the court's concern may stem from a misunderstanding about the intended operation of section 1813, not from any defect in either form.

Alternatives

The only alternative considered was acceptance of the ACLU's request for deletion of the material concerning completion of the voter's affidavit in forms GC-330 and GC-331, discussed above. That alternative was not selected for the reasons stated above. All votes on specific portions of the proposal were unanimous.

Implementation Requirements, Costs, and Operational Impacts

The legislation that led to this proposal will require a substantial initial cost for training, particularly of court investigators. The new law also requires all conservatees who lost their right to vote under the old standard to be reevaluated under the new one in their next regularly scheduled review investigations, and also requires periodic future reviews of determinations of voting incapacity under the new standard.[4] This activity is expected to result in significant additional costs over the next two years, until all conservatees will have been evaluated under the new standard, and will also result in far more reevaluations in later years than in the past, with a significantly higher percentage of voting restorations. Each of these will require additional court orders and notifications to the Secretary of State and the court's local county elections official.

On the other hand, the standard for a determination that a conservatee retains or has regained the capacity to vote has been significantly lowered. Many more, if not almost all, new conservatees should retain that right. Moreover, once the new standard is understood by judicial officers and court investigators, the total time and effort necessary to ascertain whether new conservatees should retain their right to vote should be reduced.

Attachments and Links

Judicial Council forms GC-320, GC-330, and GC-331, at pages 8–15;
Chart of comments, at pages 16–25.
Attachment A: SB 589 (Stats. 2015, ch.736):
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB589

[4] See Probate Code section 1851(a)(1)(D) and Elections Code section 2209.

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:	
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: PROPOSED CONSERVATEE	
CITATION FOR CONSERVATORSHIP ☐ **Limited Conservatorship**	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA,

To *(name)*:

1. **You are hereby cited and required to appear at a hearing in this court on**

a. Date: Time: ☐ Dept.: ☐ Room:

b. Address of court: ☐ same as noted above ☐ other *(specify):*

and to give any legal reason why, according to the verified petition filed with this court, you should not be found to be ☐ unable to provide for your personal needs ☐ unable to manage your financial resources and by reason thereof, why the following person should not be appointed ☐ conservator ☐ limited conservator of your ☐ person ☐ estate *(name)*:

2. A conservatorship of the person may be created for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter. A conservatorship of the property (estate) may be created for a person who is unable to resist fraud or undue influence, or who is substantially unable to manage his or her own financial resources. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.

3. At the hearing a conservator may be appointed for your ☐ person ☐ estate.
   The appointment may affect or transfer to the conservator your right to contract, to manage and control your property, to give informed consent for medical treatment, to fix your place of residence, and to marry.

4. You may be disqualified from voting if you are found to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process. You will not be disqualified from voting on the basis that you do, or would need to do, any of the following to complete an affidavit of voter registration:
   a. Sign the affidavit of voter registration with a mark or a cross, pursuant to Section 2150(b) of the Elections Code;
   b. Sign the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code;
   c. Complete the affidavit of voter registration with the assistance of another person pursuant to Section 2150(d) of the Elections Code; or
   d. Complete the affidavit of voter registration with reasonable accommodations.

5. The judge or the court investigator will explain to you the nature, purpose, and effect of the proceedings and answer questions concerning the explanation.

CONTINUED ON PAGE 2. THE CLERK'S SEAL IS ALSO ON THAT PAGE.

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: PROPOSED CONSERVATEE	CASE NUMBER:

6. You have the right to appear at the hearing and oppose the petition. You have the right to hire an attorney of your choice to represent you. The court will appoint an attorney to represent you if you are unable to retain one. You must pay the cost of that attorney if you are able. You have the right to a jury trial if you wish.
7. *(For limited conservatorship only)* In addition to the rights stated in item 6 above, you have the right to oppose the petition in part by objecting to any or all of the requested duties or powers of the limited conservator.

Date: Clerk, by _____, Deputy

(SEAL)

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: PROPOSED CONSERVATEE	CASE NUMBER:

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this proceeding. **I served copies** of the *Citation for Conservatorship* and the *Petition for Appointment of Probate Conservator* (form GC-310) as follows:

2. a. Person cited *(name)*:

   b. Person served: (1) ☐ person in item 2a
   (2) ☐ other *(specify name and title or relationship to the person named in item 2a)*:

   c. Address *(specify)*:

3. I served the person named in item 2
   a. ☐ **by personally delivering** the copies (1) on *(date)*: (2) at *(time)*:
   b. ☐ **by mailing** the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
      (1) on *(date):* (2) from *(city):*
      (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt—Civil* and a postage-paid return envelope addressed to me. *(Attach completed* Notice and Acknowledgment of Receipt—Civil *(form POS-015).)*
      (4) ☐ to an address outside California with return receipt requested. *(Attach completed return receipt.)*
   c. ☐ **other** *(specify other manner of service, and the authorizing code section and order of the court)*:

4. a. Person serving *(name, address, and telephone number)*:

   b. ☐ Fee for service: $
   c. ☐ Not a registered California process server.
   d. ☐ Exempt from registration under Business and Professions Code section 22350(b).
   e. ☐ Registered California process server.
      (1) ☐ Employee or independent contractor.
      (2) Registration no. *(specify)*:
      (3) County *(specify)*:
      (4) Expiration *(date)*:

5. ☐ I **declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
6. ☐ I **am a California sheriff or marshal** and I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE OF PERSON SERVING)

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:	
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE	
ORDER APPOINTING COURT INVESTIGATOR ☐ **Conservatorship** ☐ **Limited Conservatorship**	CASE NUMBER:

To *(name)*:

You are hereby appointed Court Investigator in the matter entitled above.

1. ☐ **Before the appointment of a general conservator** YOU ARE DIRECTED TO:
   a. Conduct the interviews required by Probate Code section 1826(a)(1). Interview the proposed conservatee personally.
   b. Provide to the proposed conservatee the information required by Probate Code section 1826(a)(2).
   c. Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether he or she is willing to attend.
   d. Make the determinations required by Probate Code sections 1826(a)(4)–(7), and (9)–(10). In making those determinations, review the allegations of the *Petition for Appointment of Probate Conservator* (form GC-310) as to why the appointment of a conservator is required and refer to the *Confidential Supplemental Information* (form GC-312) submitted by the petitioner. Consider the facts shown in the latter form that address each of the categories specified in Probate Code section 1821(a)(1)–(5) and consider, to the extent practicable, whether you believe the proposed conservatee suffers from any of the mental function deficits listed in Probate Code section 811(a) that significantly impairs his or her ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in Probate Code section 1801(a) (if a conservator of the person is sought) or section 1801(b) (if a conservator of the estate is sought). If you believe the proposed conservatee suffers from one or more mental function deficits listed in Probate Code section 811(a), identify all observations that support your belief.
   e. A person is presumed competent to vote regardless of his or her conservatorship status. To determine whether this presumption is overcome, you must determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.
   f. Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning (1) representation by legal counsel; and (2) whether he or she is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.
   g. Mail, at least five days before the date set for hearing, a copy of your report (1) to all persons listed in Probate Code section 1826(a)(12)
      ☐ **except** for the persons listed in attachment 1g(1) because the court has determined that mailing to those persons will result in harm to the proposed conservatee;
      ☐ **and** (2) to the other persons ordered by the court listed in Attachment 1g(2) *(specify names and addresses in the attachment).*
   h. ☐ Comply with the other orders specified in Attachment 1h.

Form Approved for Optional Use
Judicial Council of California
GC-330 [Rev. July 1, 2016]

Probate Code, §§ 1454 1826, 1894, 2250.6, 2253;
Cal. Rules of Court, rule 7.1060
www.courts.ca.gov

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: ☐ CONSERVATEE ☐ PROPOSED CONSERVATEE	CASE NUMBER:

2. ☐ **On the filing of a *Petition for Appointment of Temporary Conservator*** YOU ARE DIRECTED TO:
   a. To the extent feasible, before the hearing on the petition or, if not feasible, within two court days after the hearing, conduct the interviews required by Probate Code section 2250.6(a)(1) (prehearing) or 2250.6(b)(1) (posthearing). Interview the temporary conservatee or proposed temporary conservatee personally.
   b. Provide to the temporary conservatee or proposed temporary conservatee the information required by Probate Code section 2250.6(a)(2) (prehearing) or 2250.6(b)(2) (posthearing).
   c. To the extent feasible, make the determinations required by Probate Code section 2250.6(a)(3)–(5) before the hearing on the petition.
   d. To the extent feasible, before the hearing on the petition, report to the court in writing concerning all of the matters stated in items 2a–c.
   e. If you do not visit the temporary conservatee until after the hearing at which a temporary conservator was appointed and the temporary conservatee objects to the appointment of the temporary conservator or requests an attorney, report this information to the court promptly and in no event more than three court days after the date of your interview with the temporary conservatee.
   f. If it appears to you that the temporary conservatorship is inappropriate, immediately, and in no event more than two court days after you make your determination, make a written report of your determination to the court.

3. ☐ **Before the court grants an order under Probate Code section 2253 authorizing the temporary conservator to change the residence of the temporary conservatee**
   a. ☐ YOU ARE DIRECTED TO:
      (1) Personally interview and inform the temporary conservatee of the contents of the request by the temporary conservator for authority to change the temporary conservatee's residence; of the nature, purpose, and effect of the proceedings; and of the right to oppose the request, attend the hearing, and be represented by legal counsel.
      (2) Make the determinations required by Probate Code section 2253(b)(3)–(7).
      (3) At least two days before the hearing on change of residence, report your findings concerning the foregoing in writing to the court, including in your report the temporary conservatee's express communications concerning representation by legal counsel and whether he or she is not willing to attend the hearing and does not wish to contest the petition.
      (4) ☐ Comply with the other orders specified in Attachment 3a(4) .
   b. ☐ Good cause appearing, YOU ARE DIRECTED NOT to conduct the investigation and NOT make the report described in Probate Code section 2253(b).
   c. ☐ Good cause appearing, YOU ARE DIRECTED as specified on Attachment 3c, INSTEAD of proceeding with the investigation and report described in Probate Code section 2253(b).

4. ☐ **Before the court grants an order relating to medical consent under Probate Code section 1880.**

   The petition for an order determining that there is no form of medical treatment for which the conservatee or proposed conservatee has the capacity to give informed consent alleges that he or she is not willing to attend the hearing, or the court has received an affidavit or certificate attesting to the medical inability of the conservatee or proposed conservatee to attend the hearing.

   YOU ARE DIRECTED TO:
   a. Personally interview and inform the conservatee or proposed conservatee of the contents of the petition; of the nature, purpose, and effect of the proceedings; and of the right to oppose the petition, attend the hearing, and be represented by legal counsel.
   b. Make the determinations required by Probate Code section 1894(c)–(g).
   c. At least five days before the hearing on the petition, report your findings concerning the foregoing in writing to the court, including in your report the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.
   d. ☐ Comply with the other orders specified in Attachment 4d .

5. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

FOR PREPARATION BY THE COURT ONLY

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 THE ☐ PERSON ☐ ESTATE
of *(name)*:

CONSERVATEE

CASE NUMBER:

ORDER APPOINTING COURT INVESTIGATOR (Review and Successor Conservator Investigations)*

☐ **Conservatorship** ☐ **Limited Conservatorship**

To *(name)*:

You are hereby appointed Court Investigator in the matter entitled above.

1. ☐ **Review investigation**

   YOU ARE DIRECTED TO:

   a. ☐ Without prior notice to the conservator

      ☐ With prior notice to the conservator because of necessity or to prevent harm to the conservatee visit and personally inform the conservatee that he or she is under a conservatorship and give the name of the conservator to the conservatee.

   b. Make the determinations required by Probate Code section 1851(a)(1)(A)-(C), including whether the conservator is acting in the best interests of the conservatee. This last determination must include an examination of the conservatee's placement; the quality of care, including physical and mental treatment; and the conservatee's finances and must include, to the greatest extent possible, interviews with the conservator, the conservatee's spouse or registered domestic partner and relatives within the first degree, or, if none, the conservatee's relatives within the second degree.

   c. A person is presumed competent to vote regardless of his or her conservatorship status. In determining whether this presumption is overcome, you must determine if the conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. The conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.

   d. ☐ The court has made an order or orders under *(select all that apply):*

      ☐ Probate Code section 1873 (authority of conservatee to enter into transactions)

      ☐ Probate Code section 1880 (conservatee's capacity to give informed consent to medical treatment)

      ☐ Probate Code section 1901 (conservatee's capacity to marry).

      Determine whether the present condition of the conservatee is such that the terms of the court order or orders identified above should be modified or the order or orders revoked.

   e. To the extent practicable, review the conservator's accounting with the conservatee if he or she has sufficient capacity.

   f. Inform the court immediately if you are unable at any time to locate the conservatee.

*** This form is for ordering review investigations and reports under Probate Code sections 1850 and 1851 or investigations and reports concerning appointment of a successor conservator under Probate Code section 2684 or 2686. The *Order Appointing Court Investigator* (form GC-330) may be used to order initial and other investigations and reports under Probate Code sections 1826, 1894, 2250.6, and 2253. The *Order Setting Biennial Review Investigation and Directing Status Report Before Review* (form GC-332) may be used to order a biennial review investigation and status report under Probate Code section 1850(a)(2)). See Cal. Rules of Court, rule 7.1060.**

Form Approved for Optional Use
Judicial Council of California
GC-331 [New July 1, 2016]

Probate Code, §§ 1454, 1850, 1851, 1873, 1880,1901, 2356.5, 2684, 2686;
Cal. Rules of Court, rule 7.1060
www.courts.ca.gov

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: CONSERVATEE	CASE NUMBER:

1. g. ☐ *(If the conservator is authorized to act under Probate Code section 2356.5–dementia treatment or placement)* Advise the conservatee specifically that he or she has the right to object to the conservator's powers granted under section 2356.5. Determine whether the conservatee objects to the conservator's powers under section 2356.5, whether the powers granted under section 2356.5 are warranted, and whether some change in those powers is warranted.

   h. ☐ *(For limited conservatorship only)* Make a recommendation regarding the continuation or termination of the limited conservatorship.

   i. ☐ (For conservatorships existing on December 31, 1980, in which the conservatee has not been adjudged incompetent) Determine whether an order should be made under Probate Code section 1873 broadening the capacity of the conservatee.

   j. Certify in writing to the court your determinations and findings, including a statement of the facts on which the findings are based, not less than 15 days before the date of review under Probate Code section 1850. Do not disclose confidential medical information or confidential criminal history information from the California Law Enforcement Telecommunications System (CLETS) in the body of your report. Place all such information in one or more separate attachments to the report.

   k. At the same time your report is certified to the court, mail copies to the conservator and to the attorneys of record for the conservator and the conservatee.

   l. ☐ Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative.

   m. ☐ Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative

      ☐ **except** the person or persons named in Attachment 1m because the court has determined that mailing to that person or persons will result in harm to the conservatee.

   n. ☐ Comply with the other orders specified on Attachment 1n.

2. ☐ **Review investigation on the court's own motion or on request by an interested person**

   YOU ARE DIRECTED,

   ☐ on the court's own motion,

   ☐ at the request of *(name)*: an interested person,

   to conduct a review investigation of the conservatorship and make a report to the court as follows *(specify):*

☐ Continued in Attachment 2.

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE of *(name)*: CONSERVATEE	CASE NUMBER:

3. ☐ **Successor conservator investigation**

a. ☐ A petition for appointment of a successor conservator has been filed in this matter. The petition does not allege that the conservatee will be present at the hearing on the petition, which is scheduled as follows:

Date: Time: Dept.:

b. ☐ A petition for appointment of a successor conservator has been filed in this matter. The petition alleges that the conservatee would be present at the hearing on the petition, but the conservatee failed to appear at the hearing. The hearing has been continued to the following date, time, and department:

Date: Time: Dept.:

c. YOU ARE DIRECTED TO:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the proposed successor conservator, and the conservatee's rights to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.

(3) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

(4) If the conservatee is not represented by legal counsel, determine whether he or she wishes to be represented by legal counsel and, if so, identify the attorney whom the conservatee wishes to retain or whether he or she desires the court to appoint legal counsel.

(5) If the conservatee does not plan to retain legal counsel and has not requested appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to resolution of the matter or is necessary to protect the interests of the conservatee.

(6) Report to the court in writing, at least five days before the hearing or continued hearing, concerning items (2)–(5), including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.

(7) Mail, at least five days before the hearing or continued hearing, a copy of the report identified in item (6) to the attorneys, if any, for the petitioner and the conservatee and to the following additional persons *(specify):*

☐ Continued in Attachment 3.

4. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	ACLU of California, Voting Rights Project, by Raul Macias, Voting Rights Attorney; Fred Nisen, Supervising Attorney for Voting Rights Sacramento	AM	PROPOSED CHANGES TO GC-310: We support removing the reference to voting capacity from GC-310. We agree with the committee's conclusion that a petitioner's opinion about a conservatee's capacity to vote does not affect the duties of the proposed conservator and is not necessary. PROPOSED CHANGES TO GC-330: We propose the following further changes to form GC-330(e): • Delete: The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations. • Explanation: While it is true that a conservatee may not be disqualified based on needing a reasonable accommodation to register to vote, the court	The committee agrees with the commentator's conclusion that the phrase the commentator would delete adds little or nothing to the new standard for determining a conservatee's capacity to vote, but have concluded that the Legislature's emphasis on it, to the point of including it in every restatement of that standard in the legislation, supports its retention in these forms.

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			appointed investigator does not need to consider the conservatee's ability to register to vote to determine competence. The court investigator only needs to determine whether the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. A court investigator may be able to make that determination with a simple question, for example by asking the conservatee whether he or she wants to vote. The reference to voter registration could be confusing because the standard that SB 589 replaced was based on whether a "person is not capable of completing an affidavit of voter registration. . ." By including the list of reasonable accommodations that a conservatee is entitled to, a court investigator might incorrectly suppose that he or she should still consider a conservatee's ability to fill out a voter registration form, perhaps as the standard for expressing a desire to participate in the voting process. • Add: A person is presumed competent to vote regardless of his or her conservatorship status. • Explanation: SB 589 added a presumption to Elections Code Section 2208 that a person is eligible to vote regardless of conservatorship status. Elections Code Section 2208 also defines the standard for	The committee supports the addition to the form of the express statement of the presumption of a conservatee's competency to vote.

	Commentator	Position	Comment	Committee Response
			disqualifying a person from voting due to mental incompetence. The sentence should be added to GC-330 to ensure court investigators are aware that they are to presume the person they are evaluating is competent to vote. • Proposed new language: Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. A person is presumed competent to vote regardless of his or her conservatorship status. PROPOSED CHANGES TO GC-331: We propose the following further changes to form GC-331(c) for the same reasons as the changes proposed for GC-330: • Delete: The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the	See response to the comment concerning form GC-330(e) above.

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations. • Add: A person is presumed competent to vote regardless of his or her conservatorship status. • Proposed new language: Determine if the proposed conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. A person is presumed competent to vote regardless of his or her conservatorship status. Thank you for considering our comments. If you have any questions, please do not hesitate to contact us.	See response to comments concerning the addition of this presumption in form GC-330.
2.	Leann E. Ginther Probate Examiner Superior Court of CA County of Fresno Fresno	AM	Form GC-320, *Citation for Conservatorship*, as revised 1/1/2016 consists of 3 pages, page 2 of which contains only the caption that includes the case name (the proposed conservatee) and case number, and the space for the deputy clerk's seal demonstrating issuance of the Citation.	The committee believes this comment has merit. It has revised this form to move items 6 and 7 to the second page, where the seal is located, and has added advice at the bottom of page 1 that additional text and the clerk's seal are on page 2.

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			This format appears to lack protections regarding the actual page 1 of the Citation form served to the proposed conservatee and subsequently filed with the Court. It appears that a petitioner with motive to do so could attach a different page 1 to the clerk's issued page 2 containing the Court's seal, which could allow for alteration of page 1 with perhaps a different hearing date, etc. on the "unauthentic" page 1, which the petitioner could then file with the Court. Previously, the Citation form page 1 contained the clerk's seal on the same page as the hearing date and other critical information, which would then be filed with the Court following service to the proposed conservatee; this previous form appears to at least have the protection of the clerk's seal cohesive with the substance of the Citation, rather than the 1/1/2016 revised form containing a detached clerk's seal on a separate page 2 that is only identified by the caption provided by the petitioner. Thank you for considering,	
3.	Hon. Kim R. Hubbard Judge of the Superior Court of California, County of Orange Santa Ana	AM	I believe it would be advisable to put the whole explanation in the ruling [in the court order, form GC-340*], to wit: "Conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process and is, therefore, disqualified from voting."	The committee decided not to make this change. The disqualification is part of the order, not the findings. See item 22 on page 3 of the form.

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	Orange County Bar Association, by Todd G. Friedland, President Newport Beach	A	• Does the proposal appropriately address the stated purpose? **YES** • Should form GC-310 retain a reference to voting capacity, changed to reflect the change made by SB 589? **N**O	No response necessary.
5.	Superior Court, County of Los Angeles Los Angeles	A	No specific comments.	No response necessary.
6.	Superior Court, County of Riverside Riverside	A	While the GC-310 form is being revised, we request that the committee consider coordinating the language in the petition and order to accommodate easier self-help automation. For example, items 6 and 7 of GC-310 request information concerning either the petitioner or the proposed conservator using the same checkbox, but items 16 and 17 of GC-340 only make findings concerning the proposed conservator. Consequently, an automation solution cannot convey the answers to the applicable questions in GC-310 to GC-340 without asking further questions to determine whether the data relates to the petitioner or proposed conservator. We request that you create separate checkboxes at items 6 and 7 of GC-310 for the petitioner and proposed conservator. This would permit data related to the proposed conservator to be replicated in the order, but would not do so if the selection only dealt with the petitioner.	This comment is outside the scope of the current proposal. The committee will review this issue, but cannot do so in the context of the present matter. On initial review, however, the committee does not support the requested change. Items 6 and 7 of the petition address the requirements of Probate Code section 1813, concerning the potential appointment of a spouse or domestic partner of the proposed conservatee who is planning on filing for dissolution or to terminate the partnership, or has already undertaken to do so. Item 6 addresses the possibility or actuality of a dissolution or request for nullity of the marriage of the petitioner or the proposed conservator to the conservatee. Item 7 refers to the possibility or actuality that a petitioner or proposed conservator who is a domestic partner of the proposed conservatee will or has terminated the partnership. These matters pertain to the possible

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
				disqualification from appointment as conservator of a divorcing spouse or partnership-terminating domestic partner of a proposed conservatee unless the court finds by clear and convincing evidence, after appointment of counsel for the conservatee and consultation with that counsel, that appointment of such a spouse or partner as conservator would still be in the best interests of the conservatee. The complexity here arises from the fact that section 1813 requires the special scrutiny even if the divorcing spouse or terminating partner merely petitions for the appointment of another person as conservator, although the disqualification from appointment absent the special finding applies only to the spouse or partner, not to another person appointed on his or her petition. The court is concerned that the form refers to both the petitioner and the proposed conservator in items 6 and 7 under a single checkbox, while referring only to the conservator in items 16 and 17. This treatment is required by section 1813, which should perhaps be revised to authorize the court to apply the strict scrutiny and the stronger test for appointments of 3rd party candidates on petitions of divorcing spouses or terminating partners, but now does not.
7.	Superior Court, County of Sacramento Sacramento	A	No specific comments	No response necessary.
8.	Superior Court, County of San Diego,	AM	• Would the proposal provide cost savings?	

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	by Michael M. Roddy, Court Executive Officer San Diego		**No** • What are implementations requirements for courts? **Training will be required for front-line staff, Probate Examiners, Court Investigators, and Judicial Officers.** • 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? **Unable to determine.** • Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? **Yes** • Does the proposal appropriately address the stated purpose? **Yes** • Q: Should form GC-310 retain a reference to voting capacity, changed to reflect the change made by SB589? **No, we agree with the deletion of the former #4c. Under the new law, the proposed conservator's opinion on the proposed conservatee's desire or ability to vote seems**	

	Commentator	Position	Comment	Committee Response
			pointless. GC-320 – CITATION FOR CONSERVATORSHIP **Although the added language to the new #4 is necessary, I do not like that the form is now three pages. Moreover, I do not like that the issuance, completed by the clerk, is on a page by itself. Not only is this cumbersome for the clerk to issue, but this page could easily be detached and/or attached to a doctored citation and given to the proposed conservatee.** GC-330 – ORDER APPOINTING COURT INVESTIGATOR **No comment. San Diego does not currently use this form.** GC-331 – ORDER APPOINTING COURT INVESTIGATOR (Review and Successor Conservator Investigations) **No comment. San Diego does not currently use this form.** GC-310 – PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR **We agree with the deletion of the former #4c. Under the new law, the proposed**	The committee cannot retain the existing two-page form, but agrees with the comment about leaving the second page with only the court seal. The committee has moved items 6 and 7 to that page of form GC-320, and has added advice at the bottom of page 1 that additional text and the clerk's seal are on page 2.

W16-15
Probate Conservatorships: Conservatees' Capacity to Vote
(Revise Judicial Council forms GC-310, GC-320, GC-330, GC-331, and GC-340)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			conservator's opinion on the proposed conservatee's desire or ability to vote seems pointless.	
9.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee San Francisco	A	Recommended Joint Rules Subcommittee Position: Agree with proposed changes. The Joint Rules Subcommittee would like to note that the proposed revisions by the Probate and Mental Health Advisory Committee provide excellent direction and guidance for those who will use these forms. Court staff will need to become familiar with the revisions to the new forms, but these revisions are not expected to create a significant impact on trial court operations.	No response required. The committee thanks the Joint Rules Subcommittee for its kind note and closing comment.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
March 15, 2016

To
Members of the Rules and Projects Committee

From
Heather Anderson
Supervising Attorney, Legal Services

Subject
Initiate Circulating Order re: Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions from Enforcement of Judgments

Action Requested
Initiate Circulating Order

Deadline
March 18, 2016

Contact
Anne Ronan, 415-865-8933
anne.ronan@jud.ca.gov

With Justice Hull's approval we are adding an item to the agenda for RUPRO's March 18 for your review and approval.

Statute mandates that the Judicial Council, on April 1 of every third year beginning in 2004, make and publish adjustments to the dollar amounts of certain statutory exemptions from judgments to reflect changes in the consumer price index over the prior three year period. These exemption amounts are listed in the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156). The council is also required, at the same time, to submit to the Legislature a report on potential adjustments to the dollar amounts of homestead exemptions, calculated in the same way.

Because the new dollar amounts must, by statute, be published by April 1, 2016, and a report submitted to the Legislature at that same time, the proposal must be approved by circulating order if it is to be timely. Under the California Rules of Court, RUPRO "initiates circulating

orders to allow the council to adopt rules, standards, and forms between council meetings if necessary." Because the next regular Judicial Council meeting is not scheduled until April 15, 2016, it is appropriate for RUPRO to initiate a circulating order to ensure timely revision of form EJ-156 and submission of the required report to the Legislature. Following RUPRO's approval, this item will circulate to all council members for signature.

A draft of the Circulating Order Memorandum to be submitted to the council is attached for your consideration. The Circulating Order number and the voting instruction and signature pages will be attached to the memorandum before circulation to the council.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: March 18, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions from Enforcement of Judgments

Committee or other entity submitting the proposal:
Judicial Council staff submitting proposal for revision of form for potential sponsorship by RUPRO

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: Mandated by statute, Code Civ. Proc. § 703.150
Project description from annual agenda: not included on annual agenda

If requesting July 1 or out of cycle, explain:
By statutory mandate, the council must publish revised dollar amounts of exemptions from enforcement of judgment every third year, effective April 1 of that year.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Under Rule of Court 10.139(d), RUPRO initiates circulating orders to allow the council to adopt rules, standards, and forms between council meetings, if necessary. Because the required form revision was overlooked and not sent to the February Judicial Council meeting, and because the new dollar amounts must, by statute, be published by April 1, 2016, and a report submitted to the Legislature at that same time, the proposal must be approved by circulating order if it is to be timely.

JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: -CO-

Title
Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions from Enforcement of Judgments

Rules, Forms, Standards, or Statutes Affected
Approve form EJ-156

Recommended by
Judicial Council Rules and Projects Committee
Hon. Harry E. Hull, Chair

Martin Hoshino
Administrative Director

Action Requested
VOTING MEMBERS ONLY: Vote and return by fax. Additionally, return original signature page.

Please Respond By
March 29, 2016

Date of Report
March 16, 2016

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

Statute mandates that the Judicial Council, on April 1 of every third year beginning in 2004, make and publish adjustments to the dollar amounts of certain statutory exemptions from judgments to reflect changes in the consumer price index over the prior three year period. These exemption amounts are listed in the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156). The council is also required, at the same time, to submit to the Legislature a report on potential adjustments to the dollar amounts of homestead exemptions, calculated in the same way. The Judicial Council Rules and Projects Committee and the Administrative Director recommend that approval of the form revision and report to the Legislature be made by circulating order rather than at the council's next business meeting to ensure that the form is revised and the report submitted in compliance with statute.

Recommendation

1. The Judicial Council's Rules and Projects Committee recommends that the Judicial Council approve, effective April 1, 2016, revised *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156).

2. The Administrative Director recommends that the Judicial Council take the following actions:

    a. Approve, effective March 30, 2016, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and

    b. Direct the Administrative Director to submit the report to the Legislature.

The recommended form is attached at pages 5–6. The recommended report is attached at pages 7–10.

Previous Council Action

In 2004, the Judicial Council authorized the Administrative Office of the Courts[1] to prepare a list of the amounts of certain exemptions from enforcement of judgments and to periodically update the list as required by Code of Civil Procedure section 703.150(d)–(e).[2] Pursuant to this authorization, a list entitled *Current Dollar Amounts of Exemptions From Enforcement of Judgments* was prepared and posted on the California Courts website in April 2004. The list contained the dollar amounts of exemptions effective as of April 1, 2004, and indicated that further adjustments would be made every three years. As statutorily mandated, the exemption amounts on the list were adjusted in 2007, 2010, and 2013. The council, rather than the Administrative Director, began approving the revisions to the form in 2013.

The requirement that the council report on potential adjustments to the homestead exemption (see section 703.150(c)) is a more recent addition to the statute. This is the second report to the Legislature prepared under that provision.

Rationale for Recommendation

Section 703.150(e) requires the Judicial Council, beginning April 1, 2004, to publish a list of the current dollar amounts of exemptions from the enforcement of judgment provided in sections 703.140(b) (for cases under Title 11 of the United States Code) and 704.010 et seq. (for other

[1] See Judicial Council of California, Report from Civil and Small Claims Advisory Committee, *Exemptions From the Enforcement of Judgments* (April 12, 2004) and minutes of the April 23, 2004, Judicial Council meeting, item 1.

[2] Unless otherwise noted, all statutory references hereafter are to the Code of Civil Procedure.

cases) together with the next scheduled date of adjustment. The council is required to adjust the figures every three years based on changes to the consumer price index. (See § 703.150(a)–(b).) The list of the dollar amounts of exemptions needs to be adjusted again at this time.

The dollar amounts of the exemptions must be adjusted based on the change in the California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on December 31. (§ 703.150(d).) Based on the formula attached to this report, staff has calculated the adjusted dollar amounts of the exemptions that will be effective on April 1, 2016. *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (as form EJ-156) has been revised to show the adjusted amounts.

In 2010, the Legislature amended the provisions on exemptions to address potential adjustments to the dollar amount of homestead exemptions provided in section 704.730(a). (See § 703.150(c).) The council is not to make those adjustments, but only to calculate what they would be under the same formula used for adjusting the other exemptions (i.e., based on the change in the consumer price index over the past three years) and to provide that information to the Legislature, beginning on April 1, 2013 and at three-year intervals thereafter. (Ibid.) The recommended report to the Legislature provides this information, along with a copy of the formula used to generate it.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment because the changes to the forms are technical. No alternatives were considered in light of the statutory mandate to adjust the figures and to provide a report to the Legislature.

Implementation Requirements, Costs, and Operational Impacts

The resource implications for this proposal for the trial courts should be minimal. The form is informational only and is not filed with or completed by the courts. No costs or operational impacts are associated with the approval of the report to the Legislature.

Attachments

1. Formula for adjusting exemption amounts, at page 4
2. Form EJ-156, at pages 5–6
3. *Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions*, at pages 7–11
4. Voting instructions, at page 12
5. Vote and signature pages, at pages 13–14

Calculation of Dollar Amounts of Exemptions
Under Code of Civil Procedure Sections 703.140(b) and 704.010 et seq.
(Adjusted April 1, 2016)

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in the *Current Dollar Amounts of Exemptions From Enforcement of Judgments*, are calculated as follows:

1. Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d) the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq., are computed as follows:

$$\text{Adjusted dollar amount} = \left[\frac{\text{annual CCPI (Dec. 2015)} - \text{annual CCPI (Dec. 2012)}}{\text{annual CCPI (Dec. 2012)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

2. Definition

"CCPI" stands for the California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics.

3. Current Calculation (as of April 1, 2016)

The calculation for the adjusted dollar amounts of the exemptions in section 703.140(b) and 704.010 et. seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{249.666 - 238.155}{238.155} + 1 \right] \times \text{Previous dollar amount} = 1.0483 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 703.140(b)

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b).

These amounts are effective April 1, 2016. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

Code Civ. Proc., § 703.140(b)	Type of Property	Amount of Exemption
(1)	The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence,	$ 26,800
(2)	The debtor's interest in one or more motor vehicles	$ 5,350
(3)	The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item)	$ 675
(4)	The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	$ 1,600
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	$ 1,425
(6)	The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	$ 8,000
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	$ 14,325
(11)(D)	The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	$ 26,800

Form Approved for Optional Use
Judicial Council of California
EJ-156 [Revised April 1, 2016]

Code of Civil Procedure,
§§ 703.140, 703.150,
704.010 et seq.
www.courts.ca.gov

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 704.010 et seq.

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

These amounts are effective April 1, 2016. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

Code Civ. Proc. Section	Type of Property	Amount of Exemption
704.010	Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction)	$ 3,050
704.030	Material to be applied to repair or maintenance of residence	$ 3,200
704.040	Jewelry, heirlooms, art	$ 8,000
704.060	Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed $4,850)	$ 8,000
704.060	Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed $9,700)	$ 15,975
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) [1]	
	• Public benefits, one depositor is designated payee	$ 1,600
	• Social security benefits, one depositor is designated payee	$ 3,200
	• Public benefits, two or more depositors are designated payees [2]	$ 2,375
	• Social security benefits, two or more depositors are designated payees [2]	$ 4,800
704.090	Inmate trust account	$ 1,600
	Inmate trust account (restitution fine or order)	$ 300[3]
704.100	Aggregate loan value of unmatured life insurance policies	$ 12,800

1 The amount of a deposit account that exceeds exemption amounts is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

2 If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

3 This amount is not subject to adjustments under Code Civ. Proc., § 703.150.

JUDICIAL COUNCIL OF CALIFORNIA

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March 30, 2016

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, California 95814

Mr. Daniel Alvarez
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: *Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions,* as required under Code of Civil Procedure section 703.150(c)

Dear Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson:

The Judicial Council respectfully submits this report on potential adjustments to the dollar amounts of certain exemptions from enforcement of judgments, as required by Code of Civil Procedure section 703.150(c). That statute provides that at three-year intervals beginning on April 1, 2013, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of the homestead exemptions in effect immediately before that date as provided in Code of Civil Procedure section 704.730(a) may be increased under the formula set forth in section 703.150(d), should the Legislature approve such an adjustment.

Code of Civil Procedure section 703.150(d) provides that the Judicial Council is to determine the amount of the potential adjustment based on the change in the annual California Consumer Price Index for All Urban

Consumers, published by the Department of Industrial Relations, for the most recent three-year period ending on December 31 preceding the adjustment date, with each adjusted amount rounded to the nearest twenty-five dollars ($25). The council has calculated that the adjusted amounts based on the formula attached to this report would be as follows:

- The exemption amount in section 704.730(a)(1) (currently $75,000) would be increased to $78,625.

- The exemption amount in section 704.730(a)(2) (currently $100,000) would be increased to $104,830.

- The exemption amount in section 704.730(a)(3) (currently $175,000) would be increased to $183,450.

If you have any questions related to this report, please contact Deborah Brown, Chief Counsel, at 415-865-7667, deborah.brown@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

MH/AMR/
Attachment

cc: Shaun Naidu, Principal Consultant, Office of Senate President pro Tempore Kevin de León
Margie Estrada, Chief Counsel, Senate Judiciary Committee
Alf Brandt, Senior Counsel, Office of Speaker Anthony Rendon
Anita Lee, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Mike Petersen, Consultant, Senate Republican Policy Office
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee
Paul Dress, Consultant, Assembly Republican Office of Policy & Budget
Cory T. Jasperson, Director, Governmental Affairs, Judicial Council

Laura Speed, Principal Manager, Governmental Affairs, Judicial Council
Peter Allen, Public Affairs Officer, Public Affairs, Judicial Council
Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs, Judicial Council
Deborah Brown, Chief Counsel, Judicial Council Legal Services

Calculation of Dollar Amounts of Exemptions

Under Code of Civil Procedure Sections 704.730(a)
(Adjusted April 1, 2016)

The possible adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure section 703.730(a) are calculated as follows:

1. Formula

Under Code of Civil Procedure section 703.150(a), (b), and (d) the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq., are computed as follows:

$$\text{Adjusted dollar amount} = \left[\frac{\text{annual CCPI (Dec. 2015)} - \text{annual CCPI (Dec. 2012)}}{\text{annual CCPI (Dec. 2012)}} + 1 \right] \times \text{Previous dollar amount}$$

2. Definition

"CCPI" stands for the California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics.

3. Current Calculation (as of April 1, 2016)

The calculation for the adjusted dollar amounts of the exemptions in section 703.140(b) and 704.010 et. seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[\frac{249.666 - 238.155}{238.155} + 1 \right] \times \text{Previous dollar amount} = 1.0483 \times \text{Previous dollar amount}$$

The calculation of the dollar amounts of each of the individual exemptions is calculated by multiplying the amounts of the individual exemptions by 1.0483 with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

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Chair of the Judicial Council

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Report Summary

Report title: *Report on Potential Adjustments of Dollar Amounts of Homestead Exemptions*

Code section: Code of Civil Procedure section 703.150(c)

Date of report: March 30, 2016

The Judicial Council has submitted a report to the Legislature in accordance with Code of Civil Procedure section 703.150(c).

The following summary of the report is provided under the requirements of Government Code section 9795.

The report describes potential adjustments to the dollar amounts of homestead exemptions in Code of Civil Procedure section 704.730(a).

The full report can be accessed here: *http://www.courts.ca.gov/7466.htm*

A printed copy of the report may be obtained by calling 415-865-7446.