Item number: 01

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate Conservatorship: Notice of the Conservatee's Death (Adopt form GC-399)

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: January 29, 2016
Project description from annual agenda: #24,Develop and propose adoption of a form for the conservator to use to give notice of the conservatee's death to persons interested in the conservatorship.

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

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Probate Conservatorship: Notice of the Conservatee's Death

Rules, Forms, Standards, or Statutes Affected
Adopt form GC-399

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

Douglas C. Miller, Lead Staff
Judicial Council Legal Counsel

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 25, 2016

Contact
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Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council respond to a direction from the Legislature by adopting a new Judicial Council form for a conservator of the person of a deceased conservatee to use to notify the court and persons interested in the conservatorship that the conservatee has died.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt a new mandatory form *Notice of the Conservatee's Death* (form GC-399), to be used to advise the court and persons interested in the conservatorship that the conservatee has died.

A copy of the new form is attached at pages 7–8.

Previous Council Action

There was no previous Judicial Council action that led to the legislation mandating notice of a conservatee's death, the selection of a form for that purpose, or the form's creation and this recommendation for its adoption.

Rationale for Recommendation

In legislation effective January 1, 2016, the Legislature and the Governor enacted a new section 2361 of the Probate Code, reading as follows:[1]

> A conservator shall provide notice of a conservatee's death by mailing a copy of the notice to all persons entitled to notice under Section 1460 and by filing a proof of service with the court, unless otherwise ordered by the court.

Although the legislation does not specifically require the adoption of a Judicial Council form, the advisory committee decided that such a form would be appropriate for the notice because the new law implies requirement of a written notice, requires it to be served on persons entitled to receive other written notices in conservatorship matters, and requires proof of service of the written notice to be filed with the court. Proofs of service are commonly a part of or attached to Judicial Council forms designed for filing with courts.

The recommended form calls for the name and signature of the conservator of the person. The committee concluded that the Legislature intended this duty to fall on conservators of the person, not conservators of the estate if a different person or organization is serving in this capacity for the same conservatee, because Probate Code section 2350(a) provides that, as used in the chapter that includes section 2361,[2] the term "conservator" means the conservator of the person. The "type or print" instructions opposite the signature line, and the identification block underneath that line clearly identify who is responsible for complying with section 2361.

The notice portion of the form is simple and straightforward, suitable for use by self-represented conservators. The most difficult part of the form is the proof of service, but the instructions given at the top of page 2 should reduce any difficulty a conservator might have. Every self-represented conservator who would be required to use the new form will have already successfully completed the appointment process, involving many more difficult issues and Judicial Council forms than this proposed form presents.

[1] Stats 2015, ch. 1085, § 3 (Assem. Bill 1085).

[2] Chapter 5 of Part 4 of Division 4 of the Probate Code, entitled "Powers and Duties of Guardian or Conservator of the Person."

The proof of service does contain provisions unique to this form. The instructions say:

> You must "serve"—deliver—copies of this *Notice of the Conservatee's Death* ("Notice") to each person who has the right under Probate Code section 1460 to be notified of the date, time, place, and purpose of a court hearing in a conservatorship (the conservator of the estate, the conservatee's spouse or domestic partner, and any person who has requested special notice as provided in section 2700 of the Probate Code)[3]. You, **your employee in your practice as a professional fiduciary, your attorney in this matter, or an employee in your attorney's office,** may deliver this Notice by mail. You may also personally deliver, or arrange for another adult person to personally deliver, the Notice instead of mailing it. You must show the court that copies of this Notice have been delivered in ways the law allows. You do this by completing a proof of delivery, also called "proof of service" and having the person who did the mailing sign the proof of service, which then is filed with the original Notice. This page contains a proof of delivery that may be used only to show delivery by mail. To show personal delivery, the person who makes the personal delivery must complete and sign a proof of personal delivery to all persons to whom he or she delivers copies of this document and attach the signed copy of that proof of delivery to this Notice when it is filed with the court. You may use *Proof of Personal Service—Civil* (form POS-20) to show personal delivery. (Emphasis ([bold text] added.)

This part of the form is modeled after page 2 of the *Notice of Hearing—Guardianship or Conservatorship* (form GC-020), the basic notice form used in conservatorships. That form includes the usual provision for a nonparty declarant to do the mailing directly or for an employee in an office with a regular collection system for mail to do it (per Code Civ. Proc., § 1013a(3)). Although this method of mailing is ordinarily done in civil litigation by an employee of a party's attorney, section 1013a(3) does not limit this practice to employees of attorneys.

But section 2361 expressly requires the *conservator* to serve the notice by mail. The committee believes this provision authorizes mailing directly by the conservator instead of by a third party. Moreover, a mailing by the conservator's attorney, by an employee of the attorney, or by an employee of a conservator who is a professional fiduciary also appears to be authorized and sufficiently reliable because the mailing is done by express agents of the conservator.

[3] Because this notice is to be sent by or on behalf of the conservator of the person only after the conservatee dies, the only persons eligible to receive notice are those listed in Probate Code sections 1460(b)(1), conservator of the estate; (3) spouse or domestic partner of the conservatee; and (4) persons who have requested special notice. Notice to the additional persons referred to by reference in section 1460(b)(6) will never be required because there would never be a petition to terminate the conservatorship, or to accept the resignation of or remove the conservator.

The issue of mailing by an employee of a private conservator is somewhat different from the usual situation involving proof of mailing by an employee "in the ordinary course of business." Many, if not most, private conservators are not professional fiduciaries with office employees handling conservatorship-related correspondence and other document mailing in the regular course of their fiduciary practices. Nonprofessional private conservators may be employees of organizations with purposes and activities wholly unrelated to the conservatorship. The employer of both the conservator and the person in the office doing the mailing may not authorize or even know of the use of the organization's mail delivery system, the mailing employee's time for assembling and delivering conservatorship-related documents for mailing, and that employee's execution of a declaration under penalty of perjury about the mailing. The employee doing the mailing is not employed as an express agent of the conservator for conservatorship business, however willing he or she might be to do a particular conservatorship mailing in addition to his or her regular duties, and may not even be directly subordinate to the conservator in the company's personnel structure. Thus the agency noted above in the case of the attorney or the attorney's employee, or the office employee of a professional fiduciary that would support a delegation of the statutory duty of the conservator to do the mailing is not present in this situation.

The form's service instructions address this issue by limiting the use of employees to mail the notices to the employees of the attorney for the conservator or the employees of conservators that are professional fiduciaries. Item 1 of the proof of delivery by mail thus requires the identification of the person doing the mailing as the conservator, the attorney for the conservator, or an employee of either the attorney or the professional-fiduciary conservator.[4]

Personal service in lieu of service by mail is authorized by Probate Code section 1216(a).[5] Because of section 2361's specific grant of authority to the conservator to mail the notice, the committee infers that he or she also has authority to personally deliver it. For these reasons, the instructions on service on page 2 of the form refer to personal service as authorized either by the conservator or by another adult.

[4] The Judicial Council has adopted another conservatorship form that contains a proof of service limiting the use of employees to serve copies by mail to the employees of the attorney for the conservator. See the *Notice of Filing Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property* (form GC-042), adopted effective January 1, 2008. That form was required by a 2006 amendment to Probate Code section 2610(a) that also directed the conservator to mail service copies of the form. (See Stats 2006, ch. 493 (Assem. Bill 493), § 23.) That form does not refer to an employee of a conservator that is a professional fiduciary, but if the use of such employees for mailing service copies of court documents is sound when the law requires mailing by the fiduciary, that form could easily be revised to authorize such substituted service.

[5] Section 1216(a) reads: "If a notice or other paper is required or permitted to be mailed to a person, it may be delivered personally to that person. Personal delivery as provided in this section satisfies a provision that requires or permits a notice or other paper to be mailed."

Comments, Alternatives Considered, and Policy Implications

Comments

The proposed form was circulated for public comment between April 15 and June 14, 2016 as part of the regular spring comment cycle. A total of seven comments were received. One commentator agreed with the proposal, four agreed with the proposal if modified, and two did not state a position on the proposal, but provided suggestions. A chart with the full text of the comments received and the committee's responses is attached at pages 9–19.

This proposal drew two suggestions from the Executive Committee of the State Bar of California's Trusts and Estates Section (TEXCOM), Comment No. 3 in the attached comment chart. The first suggestion called for the form to include an option for an employee of an attorney for the conservator to mail the notice and sign the proof of service. TEXCOM pointed out that the service instructions contained in form GC-042 have such a provision. The committee agreed with this suggestion and has modified the form accordingly.

The second suggestion was that item 3(b) of the proof of service and its reference to mailing "following our ordinary business practices" is inconsistent with completion by self-represented nonprofessional conservators and may result in errors in filing out the proof of delivery by mail section. The committee agreed with this comment, at least in part. In response, it modified the proof of service provisions to describe mailing by the conservator of the person, an employee of the conservator if he or she is a professional fiduciary, the conservator's attorney, or an employee of the attorney. A professional-fiduciary conservator should be every bit as able as his or her attorney to rely on office employees to do the mailing. This modification will ensure that the mailing is an act of the conservator or his express agents in the management of the conservatorship, not the act of a third person or entity not linked to the conservator's performance as conservator.

The Superior Court of San Diego County commented that, while it understood that the purpose of this form is to help the conservator of the person comply with relatively new Probate Code section 2361, the courts should take the creation of this form as an opportunity to "remind" the conservator(s) of the requirement of a final accounting, if there is a conservatorship of the estate. The committee's view is that this comment raises excellent issues, but it does not believe this statutorily-required very specific notice by a conservator of the person should be modified to give instructions to a co-conservator in cases in which the two positions are held by different people or organizations. The committee will study whether another form of notice of the continuing duties of an estate conservator after the conservatee's death, perhaps from the court rather than from a co-fiduciary, is necessary or appropriate. Of course, in the absence of a mandatory Judicial Council form of such a notice, courts are certainly free to give their own notices to estate conservators.

The Superior Court of Los Angeles County and the Orange County Bar Association suggested that the form be modified to apply to both conservators of the person and conservators of the estate. The committee declined to make this change because Probate Code section 2350(a)

provides that, as used in the chapter that includes section 2361, the term "conservator" means the conservator of the person. Unless the new code section is modified to refer to both types of conservators or, more likely, a duplicate provision is placed in the following chapter, which prescribes the powers and duties of conservators of the estate, the committee does not believe that the Judicial Council has the authority to adopt a form that requires or permits the conservator of the estate to file and serve this notice.

The Superior Court of Orange County noted that the form contemplates service by mail or by personal delivery. The court asked about electronic service. The committee is in the process of working with legislation by this committee, and the Information Technology Advisory Committee on a legislative proposal that would authorize electronic service of notices under the Probate Code for submission to the Judicial Council later this year for sponsorship in the 2017 Legislature.[6] If that proposal results in successful legislation, this and many other probate proof of service forms would be revised.

Alternatives Considered

Because of the implied legislative directive contained in section 2361, the committee did not consider the alternative of not creating a form notice.

Implementation Requirements, Costs, and Operational Impacts

This proposal will incur the relatively modest expenses of creation and distribution of any new form. Responding courts generally advised that they will incur training costs, particularly because this form is expressly to be served by the conservator of the person. However, the impact of this has been reduced by the changes made in response to comments, which expressly permit attorneys and their office employees, and office employees of professional fiduciaries, to serve copies of the form.

A majority of the responding courts advise that the form will—in the whole—lower costs, particularly the cost of scheduling hearings to compel compliance with section 2361. The Superior Court of Riverside County said: "We support this proposal. It will improve court efficiency and statutory compliance by providing an easy, clear, and consistent procedure for notifying the court of the death of a conservatee."

Attachments and Links

1. Form GC-399, at pages 7–8
2. Chart of comments, at pages 9–19

[6] Legislative proposal LEG16-09.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** **DRAFT** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* CONSERVATEE	
NOTICE OF THE CONSERVATEE'S DEATH	CASE NUMBER:

TO ALL PERSONS INTERESTED IN THIS CONSERVATORSHIP:

PLEASE TAKE NOTICE that the above-named conservatee died on *(date):* .

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 CONSERVATOR OF THE PERSON)

(SIGNATURE OF CONSERVATOR OF THE PERSON)

Form Adopted for Mandatory Use
Judicial Council of California
GC-399 [New January 1, 2017]

Probate Code, § 2361,
www.courts.ca.gov

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF (name): CONSERVATEE	CASE NUMBER

NOTE TO CONSERVATOR OF THE PERSON:

You must "serve"—deliver—copies of this *Notice of the Conservatee's Death* ("Notice") to each person who has the right under Probate Code section 1460 to be notified of the date, time, place, and purpose of a court hearing in a conservatorship (the conservator of the estate, the conservatee's spouse or domestic partner, and any person who has requested special notice as provided in section 2700 of the Probate Code). You, your employee in your practice as a professional fiduciary, your attorney in this matter, or an employee in your attorney's office, may deliver this Notice by mail. You may also personally deliver, or arrange for another adult person to personally deliver, the Notice instead of mailing it. You must show the court that copies of this Notice have been delivered in ways the law allows. You do this by completing a proof of delivery, also called "proof of service" and having the person who did the mailing sign the proof of service, which then is filed with the original Notice. This page contains a proof of delivery that may be used only to show delivery by mail. To show personal delivery, the person who makes the personal delivery must complete and sign a proof of personal delivery to all persons to whom he or she delivers copies of this document and attach the signed copy of that proof of delivery to this Notice when it is filed with the court. You may use *Proof of Personal Service-Civil* (form POS−20) to show personal delivery.

PROOF OF DELIVERY BY MAIL

1. I am ☐ the conservator of the person; ☐ an employee of the conservator of the person in his/her practice as a professional fiduciary; ☐ an attorney for the conservator of the person; ☐ an employee in the office of an attorney for the conservator of the person, of the above-named conservatee. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*
3. I delivered the foregoing *Notice of the Conservatee's Death* to each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ personally depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
   b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state):*

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

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name of person served	Address *(number, street, city, state, and zip code)*
1.		
2.		
3.		

☐ Continued on an attachment. *(You may use form DE-120(MA)/GC-020(MA) to show additional persons served.)*

SPR16-23
Probate Conservatorships: Notice of the Conservatee's Death (adopt form GC-399)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Robert K. Maize, Jr. Attorney Santa Rosa	AM	Is this form intended to be used with a limited conservatorship where the conservatorship terminates with the death of the conservatee? If yes, should additional language to be added for a limited conservatorship? When the conservator is represented by an attorney, the conservator's attorney should be able to sign the notice and proof of mailing on the conservator's behalf, as in other circumstances.	The form must be used in all conservatorships of the person, including limited conservatorships. Both general and limited conservatorships terminate on the conservatee's death (subject to the responsibility of a conservator of the estate under Prob. Code, §§ 2467 and 2631, and California Rules of Court, rule 7.1052(c). See sections 1860(a) and 1860.5(a)(2). The committee believes that the statute does not authorize execution of the form by counsel for the conservator in lieu of a signature by the conservator of the person. But see the committee's response to the comments of TEXCOM and the Orange County Bar Association. The form has been modified to permit mailing (and execution of the proof of service) by attorneys or their employees.
2.	Orange County Bar Association, by Todd G. Friedland, President, Newport Beach	AM	The form should be changed to allow the signature of the conservator or the attorney for the conservator, and should not specify that it is for the conservator of the person. The statute does not limit the requirement of notice to the conservator of the person. In many situations there may be a professional fiduciary or individual appointed as conservator of the estate with no conservator of the person. The conservator of the estate in such situations should be required to give notice.	In response to this and other comments, the committee has changed the service instructions of the form to permit service by the attorney, an employee of the attorney, or an employee of a professional fiduciary, in addition to service by the conservator. However, the notice is the act of the conservator of the person, not the conservator of the estate. Probate Code section 2350(a) provides that, as used in the chapter that includes section 2361—Chapter 5 of Part 4 of Division 4 of the Probate Code, entitled "Powers and Duties of Guardian or Conservator of the Person"—the term "conservator" means the conservator of the person. This indicates the Legislature's intent to place this duty only on the conservator of the

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

	Commentator	Position	Comment	Committee Response
				person. See also the responses to the comments of TEXCOM and the Superior Court of the County of Los Angeles.
3.	State Bar of California Trusts and Estates Section Executive Committee (TEXCOM), by Herb Stroh, San Francisco	NI	1. Below the caption the form states: "TO ALL PERSON INTERESTED IN THIS CONSERVATORSHIP." TEXCOM suggests that the phrase be changed as follows: "TO ALL PERSONS ENTITLED TO NOTICE IN THIS CONSERVATORSHIP." Section 2361 requires notice to "all persons entitled to notice under section 1460." Using the word "interested" creates some ambiguity, suggesting a reference to "interested person" as defined in Probate Code Section 48. It is more consistent with the code section to phrase the notice as to all persons entitled to notice, and is also consistent with other forms. 2. Section 2361 is presumed to apply only to conservators of the person—it is understood that a conservator of the estate, alone, is not required to provide notice of death. Although instructions on page 2 are directed to "Conservator of the Person," it may still be confusing to a conservator of the estate. TEXCOM suggests that underneath the signature line on page 1, the following language be inserted: "No notice is required in Conservatorships of the Estate only." TEXCOM believes this may quickly clarify who is required to provide the notice.	1. The committee does not believe that the form of address contained in the form is a term of art or conveys any meaning other than "Persons Entitled to Notice." In effect, Probate Code section 1460 identifies the persons ordinarily expected to be interested in a conservatorship, including those who are not identified by relationship to the conservatee or status (conservator and conservatee), but who file requests for special notice. Note that the basic notice form used in conservatorships and guardianships, the *Notice of Hearing* (form GC-020), is not addressed to any particular person or class of persons. This would indicate that the form of address in this form is not critical. 2. Probate Code section 2350(a) provides that, as used in the chapter that includes section 2361—Chapter 5 of Part 4 of Division 4 of the Probate Code, entitled "Powers and Duties of Guardian or Conservator of the Person"—the term "conservator" means the conservator of the person. The "type or print" instructions opposite the signature line, and the identification block underneath that line clearly identify who is responsible for complying with section 2361.

	Commentator	Position	Comment	Committee Response
			3. It is noted that the "Proof of Delivery by Mail" section of the form on page 2 is drafted to be completed by the conservator, e.g. paragraph 1 identifies the signing party as the conservator of the person. The proposal suggests that the form was framed for the conservator to personally provide the notice because "section 2361 requires the conservator to mail the notice of death…." While it is true the language of 2361 states "A conservator shall provide notice of a conservatee's death…" other forms related to code sections in which the conservator is required to give notice anticipate that it may be served by counsel. For example, Probate Code Section 2610(a) requires that "the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record … an inventory and appraisement…." Although this section states specifically the conservator is to provide the notice, form GC-042 includes a proof of mailing which allows the conservator or conservator's counsel to serve the form. Certainly there are more self-represented parties in conservatorships of the person only then in conservatorship of the estate. However, conservators of the person may still have counsel, and in conservators of the person and estate are likely to have retained an attorney.	3. In response to this and other comments, the committee has modified the form to permit an employee in the office of a conservator of the person who is a professional fiduciary, the attorney for the conservator of the person, or an employee in the attorney's office, as an alternative to the conservator personally to mail the notice and to sign the proof of service, similar to the instructions contained in form GC-042, the *Notice of Filing Inventory and Appraisal*. That form of proof of service by mail is expressly authorized by Code of Civil Procedure section 1013a(3), and is not by its terms limited to employees of attorneys.

	Commentator	Position	Comment	Committee Response
			Represented conservators and their attorneys are accustomed to counsel handling notice, thus this form creates an anomaly by mandating mailing of notice by the conservator only. It is suggested that the proof of mailing language mirror GC-042 and other forms which allow for the conservator or counsel to complete the proof. 4. Additional comments regarding the proof of mailing: the "NOTE TO CONSERVATOR OF THE PERSON" references delivery of the notice and discusses personal delivery. Reference in the notice to personal delivery creates some ambiguity. Since the code section refers to mail delivery, and the purpose of the mandatory form is to comply with the code, discussion of personal delivery and directing the conservator to a different form for personal service may cause confusion. TEXCOM also suggests that 3(b) and its reference to mailing "following our ordinary business practices" is inconsistent with completion by self-represented conservators and may result in errors in filing out the proof of delivery by mail section.	4. Probate Code section 1216 permits personal delivery of notices or other papers that are required or permitted by statute to be mailed. In this situation, the express authority given to the conservator of the person to do the mailing also means that he or she may personally serve the notice. The committee agrees with this comment, at least in part. It has modified the proof of service provisions to describe mailings by the conservator of the person, an employee of the conservator if he or she is a professional fiduciary, the conservator's attorney, or an employee of the attorney. A professional-fiduciary conservator should be every bit as able as his or her attorney to rely on office employees to do the mailing. We note again that service by mail by employees in the ordinary course of business under Code of Civil Procedure section 1013a(3) is not limited to employees of attorneys.

	Commentator	Position	Comment	Committee Response
				If a nonprofessional conservator in fact had employment unrelated to the conservatorship with an organization that had a regular mail pickup and delivery system, and the employee doing the mailing was permitted by the employer to sign the declaration and do the mailing together with the organization's mailing, proof of that mailing might also qualify to show good mail service under section 1013a(3). However, that seems like an unlikely scenario, at least when the conservator is neither an owner of the unrelated business nor highly ranked in his employment. The modified form clarifies that mailing by an office employee is limited to the employees of an attorney for the conservator or of the conservator who is a professional fiduciary, an appropriate limitation here because the statute specifically directs the conservator to mail the notice. This restriction at least ensures that the mailing is an act of the conservator or his express agents in the management of the conservatorship, not the act of a third person or entity not linked to the conservator's performance as conservator.
4.	Superior Court, County of Los Angeles, Los Angeles	AM	**Does the proposal appropriately address the stated purpose?** Not fully. This proposal applies to conservatorships of the person only. It does not apply where there is a conservatorship of the estate. It is with the conservatorships of the estate where the need for this form exists so that the Court, once	Probate Code section 2350(a) provides that, as used in the chapter that includes section 2361, the term "conservator" means the conservator of the person. Unless the new code section is modified to refer to both types of conservators or, more

	Commentator	Position	Comment	Committee Response
			notified of a conservatee's death, can make sure that a final accounting is filed and approved. Practically speaking, many conservators believe they do not have to do a final accounting once the conservatee dies, therefore no action is taken. However, the court has an obligation to close the estate and make sure that any assets of the conservator are properly accounted for and transferred to the appropriate heirs. It is the recommendation of LASC to amend this proposal to include all conservatorships, not conservatorships of the person only. **Would the proposal provide cost savings? If so please quantify.** This form will provide a cost savings by eliminating the method of submitting notices to the Court in various formats, including attorney drafted notices, or death certificates submitted by self-represented litigant conservators. This form simplifies the process for self-represented litigant conservators and allows staff to more efficiently identify notices, but it needs to apply to both conservator of the estate and of the person. Please add a box to the form to allow for "Department/Room No." near the "CASE NUMBER" box. This will trigger a cost savings to courts by reducing the amount of time employees spend identifying the assigned all-	likely, a duplicate provision is placed in the following chapter, which prescribes the powers and duties of conservators of the estate, the committee does not believe that the Judicial Council has the authority to adopt a form that requires or permits the conservator of the estate to file and serve this notice. The committee does not support this request. It has created forms with this information below the case number, usually also with the name of the judicial officer; but has not done so in a situation where no hearing is scheduled because of the

	Commentator	Position	Comment	Committee Response
			purpose courtroom, particularly for large courts. A cost analysis cannot be provided at this time. **What would the implementation requirements be for the courts?** Some training will be required for Court staff if the proposed judicial council form is implemented. Filing window clerks will need to be familiarized with the new forms. Employees will need to be educated as to the manner in which service is to be made. The conservator will be serving the notice, not a third party. Adding a code to the Court's case management system may be required. **Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for staff training and implementation?** Two months from approval of the proposal until its effective date is sufficient time. **How well would this proposal work in courts of different sizes?**	filing. Many conservators or even their attorneys might not know what the "all-purpose courtroom" for probate matters is in their court, if there is one; but instead would be inclined merely to identify the department where a hearing was last held in the matter. With no hearing anticipated in response to this filing, it is unclear what good this identification would do. See the exceptions to service of the form notice by the conservator in the committee's response to Comment No. 3 of TEXCOM, above.

SPR16-23
Probate Conservatorships: Notice of the Conservatee's Death (adopt form GC-399)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			The impact of this proposal should not vary based on the size of the court.	
5.	Superior Court, County of Orange, by Orange County Court Managers, Santa Ana	NI	Probate Code 2361 specifically says 'mailing' a copy of the notice. However, page 2 of the GC-399 form notes that the notice could be personally delivered. If other forms of service are being allowed, what about eservice?	With the possible revision of the Probate Code to provide for e-service in probate matters in legislation to be considered for sponsorship by the Judicial Council in 2017, that form of service of this notice would be authorized if that legislation is enacted and becomes effective in 2018. If that happens, the form would be revised as necessary or convenient to refer to e-service.
6.	Superior Court, County of Riverside, by Marita Ford, Sr. Management Analyst, Riverside	A	We support this proposal. It will improve court efficiency and statutory compliance by providing an easy, clear, and consistent procedure for notifying the court of the death of a conservatee. • **Does the proposal appropriately address the stated purpose?** Yes. • **Would the proposal provide cost savings? If so please quantify.** Yes. It should reduce unnecessary hearings and delays due to failure of a conservator to promptly notify the court of the conservatee's death.	No response necessary. The committee thanks the court for its review of this proposal and its responses to the questions proposed to court administrators.

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

	Commentator	Position	Comment	Committee Response
			• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. The court will need to train courtroom assistants, create new procedures, and add docket codes to accommodate this new form. **• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for staff training and implementation?** Yes. **• How well would this proposal work in courts of different sizes?** It should be helpful for courts of all sizes.	
7.	Superior Court, County of San Diego, by Michael Roddy, Court Executive Officer, San Diego	AM	Could the form be renamed to Notice of Death of Conservatee? It is understood that the purpose of this form is to help the Conservator of the Person comply	The committee sees no reason to make this change. This comment raises excellent issues, but the committee does not believe this statutorily-

	Commentator	Position	Comment	Committee Response
			with relatively new Probate Code section 2361; however, the courts should take the creation of this form as an opportunity to "remind" the conservator(s) of the requirement of a final accounting, if there is a Conservatorship of the Estate. Our court would like to include the following language and check-boxes, on the form, after the date of death: Pursuant to Probate Code section 2630, the termination of the relationship of conservator and conservatee by the death of either, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the conservator or for any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship. California Rule of Court, rule 7.1052(c) asserts that it is the duty of the conservator of the estate whose administration is terminated by operation of law or by court order to file and obtain the court's approval of a final account of the administration. 0 There is no Conservatorship of the Estate. 0 The final accounting has been filed or will be filed by __[date]___. 0 The final accounting was waived by court-order on __[date]___.	required very specific notice by a conservator of the person should be modified to give instructions to a co-conservator in cases in which the two positions are held by different people or organizations. The committee will study whether another form of notice of the continuing duties of an estate conservator after the conservatee's death, perhaps from the court rather than from a co-fiduciary, is necessary or appropriate. Of course, in the absence of a mandatory Judicial Council form of such a notice, courts are certainly free to give their own notices to estate conservators.

SPR16-23
Probate Conservatorships: Notice of the Conservatee's Death (adopt form GC-399)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Q: Does the proposal appropriately address the stated purpose? A: Yes. **Q: Would the proposal provide cost savings?** A: No. If the form also helped the court with the tracking of a final accounting, as proposed above, it could save court staff time spent researching whether the parties should be notified that their final accounting is due. **Q: What are implementations requirements for courts?** A: We will need to have our case management system configured to add this new filing. **Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?** A: Yes. **Q: How well would this proposal work in courts of different sizes?** A: This proposal should work in courts of any size.	No response to the remainder of this comment is necessary. The committee thanks the court for responding to these specific inquiries.

Item number: 02

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Probate: Decedent Estate Proceedings and a Substitute for Those Proceedings (Revise forms DE-111 and DE-310)

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: January 29, 2016
Project description from annual agenda: #16: Proposal to modify Petition for Probate (form DE-111) to state: whether the decedent was a citizen of a foreign country; whether the will offered for probate is lost; and whether the appointment is sought as a successor personal representative; and #19: Proposal to revise Petition to Determine Succession to Real Property (form DE-310) to require a statement of the character of the property as community, separate, or quasi-community.

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

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2016

Title
Probate: Decedent Estate Proceedings and a Substitute for Those Proceedings

Rules, Forms, Standards, or Statutes Affected
DE-111, DE-310

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair
Douglas C. Miller
Attorney, Legal Services, JCC

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 24, 2016

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

Executive Summary

The Probate and Mental Health Advisory Committee recommends revising the form that commences a decedent estate proceeding to inquire whether a decedent was a citizen of a foreign country, whether the original of the decedent's will or a codicil offered for probate has been lost, and whether the proposed appointment of a personal representative is the appointment of a successor in that office. The committee also recommends revising the form used to convey title to a decedent's real and connected personal property when an estate proceeding is not required to require the petitioner to state facts showing the character of the subject property as separate, community, or quasi-community if his or her claim to the property is based on inheritance. These changes will ensure that courts and petitioners are alerted to issues that need to be addressed when these particular facts are present.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise the *Petition for Probate* (form DE-111) to:

    a. Ask the petitioner whether the decedent was a citizen of a country other than the United States, and if so, to identify the country;

    b. Require the petitioner to disclose that the original of the will or a codicil offered for probate has been lost, and if so, to attach to the petition a copy of the lost document or a written statement of its dispositive provisions; and state reasons why the statutory presumption of the testator's intentional destruction of the document does not apply or has been overcome; and

    c. Ask the petitioner if the personal representative proposed for appointment in the petition would be a successor; and

2. Revise the *Petition to Determine Succession to Real Property (Estates of $150,000 or Less)* (form DE-310) to require the petitioner to state, if his or her claim to the subject property is based on an inheritance, facts that show the character of the subject property to be community, separate, or quasi-community property.

Copies of the revised forms are attached at pages 8–13.

Previous Council Action

The *Petition for Probate* (form DE-111) was adopted by the Judicial Council effective on January 1, 1985 and has been revised nine times, most recently effective on March 1, 2008. The *Petition to Determine Succession to Real Property (Estates of $150,000 or Less)* (form DE-310) was adopted effective July 1, 1987. It has been revised four times since then, most recently effective on July 1, 2012. No prior revisions of either form addressed the topics of the revisions recommended in this report.

Rationale for Recommendation

The changes to both forms proposed in this report were recommended to the advisory committee by the managing probate staff attorney for a court. They are all designed to ensure that courts that receive these filed forms are alerted as soon as possible to important issues that would be presented if one or more of the unique factual situations indicated exist, and petitioners are made aware before they complete and file their petitions that these issues must be addressed, not only in the petitions, but also in any litigation about those issues that may occur after the petitions are filed.

Form DE-111

The *Petition for Probate* (form DE-111) is the form that must be filed to commence a decedent estate proceeding.[1]

Decedent a citizen of a foreign country

The first change recommended for this form is the addition of a new item 3b on page 1. The new item would require the petitioner to advise if the decedent was a citizen of a foreign country, and if so, to identify the country. This item would advise court staff and judicial officers reviewing the filed petition that special notice requirements under Probate Code section 8113 may apply.[2] Existing items 3b through 3g on pages 1 and 2 of the form would be redesignated as items 3c through 3h.

Lost will

The second recommended change in the form is the addition of new item 3f(3) on page 2:

> The original of the will or codicil identified above has been lost. *(Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the resumption in Prob. Code, § 6124 does not apply.)*

A lost or destroyed will or codicil may be offered for probate if its contents and due execution can be proved (see Prob. Code, § 8223). However, if a lost will or codicil was last in the possession of the testator, he or she was competent until death, and neither the original nor a duplicate original copy can be found after the testator's death, the document is subject to a presumption that it was destroyed by the testator with intent to revoke (Prob. Code, § 6124).[3]

Form DE-111 does not now refer to or request any information about a lost will. It does not alert a proposed petitioner, particularly one who is contemplating self-representation (1) that he or she may attempt to offer a lost will or codicil for probate, and (2) if he or she does so, he or she must overcome the presumption of section 6124. Requiring the proposed petitioner, at the time of filing the petition, to indicate that the matter is a lost-will case and to state facts rebutting or

---

[1] Both form DE-111 and form DE-310 are mandatory forms under California Rules of Court, rule 1.31.

[2] Unless otherwise stated, all code citations are to the Probate Code. Section 8113 requires notice of the hearing on the petition for probate to be given to the foreign decedent's country's recognized diplomatic or consular office in the United States if there is no will or if the will does not name an executor. If, by intestacy or under the decedent's will, property of the estate is distributable to a citizen of a foreign country, such notice must also be given to that country's representative in the United States. In many, if not most, cases, some or all heirs or beneficiaries of a foreign decedent are citizens of the same country as the decedent.

[3] A "duplicate original copy" under section 6124 is not a mere photocopy of a signed will or codicil or an unsigned copy. It is a duplicate, but it must contain original signatures of the testator and of any witnesses. See *Lauermann v. Superior Court (Muongpruan)* (2005) 127 Cal.App.4th 1327, 1330–1331. Thus the reference in the revised form to the attachment of a copy of the lost will or codicil to the petition is as a method of showing what the lost original document provides, not the offer of a duplicate original copy, which would not be a lost will or codicil at all.

showing the inapplicability of the presumption would prepare a proposed petitioner for what would lay ahead, perhaps suggesting the need to retain counsel. It would also alert the court at the earliest possible time that a lost will or codicil is involved and would give fair notice to other persons interested in the estate of these facts. Even if the matter is ultimately not contested, facts alleged in the petition showing the rebuttal or inapplicability of the presumption would support the admission of the lost will in the unopposed matter (see Prob. Code, § 1022: "An affidavit or verified petition shall be received in evidence when offered in an uncontested proceeding under this code.")

The title caption of this form would also be revised to permit the petitioner to indicate that the will (or a codicil) offered for probate is a lost will. This change would follow and improve on the recommendation in *California Decedent Estate Practice* (Cont.Ed.Bar 2d ed. 2015) § 7.66, to interlineate the word "lost" or "destroyed" before "will" in the title of the form.[4]

Proposed personal representative a successor

A new item 3(g)(4) would be added at page two of the form that would advise that the proposed appointment of a personal representative is the appointment of a successor to that office.[5] Such petitions are filed with or shortly after petitions for removal of the prior representative or upon a vacancy in the position caused by the prior representative's death or resignation. The court staff attorney who recommended this proposal to the committee advises that attorneys sometimes file self-drafted petitions for appointment of successor administrators, on the assumption that the Judicial Council form should not be used because it does not refer to successor appointments. This practice may present difficulties requiring postponements, additional court and staff time, and filing of revised petitions or supplements because these petitions often fail to include all the information required by the mandatory form (e.g., item 8, the identity, relationship to decedent, and address of all heirs and beneficiaries). This proposed change would eliminate this problem.

This change would also help courts to match the petition for a successor's appointment with a removal petition against the prior personal representative—which might have been filed by a different party, or could reveal the possible need for a temporary appointment upon the effective date of the vacancy, pending the hearing on the permanent successor's appointment (see § 8523). The new item would also alert the court that neither notice of hearing by publication under section 8120 nor notice of administration to creditors under section 9050 will be required (see § 8522(b)).

[4] Space limitations prevent the addition of "destroyed" and "codicil" to "lost" in the title of the form. But a will destroyed by accident or by anyone other than the competent testator with an intent to revoke is "lost" within the meaning of section 8223, and a codicil is a revision of a will. It is taken together with the will it modifies to become the last will of the decedent.

[5] Item 3g of the revised form is item 3f of the current form.

Form DE-310

The form *Petition to Determine Succession to Real Property (Estates of $150,000 or Less)* is used to commence an expedited proceeding as a substitute for a full decedent estate administration to transfer real and associated personal property to a decedent's successors in interest, by intestacy or will, when the total value of all property held by a decedent in this state is less than $150,000.[6] (See §§ 13151–13158.)

A single change is recommended for this form. A new item 11(3) would be added on page two:

> (3) [A]nd, if a petitioner's claim to the property is based on succession under Probate Code sections 6401 and 6402, the character of the property as community, separate, or quasi-community.

The character of the property has relevance if there is no will. A surviving spouse or domestic partner either is or is not the sole heir, depending on the character of the property and the relationship to the decedent of the other survivors. If contested, a petitioner would be required to establish the proper character of the property to establish the proper share of it that would come to him or her. This change would require the petitioner to show those facts in the petition, not merely at a contested hearing, that would determine his or her proper share in cases in which the character of the property is relevant to determination of that issue.

Comments, Alternatives Considered, and Policy Implications

Comments

Seven comments were received in response to the Invitation to Comment circulated as spring proposal SPR16-24. Three commentators agreed with the proposal, two agreed if modified, one—the California Judges Association (CJA)—did not indicate approval or disapproval, but provided suggestions, and one indicated he disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 14–25.

The commentator who indicated that he disagreed with the proposal made several suggestions for modifying form DE-111. The committee made many of the changes suggested by this commentator.

CJA suggested that the lost-will item in form DE-111 should merely request a statement that the original will is lost. The committee declined to make this change, because it concluded that the requirement of stating facts in the appointment petition to rebut the presumption that a lost will or codicil was intentionally revoked by the testator would tend to make petitioners exercise due diligence to find the lost will before rather than after they file their appointment petitions.

[6] Exclusive of many kinds of commonly held interests in property, including joint tenancy interests; certain types of multiparty accounts; vehicles, boats, and trailer homes with state-issued title documentation under the Vehicle or Health and Safety Codes; and modest amounts of compensation owed to the decedent (see Prob. Code, §§ 13050, 13151).

CJA also commented on form DE-310 as follows:

> With respect to Form DE-310, it may pose a difficult if not impossible burden for the petitioner to state under penalty of perjury what the character (community, separate or quasi-community) of the subject property is. Because that character is relevant only in certain cases, to require the petitioner in every case to ascertain and state it in the petition (even where irrelevant) seems unnecessary. Additionally, self-represented litigants may not understand the distinctions between community, separate, and quasi-community property; judicial officers would prefer to receive the facts and circumstances of each acquisition of property to enable the judicial officer to draw the legal conclusions to the character of the property.
>
> Also, existing paragraphs 12 and 13 of the form require the petitioner to state the requested disposition of the subject property; perhaps it should be left to anyone who contests the petition to raise a dispute over whether that proposed distribution is correct.
>
> In response to this and other comments, item 11 of form DE-310 has been revised to ask the petitioner to state facts concerning the character of the subject property only if his or her claim is based on inheritance. The committee does not recommend eliminating this item entirely because it believes that the petitioner has the burden of showing entitlement to the distribution, whether or not there is opposition. Especially if there is no opposition, that showing should be made in the petition, which will be the only evidence in the case. (See Prob. Code, § 1022.)

The committee specifically requested comment as to whether form DE-310 should inquire about the character of the subject property as separate, community, or quasi-community in all cases, or only when the property's character is relevant to the right to receive it. There were differing views among the commentators who responded to this question.[7] As noted above, the committee resolved this question by concluding that facts demonstrating the character of the property should be required only if the petitioner's claim to the property is based on inheritance.

Alternatives considered

In addition to the alternatives considered in response to the public comments, the committee considered declining to take action in response to the initial suggestions received for changes in these forms. The committee concluded, however, that the suggestions from a particularly highly respected and very experienced probate department staff attorney would address and potentially resolve issues that often occur in decedent estates or in the substitute proceedings addressed in form DE-310. Modification of the two mandatory forms is the only way to ensure that the

[7] The comment of the Superior Court, County of San Diego was in favor of requiring evidence of the character of the property in all cases to ensure consistency in all of them, and also to demonstrate to some potential petitioners that they may not meet the requirements to make a claim to the subject property.

additional information requested by these changes will be provided by the petitioners in both of these proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposal will incur the costs associated with the distribution of and training concerning any new or revised form. However, all court commentators that stated a position on costs advised that the proposal would either reduce them, because the greater disclosure required in both petitions would reduce postponements and contested matters, or at least would impose no greater costs.

Attachments and Links

1. Judicial Council forms DE-111 and DE-310 , at pages 8–13
2. Chart of comments, at pages 14–25

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:	
ESTATE OF *(name)*: DECEDENT	
PETITION FOR ☐ **Probate of** ☐ **Lost Will and for Letters Testamentary** ☐ **Probate of** ☐ **Lost Will and for Letters of Administration with Will Annexed** ☐ **Letters of Administration** ☐ **Letters of Special Administration** ☐ **with general powers** ☐ **Authorization to Administer Under the Independent Administration of Estates Act** ☐ **with limited authority**	CASE NUMBER: HEARING DATE AND TIME: DEPT.:

1. Publication will be in *(specify name of newspaper):*
   a. ☐ Publication requested.
   b. ☐ Publication to be arranged.
2. **Petitioner** *(name each):*

   requests that
   a. ☐ decedent's will and codicils, if any, be admitted to probate.
   b. *(name):* be appointed
      (1) ☐ executor
      (2) ☐ administrator with will annexed
      (3) ☐ administrator
      (4) ☐ special administrator ☐ with general powers

      and Letters issue upon qualification.
   c. ☐ full ☐ limited authority be granted to administer under the Independent Administration of Estates Act.
   d. (1) ☐ bond not be required for the reasons stated in item 3d.
      (2) ☐ $ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. *(Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)*
      (3) ☐ $ in deposits in a blocked account be allowed. Receipts will be filed. *(Specify institution and location):*

3. a. Decedent died on *(date):* at *(place):*
      (1) ☐ a resident of the county named above.
      (2) ☐ a nonresident of California and left an estate in the county named above located at *(specify location permitting publication in the newspaper named in item 1):*

   b. ☐ Decedent was a citizen of a country other than the United States *(specify country):* .
   c. Street address, city, and county of decedent's residence at time of death *(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
DE-111 [Rev. January 1, 2017]

PETITION FOR PROBATE
(Probate—Decedents Estates)

Probate Code, §§ 8002, 10450;
www.courts.ca.gov

ESTATE OF *(name)*: DECEDENT	CASE NUMBER:

3. d. **Character and estimated value of the property of the estate** *(complete in all cases):*
   (1) Personal property: $
   (2) Annual gross income from
      (a) real property: $
      (b) personal property: $
   (3) **Subtotal** *(add (1) and (2)):* $ _____
   (4) Gross fair market value of real property: $
   (5) (Less) Encumbrances: ($ _____)
   (6) Net value of real property: $ _____
   (7) **Total** *(add (3) and (6)):* $ _____

e. (1) ☐ Will waives bond. ☐ Special administrator is the named executor, and the will waives bond.
   (2) ☐ All beneficiaries are adults and have waived bond, and the will does not require a bond. *(Affix waiver as Attachment 3e(2).)*
   (3) ☐ All heirs at law are adults and have waived bond. *(Affix waiver as Attachment 3e(3).)*
   (4) ☐ Sole personal representative is a corporate fiduciary or an exempt government agency.

f. (1) ☐ Decedent died intestate.
   (2) ☐ Copy of decedent's will dated: ☐ codicil dated *(specify for each):*

   are affixed as Attachment 3f(2). *(Include typed copies of handwritten documents and English translations of foreign-language documents.)*
   ☐ The will and all codicils are self-proving (Prob. Code, § 8220).
   (3) ☐ The original of the will and/or codicil identified above has been lost. *(Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 does not apply.)*

g. **Appointment of personal representative** *(check all applicable boxes):*
   (1) Appointment of executor or administrator with will annexed:
      (a) ☐ Proposed executor is named as executor in the will and consents to act.
      (b) ☐ No executor is named in the will.
      (c) ☐ Proposed personal representative is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3g(1)(c).)*
      (d) ☐ Other named executors will not act because of ☐ death ☐ declination ☐ other reasons *(specify):*

      ☐ Continued in Attachment 3g(1)(d).
   (2) Appointment of administrator:
      (a) ☐ Petitioner is a person entitled to Letters. *(If necessary, explain priority in Attachment 3g(2)(a).)*
      (b) ☐ Petitioner is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3g(2)(b).)*
      (c) ☐ Petitioner is related to the decedent as *(specify):*
   (3) ☐ Appointment of special administrator requested. *(Specify grounds and requested powers in Attachment 3g(3).)*
   (4) ☐ Proposed personal representative would be a successor personal representative.

h. Proposed personal representative is a
   (1) ☐ resident of California.
   (2) ☐ nonresident of California *(specify permanent address):*

   (3) ☐ resident of the United States.
   (4) ☐ nonresident of the United States.

ESTATE OF *(name)*: DECEDENT	CASE NUMBER:

4. ☐ Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
5. a. Decedent was survived by *(check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))*
   (1) ☐ spouse.
   (2) ☐ no spouse as follows:
      (a) ☐ divorced or never married.
      (b) ☐ spouse deceased.
   (3) ☐ registered domestic partner.
   (4) ☐ no registered domestic partner. *(See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)*
   (5) ☐ child as follows:
      (a) ☐ natural or adopted.
      (b) ☐ natural adopted by a third party.
   (6) ☐ no child.
   (7) ☐ issue of a predeceased child.
   (8) ☐ no issue of a predeceased child.

   b. Decedent ☐ was ☐ was not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*

6. *(Complete if decedent was survived by (1) a spouse or registered domestic partner but no issue (only **a** or **b** apply), or (2) no spouse, registered domestic partner, or issue. (Check the **first** box that applies):*
   a. ☐ Decedent was survived by a parent or parents who are listed in item 8.
   b. ☐ Decedent was survived by issue of deceased parents, all of whom are listed in item 8.
   c. ☐ Decedent was survived by a grandparent or grandparents who are listed in item 8.
   d. ☐ Decedent was survived by issue of grandparents, all of whom are listed in item 8.
   e. ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
   f. ☐ Decedent was survived by next of kin, all of whom are listed in item 8.
   g. ☐ Decedent was survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
   h. ☐ Decedent was survived by no known next of kin.
7. *(Complete only if no spouse or issue survived decedent.)*
   a. ☐ Decedent had no predeceased spouse.
   b. ☐ Decedent had a predeceased spouse who
      (1) ☐ died not more than 15 years before decedent and who owned an interest in **real property** that passed to decedent,
      (2) ☐ died not more than five years before decedent and who owned **personal property** valued at $10,000 or more that passed to decedent, *(If you checked (1) or (2), check only the **first** box that applies):*
         (a) ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
         (b) ☐ Decedent was survived by a parent or parents of the predeceased spouse who are listed in item 8.
         (c) ☐ Decedent was survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
         (d) ☐ Decedent was survived by next of kin of the decedent, all of whom are listed in item 8.
         (e) ☐ Decedent was survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
      (3) ☐ neither (1) nor (2) apply.

8. Listed on the next page are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 5, 6, and 7; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

ESTATE OF *(name)*: DECEDENT	CASE NUMBER:

8. Name and relationship to decedent | Age | Address

☐ Continued on Attachment 8.

9. Number of pages attached: _____

Date:

_____ ▶ _____

(TYPE OR PRINT NAME OF ATTORNEY) (SIGNATURE OF ATTORNEY) *

* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

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

Date:

_____ ▶ _____

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

_____ ▶ _____

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

Signatures of additional petitioners follow 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*):	**DRAFT** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF *(name)*: DECEDENT	CASE NUMBER:
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY ☐ **and Personal Property (Estates of $150,000 or Less)**	HEARING DATE AND TIME: / DEPT.:

1. Petitioner *(name of each person claiming an interest):*

   requests a determination that the real property ☐ and personal property described in item 11 is property passing to petitioner and that no administration of decedent's estate is necessary.
2. Decedent (*name*)*:*
   a. Date of death:
   b. Place of death *(city and state or, if outside the United States, city and country):*
3. At least 40 days have elapsed since the date of decedent's death.
4. a. ☐ Decedent was a resident of this county at the time of death.
   b. ☐ Decedent was **not** a resident of California at the time of death. Decedent died owning property in this county.
5. Decedent died ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 5 or 12a.
6. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
   b. ☐ Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.
7. Proceedings for the administration of decedent's estate in another jurisdiction: a. ☐ Have **not** been commenced.
   b. ☐ Have been commenced ☐ and completed. *(Specify state, county, court, and case number):*

8. The **gross value** of decedent's interest in real and personal property located in California as shown by the *Inventory and Appraisal* attached to this petition—excluding the property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by decedent, etc.)—did not exceed $150,000 as of the date of decedent's death. *(Prepare and attach an* Inventory and Appraisal *as Attachment 8 (use Judicial Council forms DE-160 and DE-161 for this purpose). A probate referee appointed for the county named above must appraise all real property and all personal property other than cash or its equivalent. See Prob. Code, §§ 8901, 8902.)*
9. a. Decedent is survived by *(check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))*
   (1) ☐ spouse
   (2) ☐ no spouse as follows: (a) ☐ divorced or never married (b) ☐ spouse deceased
   (3) ☐ registered domestic partner
   (4) ☐ no registered domestic partner *(See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)*
   (5) ☐ child as follows: (a) ☐ natural or adopted (b) ☐ natural adopted by a third party
   (6) ☐ no child
   (7) ☐ issue of a predeceased child
   (8) ☐ no issue of a predeceased child
   b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*

MATTER OF *(name)*: DECEDENT	CASE NUMBER:

10. ☐ Decedent is survived by *(complete if decedent was survived by (1) a spouse or registered domestic partner described in Prob. Code, § 37 but no issue (only a or b apply); or (2) no spouse or registered domestic partner described in Prob. Code, § 37, or issue. Check the **first** box that applies.):*
    a. ☐ A parent or parents who are listed in item 14.
    b. ☐ A brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 14.
    c. ☐ Other heirs under Probate Code section 6400 et seq., all of whom are listed in item 14.
    d. ☐ No known next of kin.
11. Attachment 11 contains (1) the **legal description** of decedent's real property and its Assessor's Parcel Number (APN) and ☐ a description of personal property in California passing to petitioner; (2) decedent's interest in the property; and, (3) if a petitioner's claim to the property is based on succession under Probate Code sections 6401 and 6402, facts that show the character of the property as community, separate, or quasi-community property.
12. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property ☐ and personal property described in item 11 because each petitioner is:
    a. ☐ **(will)** A beneficiary who succeeded to the property under decedent's will.[1]
    b. ☐ **(no will)** A person who succeeded to the property under Probate Code sections 6401 and 6402.
13. The specific property interest claimed by each petitioner in the real property ☐ and personal property ☐ is stated in Attachment 13 ☐ is as follows *(specify)*:
14. The names, relationships to decedent, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named or checked in items 1, 9, and 10; (2) all other heirs of decedent; and (3) all devisees of decedent (persons designated in the will to receive any property) are listed in Attachment 14.
15. The names and addresses of all persons named as executors in decedent's will ☐ are listed below ☐ are listed in Attachment 15 ☐ No executor is named. ☐ There is no will.
16. ☐ Petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust, as determined in cases of future interests under paragraphs (1), (2), or (3) of subdivision (a) of Probate Code section 15804, are listed in Attachment 16.
17. ☐ Decedent's estate was under a ☐ guardianship ☐ conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator ☐ are listed below ☐ are listed in Attachment 17.
18. Number of pages attached: _____

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME OF ATTORNEY) (SIGNATURE OF ATTORNEY)*

* (Signature of all petitioners also required (Prob. Code, § 1020).)

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

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME OF PETITIONER) (SIGNATURE OF PETITIONER) [2]

_____ ▶ _____
(TYPE OR PRINT NAME OF PETITIONER) (SIGNATURE OF PETITIONER) [2]

☐ SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

[1] See Probate Code section 13152(c) for the requirement that a copy of the will be attached in certain instances. If required, include as Attachment 5 or 12a.

[2] Each person named in item 1 must sign.

SPR16-24

Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings

(revise DE-111 and DE-310)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association, by Lexi Purich Howard, Legislative Director Sacramento	NI	This proposal proposes revisions to two Judicial Council forms: 1. Form DE-111 (*Petition for Probate*). Fundamentally, the proposed revisions to this form have three goals: —To add to the form an item stating whether or not the decedent was a citizen of a foreign country. The purpose of this revision is (1) to notify petitioners that the decedent's foreign citizenship may be important and (2) to advise court staff reviewing the petition that notice issues may be present. —To expressly enable the form to be used to probate a lost will or codicil. —To state in the form if the proposed personal representative is a successor. 2. Form DE-310 (*Petition to Determine Succession to Real Property - Estates of $150,000 or less*). The proposed revision to this form would require the petitioner to state whether the subject property is community, separate or quasi-community. The goal of this addition to let court staff know whether the existing allegations in the form asserting who the subject property is to pass to (existing paragraphs 12b and 13) are correct—this, because in certain situations the character of the	

	Commentator	Position	Comment	Committee Response
			property (community, separate or quasi-community) affects who is entitled to it upon the death of the owner. With particular regard for the needs of self-represented litigants, we are concerned that though the proposed forms may serve the interests of court staff, they may not adequately meet the needs of self-represented litigants. With respect to the proposed revisions to DE-111 regarding lost wills/codicils, it seems that the percentage of cases in which the form will be used to seek probate of a lost will or codicil is quite small, and the four additions proposed concerning a lost will or codicil make the form somewhat more difficult to maneuver. For this reason, it may be that the added effort in filling out the form with the proposed additions outweighs the potential benefit given that the fact that the will/codicil offered for probate is lost will likely surface soon enough. We suggest that the form simply be modified to provide a box in new Paragraph 3(f) stating "The will/codicil is lost." With respect to Form DE-310, it may pose a difficult if not impossible burden for the petitioner to state under penalty of perjury what the character (community, separate or quasi-community) of the subject property is. Because that character is relevant only in certain cases, to	The committee believes that the requirement of stating facts in the appointment petition to rebut the presumption that a lost will or codicil was intentionally revoked by the testator would tend to make petitioners exercise due diligence to find the lost will before rather than after they file their appointment petitions. In response to this and other similar comments, the committee has decided not to require a

	Commentator	Position	Comment	Committee Response
			require the petitioner in every case to ascertain and state it in the petition (even where irrelevant) seems unnecessary. Additionally, self-represented litigants may not understand the distinctions between community, separate, and quasi-community property; judicial officers would prefer to receive the facts and circumstances of each acquisition of property to enable the judicial officer to draw the legal conclusions to the character of the property. Also, existing paragraphs 12 and 13 of the form require the petitioner to state the requested disposition of the subject property; perhaps it should be left to anyone who contests the petition to raise a dispute over whether that proposed distribution is correct. Our comments here are intended to assist with this proposal at this stage and are not representative of a position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.	statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements. The committee believes that the petitioner has the burden of showing entitlement to the distribution, whether or not there is opposition. Especially if there is no opposition, that showing should be made in the petition, which will be the only evidence in the case. (See Prob. Code, § 1022.)
2.	Robert Denham Publications Attorney CEB Oakland	N	First, on form DE-111. Although it seems worthwhile to indicate on the form that the will is lost or destroyed, this may not be needed in the title of the form as suggested in DEP §7.66. It seems enough to add 3f(3) as an alternative to (1) decedent died intestate, or (2) copy of will attached. Note: The box for this alternative (3)	The committee believes the revised title that permits immediate identification of a lost-will estate situation is useful, and will continue to recommend its retention. The Note concerning alignment of the checkbox for item 3f(3)) is correct. The form has been changed.

	Commentator	Position	Comment	Committee Response
			should be aligned with the boxes for (1) and (2). The proposed revised form has it aligned with the box for self-proving wills. Also, it seems unnecessary and confusing to have anything about lost or destroyed wills under 3f(2) (as shown in the proposed revised form). Further, it seems undesirable to request reasons why the presumption does not apply. This anticipates a problem that may not arise. If no one objects, or if the disposition of the estate is substantially unaffected by revocation of the will, there may be no need to consider the question. The statutory presumption is of somewhat dubious value. In the CEB Estate Planning Reporter we have suggested that the statute should be repealed, because it is unlikely in most cases that failure to find the will is in fact the result of destruction with intent to revoke.	The committee agrees with this comment and will move the reference to an attached statement of the terms of a lost will to item 3f(3), to be part of the statement that contains the facts showing that the presumption is inapplicable. The instruction in item 3f(3) would now read as follows: "(Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 of the testator's intentional destruction of will or codicil does not apply.)" The committee believes the statement is useful under current law. In most cases, the statement would be brief (e.g., in cases in which the original will was not last in the decedent's possession because it had been stored with the decedent's attorney or with someone else until after the decedent's death, or the decedent was not competent until his or her death.) The requirement would force the petitioner to prepare to address the potential consequences of a lost will sooner rather than later, whether or not the will is ultimately challenged or its dispositive provisions do not materially affect distribution of the estate. Of course, if the statute is repealed, the form

	Commentator	Position	Comment	Committee Response
			Historically, the problem most often arose from duplicate wills which have become less common with the advent of photocopies. Indeed, another suggestion would be to invite the petitioner to attach a photocopy of the will in this context if the original is unavailable. So I would revise 3f(3) to read as follows: "The original of the will or codicil has been lost. This relates to decedent's will dated: _____ [] codicil dated: _____ . A written statement of the testamentary words or their substance is affixed as Attachment 3f(3) (include photocopies if available)." Second, on Form DE-310. Again, requesting the character of the property anticipates a problem that may not arise. It may not be known or evident whether property is entirely community or separate, and it makes no difference whether property is community or quasi-community. If no one objects, or if the disposition of the estate is unaffected, there may be no need to consider these questions. Presumably, the description of the decedent's interest in the property in Attachment 11 and the statement of facts supporting the petitioner's succession to the property in Attachment 13 combined with the family relationship questions in Item 9 should contain the necessary information. For example, both separate and community property	would be revised again accordingly. The revised instruction in item 3f(3), quoted above in full, includes a request for attachment of a photocopy of the lost will or codicil as a substitute for the written statement of the testamentary words in the original lost testamentary document. In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.

	Commentator	Position	Comment	Committee Response
			pass to the surviving spouse in case of intestacy if there are no children. If there are children, they or the spouse can dispute whether property is separate or community. I would not make this change.	
3.	Orange County Bar Association by Todd G. Friedland, President, Newport Beach	A	No specific comments made.	No response is necessary.
4.	Superior Court, County of Los Angeles	AM	**Does the proposal appropriately address the stated purpose?** Yes, the proposal appropriately addresses the stated purpose. **Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition?** No. It is the feeling of the bench that this statement should not be added to the forms. Most self-represented litigants do not know how to assess this issue, and it will only serve to cause continuances when they fill it out incorrectly, or leave it blank. There is no reason why this characterization of the property should be on this form. Where it is relevant, it is generally raised during the course of the action	In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.

SPR16-24
Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings
(revise DE-111 and DE-310)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			in a separate petition. **Would the proposal provide cost savings? If so, please quantify.** As stated in the summary, while there may be some costs incurred training staff, the proposal will lead to lower costs by reducing postponements and contested matters. What would the implementation requirements be for courts? Distribution of forms and training for staff will be required after adoption of the proposal. **Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Two months is sufficient to implement the proposal. **How well would this proposal work in courts of different sizes?** The impact of this proposal should not vary based on the size of the Court.	

SPR16-24

Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings

(revise DE-111 and DE-310)

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

	Commentator	Position	Comment	Committee Response
5.	State Bar of California, Trusts and Estates Section Executive Committee (TEXCOM), by Herb Stroh, San Francisco	A	**TEXCOM believes that the proposed revisions to the Petition for Probate (form DE-111) and Petition to Determine Succession to Real Property (form DE-310) are appropriate and sensible.**	No response is necessary.
6.	Superior Court, County of Riverside, by Marita Ford,	A	We support this proposal. The proposal is needed for the court to begin enforcing the requirement in Probate Code 8113 when a decedent was a citizen of a foreign country. It will also improve access to justice, court efficiency, and statutory compliance by providing an easy, clear, and consistent procedure for admitting a lost will to probate or seeking appointment of a successor personal representative. It should eliminate the common practice of modifying the judicial council forms when dealing with a lost will as recommended by popular treatises. It will reduce continuances by requesting required information (e.g. presumption of revocation or separate/community characterization) in the initial petition rather than having these issues come up first in the probate notes or at the first hearing. **• Does the proposal appropriately address the stated purpose?** Yes.	No response is necessary.

SPR16-24

Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings

(revise DE-111 and DE-310)

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

	Commentator	Position	Comment	Committee Response
			• Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition? No. **• Would the proposal provide cost savings? If so, please quantify.** Yes. It should reduce continuances due to lack of sufficient information in initial petitions. **• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** These changes should not require any implementation costs. **• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for**	In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.

	Commentator	Position	Comment	Committee Response
			implementation? Yes. • **How well would this proposal work in courts of different sizes?** It should be helpful for courts of all sizes.	
7.	Superior Court, County of San Diego, by Michael Roddy, Court Executive Officer, ~~San Diego~~	AM	**Q: Does the proposal appropriately address the stated purpose?** A: Yes. It would also be helpful if the *Order for Probate* (DE-140) were also revised to include a statement that the court finds that the presumption of revocation has been overcome, the will is admitted as a lost will, and a requirement for an attachment that includes a copy of the will or a statement of its testamentary provisions. Suggestion: Item 2c.(2) – add another line with the following: THE COURT FINDS… c. Decedent died (1) □ intestate (2) □ testate □ Petitioner has overcome the presumption of revocation per Prob. Code 6124 and decedents will dated: _____ and each codicil dated: _____	The committee will consider revisions of the *Order for Probate*, but these changes could not be part of the current proposal without creating a significant delay in its adoption.

	Commentator	Position	Comment	Committee Response
			was admitted to probate by Minute Order on (date): _____ □ as a lost instrument. Attachment 2c.(2) includes a copy of the lost will or a statement of testamentary provisions per Prob. Code 8223. **Q: Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition?** A: [Yes] There are some instances when the character of the property will have no effect on the disposition but, for the sake of consistency, the information should be required in all cases. Having that as a requirement may also serve as a notification to some parties that they do not meet the requirements to file the petition in the first place. **Q: Would the proposal provide cost savings?** A: No. **Q: What would the implementation requirements be for the courts?**	The committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.

	Commentator	Position	Comment	Committee Response
			A: Training of staff, including front-line staff, Examiners and Judicial Officers. Possible reconfiguration of case management systems for courts that want to distinguish lost wills from other petitions for Probate, based on the filing. **Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** A: Yes. **Q: How well would this proposal work in courts of different sizes?** A: Court-size should not make a difference.	

Item number: **03**

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors (Forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688 and FL-692)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Ruth McCreight, 415-865-7666, ruth.mccreight@jud.ca.gov;Eve Hershcopf, 415-865-7961, eve.hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 4/14/16 RUPRO Meeting
Project description from annual agenda: AB 610 (Jones-Sawyer) Child support: suspension of support order Chapter 629, Statutes of 2015 Summary: Suspends a child support order by operation of law when an obligor is incarcerated or involuntarily institutionalized, unless the obligor has the means to pay support, or the obligor was incarcerated or involuntarily institutionalized for either an offense constituting domestic violence or the failure to pay child support.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors

Rules, Forms, Standards, or Statutes Affected
Forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 19, 2016

Contact
Ruth McCreight, 415-865-7666
Ruth.McCreight@jud.ca.gov
Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising eight forms to remove outdated language regarding suspension of child support orders for obligors who are incarcerated or involuntarily institutionalized, which became effective on July 1, 2011 under Senate Bill 1355 (Wright; Stats. 2010, ch. 495) and sunsetted on June 30, 2015. In addition, the committee recommends implementing the mandates of Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), which became effective October 8, 2015, by revising the same eight forms and an additional five forms to incorporate current provisions regarding temporary suspension of child support obligations by operation of law for incarcerated and involuntarily institutionalized

obligors (unless certain exceptions apply).[1] These proposed form revisions also provide guidance regarding the adjustment of arrears for a suspended support order, the procedure to object to the local child support agency's adjustment, and the information needed by the court to consider and approve a request to adjust arears.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise 10 forms to add a notification, in plain language, regarding the temporary suspension of the obligor's duty to pay child support while incarcerated or involuntarily institutionalized. The 10 forms are:

   Form FL-342, *Child Support Information and Order Attachment*
   Form FL-350, *Stipulation to Establish or Modify Child Support and Order*
   Form FL-530, *Judgment Regarding Parental Obligations*
   Form FL-615, *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment*
   Form FL-625, *Stipulation and Order*
   Form FL-630, *Judgment Regarding Parental Obligations*
   Form FL-665, *Findings and Recommendation of Commissioner*
   Form FL-687, *Order After Hearing*
   Form FL-688, *Short Form Order After Hearing*
   Form FL-692, *Minutes and Order or Judgment*

2. Revise form FL-490, *Application to Determine Arrears*, to request, in cases in which the local child support agency is not providing services, the adjustment of arrears due to incarceration or involuntarily institutionalization;

3. Revise form FL-676, *Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization*, to clarify that a request for adjustment of arrears due to incarceration or involuntary institutionalization only applies to child support orders issued or modified on or after October 8, 2015; and

4. Revise form FL-676-INFO, *Information Sheet for Request for Judicial Determination of Support Arrearages or Adjustment of Arrearages Due to Incarceration or Involuntary Institutionalization*, to update and clarify instructions.

The revised forms are attached at pages 7–42.

[1] Note that AB 610 does not address orders made or modified during the "gap" period between the sunsetting of the SB 1355 program on June 30, 2015 and the initiation of the AB 610 program on October 8, 2015.

Previous Council Action

Effective July 1, 1997, the Judicial Council adopted form FL-676, *Request for Judicial Determination of Support Arrearages,* to implement legislation that created California's current Child Support Commissioner and Family Law Facilitator Program.

Effective January 1, 2010, the Judicial Council revised forms FL-530, FL-615, FL-625, FL-630, FL-665, FL-687, and FL-692 to implement changes to the Family Code made by AB 2781 (Leno; Stats. 2006, ch. 797) that require every child support order to include (1) a separate money judgment against a child support obligor for the fee of a private child support collector, and (2) a provision for continued health insurance coverage for disabled adult children.

Effective July 1, 2011, the Judicial Council revised the above-noted forms, FL-676 and FL-676-INFO in response to Senate Bill 1355 (Wright; Stats. 2010, ch. 495), which provided a process for formerly incarcerated or involuntarily institutionalized obligors to petition the court for forgiveness of child support arrears accrued during the period of incarceration or involuntary institutionalization.

Rationale for Recommendation

Family Code section 4007.5 addresses the temporary suspension of child support orders while the obligor is incarcerated or involuntarily institutionalized. Senate Bill 1355 (Wright; Stats. 2010, ch. 495) originally added this section to the Family Code, which provided for temporary suspension of child support orders being enforced by the local child support agency during incarceration or involuntary institutionalization, and authorized obligors once released to petition the court for adjustment of arrears accrued during incarceration or involuntary institutionalization. When SB 1355 sunsetted on June 30, 2015, obligors lost the ability to petition the court for such an adjustment of arrears.

Assembly Bill 610 (Jones-Sawyer; Stats. 2015; ch. 629) went into effect October 8, 2015, replacing the language of Family Code section 4007.5 with a new provision authorizing the temporary suspension of child support orders by operation of law when an obligor is incarcerated or involuntarily institutionalized for any period exceeding 90 days, unless (1) the obligor has the means to pay support, or (2) the obligor was incarcerated or involuntarily institutionalized for failure to pay child support or for an offense constituting domestic violence against the supported party or child. The statute applies to all child support orders and provides that the child support order will resume on the first day of the first full month following the obligor's release from confinement, in the same amount as previously ordered.

Under AB 610, Family Code section 4007.5 provides the local child support agency with authority to administratively adjust child support account balances for formerly incarcerated or involuntarily institutionalized obligors, requires the agency to give notice of the arrears adjustment, and provides the obligor and the obligee with the opportunity to object. If either party objects, the agency is required to file a motion asking the court to adjust the arrears. When the local child support agency is not involved in a case, the legislation permits the obligor or

obligee to petition the court to set child support and determine arrears. These provisions address the significant arrears that accrue when an obligor is incarcerated or institutionalized, which can affect the performance of California's child support program and have a negative impact on the obligor's ability, once released, to productively reenter society and reconnect with his or her children.

The requirements for relief under the former SB 1355 program and the current AB 610 program are identical. They each provide that child support orders are suspended for any period exceeding 90 days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, with identical exceptions (obligor's incarceration or involuntarily institutionalization was due to domestic violence against the supported person or child or for failure to pay support). The main differences are the process for adjustment of arrears, as described above, and that the SB 1355 program only applies to child support orders being enforced by the local child support agency while the AB 610 program applies to all child support orders. AB 610 does not address orders made or modified during the "gap" period between the sunsetting of SB 1355 on June 30, 2015 and the initiation of the AB 610 program on October 8, 2015.

To comply with the statutory sunset provision of SB 1355 and with the provisions of AB 610, forms FL-350, FL-530, FL-615, FL-625, FL-630, FL-665, FL-687, FL-692 need to be revised to replace the current provision regarding determination of support arrearages or adjustment of arrearages due to incarceration or involuntary institutionalization with a new provision designed to incorporate the terms of AB 610. The committee also recommends revising forms FL-342 and FL-688 to add this same new provision.

Forms FL-676 and FL-676-INFO also need to be revised to reflect the AB 610 changes in the process for adjusting arrears. In addition, to reflect the broader application of the arrears process under AB 610, form FL-490, *Application to Determine Arrears*, is for use in cases in which the local child support agency is not providing services, and needs to be revised so that it can be used to request adjustment to child support arrears.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2016 invitation-to-comment cycle—from April 15, 2016, to June 14, 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 proposal was also sent to the Department of Child Support Services, the Child Support Directors' Association Forms and Legal Practices Committee Chairs, and child support commissioners.

A total of nine comments were received; of those, three agreed with the proposal and six agreed if modified. No opposition to the proposal was received. Commentators included the California Department of Child Support Services, the Child Support Directors Association, the Executive Committee of the Family Law Section of the State Bar of California, the Orange County Bar Association, the State Bar of California Standing Committee on the Delivery of Legal Services, the superior courts of California, and the counties of Los Angeles, Orange, Riverside, and San Diego. A chart with all comments received and the committee's responses is attached at pages 43–62.

The commentators provided thoughtful and helpful suggestions for improvements to the proposed form revisions, many of which the committee recommends incorporating. The commentators also provided valuable responses to the specific questions posed by the Invitation to Comment.

Of the four comments from superior courts, two agreed with the proposal and two agreed if modified. The committee recommends incorporating many of the courts' suggestions, including revisions to clarify the exceptions to the temporary suspension of child support and changes to form captions to make them consistent.

The committee recommends incorporating many of the revisions to the standard notification language suggested by the Child Support Directors Association (CSDA) and the California Department of Child Support Services (DCSS). CSDA emphasized the importance of using easy-to-understand language to benefit self-represented litigants, and also suggested concise revisions to minimize printing costs for courts.

CSDA also suggested extensive citations to Family Code section 4007.5. In the interests of promoting plain language, brevity, and shorter forms, the committee recommends declining this suggestion.

The committee also recommends incorporating a suggestion of the State Bar of California, Standing Committee on the Delivery of Legal Services to clarify the meaning of "arrears."

Alternatives

In addition to the alternatives considered in response to the public comments, the committee also considered developing a new Judicial Council form for use by the local child support agency to ask the court to adjust the arrears when one of the parties objects to the proposed administrative action. The committee also considered revising form FL-680, *Notice of Motion (Governmental)*, to add an option for the local child support agency to inform the court that an objection was made to the request to adjust arrears. The committee concluded that a either a new form or revisions to current form FL-680 would generate unnecessary costs for courts. The committee also considered postponing or declining to recommend any form revisions in light of the fiscal situation faced by courts. The committee, however, decided to recommend the revisions to facilitate court implementation of the recent legislation.

Implementation Requirements, Costs, and Operational Impacts

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

Relevant Strategic Plan Goals and Operational Plan Objectives

As this proposal improves litigants' access to child support enforcement and understanding of their rights regarding the impact of incarceration or involuntary institutionalization on child support orders, it supports Goal I, Access, Fairness, and Diversity. As the proposal also 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. Judicial Council forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, FL-692, at pages 7–42.
2. Chart of comments, at pages 43–62.
3. Link to AB 610.

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

CHILD SUPPORT INFORMATION AND ORDER ATTACHMENT

TO ☐ **Findings and Order After Hearing (form FL-340)** ☐ **Judgment (form FL-180)**
☐ **Restraining Order After Hearing (CLETS-OAH) (form DV-130)**
☐ **Other** *(specify):*

THE COURT USED THE FOLLOWING INFORMATION IN DETERMINING THE AMOUNT OF CHILD SUPPORT:

1. ☐ A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.
2. ☐ **Income**
   a. Each parent's monthly income is as follows:

	Gross monthly income	Net monthly income	Receiving TANF/CalWORKS
Petitioner/plaintiff:	$	$	☐
Respondent/defendant:	$	$	☐
Other parent:	$	$	☐

   b. Imputation of income. The court finds that the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent has the capacity to earn:
   $ per and has based the support order upon this imputed income.
3. ☐ **Children of this relationship**
   a. Number of children who are the subjects of the support order *(specify):*
   b. Approximate percentage of time spent with petitioner/plaintiff: %
   respondent/defendant: %
   other parent: %
4. ☐ **Hardships**

Hardships for the following have been allowed in calculating child support:

	Petitioner/ plaintiff	Respondent/ defendant	Other parent	Approximate ending time for the hardship
a. ☐ Other minor children:	$	$	$	
b. ☐ Extraordinary medical expenses:	$	$	$	
c. ☐ Catastrophic losses:	$	$	$	

THE COURT ORDERS

5. ☐ **Low-income adjustment**
   a. ☐ The low-income adjustment applies.
   b. ☐ The low-income adjustment does not apply because *(specify reasons):*

6. ☐ **Child support**
   a. **Base child support**
   ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent must pay child support beginning *(date):* and continuing until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student, whichever occurs first, as follows:

Child's name	Date of birth	Monthly amount	Payable to *(name):*

Payable ☐ on the 1st of the month ☐ one-half on the 1st and one-half on the 15th of the month
☐ other *(specify):*

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

THE COURT FURTHER ORDERS

6. b. ☐ **Mandatory additional child support**

(1) Child-care costs related to employment or reasonably necessary job training

(a) ☐ Petitioner/plaintiff must pay: ☐ % of total or ☐ $ per month child-care costs.
(b) ☐ Respondent/defendant must pay: ☐ % of total or ☐ $ per month child-care costs.
(c) ☐ Other parent must pay: ☐ % of total or ☐ $ per month child-care costs.
(d) ☐ Costs to be paid as follows *(specify)*:

c. **Mandatory additional child support**

(2) Reasonable uninsured health-care costs for the children

(a) ☐ Petitioner/plaintiff must pay: ☐ % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: ☐ % of total or ☐ $ per month.
(c) ☐ Other parent must pay: ☐ % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify)*:

d. ☐ **Additional child support**

(1) ☐ Costs related to the educational or other special needs of the children

(a) ☐ Petitioner/plaintiff must pay: ☐ % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: ☐ % of total or ☐ $ per month.
(c) ☐ Other parent must pay: ☐ % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify)*:

(2) ☐ Travel expenses for visitation

(a) ☐ Petitioner/plaintiff must pay: ☐ % of total or ☐ $ per month.
(b) ☐ Respondent/defendant must pay: ☐ % of total or ☐ $ per month.
(c) ☐ Other parent must pay: ☐ % of total or ☐ $ per month.
(d) ☐ Costs to be paid as follows *(specify)*:

e. ☐ **Non-Guideline Order**
This order does not meet the child support guideline set forth in Family Code section 4055. *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) is attached.

Total child support per month: $

f. **Child Support Order Suspension**
When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison,or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

7. **Health-care expenses**

a. Health insurance coverage for the minor children of the parties must be maintained by the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent if available at no or reasonable cost through their respective places of employment or self-employment. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any health-care claims. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

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

b. ☐ Health insurance is not available to the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent at a reasonable cost at this time.

c. ☐ The party providing coverage must assign the right of reimbursement to the other party.

8. **Earnings assignment**
An earnings assignment order is issued. **Note:** The payor of child support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor's wages and for payment of any support not paid by the assignment.

9. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

10. ☐ **Employment search order (Family Code § 4505)**
☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent is ordered to seek employment with the following terms and conditions:

11. **Other orders** *(specify):*

12. **Notices**
a. *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.
b. If this form is attached to *Restraining Order After Hearing* (form DV-130), the support orders issued on this form (form FL-342) remain in effect after the restraining orders issued on form DV-130 end.

13. **Child Support Case Registry Form**
Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this order. Thereafter, the parties must notify the court of any change in the information submitted within 10 days of the change by filing an updated form.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER	CASE NUMBER:

1. a. ☐ Mother's net monthly disposable income: $
   Father's net monthly disposable income: $
   -OR-
   b. ☐ A printout of a computer calculation of the parents' financial circumstances is attached.
2. ☐ Percentage of time each parent has primary responsibility for the children: Mother: % Father: %
3. a. ☐ A hardship is being experienced by the mother $ per month because of *(specify):*

   The hardship will last until *(date):*
   b. ☐ A hardship is being experienced by the father $ per month because of *(specify):*

   The hardship will last until *(date):*
4. The amount of child support payable by *(name):* , referred to as "the parent ordered to pay support," as calculated under the guideline is: $ per month.
5. ☐ We agree to guideline support.
6. ☐ The guideline amount should be rebutted because of the following:
   a. ☐ We agree to child support in the amount of $ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.
   b. ☐ Other rebutting factors *(specify):*
7. The parent ordered to pay support must pay child support as follows beginning *(date):*
   a. BASIC CHILD SUPPORT

Child's name	Monthly amount	Payable to *(name):*

   Total: $ payable ☐ on the first of the month ☐ other *(specify):*
   b. ☐ In addition, the parent ordered to pay support must pay the following:
      (1) ☐ $ per month for child care costs to *(name):* on *(date):*
      (2) ☐ $ per month for health-care costs not covered by insurance to *(name):* on *(date):*
      (3) ☐ $ per month for special educational or other needs of the children to *(name):* on *(date):*
      (4) ☐ other *(specify):*
   c. **Total monthly child support** payable by the parent ordered to pay support will be: $
      payable ☐ on the first of the month ☐ other *(specify):*
   d. When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

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

8. a. Health insurance will be maintained by *(specify name):*
   The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.
   b. ☐ A health insurance coverage assignment will issue if health insurance is available through employment or other group plan or otherwise is available at reasonable cost. Both parents are ordered to cooperate in the presentation, collection, and reimbursement of any medical claims.
   c. Any health expenses not paid by insurance will be shared: Mother: % Father: %
9. a. An earnings assignment order is issued.
   b. ☐ We agree that service of the earnings assignment be stayed because we have made the following alternative arrangements to ensure payment *(specify):*
10. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount in arrears nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
11. ☐ Travel expenses for visitation will be shared: Mother: % Father: %
12. ☐ We agree that we will promptly inform each other of any change of residence or employment, including the employer's name, address, and telephone number.
13. ☐ Other *(specify):*
14. We agree that we are fully informed of our rights under the California child support guidelines.
15. We make this agreement freely without coercion or duress.
16. The right to support
    a. ☐ has not been assigned to any county, and no application for public assistance is pending.
    b. ☐ has been assigned or an application for public assistance is pending in *(county name):*

If you checked b., an attorney for the local child support agency must sign below, joining in this agreement.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Notice: If the amount agreed to is less than the guideline amount, no change of circumstances need be shown to obtain a change in the support order to a higher amount. If the order is above the guideline, a change of circumstances will be required to modify this order. This form must be signed by the court to be effective.

Date:

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

Date:

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

Date:

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

Date:

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

THE COURT ORDERS

17. a. ☐ The guideline child support amount in item 4 is rebutted by the factors stated in item 6.
    b. Items 7 through 13 are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this stipulation, all provisions of any previous orders made in this action will remain in effect.

Date:

JUDGE OF THE SUPERIOR COURT

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent per year. This can be a large added amount.

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

APPLICATION TO DETERMINE ARREARS

Attachment to Request *for Order* (form FL-300)

☐ **Child support** ☐ **Spousal or partner support** ☐ **Family support** ☐ **Medical support**
☐ **Unreimbursed expenses** ☐ **Unreimbursed medical expenses**
☐ **Other *(specify):***

1. I ask that the amount of past due support payments (arrears) be decided in this case.

2. I have attached *(check all that apply):*
   a. ☐ a *Declaration of Payment History* (FL-420)
   b. ☐ a *Payment History Attachment* (FL-421)
   c. ☐ Other *(specify):*

3. ☐ I ask that the amount of past due support payments (arrears) be changed as follows:
   a. ☐ I have already paid ☐ some ☐ all of the support ordered. Proof of payment is attached.
   b. ☐ The children for whom support is to be paid were living with me full time for the period from _____ to _____. I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
   c. ☐ Suspended due to jail, prison, or an institution (juvenile facility or mental health facility). (Family Code, § 4007.5)
      (1) I was incarcerated or involuntarily institutionalized for the following periods for more than 90 days in a row during which I did not have the financial ability to pay child support. *(Attach any proof of your incarceration or involuntary institutionalization.)*
      (a) Date(s) incarceration or involuntary institutionalization began: _____
      (b) Date(s) incarceration or involuntary institutionalization ended: _____
      (2) The reason that I was in jail, prison, or an institution (juvenile facility or mental health facility) was not because I failed to pay court ordered child support or committed domestic violence against the supported person or child.
      (3) My child support order was made or changed by the court on or after October 8, 2015.
   d. ☐ Other *(specify):*

4. ☐ I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed ☐ childcare expense ☐ medical expense *(Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)*

5. ☐ I am asking the other person to pay a. ☐ Attorney Fees b. ☐ Costs
   Income and Expense Declaration (form FL-150) is attached.

6. Facts in support of the relief requested are *(specify):*
   ☐ contained in the attached declaration.

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

Date:

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DECLARANT)

☐ Petitioner/Plaintiff ☐ Respondent/Defendant
☐ Attorney ☐ Other *(specify):*

NOTICE: This form must be attached to *Request for Order* (FL-300)

NOT A COURT ORDER

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406)*:	*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: OTHER PARENT/PARTY:	
JUDGMENT REGARDING PARENTAL OBLIGATIONS (UIFSA) ☐ ____ **AMENDED** ☐ ____ **SUPPLEMENTAL**	CASE NUMBER:

1. a. ☐ **NOTICE: THIS IS A PROPOSED JUDGMENT. This *Judgment Regarding Parental Obligations (UIFSA)* will be entered by the court and will become legally binding unless you fill out and file the *Response to Uniform Support Petition (UIFSA)* (form FL-520) with the court clerk within 30 days of the date you were served with the *Summons (UIFSA)* (form FL-510) and *Uniform Support Petition* (form OMB 0970-0085). If you need a *Response* form, you may get one from the local child support agency, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the *Response*, follow the procedures listed in the information sheet attached to that form.**

   b. ☐ **NOTICE: THIS IS A JUDGMENT. It is now legally binding.**

2. **THIS MATTER PROCEEDED AS FOLLOWS:**
   a. ☐ Judgment entered under Family Code section 5002.
   b. ☐ By court hearing, appearances as follows:
      (1) Date: Dept.: Judicial officer:
      (2) ☐ Petitioner present ☐ Attorney present *(name)*:
      (3) ☐ Respondent present ☐ Attorney present *(name)*:
      (4) Child support agency (Family Code, §§ 17400, 17406) by *(name)*:
      (5) ☐ Other *(specify)*:

   c. The parent ordered to pay support is the ☐ petitioner ☐ respondent ☐ other *(specify)*:

3. ☐ This order is based on presumed income for the parent ordered to pay support under Family Code section 5002.
4. ☐ Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
5. ☐ This order is based on the attached documents *(specify)*:

6. **THE COURT ORDERS:**
   a. The parent ordered to pay support ☐ is the parent of the children named in item 6b.
      ☐ has previously been determined to be the parent of the children named in item 6b.
   b. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

6. b. (1) ☐ Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:
☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

(2) ☐ Other *(specify):*

(3) ☐ For a total of $ payable on the day of each month beginning *(date):*

(4) ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because *(specify reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

c. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d. ☐ The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount

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

(1) ☐ Other *(specify):*

(2) ☐ For a total of $ payable $ on the day of each month beginning *(date):*

(3) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

6. e. No provision of this judgment operates to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

g. **An earnings assignment order is issued.**

h. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

i. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k The *Notice of Rights and Responsibilities* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

l. ☐ The court further orders *(specify):*

Date:

Number of pages attached: _____

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.

Date:

▶ _____

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406)*:	*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/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
STIPULATION FOR ☐ JUDGMENT ☐ SUPPLEMENTAL JUDGMENT REGARDING PARENTAL OBLIGATIONS AND JUDGMENT	CASE NUMBER:

1. This matter proceeded as follows:

a. ☐ By written stipulation without court appearance.

b. ☐ By court hearing, appearances as follows:

(1) Date: Dept.: Judicial officer:

(2) ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*

(3) ☐ Respondent/defendant present ☐ Attorney present *(name):*

(4) ☐ Other parent present ☐ Attorney present *(name):*

(5) Local child support agency (Family Code, §§ 17400, 17406) by *(name):*

(6) ☐ Other *(specify):*

c. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent.

2. ☐ This order is based on the attached documents *(specify):*

3. The parties agree that:

a. The parent ordered to pay support has read and understands the *Advisement and Waiver of Rights for Stipulation* on page 5 of this form. The parent ordered to pay support gives up these rights and freely agrees that a judgment may be entered in accordance with this stipulation.

b. The amount of support payable by the party ordered to pay support as calculated under the guideline is $ per month.

☐ We agree to guideline support.

☐ The guideline amount should be rebutted because of the following:

(1) ☐ We have been fully informed of the guideline amount of support; we agree voluntarily to child support in the amount of $ per month; the agreement is in the best interest of the children; the needs of the children will be met adequately by the agreed amount; the children are not receiving public assistance; no application for public assistance is pending; and application of the guideline would be unjust and inappropriate in this case. We understand that if the order is below the guideline, no change of circumstances need be shown for the court to raise this order to the guideline amount. If the order is above the guideline, a change of circumstances will be required to modify this order.

(2) ☐ Other rebutting factors *(specify):*

c. ☐ The computer printout attached shows the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

3. d. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent are the parents of the children named in item 3e below.

e. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

(1) ☐ Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:

☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.

Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:

☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.

Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

(2) ☐ Other *(specify):*

(3) ☐ For a total of $ payable on the day of each month beginning *(date):*

(4) ☐ The low-income adjustment applies.

☐ The low-income adjustment does not apply because *(specify reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

f. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

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

3. g. ☐ The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below.

Name of child	Date of birth	Period of support	Amount

(1) ☐ Other *(specify):*

(2) ☐ For a total of $ payable $ on the day of each month beginning *(date):*

(3) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

h. If this is a judgment on a *Supplemental Complaint,* it does not modify or supersede any prior judgment or order for support or arrearages, unless specifically provided.

i. No provision of this judgment may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

j. All payments, unless specified in item 3e(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

k. **An earnings assignment order is issued.**

l. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

m. If "The parent ordered to pay support" box is checked in item 3f, a health insurance coverage assignment must issue.

n. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

o. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

p. ☐ The following person (the "other parent") is added as a party to this action *(name):*

q. ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR RESPONDENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF OTHER PARENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR OTHER PARENT)

JUDGMENT

4. THE COURT SO ORDERS.

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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

ADVISEMENT AND WAIVER OF RIGHTS FOR STIPULATION

1. **RIGHT TO BE REPRESENTED BY A LAWYER.** I understand that I have the right to be represented by a lawyer of my choice at my expense. If I cannot afford a lawyer to represent me, I can ask the court to appoint one to represent me free of charge only if I dispute that I am the parent of the children named in this action and only on the issue of parentage. I understand that the attorney for the local child support agency does not represent me.
2. **RIGHT TO A TRIAL.** I understand that I have a right to have a judicial officer (1) determine if I am the parent of the children named in the stipulation, (2) decide how much child support I must pay, and (3) decide how much I owe for arrearages (unpaid support).
3. **RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES.** I understand that in a trial any allegations made against me must be proved. At the trial I may be present with a lawyer when witnesses testify, and I may ask them questions. I may also present evidence and witnesses.
4. **RIGHT TO HAVE PARENTAGE TESTS WHERE THE LAW PERMITS.** I understand that, where the law permits, I have the right to have the court order parentage tests. The court will decide on the tests. The court could order that I pay none, some, or all of the costs of the tests.
5. **ADMISSION AND WAIVER OF RIGHTS.** I understand that by agreeing to the terms of this stipulation, I am admitting that I am the parent of the children named in the stipulation and I am giving up the rights stated above.
6. **WHERE THE STIPULATION INCLUDES CHILD SUPPORT.**
   a. I understand that I will have the duty to obey the support order for the children named in the stipulation until the order is changed by the court or ended by law.
   b. I also understand that the court will order any support payments to be paid directly from my wages or other earnings and sent to the local child support agency if one is assigned to collect the support.
   c. I have been advised of the amount of guideline child support and how the proposed child support amount was determined.
7. **WHERE THE STIPULATION INCLUDES A PROVISION FOR HEALTH INSURANCE.** I understand that I must keep health insurance coverage for the minor children if insurance is available or becomes available to me at no or reasonable cost. A health insurance coverage assignment/*National Medical Support Notice* may be ordered to get health insurance for my children.
8. I agree to the terms of this stipulation freely and voluntarily.
9. I understand that the local child support agency is required by state law to enforce the duty of support.
10. **I UNDERSTAND THAT IF I WILLFULLY FAIL TO SUPPORT MY CHILDREN, CRIMINAL PROCEEDINGS MAY BE INITIATED AGAINST ME.**
11. **COLLECTION OF SUPPORT.** I understand that any support I owe may be collected from any of my property. This collection may be made by intercepting money owed to me by the state or federal government (such as tax refunds, unemployment and disability benefits, and lottery winnings), by taking property I own, by placing a lien on my property, or by any other lawful means.
12. **IF I AM REPRESENTED BY AN ATTORNEY, MY ATTORNEY HAS READ AND EXPLAINED TO ME THE TERMS OF THE STIPULATION AND THIS ADVISEMENT AND WAIVER OF RIGHTS, AND I UNDERSTAND THESE TERMS.**

☐ I have read and understand the *Advisement and Waiver of Rights for Stipulation;* or
☐ Attached is a translation of this *Advisement and Waiver of Rights for Stipulation* in *(specify language):*
☐ I understand the translation.

Date:

▶ (TYPE OR PRINT NAME)

(PARTY'S SIGNATURE)

☐ I understand the translation.

Date:

▶ (TYPE OR PRINT NAME)

(PARTY'S SIGNATURE)

DECLARATION OF PERSON PROVIDING INTERPRETATION/TRANSLATION: The party/parties indicated below is/are unable to read or understand this *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* because

☐ (Insert name): _____ 's primary language is *(specify):*
and he or she ☐ has ☐ has not read the form stipulation translated into this language.

☐ (Insert name): _____ 's primary language is *(specify):*
and he or she ☐ has ☐ has not read the form stipulation translated into this language.

I certify under penalty of perjury under the laws of the State of California that I am competent to interpret or translate in the primary language indicated above and that I have, to the best of my ability, read to, interpreted for, or translated for the above-named party the *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* in the party's primary language. The above-named party said he or she understood the terms of this *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment* before signing it.

Date:

▶ (TYPE OR PRINT NAME)

(SIGNATURE)

Date:

▶ (TYPE OR PRINT NAME)

(SIGNATURE)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*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/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
STIPULATION AND ORDER	CASE NUMBER:

1. **This matter proceeded as follows:**
   a. ☐ By written stipulation without court appearance.
   b. ☐ By court hearing, appearances as follows:
      (1) Date: Dept.: Judicial officer:
      (2) ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*
      (3) ☐ Respondent/defendant present ☐ Attorney present *(name):*
      (4) ☐ Other parent present ☐ Attorney present *(name):*
      (5) Local child support agency (Family Code, §§ 17400, 17406) by *(name):*
      (6) ☐ Other *(specify):*

   c. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent.
2. ☐ This order is based on the attached documents *(specify):*

3. **The parties agree that**
   a. All orders previously made in this action remain in full force and effect except as specifically modified below.
   b. The amount of support payable by the parent ordered to pay support as calculated under the guideline is $ per month.
      ☐ We agree to guideline support.
      ☐ The guideline amount should be rebutted because of the following:
      (1) ☐ We have been fully informed of the guideline amount of support; we agree voluntarily to child support of $ per month; the agreement is in the best interest of the children; the needs of the children will be met adequately by the agreed amount; the children are not receiving public assistance; no application for public assistance is pending; and application of the guideline would be unjust and inappropriate in this case. We understand that if the order is below the guideline, no change of circumstances need be shown for the court to raise this order to the guideline amount. If the order is above the guideline, a change of circumstances will be required to modify this order.
      (2) ☐ Other rebutting factors *(specify):*

   c. ☐ The attached computer printout shows the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

3. d. ☐ The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

(1) ☐ Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:
☐ one-half or ☐ % or ☐ (specify amount): $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
☐ one-half or ☐ % or ☐ (specify amount): $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

(2) ☐ Other *(specify)*:

(3) ☐ For a total of $ payable on the day of each month beginning *(date)*:

(4) ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because *(specify reasons)*:

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

e. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

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

3. f. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*
   (1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $
   (2) ☐ Interest is not included and is not waived.
   (3) ☐ Payable: $ on the day of each month beginning *(date):*
   (4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

   g. No provision of this judgment may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

   h. All payments, unless specified in item 3d(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

   i. **An *Income Withholding for Support* (form FL-195/OMB No. 0970-0154) will issue.**

   j. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

   k. If "The parent ordered to pay support" box is checked in item 3e, a health insurance coverage assignment must issue.

   l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

   m. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

   n. ☐ The following person (the "other parent") is added as a party to this action *(name):*

   o. ☐ Other *(specify):*

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF OTHER PARENT)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR OTHER PARENT)

ORDER

4. **THE COURT SO ORDERS.**

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

DECLARATION OF PERSON PROVIDING INTERPRETATION/TRANSLATION: The party/parties indicated below is/are unable to read or understand this *Stipulation and Order* because

☐ (Insert name) _____'s primary language is *(specify):*

and he or she ☐ has ☐ has not read the form stipulation translated into this language.

☐ (Insert name) _____'s primary language is *(specify):*

and he or she ☐ has ☐ has not read the form stipulation translated into this language.

I certify under penalty of perjury under the laws of the State of California that I am competent to interpret or translate in the primary language indicated above and that I have, to the best of my ability, read to, interpreted for, or translated for the above-named party the *Stipulation and Order* in the party's primary language. The above-named party said he or she understood the terms of this *Stipulation and Order* before signing it.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406)*:	*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/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
JUDGMENT REGARDING PARENTAL OBLIGATIONS ☐ _____ **AMENDED** ☐ _____ **SUPPLEMENTAL**	CASE NUMBER:

1. a. **NOTICE: THIS IS A ☐ PROPOSED ☐ AMENDED PROPOSED JUDGMENT. This *Judgment Regarding Parental Obligations* will be entered by the court and will become legally binding unless you fill out and file the *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610) with the court clerk within 30 days of the date you were served with the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600). If you need form FL-610, you may get one from the local child support agency's office, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the answer, follow the procedures listed in the attached instructions.**

   b. ☐ **NOTICE: THIS IS A JUDGMENT. It is now legally binding.**

2. **This matter proceeded as follows:**
   a. ☐ Judgment entered under Family Code section 17430.
   b. ☐ By court hearing, appearances as follows:
      (1) Date: Dept.: Judicial officer:
      (2) ☐ Petitioner/plaintiff present ☐ Attorney present *(name)*:
      (3) ☐ Respondent/defendant present ☐ Attorney present *(name)*:
      (4) ☐ Other parent present ☐ Attorney present *(name)*:
      (5) Local child support agency attorney (Family Code, §§ 17400,17406) *(name)*:
      (6) ☐ Other *(specify)*:

   c. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent.

3. ☐ This order is based on presumed income for the parent ordered to pay support under Family Code section 17400.
4. ☐ Attached is a computer printout showing the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
5. ☐ This order is based on the attached documents *(specify)*:

THE COURT ORDERS

6. a. ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent are the parents of the children named in item 6b below.
   b. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

6. b. (1) ☐ Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:

☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.

Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:

☐ one-half or ☐ % or ☐ *(specify amount):* $ per month of the costs.

Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

(2) ☐ Other *(specify):*

(3) ☐ For a total of $ payable on the day of each month beginning *(date):*

(4) ☐ The low-income adjustment applies.

☐ The low-income adjustment does not apply because *(specify reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

c. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d. ☐ The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARENT:	CASE NUMBER:

6. d. (1) ☐ Other *(specify):*

(2) ☐ For a total of $ payable $ on the day of each month beginning *(date):*

(3) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. If this is a judgment on a *Supplemental Complaint,* it does not modify or supersede any prior judgment or order for support or arrearage, unless specifically provided.

f. No provision of this judgment can operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

g. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

h. **An earnings assignment order is issued.**

i. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

j If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

k. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

l. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

m. ☐ The following person (the "other parent") is added as a party to this action *(name):*

n. ☐ **The court further orders** *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
Date:

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name)*:	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
FINDINGS AND RECOMMENDATION OF COMMISSIONER	CASE NUMBER:

1. Name *(specify)*: objected to Commissioner *(name)*:
   hearing this matter as a temporary judge.
2. **THIS MATTER PROCEEDED AS FOLLOWS**
   a. ☐ By court hearing, appearances as follows:
      (1) Date: Dept.: Judicial officer:
      (2) ☐ Petitioner/plaintiff present ☐ Attorney present *(name)*:
      (3) ☐ Respondent/defendant present ☐ Attorney present *(name)*:
      (4) ☐ Other parent present ☐ Attorney present *(name)*:
      (5) Local child support agency attorney (Family Code, §§ 17400, 17406) by *(name)*:
      (6) ☐ Other *(specify)*:

   b. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent.
3. ☐ Attached is a computer printout showing the parents' income and percentage of time each parent spends with the child(ren). The printout, which shows the calculation of child support payable, will become the court's findings.
4. ☐ This recommended order is based on the attached documents *(specify)*:

5. **THE COMMISSIONER RECOMMENDS THE FOLLOWING**
   a. All orders previously made in this action remain in full force and effect except as modified below.
   b. (Name of parent): ☐ mother ☐ father
      (Name of parent): ☐ mother ☐ father
      are the parents of the children listed below.
   c. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount

   (1) ☐ Mandatory additional child support
      (a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:
      ☐ one-half or ☐ % or ☐ *(specify amount)*: $ per month of the costs.
      Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.
      (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
      ☐ one-half or ☐ % or ☐ *(specify amount)*: $ per month of the costs.
      Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

5. c. (2) ☐ Other *(specify):*

(3) ☐ For a total of $ payable on the day of each month beginning *(date):*

(4) ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because *(specify reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

d. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

e. ☐ The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount

(1) ☐ Other *(specify):*

(2) ☐ For a total of $ payable $ on the day of each month beginning *(date):*

(3) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

f. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

(1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $

(2) ☐ Interest is not included and is not waived.

(3) ☐ Payable: $ on the day of each month beginning *(date):*

(4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

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

5. g. No provision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

h. All payments, unless specified in item 5c(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

i. **An earnings assignment order is issued.**

j. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

k. If "The parent ordered to pay support" box is checked in item 5d, a health insurance coverage assignment must issue.

l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

m. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

n. ☐ The following person (the "other parent") is added as a party to this action *(name):*

o. ☐ The court further recommends *(specify):*

Date:

_____
COMMISSIONER

Number of pages attached: ____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

CLERK'S CERTIFICATE OF MAILING OR SERVICE

I certify that I am not a party to this cause and that

1. ☐ **Personal service.** A true copy of this *Findings and Recommendation of Commissioner* was handed to the
   ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent
   at the hearing of this matter before the commissioner.
2. ☐ **Mail.** A true copy of this *Findings and Recommendation of Commissioner* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the request was mailed
   at *(place):* California,
   on *(date):*

Date: Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
REQUEST FOR ☐ **DETERMINATION OF SUPPORT ARREARS** ☐ **ADJUSTMENT OF CHILD SUPPORT ARREARS DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION**	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date):*

a. Date: Time: ☐ Dept.: ☐ Div.: ☐ Room:

b. Address of court: ☐ same as noted above ☐ other *(specify):*

2. The local child support agency is providing support enforcement services in this case.

3. ☐ **DETERMINATION OF SUPPORT ARREARS**
   a. The local child support agency states that past due support payments (arrears) are owed, as shown in the attached document.
   b. I disagree with the local child support agency's statement, and I request the court to make a determination of arrears. I am attaching my statement of the arrears, which includes a monthly breakdown of amounts ordered and amounts paid.

4. ☐ **ADJUSTMENT OF CHILD SUPPORT ARREARS DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION**
   a. I was incarcerated or involuntarily institutionalized for the following periods of time for more than 90 days in a row during which I did not have the financial ability to pay child support. *(Attach any proof of your incarceration or involuntary institutionalization):*
      (1) Date(s) incarceration or involuntary institutionalization started:
      (2) Date(s) of release:
   b. The reason that I was incarcerated or involuntarily institutionalized was not because I didn't pay the child support owed or because I committed domestic violence against the supported person or child.
   c. My child support order was made or changed on or after October 8, 2015.

5. ☐ Other *(specify):*

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner's acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection (Governmental)* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

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

☐ Number of pages attached: _____

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)

An adult *other than you* must complete the Proof of Service below.

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. My residence or business address is *(specify):*

3. I served a copy of the foregoing *Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676) and all attachments as follows *(check either a, b, or c for each party served):*
   a. ☐ **Personal delivery.** I personally delivered a copy and all attachments as follows:
      (1) ☐ Name of party or attorney served:
      (a) Address where delivered:
      (b) Date delivered:
      (c) Time delivered:
      (2) ☐ Name of local child support agency served:
      (a) Address where delivered:
      (b) Date delivered:
      (c) Time delivered:
   b. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred. I deposited this request with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:
      (1) ☐ Name of party or attorney served:
      (a) Address:
      (b) Date mailed:
      (c) Place of mailing *(city and state):*
      (2) ☐ Name of local child support agency served:
      (a) Address:
      (b) Date mailed:
      (c) Place of mailing *(city and state):*
      (3) I served this motion/request, which included an address verification declaration (*Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order* (form FL-334) may be used for this purpose).

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 PERSON WHO SERVED REQUEST)

INFORMATION SHEET: REQUEST FOR DETERMINATION OF SUPPORT ARREARS OR ADJUSTMENT OF CHILD SUPPORT ARREARS DUE TO INCARCERATION OR INVOLUNTARY INSTITUTIONALIZATION

Please follow these instructions to complete a *Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676). If you need free help completing form FL-676, you can contact the Family Law Facilitator's Office in your county. For more information on finding a family law facilitator, see the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp*.

Form FL-676 should be used only if you disagree with the past due support payments (arrears) that the local child support agency says are owed or if an adjustment of child support arrears due to incarceration or institutionalization is needed and you cannot reach an agreement with the local child support agency. Child support includes the basic amount plus any additional amounts for child care costs related to employment, or training needed to get job skills and reasonable uninsured health care costs for the children. Form FL-676 cannot be used if you want to change your child support order.

When you have completed form FL-676, file the original and attachments with the court clerk. The court clerk's address is listed in the telephone directory under "County Government Offices" or online at *www.courts.ca.gov/courts/find.htm*. Keep three copies of the filed form and its attachments. Serve one copy on the local child support agency, one copy on the other parent, and keep the other for your records. (See *Information Sheet for Service of Process* (form FL-611).)

INSTRUCTIONS FOR COMPLETING FORM FL-676 (TYPE OR PRINT IN BLACK INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box.

Front page, second box, left side: Print your county's name and the court's address in the box. Use the same address for the court that is on your most recent support order or judgment. If you do not have a copy of your most recent support order or judgment, you can get one from either the court clerk or the local child support agency.

Front page, third box, left side: Print the names of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed in your most recent support order or judgment. If no name is listed for the Other Parent leave that line blank.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print your case number in this box. This number is also listed on your most recent support order or judgment.

Front page, fourth box, left side: Check the box to indicate whether you are asking for a determination of support arrears or adjustment of child support arrears due to incarceration or involuntary institutionalization. Check both boxes if you are asking for both a determination of arrears and an adjustment of child support arrears.

1.a.–b You must contact the court clerk's office and ask that a hearing date be set for this motion. The court clerk will give you the information you need to complete this section.

2. This section states that the local child support agency is handling your support case.

3. Check the box if you do not agree with the local child support agency's statement of past due support payments (arrears) and want the court to make a final determination.

3a. **This section requires you to attach the statement or other document from the local child support agency that tells the amount of support arrears owed.**

3b. **This section requires you to attach your own statement of the amount of support arrears owed.** Your statement must show a monthly breakdown of the amount of support ordered and the amount paid each month. You may use *Declaration of Payment History* (form FL-420) and *Payment History Attachment* (form FL-421) to complete your statement of arrears.

4. **Check if this applies.** Attach or bring to the court hearing proof of the dates of incarceration or involuntary institutionalization. If you have any evidence or documentation that you had no income or assets, in addition to your sworn statement on the form, please bring that to court with you.

You must date the request, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of second page, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names listed on the front page.

Top of second page, box on right side: Print your case number in this box. Use the same number as the one on the front page. Instructions for how to complete the Proof of Service section of the *Request* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the request and its attachments must fill out this section of the form. **You cannot serve your own form FL-676.**

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406)* OR ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address)* TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name)*:	*FOR COURT USE ONLY* **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept.: Judicial officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name)*:
   c. ☐ Respondent/defendant present ☐ Attorney present *(name)*:
   d. ☐ Other parent present ☐ Attorney present *(name)*:
   e. Local child support agency attorney (Family Code, §§ 17400, 17406) by *(name)*:
   f. ☐ Other *(specify)*:

   g. The parent ordered to pay support is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent.
2. ☐ Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
3. ☐ This order is based on the attached documents *(specify)*:

THE COURT ORDERS

4. a. All orders previously made in this action remain in full force and effect except as specifically modified below.
   b. The parent ordered to pay support is the parent of and must pay current child support for the following children:

Name of child	Date of birth	Monthly support amount

(1) ☐ Mandatory additional child support

(a) The parent ordered to pay support must pay additional monthly support for reasonable child-care costs, as follows:
☐ one-half or ☐ % or ☐ *(specify amount)*: $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
☐ one-half or ☐ % or ☐ *(specify amount)*: $ per month of the costs.
Payments must be made to the ☐ other parent ☐ State Disbursement Unit ☐ health-care provider.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

4. b. (2) ☐ Other *(specify):*

(3) ☐ For a total of $ payable on the day of each month beginning *(date):*

(4) ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because *(specify reasons):*

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

(6) When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

c. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

d. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

(1) ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $

(2) ☐ Interest is not included and is not waived.

(3) ☐ Payable: $ on the day of each month beginning *(date):*

(4) ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. No provision of this order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 4b(1) above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

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

4. g. **An earnings assignment order is issued.**

h. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.

i. If "The parent ordered to pay support" box is checked in item 4c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k. The form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

l. ☐ The following person (the "other parent") is added as a party to this action *(name):*

m. ☐ The court further orders *(specify):*

Date:

JUDICIAL OFFICER

Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
Date:

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

GOVERNMENTAL AGENCY *(Under Family Code, §§ 17400,17406)*:	*FOR COURT USE ONLY*
TELEPHONE NO. *(Optional)*: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
SHORT FORM ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept.: Judicial officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name)*:
   c. ☐ Respondent/defendant present ☐ Attorney present *(name)*:
   d. ☐ Other parent present ☐ Attorney present *(name)*:
   e. Attorney for local child support agency present under Family Code sections 17400 and 17406 by *(name)*:
   f. ☐ Other *(specify)*:

2. **THE COURT FINDS,** based upon the moving papers:
   a. *(Name)*: is the parent ordered to pay support in this proceeding.
   b. ☐ The parent ordered to pay support has no ability to pay support because *(specify)*:
   c. ☐ Health insurance coverage at no or reasonable cost is currently not available to the parent ordered to pay support to cover the minor children in this action.

3. **THE COURT ORDERS**
   a. All orders previously made in this action will remain in full force and effect except as specifically modified below.
   b. ☐ This matter is continued to in Dept.: for the following purposes only:
   c. ☐ The parent ordered to pay support is ordered to appear on the continuance date.
   d. ☐ Current child support is modified to $ per month beginning *(date)*:
   e. ☐ The court retains jurisdiction to order support retroactive to:
      (1) ☐ *(Specify date)*:
      (2) ☐ The date the parent ordered to pay support becomes employed or otherwise has the ability to pay support.
      (3) ☐ The date the parent ordered to pay support abandons or separates from the children at issue in this case.
   f. ☐ Any order to liquidate the support arrearage is suspended until further order of this court.
   g. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
   h. When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

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

3. i. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

j. ☐ The parent ordered to pay support is ordered to obtain health insurance coverage for the children in this action if it becomes available at no or reasonable cost. The party ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

k. ☐ Other *(specify):*

4. Number of pages attached: _____

Approved as conforming to court order.

Date:

▶ _____

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

Date:

_____

JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
☐ MINUTES ☐ ORDER ☐ JUDGMENT ☐ RECOMMENDED ORDER	CASE NUMBER:

This form may be used for preparation of court minutes and/or as an alternative to form FL-615, FL-625, FL-630, FL-665, or FL-687. If this form is prepared as both court minutes and an alternative to one of these forms, then the parties do not need to prepare any additional form of order.

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Time: Department:
   b. Judicial officer *(name)*: ☐ Judge pro Tempore ☐ Commissioner
      Court reporter *(name)*:
      Court clerk *(name)*: Bailiff *(name)*:
   c. ☐ Interpreter(s) present *(name)*:
      for *(name)*: (specify language):
   d. ☐ Petitioner present ☐ Attorney present *(name)*:
   e. ☐ Respondent present ☐ Attorney present *(name)*:
   f. ☐ Other parent present ☐ Attorney present *(name)*:
   g. Attorney for local child support agency *(name)*:
   h. The parent ordered to pay support for purposes of this order is the ☐ petitioner ☐ respondent ☐ other parent.
   i. ☐ Other *(specify)*:

2. ☐ This is a recommended order/judgment based on the objection of *(specify name)*:
3. a. ☐ This matter is taken off calendar.
   b. ☐ This entire matter is denied ☐ with ☐ without prejudice.
   c. ☐ This matter is continued at the request of the ☐ local child support agency ☐ petitioner ☐ respondent ☐ other parent to
      Date: Time: Department:
      (specify issues):
      Petitioner ☐ Respondent ☐ Other parent is ordered to appear at that date and time.
   d. ☐ The court takes the following matters under submission *(specify)*:

4. ☐ **Order of examination**
   The ☐ petitioner ☐ respondent ☐ other *(specify)*: was sworn and examined.
   ☐ Examination was held outside of court.
5. **Referrals**
   a. ☐ The parties are referred to family court services or mediation.
   b. ☐ Petitioner ☐ Respondent ☐ Other parent is referred to the family law facilitator.
   c. ☐ Other *(specify)*:

THE COURT FINDS

6. ☐ Respondent ☐ Petitioner ☐ Other parent ☐ was ☐ was not served regarding this matter.
7. ☐ Respondent ☐ Petitioner ☐ Other parent ☐ admits ☐ denies parentage.
8. ☐ The parents of the children named below in item 14a are *(specify names)*:

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

9. ☐ Respondent ☐ Petitioner ☐ Other parent has read, understands, and has signed the *Advisement and Waiver of Rights for Stipulation (Governmental)* (form FL-694). He or she gives up those rights and freely agrees that a judgment may be entered in accordance with these findings.

10. a. Guideline support amount: $
    b. This order ☐ is ☐ is not based on the guideline.
    c. ☐ The attached *Guideline Findings Attachment (Governmental)* (form FL-693) is incorporated into these findings.
    d. ☐ A printout, which shows the calculation of child support payable, is attached and must become the court's findings.
    e. ☐ The child support agreed to by the parents is ☐ below ☐ above the statewide child support guideline. The amount of support that would have been ordered under the guideline formula is $ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance, and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. The order is in the best interest of the children. If the order is below the guideline, no change of circumstance will be required for the court to modify this order. If the order is above the guideline, a change of circumstance will be required for the court to modify this order.
    f. ☐ The low-income adjustment applies.
    ☐ The low-income adjustment does not apply because *(specify reasons):*

11. ☐ Arrearages from *(specify date):* through *(specify date):*
    are $ ☐ including interest ☐ interest not computed and not waived.

THE COURT ORDERS

12. All orders previously made in this action must remain in full force and effect except as specifically modified below.
13. ☐ Genetic testing must be coordinated by the local child support agency.
    a. ☐ Respondent ☐ Petitioner ☐ Mother of the children
    ☐ Other *(specify):*
    and the minor children must each submit to genetic testing as directed by the local child support agency.
    b. ☐ The parent ordered to pay support must reimburse the local child support agency for genetic testing costs of $
14. a. ☐ The parent ordered to pay support is the parent of the children listed below and must pay current child support for them.
    ☐ The court finds that there is sufficient evidence that the parent ordered to pay support is the parent of the children listed below and therefore there is sufficient evidence to enter a support order.

Name of child	Date of birth	Monthly basic support amount

    ☐ Additional children are listed on an attached page.
    b. ☐ The parent ordered to pay support must pay additional support monthly for actual child-care costs of
    ☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.
    Payments must be made to the ☐ State Disbursement Unit ☐ other party ☐ child-care provider.
    c. ☐ The parent ordered to pay support must pay reasonable uninsured health-care costs for the children of
    ☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.
    Payments must be made to the ☐ State Disbursement Unit ☐ other party ☐ health-care provider.
    d. ☐ The parent ordered to pay support must pay additional support monthly for the following *(specify):*
    ☐ *(specify amount):* $ ☐ one-half ☐ (specify percent): percent of said costs.
    Payments must be made to the ☐ State Disbursement Unit ☐ other party.
    e. ☐ Other *(specify):*

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

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

14. f. ☐ For a total of $ payable on the day of each month beginning *(date):*

g. ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because *(specify reasons):*

h. Any support ordered will continue until further order of court, unless terminated by operation of law.

i. When a person who has been ordered to pay child support is in jail, prison, or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

15. ☐ The parent ordered to pay support ☐ The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

16. ☐ The parent ordered to pay support may claim the children for tax purposes as long as all child support payments are current as of the last day of the year for which the exemptions are claimed.

17. ☐ Petitioner ☐ Respondent ☐ Other parent must pay to ☐ petitioner ☐ respondent ☐ other parent
as ☐ spousal support ☐ family support $ per month, beginning *(date):*
☐ payable on the day of each month.

18. ☐ The parent ordered to pay support must pay child support for the following past periods and in the following amounts:

Name of child	Period of support	Amount

a. ☐ Other *(specify):*

b. ☐ For a total of $ payable $ on the day of each month beginning *(date):*

c. ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

19. ☐ The parent ordered to pay support owes support arrears as follows, as of *(date):*

a. ☐ Child support: $ ☐ Spousal support: $ ☐ Family support: $ ☐ Other: $

b. ☐ Interest is not computed and is not waived.

c. ☐ Payable: $ on the day of each month beginning *(date):*

d. ☐ Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

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

20. No provision of this judgment can operate to limit any right to collect all sums owing in this matter as otherwise provided by law.
21. All payments, unless specified in items 14b, c, and d above, must be made to the State Disbursement Unit at the address listed below *(specify address):*

22. **An earnings assignment order is issued.**
23. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
24. If "The parent ordered to pay support" box is checked in item 15, a health insurance coverage assignment must issue.
25. ☐ Job search. *(Specify name(s)):* must seek employment for at least *(specify number):* jobs per week and report those job applications and results to the court and the local child support agency at the continuance date. These job applications are to be made in person, not by phone, fax, or e-mail.
26. ☐ For purposes of the licensing issue only, the parent ordered to pay support is found to be in compliance with the support order in this action. The local child support agency must issue a release of license(s).
27. ☐ Notwithstanding any noncompliance issues with the support order in this action, the court finds that the needs of the party ordered to pay support warrant a conditional release. The local child support agency must issue a release of license(s). Such release is effective only as long as the parent ordered to pay support complies with all payment terms of this order.
28. ☐ A warrant of attachment/bench warrant issues for *(specify name):*
    a. ☐ Bail is set in the amount of $
    b. ☐ Service is stayed until *(date):*
29. ☐ The court retains jurisdiction to make orders retroactive to *(date):*
30. ☐ The court reserves jurisdiction over ☐ all issues ☐ the issues of *(specify):*

31. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
32. The *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* and *Information Sheet on Changing a Child Support Order* (form FL-192) are attached and incorporated.
33. ☐ The following person (the "other parent") is added as a party to this action *(name):*
34. ☐ The court further orders *(specify):*

Approved as conforming to court order.
Date:

▶ _____
(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

▶ _____
(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Date:

_____
JUDICIAL OFFICER

☐ Number of pages attached: _____

☐ Signature follows last attachment.

Spring 16-16

Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	AM	Thank you for the opportunity to provide input, express our ideas, experiences and concerns with the incarcerated and involuntarily institutionalized obligor proposal. The California Department of Child Support Services (DCSS) concurs information about recent statutory changes is needed and best explained in plain language. Our experience with families is that ready access to clear and understandable information is important. It allows all parents to make informed decisions and to understand what choices and situations may potentially impact them. As many families cannot afford legal representation, the information available on mandatory court forms continues to fill a growing need particularly for low and moderate income families. Overall, the proposed changes effectively address the legislation that added new Family Code section 4007.5. However, DCSS is concerned some case participants will still misunderstand the scope of the relief available to obligors under this new Family Code provision. Based on our experience, DCSS respectfully recommends additional changes be made for clarity as specifically set forth below. • SPR 16-16 Page 3--Standard Notice Language When a person who has a duty to pay child support is in jail or prison, or is placed in an institution (a juvenile facility or a mental health	• No response necessary. • The committee accepts aspects of the suggestion and has incorporated some elements of the suggested "Standard Notice Language." However, to enhance the brevity and clarity of the notice provision, the

	Commentator	Position	Comment	Committee Response
			facility) against his or her will, and is held for more than 90 days in a row, the duty to make child support payments is (temporarily stopped automatically). The duty to pay child support will NOT be stopped if the person who owes support still has the financial ability to pay that support even while in jail, prison, or an institution. The duty also continues if the reason the person is in jail, prison, or an institution is because he or she didn't pay the child support owed, or committed domestic violence against the person who was to receive the child support or against the supported child. It does not stop interest on any arrears already owed from growing. Once a person who has to pay support is released from jail, prison, or the institution, the duty to pay child support starts again on the first day of the month after the person is released. The person must then begin to pay child support in the same amount as before he or she was in jail, prison, or an institution. This law that allows the duty to pay child support payments to be temporarily stopped automatically while a person is in jail, prison, or an institution applies ONLY to people who have a child support order that was made or changed, on or after October 8, 2015 for periods AFTER their order was made or changed. • SPR 16-16 Page 4--FL-676 Revisions Add subdivision (c), to read: "My child support	committee has revised the proposed language and has condensed the second paragraph to make it the last sentence in the recommended notice provision: "When a person who has been ordered to pay child support is in jail, prison or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison or an institution. It will also not be stopped if the reason the person is in jail, prison or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison or an institution." • The committee accepts the plain language suggestions and has incorporated elements of the suggested language. The committee

	Commentator	Position	Comment	Committee Response
			order was made or changed by the court on or after October 8, 2015 and this dispute is about periods AFTER this order was made or changed. • SPR 16-16 Page 5--FL-490 Revisions Revise Item 3.c(3) to read: "My child support order was made or changed by the court on or after October 8, 2015 and this dispute is about periods AFTER this order was made or changed. Finally, DCSS agrees a specialized form for local child support agency use is not necessary. The existing FL-680, *Notice of Motion* (Governmental), can be used for this purpose.	declines to include language about orders made on or after October 8, 2015 as all orders will necessarily be after that date. • The proposed language in FL-490 conveys the essential information; in the interest of brevity and clarity, the committee declines to add the suggested language. • No response necessary
2.	Child Support Directors Association Judicial Council Forms Committee by Ronald Ladage, Chair	AM	With the passage and implementation of the new Family Code section 4700.5, effective October 8, 2015, a revision of Judicial Council forms is required. Generally, our committee recommends that the code section (Family Code section 4007.5) be cited every time the new language is used. We believe the term "juvenile facility" is too vague, and suggest using the language "involuntarily institutionalized as defined by the statute" instead. Below please find the proposed language along with a list of the forms that must be changed. **I. Suggested language regarding Family Code section 4007.5 for all forms:** "As provided in Family Code Section	• The committee declines to include a reference to Family Code section 4007.5 each time the new statute's language is included on relevant forms because the reference does not contribute to the forms' clarity or brevity. • Family Code section 4007.5(e)(1) uses the term "juvenile facility" within the definition of "incarcerated or involuntarily institutionalized," and therefore the committee has included this term on the forms. • The committee accepts aspects of the suggestion to provide the notification in plain language and has incorporated the suggested language with minor revisions to enhance the

	Commentator	Position	Comment	Committee Response
			4007.5, when a person who has an order to pay child support is in jail, prison or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison or an institution. It will also not be stopped if the reason the person is in jail, prison or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the person who was to receive the child support or against the supported child. The child support order starts again on the first day of the month after the person is released from jail, prison or an institution." **II. Justification for the language changes made above:** The CSDA Judicial Council Forms Committee agrees that it is necessary to include language to incorporate the changes made to Family Code section 4007.5. The forms identified and the placement of this language in the forms is appropriate; however, we suggest the language above be used on all the forms where the language has been identified as required. Although the language proposed by the JCC	brevity and clarity of the notice provision, as follows: "When a person who has been ordered to pay child support is in jail, prison or involuntarily institutionalized, for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes the support has the financial ability to pay that support while in jail, prison or an institution. It will also not be stopped if the reason the person is in jail, prison or an institution is because the person didn't pay court ordered child support, or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison or an institution."

	Commentator	Position	Comment	Committee Response
			is easy to understand, it takes up a substantial amount of space on each of the forms. We have found that litigants often do not read past the first few sentences in any provision. We understand your effort and the need to simplify to make the language as easy to understand as possible; however, being concise would benefit the self-represented litigants as well as having a positive fiscal impact by having to utilize less additional pages for each form. Specifically we recommend starting the provision with a reference to the statutory citation ("As provided in Family Code section 4007.5") because it gives a reference for litigants to find specific provisions that cannot be included on every form such as the sunset date and the statutory definition of specified words (i.e. "incarcerated or involuntary institutionalized"). It also distinguishes this language from the standard prison orders some individual courts include on each child support order. It is a common, but not uniform practice, for individual courts to include "standard orders" that indicate the circumstances (for that particular county court only) in which the child support obligation is suspended in various circumstances (i.e. when the party is receiving public assistance). Indicating that this particular clause is pursuant to the statute as codified under Family Code section 4007.5 will limit the amount of	• The committee declines, in the interests of promoting plain language, brevity and shorter forms, to add citations to Family Code section 4007.5. The code section is included in the title and it seems unlikely that litigants who do not read past the first few sentences are likely to read the Family Code instead.

	Commentator	Position	Comment	Committee Response
			disparate practices among each the courts in different counties and assist in uniform treatment of litigants in every court.	
			The committee believes that "a duty to pay child support" and "a court order to pay child support" are distinguishable as every person has a duty to support their child. This code section suspends a child support order not the duty owed to a child. We believe the statutory language as set out by the legislature should be used when it is clear and easily understood.	The committee has incorporated the proposed change.
			We suggest the last sentence be removed as this provision will only appear on orders issued or modified after October 8, 2015 at this point in time.	The committee has made the recommended change.
			III. The Committee suggests the following revisions to the Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors forms:	
			a. Form FL-342, *Child Support Information and Order Attachment* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	a. The committee has made the recommended change with modifications as noted above.
			b. Form FL-343: Commentary: was the decision to not make changes to the Form FL-343 a purposeful determination that the	b. Family Code section 4007.5 is not applicable to family support orders, and therefore revisions to FL-343 are not needed.

	Commentator	Position	Comment	Committee Response
			FC 4007.5 does not apply to Family Support orders?	
			c. Form FL-350, *Stipulation to Establish or Modify Child Support Order* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	c. The committee has made the recommended change with modifications as noted above.
			d. Form FL-530, *Judgment Regarding Parental Obligations (UIFSA)* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	d. The committee has made the proposed change with modifications as noted above.
			e. Form FL-615, *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	e. The committee has made the proposed change with modifications as noted above.
			f. Form FL-625, *Stipulation and Order (Governmental)* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	f. The committee has made the proposed change with modifications as noted above.
			g. Form FL-630, *Judgment Regarding*	g. The committee has made the proposed change

	Commentator	Position	Comment	Committee Response
			Parental Obligations (Governmental) We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	with modifications as noted above.
			h. Form FL-665, *Findings and Recommendation of Commissioner (Governmental)* We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	h. The committee has made the proposed change with modifications as noted above.
			i. Form FL-490, *Application to Determine Arrearages* We suggest Item 3.c. state: "Suspended because of prison, jail or institutionalization (Family Code section 4007.5)" For Item 3.c.(1), we suggest the following language: Insert "in a row" after "90 days" Insert "the financial ability" where it states "the ability" Insert "pay child support" for "pay support" For Item 3.c.(2), we suggest the following : Do not capitalize "NOT" because we	i. The committee has incorporated the suggested additions, with minor revisions, into the recommended changes for form FL-490. It does not think that adding the code section assists in plain language understanding of the form. The committee has made the proposed changes. The committee has made the proposed changes. The committee has made the proposed changes. The committee has made the proposed changes.

	Commentator	Position	Comment	Committee Response
			believe this is condescending and inconsistent with other forms	
			Remove the language "(juvenile facility or mental health facility)" as it is vague and overbroad. The reference to the statute is more appropriate to allow litigants to see the definition in the statute.	The committee declines to remove the language "(juvenile facility or mental health facility)" because Family Code section 4007.5(e)(1) uses these terms within the definition of "incarcerated or involuntarily institutionalized," and the terms are not overly vague or overbroad
			Insert "court ordered child support" where it says "child support"	The committee has incorporated the proposed changes.
			j. Form FL-687, *Order After Hearing (Governmental)*	j. The committee has incorporated the proposed changes with modifications as noted above.
			We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	
			k. Form FL-692, *Minutes and Order or Judgment (Governmental)*	k. The committee has incorporated the proposed changes with modifications as noted above.
			We recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form.	
			l. Form FL-342, *Child Support Information and Order Attachment*	l. The committee has incorporated the proposed changes with modifications as noted above.
			We recommend the proposed language above (item I.) be used in the same space as	

	Commentator	Position	Comment	Committee Response
			indicated by the DRAFT form.	
			m. Form FL-688, *Short Form Order After Hearing (Governmental)* For Item h., we recommend the proposed language above (item I.) be used in the same space as indicated by the DRAFT form. For Item k., we suggest that the judicial officer signature line be moved to the bottom of the page and the most possible space be available for free form or written text under "Other".	m. The committee has incorporated the proposed changes with modifications as noted above.
			n. Form FL-676, *Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* We believe Item 4.a. and 4.b. should not have check boxes as they are not optional – both must be satisfied for relief. This will assist the self-represented litigants as well as the judicial officer. For Item 4.a., we suggest adding "in a row" after "90 days" For Item 4.a., we suggest using the words "financial ability," rather than "means" For Item 4.b., "NOT" should not be capitalized (for the same reasons as above)	n. The committee has incorporated the proposed changes. The committee has incorporated the proposed changes. The committee has incorporated the proposed changes. The committee has incorporated the proposed changes. The committee has incorporated the proposed changes.

	Commentator	Position	Comment	Committee Response
			For Item 4.a.(1), we suggest the same exact language as used on FL-490 Item 3.c.(1)(a) (with the changes suggested above) for consistency, since Family Code 4007.5 does not distinguish between governmental and non-governmental child support cases.	The committee has incorporated the proposed changes with minor revisions.
			o. Form FL-676- INFO, *Information Sheet for Request for Determination of Support Arrears or Adjustment of Child Support Arrears due to Incarceration or Involuntary Institutionalization*	
			We suggest removing the sentence that was added to the second paragraph ("Child support includes…") in order to save space. The new language is incomplete and not necessary to complete this particular form.	The committee has retained the sentence, "Child support includes…," because it provides obligors and obligees with relevant information regarding the different components that can be included in a child support order.
			For Item 3., we suggest writing: "Check this box if you don't agree with the local child support agency's statement of arrears and want the Court to make a final determination of arrears."	The committee has incorporated the suggested changes, with minor revisions, into the recommended language
			For Item 4., we suggest changing the language from "Complete all that apply" to "Check if applies." We also suggest removing "If you check the box in item 4(a)," (because there will not be a box to check pursuant to the above recommendation).	The committee has incorporated the proposed changes.

	Commentator	Position	Comment	Committee Response
			IV. The Committee response to the specified JCC question as to whether JCC should develop a specific form for the LCSA's motion for a court determination on suspension of child support: a. This Committee recommends that the JCC not develop a specific form for the LCSA motion to determine a suspension of child support pursuant to Family Code Section 4007.5. The Committee recommends that LCSA's simply use the FL-680 Notice of Motion (Governmental). The pre-existing form can be universally used by all LCSA's and is already within the CSE system. Use of this form would be more efficient and cost effective than creating a brand new form with such limited use. Additionally, a new form would not be incorporated into the CSE system in time to be used for motions that may need to be filed, as the new statute has been in place for over 8 months now. It would be more efficient to simply allow LCSA's to continue to use the interim process that they have developed than have to change to use a more limited single scope form. Use of the pre-existing form will only require an additional attachment from the LCSA- and drafts of such attachment have already been created and distributed by this Committee for evaluation and optional use by LCSA's.	• No response necessary.
3.	Orange County Bar Association Todd G. Friedland, President	A	Does the proposal appropriately address the stated purpose? YES	• No response necessary.

Spring 16-16

Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors

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

	Commentator	Position	Comment	Committee Response
			Are the proposed revisions and effective way to address the legislation that added new Family Code Section 4007.5? YES	• No response necessary.
			Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form L-680, Notice of Motion (Governmental) sufficient for this purpose? YES. THERE ARE POTENTIAL CIRCUMSTANCES WHEN THE LCSA WILL NOT BE ENFORCING AND THE NON-GOVERNMENTAL FORMS WOULD BE USED.	• No response necessary
			What is the impact of this modification on low and moderate income persons? BY ALLOWING THE CHILD SUPPORT OBLIGATION TO BE SUSPENDED DURING INCARCERATION THE OBLIGEE MAY BE ELIGIBLE FOR PUBLIC ASSISTANCE TO DEFRAY THE LOSS OF CHILD SUPPORT. THIS IS BALANCED BY THE OBLIGOR NOT ACCRUING SIGNIFICANT ARREARS, AND ALSO SAVES COSTS FOR ALL INVOLVED. THERE IS SOME ISSUE WITH INCARCERATED PERSONS THAT HAVE AN INDEPENDENT SOURCE OF INCOME (SO ACTUALLY NO LOSS OF INCOME DURING INCARCERATION) BUT THE VAST MAJORITY OF OBLIGORS BENEFIT FROM THE SUSPENSION, THE OBLIGEES DO NOT HAVE TO TAKE TIME OFF WORK	• No response necessary.

	Commentator	Position	Comment	Committee Response
			OR FIND CHILDCARE TO ATTEND A COURT HEARING FOR THE SUSPENSION, AND THE LCSA CAN PERFORM THE ACCOUNTING OF AMOUNTS OWED UPON RELEASE.	
4.	State Bar of California Executive Committee of the Family Law Section	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the changes to Judicial Council forms set out in this proposal based on the new version of Family Code section 4007.5, which was enacted last year (AB 610). With respect to the specific request for comments, FLEXCOM responds as follows: 1. Does the proposal appropriately address the stated purpose? Yes, the proposal does address the stated purpose because the advisement adequately informs the reader of the rights and obligations created under the new law. We suggest the following additional language to be added to the advisement: a) Explain that the suspension takes effect by operation of law for further clarity. b) As to the government forms only, add language regarding the administrative review process and the right to object. 2. Are the proposed revisions an effective way to address the legislation that added new Family Code section	• (a) The committee declines to include additional language that explains that the suspension "takes effect by operation of law" because that term is unfamiliar to many obligors and obligees, and the phrase "the child support order is temporarily stopped" adequately conveys that the obligor is not required to take action to temporarily suspend the support order. • (b) The committee declines the suggestion as FL-676 and FL-676-INFO already include language about the local child support agency's proposed adjustment of arrears and a checkbox that enables litigants to object to it.

	Commentator	Position	Comment	Committee Response
			4007.5? Yes, the advisement is an effective way to address the new legislation as all the appropriate forms, such as orders and judgments, are changed to include the advisement.	• No response necessary.
			3. Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form FL-680, *Notice of Motion (Governmental)* sufficient for this purpose? A new form as described should not be developed. LSCA staff members are subject matter experts and can use the generic governmental Notice of Motion (FL-680) to a court determination on suspension of child support.	• No response necessary.
			4. What is the impact of this modification on low and moderate income persons? Since most of the incarcerated child support obligors that will fall under this legislation will be of low or moderate income, we see an advantage to having Judicial Council forms explaining their rights and obligations in plain language.	• No response necessary.
5.	State Bar of California Standing Committee on the Delivery	AM	• Does the proposal appropriately address the stated purpose?	• No response necessary.

	Commentator	Position	Comment	Committee Response
	of Legal Services		Yes. • Are the proposed revisions an effective way to address the legislation that added new Family Code section 4007.5? Yes. • Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form FL-680, Notice of Motion (Governmental) sufficient for this purpose? SCDLS believes form FL-680, Notice of Motion (Governmental) is sufficient. • What is the impact of this modification on low and moderate-income persons? It ought to help low and moderate-income persons understand their rights, if not necessarily how to avail themselves of them. **Additional Comments** The first time "arrears" appears on a form, SCDLS suggests that the form read "past due support payments (arrears)", as on the proposed FL-490. The suggestion is simply to help individuals understand what 'arrears' are.	• No response necessary. • No response necessary. • No response necessary. • The committee has incorporated the phrase on forms FL-490, FL-676 and FL-676-INFO.
6.	Superior Court of California, County	AM	**Suggested modification:**	

	Commentator	Position	Comment	Committee Response
	of Los Angeles		Throughout the proposal as well as on the page noted below, verbiage should be consistent: Page 12, items 3c.(2)…committed violence against **the supported person or child** should be amended to **the person who was to receive the child support or against the supported child.** **Request for Specific Comments:** **Does the proposal appropriately address the stated purpose?** Yes. **Are the proposed revisions an effective way to address the legislation that added new Family Code section 4007.5?** Yes. **Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form FL-680, Notice of Motion (Governmental) sufficient for this purpose?** No additional forms would be required. **What is the impact of this modification on low and moderate income persons?** It will have a positive impact on only persons not able to pay while incarcerated or	• The committee accepts the suggestion and has incorporated them into the suggestions revisions. • No response necessary. • No response necessary. • No response necessary. • No response necessary.

	Commentator	Position	Comment	Committee Response
			institutionalized by being relieved from making payments by operation of law.	
			Would the proposal provide cost savings? If so please quantify. Unknown at this time.	• No response necessary.
			What would the implementation requirements be for courts—for example, training staff, revising processes and procedures, changing docket codes in case management systems? Implementation would require minimal training, the implementation of CMS codes and new forms.	• No response necessary.
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	• No response necessary.
			How well would this proposal work in courts of different sizes? No difference for courts of different sizes.	• No response necessary.
7.	Superior Court of California, County of Orange Family and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	AM	All of the form heading sections are inconsistent. Some forms list "Other" and others list "Other Parent" and some forms list "Other Party." We recommend using "Other Party" for all forms to provide uniformity.	• The committee has adopted a convention of using "Other Parent/Party" and has incorporated that designation into the recommended revisions.
			The language that incorporates AB610 should	• The committee declines to change the order of

	Commentator	Position	Comment	Committee Response
			have the paragraphs in reverse order. For example, page 8 section f, the second paragraph should be the first and vice versa to flow better. The added language are applied throughout all of the revised forms so we recommend the same changes apply to all forms that have this new language.	the paragraphs as the provision tracks Family Code section 4007.5(a) and (b)
8.	Superior Court of California, County of Riverside by Marita Ford Senior Management Analyst	A	No additional comments.	No response necessary.
9.	Superior Court of California, County of San Diego by Mike Roddy Court Executive Officer	A	**FL-490:** Item 3.c. delete "Jail, prison, or an institution (juvenile facility or mental health facility)" and make item 3.c.(1) item 3.c. Additionally, renumber 3.c.(2) and 3.c.(3) to 3.c.(1) and 3.c.(2) respectively. Q: Does the proposal appropriately address the stated purpose? Yes. Q: Are the proposed revisions an effective way to address the legislation that added new Family Code section 4007.5? Yes. Q: Should the Judicial Council develop a specific form for the local child support agency's motion for a court determination on suspension of child support, or is form FL-680, Notice of Motion (Governmental) sufficient for this purposed? Form FL-680 is sufficient. Q: What is the impact of this modification on low and moderate income persons? Unable to	• The committee declines to make these suggested changes as the current language provides greater clarity. • No response necessary. • No response necessary. • No response necessary. • No response necessary.

	Commentator	Position	Comment	Committee Response
			determine. Q: Would the proposal provide cost savings? None Q: What are implementations requirements for courts? Replacing existing forms Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.	• No response necessary. • No response necessary. • No response necessary.

Item number: 04

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Family Law: Child Support and Uniform Interstate Family Support Act

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gary Slossberg, (916) 263-0660, gary.slossberg@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 SB 746, which, among others things, revises the Uniform Interstate Family Support Act (UIFSA) to comply with federal law and maintain state eligibility to receive federal funding for child support enforcement, under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Family Law: Child Support and Uniform Interstate Family Support Act

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.324; adopt forms FL-590(A), FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, Fl-575; revoke forms FL-511 and FL-515

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 26, 2016

Contact
Gary Slossberg, 916-263-0660
gary.slossberg@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising five Judicial Council forms to accurately reflect updated code references, adopting three new Judicial Council forms, and revoking two forms in their entirety. These changes are required by modifications to the Uniform Interstate Family Support Act (Sen. Bill 646 [Jackson]; Stats. 215, ch. 493, § 5), which was chaptered as Family Code sections 5700.101–5700.905.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rule 5.324 to replace the reference to Family Code section 4930 with section 5700.316;

2. Adopt *UIFSA Child Support Order Jurisdictional Attachment* (form FL-590(A)) to make assumption or loss of continuing exclusive jurisdiction a standard order in California;

3. Adopt *Notice of Registration of an International Hague Convention Support Order* (form FL-592) which clearly delineate the time frames within which one may contest the validity or enforcement of a registered Hague Convention support order and provide the necessary next steps toward contesting the Convention support order;

4. Adopt *Request for Hearing Regarding Registration of an International Hague Convention Support Order* (form FL-594), which lists the appropriate defenses for the Convention support order;

5. Revise form FL-510 to replace the reference to Family Code section 4925 with section 5700.311 and change the layout of the form to conform to the layout of other existing family law summons forms;

6. Revise form FL-520 to replace the reference to Family Code section 4925 with section 5700.311 and to make a request for genetic testing mandatory for all children to which an alleged parent denies parentage;

7. Revise form FL-560 to replace the reference to Family Code section 5001 with section 17404.2;

8. Revise form FL-570 to replace the references to Family Code sections 4952 and 4954 with sections 5700.603 and 5700.605, respectively, and to correct the notice regarding the deadline for a responding party to request a hearing;

9. Revise form FL-575 to replace the references to Family Code sections 4955 and 4956 with sections 5700.606 and 5700.607, respectively; and

10. Revoke forms FL-511, *Ex Parte Application for Order for Nondisclosure of Address and Order (UIFSA)* and FL-515, *Order to Show Cause (UIFSA)*.

The text of amended rule 5.324 is attached at page 10; copies of the forms are attached at pages 11–30.

Previous Council Action

Rule 5.324 was originally adopted by the Judicial Council effective July 1, 2005. It was amended, effective January 1, 2008, to allow local child support agencies to request phone appearances on behalf of parties, and later amended along with the amendments to rule 3.670 to correct references to that rule, effective July 1, 2011, and once again effective January 1, 2014.

The council adopted forms FL-570 and FL-575, effective January 1, 1999; FL-510, FL-511, FL-515, and FL-520, effective July 1, 1999; and FL-560, effective July 1, 2000. The forms originally were numbered as forms 1285.88, 1285.90, 1298.50, 1298.56, 1298.52, 1298.54, and 1298.60, respectively. The council renumbered these forms to their current numbering system effective January 1, 2003. The council revised form FL-575, effective July 1, 2007, for minor technical changes.

Rationale for Recommendation

Updating statutory references

The Uniform Interstate Family Support Act (UIFSA) provides universal and uniform rules for the enforcement of family support orders. UIFSA represents a collaborative effort among the National Conference of Commissioners on Uniform State Laws (also known as ULC), federal and state child support officials, and representatives of national child support organizations.

In 2008, the ULC approved amendments to UIFSA to incorporate the provisions of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention), concluded at The Hague on November 23, 2007. The Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases.

In 2014, section 666(f) of title 42 of the United States Code required all states to adopt and have in effect UIFSA, including any amendments officially adopted by the ULC as of September 30, 2008. California adopted these changes in 2015 as Family Code sections 5700.101–5700.905. (See Link A.) These new code sections replaced prior code sections that were referenced in rule 5.324 and in several forms. The recommended changes to rule 5.324 and forms FL-510, FL-520, FL-560, FL-570, Fl-575 are required to conform to these statutory changes.

Adopting New *UIFSA Child Support Order Jurisdictional Attachment* (form FL-590(A))

UIFSA is built on the principle of continuing, exclusive jurisdiction, where the state issuing the order retains jurisdiction to modify a child support order unless and until a certain set of conditions applies. It also requires a state assuming jurisdiction to provide notice and a copy of the resulting order to the original issuing state. The committee recommends adoption of new form FL-590(A) to facilitate compliance with these requirements by making assumption or loss of continuing exclusive jurisdiction under UIFSA a standard order in California. This new form lays out each of the conditions established by UIFSA to allow courts to identify when jurisdiction is shifting or being retained, thereby improving usability for private litigants seeking to modify their orders and also making California orders easier to read by other states.

Adopting new *Notice of Registration of an International Hague Convention Support Order* (form FL-592) and *Request for Hearing Regarding Registration of an International Hague Convention Support Order* (form FL-594)

The committee also recommends adopting new forms FL-592 and FL-594 to implement the process to register a Convention support order under new Family Code sections 5700.706–

5700.708. This process is distinct from the process to register an out-of-state or non-Convention foreign support order under Family Code sections 5700.605–5700.608. The defenses to registration and time frame to file a contest are expanded for those cases under the Convention. (See Attachment B for Family Code sections 5700.707 and 5700.708, which identify the contest process.) The committee recommends adopting separate forms FL-592 and FL-594 for this registration and contest process to reduce confusion for parties regarding the available defenses to and time frames for each kind of order.

The committee is recommending the adoption of forms FL-592 and FL-594 effective January 1, 2017, rather than waiting to develop forms until after The Hague Convention is officially ratified[1] because waiting would likely lead to delays in providing the appropriate forms for Convention support order proceedings, during which time litigants may not be properly informed of their rights under the law.

Revoking form FL-511, Ex Parte Application for Order for Nondisclosure of Address and Order (UIFSA)

Form FL-511 was needed under former Family Code sections 4926 and 4977 to facilitate a court process for sealing certain identifying information in UIFSA cases. Section 4926 has been recodified as section 5700.312 and now provides for a nonjudicial nondisclosure process, thus removing the need for form FL-511. The committee therefore recommends revoking this form.

Revoking form FL-515, Order to Show Cause (UIFSA)

After the comment period ended, it came to the committee's attention that form FL-515, *Order to Show Cause (UIFSA)*, duplicated other existing family law motion forms that served the same purpose (see discussion in Comments, Alternatives Considered, and Policy Implications below). The form also was not widely in use, with most litigants electing to use other motion forms to request to establish or modify support, establish paternity, and so forth. Because Local Child Support Agencies (LCSAs) are the main users of these forms, the committee reached out to the Legal Practices Committee of the Child Support Directors Association of California, which in turn sent out an inquiry to its members to assess whether this form is widely used and whether revoking it would present an issue to the operations of LCSAs. No response was received. Additionally, the committee contacted the Department of Child Support Services and confirmed that the form is not widely used by the LCSAs. The committee spoke with the LCSA who made the most use of the form in 2015 (about 80 percent of all uses), whose chief attorney indicated that although a revocation of the form would require a change in practice, its revocation would not hinder the operations of the LCSA in any substantial way. Therefore, the committee determined that form FL-515 should be revoked to prevent confusion and simplify the law and

[1] While the federal regulations mandated the adoption of Family Code sections 5700.101–5700.905, sections 5700.706–5700.708, which dictate the registration process of a Convention support order, will become applicable only after the United States becomes a signatory of The Hague, which is expected to occur in the fall of 2016. The Hague has been cleared by all of the relevant federal entities, including the State Department, and currently is awaiting the President's signature. The committee will continue to monitor the progress of its signing and, in the highly unlikely event that The Hague is not signed, will make appropriate recommendations to the council.

motion process as it relates to child support cases. Revoking the form is a minor substantive change that is unlikely to create controversy and therefore within the Judicial Council's purview to revoke without circulation (see Cal. Rules of Court, rule 10.22(d)(2)).

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2016 invitation-to-comment cycle, from April 15 to June 14, 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 proposal also went to the Department of Child Support Services, the Child Support Directors Association of California's Legal Practices Committee chair and Judicial Council Forms Subcommittee chair, and child support commissioners. Nine organizations provided comment: two agreed with the proposal, three agreed with the proposal if modified, and four 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 38–50.

Technical changes

The majority of commentators offered technical changes to improve consistency throughout the forms, to ensure that the forms better conform to the language and intent of the underlying Family Code, to provide greater guidance to clerks in executing court orders, and to provide for plain language to improve litigants' understanding of the process. The committee agreed with the majority of these suggestions and modified the proposal to incorporate them. The committee also considered, but ultimately declined to adopt one proposed technical change in its recommendation. One commentator suggested adding an item for the process server registration number; however, given that the majority of family law proof of service forms—and particularly the proof of services incorporated within other family law governmental forms—do not contain such an item, to maintain consistency, the committee declined to recommend this change. Additionally, the committee was concerned that unrepresented litigants might see an item for a process server registration number and mistakenly believe that a registered process server is required.

Changing the layout of FL-510

One commentator suggested placing the Spanish translation of the text of form FL-510, *Summons (UIFSA)*, on the back of the form. The commentator was concerned that the current layout of the translated text was confusing. The committee agreed that a more user-friendly display of information was appropriate, but to avoid adding an additional page to the form, the committee instead recommends a change in layout to conform to the layout of existing family law summons forms (e.g., FL-110 and FL-210), which display the English text and translated Spanish text side by side.

Titling form FL-515 as Request for Order

Two commentators raised the issue of titling form FL-515 as an *Order to Show Cause* rather than a *Request for Order*. The general family law motion form (FL-300) is titled *Request for Order*, intending to avoid the prior confusion of having two motion forms (i.e., *Notice of Motion* and *Order to Show Cause*), which largely served the same purpose. The committee—recognizing the abundance of family law motion forms already in existence that can adequately meet the needs of both local child support agencies and private parties in filing motions to establish or modify support, to determine paternity, and so forth—recommends that form FL-515 be revoked. (See discussion in Rationale for Recommendation above.) This resolution seems more appropriate than merely changing the name of form FL-515 to *Request for Order*, thereby creating yet another family law motion form that would serve the same function as many others. Removing this redundancy in forms should serve to lessen the potential confusion of the unrepresented litigants seeking relief from the court.

As an alternative to revoking form FL-515, the committee considered but decided against the option of retitling form FL-515 as *Request for Order*. Such a change would have also required minor technical changes to the form so that its language would conform to the standard *Request for Order* (form FL-300), rather than to the language of an *Order to Show Cause*. Furthermore, after the comment period ended, the committee learned that maintaining form FL-515 would require two additional changes: (1) the notice regarding the service deadline would need to be changed from 10 calendar days before the hearing to 9 court days before the hearing, consistent with the 2004 amendments to Code of Civil Procedure section 1005; and (2) references to the now-obsolete FL-500 and FL-525 would need to be removed and replaced with the federal UIFSA form numbers, because these forms were revoked by the council in 2007 in favor of using the mandatory federal forms.

Confusion regarding the appropriate use of form FL-575 versus form FL-594

Three commentators raised concerns about possible confusion among parties deciding which form to use to request a hearing to challenge the registration of a support order. One commentator suggested that the two hearing request forms, forms FL-575 and FL-594, should cross-reference one another to add more clarity regarding each's intended use. To address this concern, the committee recommends a minor modification to the information sheets of each form to cross-reference one another.

The other two commentators suggested that the titles of new form FL-594 and its accompanying notice of registration, new form FL-592, be changed from the proposed names to specifically note that the forms are for "International Hague Convention" support orders, rather than just "Convention" support orders. A "Convention Support Order" is a term of art within the Family Code. Although the original version of the proposed form included an explanation of the term in its instructions, which may have been sufficient, the commentators' concerns presumably are that unrepresented litigants (and possibly even attorneys) unfamiliar with the term may use the wrong form (e.g., the hearing request form for an out-of-state, but not Convention, support order) and likewise may be unaware of the appropriate defenses to the registration of a Convention order.

Forms FL-575 and FL-594, although similar in their purpose, lay out distinct defenses to registration, so providing the additional direction as to when each form should be used increases the chances that the parties will be aware of their legal rights. Consequently, the committee recommends retitling forms FL-592 and FL-594 to replace "Convention Support Order" with "International Hague Convention Support Order." To maintain consistency, the committee further recommends the use of "International Hague Convention Support Order" rather than "Convention Support Order" wherever the term appears on both forms FL-592 and FL-594.

Suggestion to make form FL-590(A) an optional form

One commentator suggested making form FL-590(A), on which the court makes the appropriate jurisdictional findings under UIFSA, optional. Although the committee appreciates the desire of local courts and child support agencies to develop their own practices and forms for making such findings, the committee is concerned with uniformity between courts in ensuring that all judicial officers consider all the requisite findings in deciding to accept or decline to take jurisdiction and that the parties as well are aware of the elements that go into this determination. Requiring this form in all UIFSA cases promotes this uniformity and the increased understanding of the parties. The committee therefore recommends that it be a mandatory form.

Minor technical changes on forms FL-570 and FL-592

Two commentators recommended changing the language on items 5 and 6 of form FL-570, which refers to the deadline to request a hearing. The current language indicates a deadline of "within 25 days of the date" that the notice was mailed. The statute requires the filing of a request for a hearing within 20 days after notice, a date that is extended by Code of Civil Procedure section 1013 if service is by mail by 5, 10, or 20 days, depending upon whether the service is to an address in the state of California, out of state, or out of country, respectively. Although the current language indicates the correct deadline if the notice is mailed by the clerk to an address in California, it is incorrect if the notice is mailed to an address outside California. One of the commentators noted that this discrepancy has led to confusion among the parties and the courts. The committee recommends replacing this language with the language from Family Code section 5700.605, "within 20 days after notice."

Another commentator recommended adding language to item 3 of forms FL-570 and FL-592 to provide a space to include the current value of the arrears originating from an international order converted into U.S. dollars, consistent with Family Code section 5700.305(f). The committee recommends this additional language.

Alternatives considered

Not making these changes is not a feasible alternative. Failure to make the modifications to the forms would result in California's being out of compliance with the federal mandates and suffering adverse fiscal impacts. Moreover, without the updated code references, litigants using the forms could be confused by the obsolete citations. Failure to adopt the new forms would result in litigants' not providing all the information they are required to report to the court.

As discussed above, the committee considered maintaining form FL-515, rather than recommending that it be revoked. Maintaining the form would require changes to remove obsolete form references and code references and to correct language regarding the service and filing deadline for a responsive declaration. As discussed above, it also would be advisable to change the form's title to *Request for Order* to be consistent with other family law motion forms, which, in turn, would require additional changes to match the standard format of a *Request for Order*. The committee, however, decided that simplifying the process by reducing the number of forms that serve the same purpose and therefore may lead to confusion, particularly among unrepresented litigants, was the best course of action.

The committee also considered whether any additional amendments to rule 5.324, the current rule regarding telephonic and other remote appearances, were needed in light of new Family Code section 17404.3, which replaced Family Code section 5003 regarding telephonic and other remote appearances.

Because, the language of Family Code section 4930(f) was simply moved into new Family Code section 5700.316, the committee concluded that rule 5.324 is sufficient if amended to reflect the new code section reference. Although rule 5.324 does not allow telephonic or other remote appearances in all cases, it provides substantial due process protections and presumably meets the previous code requirements. Thus, the committee recommends that only the required technical changes be made to rule 5.324 at this time. The committee will consider substantive changes to the rule as part of a future proposal that would address remote appearances in all family law matters.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that these recommendations will result in any costs to the branch other than the one-time cost of implementing the forms, nor does the committee anticipate any requirements for implementation—or fiscal or operational impacts on the courts. Courts do not commonly make multiple copies of these forms. Providing the guidance in the forms regarding the interstate requirements is intended to save time.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because these recommendations improve litigants' access to child support enforcement and understanding of their rights regarding the registration of out-of-state cases, they support Goal I, Access, Fairness, and Diversity. Because they also amend, revise, and create rules and forms to allow courts to implement statutory requirements, they support Goal III, Modernization of Management and Administration (Goal III.A).

Attachments and Links

1. Cal. Rules of Court, rule 5.324, at page 10
2. Forms FL-510, FL-511, FL-515, FL-520, FL-560, FL-570, FL-575, FL-590(A), FL-592, and FL-594, at pages 11–30

3. Chart of comments, at pages 31–44
4. Link A: Senate Bill 646, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB646*
5. Attachment B: Family Code sections 5700.707 and 5700.708
6. Attachment C: UIFSA Conversion Chart

Rule 5.324 of the California Rules of Court is amended, effective January 1, 2017, to read:

Rule 5.324. Telephone appearance in title IV-D hearings and conferences

(a)–(c) * * *

(d) Exceptions

A telephone appearance is not permitted for any of the following except as permitted by Family Code section 5700.3164930:

(1) Contested trials, contempt hearings, orders of examination, and any matters in which the party or witness has been subpoenaed to appear in person; and

(2) Any hearing or conference for which the court, in its discretion on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case.

(e)–(k) * * *

SUMMONS

FOR COURT USE ONLY

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

NOTICE AND WARNING TO RESPONDENT:
AVISO Y ADVERTENCIA AL ACUSADO O A LA ACUSADA:

CASE NUMBER *(Número del Caso):*

IF YOU WANT LEGAL ADVICE, CONTACT A LAWYER IMMEDIATELY.	***SI DESIA CONSEJOS LEGALES, CONSULTE A UN ABOGADO DE INMEDIATO.***
YOU ARE BEING SUED. THE LAWSUIT CLAIMS YOU ARE THE PARENT OF CHILDREN NAMED IN THE *UNIFORM SUPPORT PETITION*. THE LAWSUIT ALSO SAYS YOU MUST PAY CHILD SUPPORT.	***SE HA PRESENTADO UNA DEMANDA JUDICIAL EN SU CONTRA. EN LA DEMANDA SE ALEGA QUE USTED ES EL PADRE/LA MADRE DEL (DE LOS) HIJO(S) NOMBRADO(S) EN LA PETICIÓN UNIFORME DE SUSTENTO* (UNIFORM SUPPORT PETITION)*. LA DEMANDA INDICA TAMBIÉN QUE USTED DEBE PAGAR POR EL SUSTENTO DE DICHO(S) HIJO(S).***
YOU CAN OPPOSE THE LAWSUIT. IF YOU DON'T, THE COURT MAY FIND THAT YOU ARE THE PARENT AND ORDER YOU TO PAY CHILD SUPPORT, WHICH MAY BE TAKEN FROM YOUR PAY OR YOUR PROPERTY.	***USTED PUEDE OPONERSE A LA DEMANDA. SI NO LO HACE, LA CORTE PODRÁ DETERMINAR QUE USTED ES EL PADRE/ LA MADRE Y ORDENARLE QUE HAGA PAGOS DE SUSTENTO, LOS CUALES PODRÁN DEDUCIRSE DE SU SUELDO O DE OTROS BIENES DE SU PROPIEDAD.***
YOU CAN OPPOSE THE LAWSUIT BY DOING ALL OF THE FOLLOWING WITHIN 30 CALENDAR DAYS AFTER BEING SERVED WITH THIS *SUMMONS* AND *UNIFORM SUPPORT PETITION:*	***USTED PUEDE OPONERSE A LA DEMANDA AL TOMAR TODOS LOS PASOS SIGUIENTES DENTRO DE LOS 30 DÍAS CALENDARIOS CONTADOS A PARTIR DE LA FECHA EN QUE SE LE ENTREGUE ESTA CITACIÓN JUDICIAL Y PETICIÓN UNIFORME DE SUSTENTO*:**

1. If you did not receive the *Response to Uniform Support Petition* (form FL-520) with the summons, you can get one from the court's family law facilitator's office or from the California Courts website at *www.courts.ca.gov*. Fill out, sign, and date the form.
   Si no recibió, junto con la citación judicial, el formulario de respuesta (formulario FL-520), titulado en inglés Response to Uniform Support Petition (form FL-520), obtenga uno en la oficina del asistente de derecho familiar de la corte o en el sitio web de las Cortes de California en *www.sucorte.ca.gov*. Complete, firme y feche el formulario.
2. Have an adult other than yourself mail a copy of the response to the Petitioner, or Petitioner's attorney, and/or local child support agency at the following address(es):
   Haga que otra persona adulta (que no sea usted), envíe por correo una copia de este formulario a la parte demandante, o al abogado de la parte demandante, y/o a la oficina de la agencia local de mantenimient de hijos (local child support agency) *en la dirección o direcciones siguiente(s)*:

[SEAL]

3. The person who mailed the form must complete the proof of service on the back of the response.
   La persona que envía el formulario por correo debe completar el comprobante de notificación (proof of service) *impreso al dorso del formulario de respuesta.*
4. File the response with the court at the following address:
   Presente el formulario de respuesta ante la corte en la siguiente dirección:

Form Adopted for Mandatory Use
Judicial Council of California
FL-510 [Rev. January 1, 2017]

SUMMONS
(UIFSA)

Family Code, § 5700.311
www.courts.ca.gov

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) or ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):* (*Party appearing without an attorney should enter in this space the same address listed in item 3, below.*)	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: ATTORNEY FOR *(Name):*	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER:	
EX PARTE APPLICATION FOR ORDER FOR NONDISCLOSURE OF ADDRESS AND ORDER	CASE NUMBER:

1. ☐ *(Name):* applies for an order for nondisclosure of the address or other identifying information of *(name)*: in the pleadings and other documents to be filed in this action.

2. ☐ The local child support agency acting on behalf of *(name):* applies for an order for nondisclosure of the address or other identifying information of *(name):* in the pleadings and other documents to be filed in the UIFSA action.

3. The following is the mailing address for service of process on *(name):*

4. Facts in support of this application *(state facts that demonstrate that the health, safety, freedom of movement, or physical or emotional well-being of the applicant or the applicant's child may be unreasonably put at risk by the disclosure of the applicant's address or other identifying information):*
   ☐ contained in the attached declaration

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

PETITIONER: RESPONDENT: OTHER:	CASE NUMBER:

THE COURT FINDS:

5. ☐ The health, safety, or liberty of *(name):* would be unreasonably put at risk by the disclosure of his or her address or other identifying information that may lead to his or her whereabouts.

6. ☐ The application is not sufficient to grant the requested relief.

THE COURT ORDERS:

7. ☐ The address or other identifying information that may lead to the whereabouts of *(name):* shall not be disclosed in the pleadings or documents filed in this action.

8. ☐ The application is denied.

9. ☐ Other *(specify):*

Date:

JUDICIAL OFFICER

NOTE: Use of this ex parte application and order will require that the UIFSA petition in this matter be initiated in the California court in which this application is submitted pursuant to Family Code sections 4907 and 4918.

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) or ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):* TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS *(Optional):* 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:	
ORDER TO SHOW CAUSE (UIFSA) FOR ☐ MODIFICATION ☐ **Child Support** ☐ **Spousal Support** ☐ **Parentage** ☐ **Other *(specify):***	CASE NUMBER:

1. TO *(name):*

2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE ORDERS ASKED FOR IN THE ATTACHED DOCUMENTS SHOULD NOT BE GRANTED.

   a. Date: Time: ☐ Dept.: ☐ Rm.:

   b. Address of court ☐ same as noted above ☐ other *(specify):*

3. IT IS FURTHER ORDERED that a blank ☐ *Responsive Declaration* (FL-320) ☐ *Response to Uniform Support Petition* (FL-520) and the following documents must be served with this order:
   a. ☐ *Uniform Support Petition and General Testimony* (FL-500)
   b. ☐ A blank *Income and Expense Declaration* (FL-150) or *Financial Statement (Simplified)* (FL-155)
   c. ☐ *Affidavit in Support of Establishing Paternity* (FL-525/OMB 0970-0085)
   d. ☐ Copy of existing support order from *(specify):*
   e. ☐ Other *(specify):*

4. a. ☐ Time for ☐ service ☐ hearing is shortened. Service must be on or before *(date):*
      Any responsive declaration must be served on or before *(date):*
   b. ☐ You are ordered to comply with the temporary orders attached.
   c. ☐ Other *(specify):*

Date:

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the income of both parents. You should supply the court with information about your income. Otherwise, the child support order will be based on the information supplied by the other parent.

You do not have to pay any fee to file responsive declarations in response to this *Order to Show Cause (UIFSA)*, including a completed *Income and Expense Declaration* (FL-150) or *Financial Statement (Simplified)* (FL-155) that will show your income. In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least ten calendar days before the hearing date.

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: 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: OTHER:	
RESPONSE TO UNIFORM SUPPORT PETITION	CASE NUMBER:

YOU MUST FILE THIS RESPONSE WITH THE COURT IF YOU WISH TO OPPOSE THE LAWSUIT.

1. ☐ **PARENTAGE**
   a. I am the parent of the following children *(specify all children listed in the petition):*

	Child's name	Date of birth
(1) ☐ Yes ☐ No		
(2) ☐ Yes ☐ No		
(3) ☐ Yes ☐ No		
(4) ☐ Yes ☐ No		
(5) ☐ Yes ☐ No		

   (6) ☐ Additional children are listed on a page attached to this response.

   b. ☐ A voluntary declaration of paternity has been signed by the parents and is attached.

2. I request that a genetic test to determine parentage be done for all children for whom I have checked a "No" box above.

3. **CHILD SUPPORT**
   a. ☐ I agree to pay support as requested in this action.
   b. ☐ I disagree with the support requested. ☐ Attached is my completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). (NOTE: You can file this response without either of these forms.)

4. **OTHER ORDERS**
   a. ☐ I agree to the other orders requested.
   b. ☐ I disagree with the other requested orders as follows *(specify):*

5. ☐ I request a court hearing.

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER:	

6. My address and telephone number for receipt of all notices and court dates until I file a change of address with the court and with the petitioner or petitioner's attorney and/or the local child support agency are as follows:
   Address:
   City and zip code:
   Home telephone:
   Work telephone:

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

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

An adult *other than you* must complete the Proof of Service below and provide a copy of this response to the petitioner or petitioner's attorney and/or the local child support agency at the address listed on the summons.

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. I served this response and any other forms filed with the response as follows *(check a. or b. below for each person served):*

a. ☐ **Personal service.** I personally delivered a copy of this response as follows:
   ☐ (1) Name of party or attorney served:
      (a) Address where delivered:
      (b) Date of delivery:
      (c) Time of delivery:
   ☐ (2) Name of local child support agency served:
      (a) Address where delivered:
      (b) Date of delivery:
      (c) Time of delivery:

b. ☐ **Mail.** I deposited this response in the United States mail, in a sealed envelope with first-class postage fully prepaid, addressed as follows:
   ☐ (1) Name of party or attorney served:
      (a) Address:
      (b) Date of mailing:
      (c) Time of mailing:
   ☐ (2) Name of local child support agency served:
      (a) Address:
      (b) Date of mailing:
      (c) Time of mailing:

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 PERSON WHO SERVED RESPONSE)

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing,* you or any other party object to the commissioner acting as a temporary judge. The court commissioner may still hear your case to make findings and recommendations to a judge. However, if you object to the commissioner acting as a temporary judge, an order will not be made until a judge reviews your case.

INFORMATION SHEET FOR RESPONSE TO UNIFORM SUPPORT PETITION

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Response to Uniform Support Petition* (form FL-520) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form.

You must file the completed response and attachments with the court clerk within 30 days of the date you received the *Uniform Support Petition* (form OMB 0970-0085). The address of the court clerk is the same as the one shown for the superior court on the summons. You may have to pay a filing fee. If you cannot afford to pay the filing fee, contact the court clerk. **Keep two copies of the filed response form and its attachments. Serve one copy on the petitioner or petitioner's attorney and/or the local child support agency and keep the other copy for your records. (See *Information Sheet for Service of Process*, form FL-611.)**

INSTRUCTIONS FOR COMPLETING THE RESPONSE FORM (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN INK):

Front page, first box, top of form, left side: Print your name, address, and telephone number in this box if it is not already there.

Item 1: If you are responding to a question of paternity, check the "parentage" box.

a. For each child listed on the response form, you must check the "yes" box if you agree that you are that child's parent or check the "no" box if you do not think or you are not sure whether you are that child's parent. You must write in the name of each child listed in the *Uniform Support Petition* if your response form does not include the names of any children.

b. If you and the other parent have signed a voluntary declaration of paternity you should attach it to this form and check this box.

Item 2: If the local child support agency filed the *Uniform Support Petition*, the local child support agency will tell you when and where to go for the genetic test. The local child support agency's office will pay for the cost of the test, but if the court decides that you are the parent, you may have to repay this cost to the local child support agency.

Item 3: a. Check this box if you agree to pay the support asked for in the *Uniform Support Petition* that you received.

b. If you disagree with the support asked for in the *Uniform Support Petition*, you should check this box. If you have documents that prove your reasons for disagreeing with the request in the *Uniform Support Petition*, you should attach documents to this form.

Item 4: a. Check this box if you agree to the other orders requested in the *Uniform Support Petition* that you received.

b. If you disagree with the orders requested in the *Uniform Support Petition*, you should check this box.

Item 5: Check this box if you want a court hearing. The petitioner or the local child support agency may also schedule a hearing whether or not you have checked this box.

Item 6: You must list your address and phone numbers where you can receive all notices and court dates. You must let the court know whenever your address changes. You may not receive important notices that affect you if the court does not have your current address.

You must date the response form, print your name, and sign the form under a penalty of perjury. When you sign the response form, you are stating that the information you have provided is true and correct.

Instructions for how to complete the Proof of Service section of the response form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the response and its attachments must fill out this section of the form.

You cannot serve your own response.

If you need assistance with this form, contact an attorney or the family law facilitator in your county. The family law facilitator can give you free help with this form.

PARTY WITHOUT ATTORNEY OR ATTORNEY OR GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406) (name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR No.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: 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:	
EX PARTE APPLICATION FOR TRANSFER AND ORDER	CASE NUMBER:

APPLICANT DECLARES:

1. a. ☐ I am employed by the: County local child support agency and have examined records kept by that office concerning *(name of respondent/petitioner):*
   b. ☐ I am the Petitioner in this case.

2. a. ☐ A petition in this case has been filed in this court, but no order has been entered.
   b. ☐ An order has been entered in this case.
   c. ☐ An order of another state has been registered in this court.

3. ☐ Respondent does not reside in this county.
   ☐ Petitioner does not reside in this county.

4. ☐ Respondent currently resides in *(specify county of residence):*
   ☐ Petitioner currently resides in *(specify county of residence):*

5. Therefore, I request that the court transfer this case—including all pleadings, orders, and other documents in the case file—to *(specify name and address of tribunal):*

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

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT)

ORDER

IT IS ORDERED that the clerk of the court transfer this case—including all pleadings, orders, and other documents in the case file—to the tribunal specified in item 5, without payment of any fee.

IT IS FURTHER ORDERED that the clerk notify the Petitioner, the Respondent, the California Central Registry, and the child support agency of the transferring and receiving jurisdictions where and when the action was transferred.

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
FL-560 [Rev. January 1, 2017]

Family Code, § 17404.2
www.courts.ca.gov

PETITIONER:	CASE NUMBER:
RESPONDENT:	

NOTICE OF TRANSFER

You are notified that all pleadings, orders, and other documents filed in this case have been transferred to the tribunal specified in item 5 on page 1.

CLERK'S CERTIFICATE OF MAILING

6. I certify that I am not a party to this cause and that a copy of this *Ex Parte Application for Transfer and Order (UIFSA)* was sent to Petitioner, Respondent, the California Central Registry, and the child support agency of the transferring and receiving jurisdictions by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the appropriate person or agency, sealed, and deposited with the U.S. Postal Service

   at *(place):*
   on *(date):*

Date:

Clerk, by _____, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
NOTICE OF REGISTRATION OF OUT-OF-STATE SUPPORT ORDER ☐ **Support Order** ☐ **Income Withholding Order**	CASE NUMBER:

1. To *(name):*

2. You are notified that an ☐ Out-of-State Support Order ☐ Out-of-State Order for Income Withholding has been registered with this court. A copy of the order and the Letter of Transmittal Requesting Registration are attached.

3. The amount of arrears is specified in item 1 on the attached Letter of Transmittal Requesting Registration.

   ☐ The amount of the alleged arrears is: $ as of , having a U.S.dollar equivalence of as of .

4. The registered order is enforceable in the same manner as a support order made by a California court as of the date that the Letter of Transmittal Requesting Registration is filed.

5. If you want to contest the validity or enforcement of the registered order, you must request a hearing within 20 days after notice. You can request a hearing by completing and filing a *Request for Hearing Regarding Registration of Support Order* (form FL-575).

6. If you fail to contest the validity or enforcement of the attached order within 20 days after notice, the order will be confirmed by the court and you will be unable to contest any portion of the order including the amount of arrears as specified in item 1 of the Letter of Transmittal Requesting Registration.

CLERK'S CERTIFICATE OF MAILING

7. I certify that I am not a party to this cause and that a copy of the Letter of Transmittal Requesting Registration with a copy of the out-of-state order were sent to the person named in item 1 by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the person named in item 1 only at the address in the Letter of Transmittal Requesting Registration, sealed, and deposited with the U.S. Postal Service
   at *(place):*
   on *(date):*

8. A copy was sent to the local child support agency on *(date):*

Date: Clerk, by _____, Deputy

Form Approved for Optional Use
Judicial Council of California
FL-570 [Rev. January 1, 2017]

Family Code, §§ 5700.603, 5700.605
www.courts.ca.gov

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: 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/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF SUPPORT ORDER ☐ **California Support Order** ☐ **Out-of-State Support Order**	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date):*

a. Date: Time: Dept: Div: Room:

b. The address of the court is: ☐ same as noted above ☐ other *(specify):*

2. I request that service of the registration of support be vacated (canceled) because

a. ☐ I am not the Obligor named in the Letter of Transmittal Requesting Registration.

b. ☐ the court or tribunal that issued the order did not have personal jurisdiction over me.

c. ☐ the support order was obtained by fraud.

d. ☐ the support order has been vacated, suspended, or modified by a later order. *(Please attach a copy of the later order.)*

e. ☐ the order has been stayed pending appeal.

f. ☐ the amount of arrears in section 1 of the Letter of Transmittal Requesting Registration is incorrect. The correct amount of arrears is *(specify amount):* $ ☐ Supporting documents attached.

g. ☐ some or all of the arrears are not enforceable.

h. ☐ Other *(specify):*

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the *Request for Hearing Regarding Registration of Support Order* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed

at *(place):* , California,
on *(date):*

Date: Clerk, by _____ , Deputy

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF CALIFORNIA SUPPORT ORDER/ OUT-OF-STATE SUPPORT ORDER

(Do NOT deliver this Information Sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of Support Order (*form FL-575) if you do not have an attorney representing you. Your attorney, if you have one, should complete this form. You can get free help with this form from the family law facilitator in your county.

This form should be used if you received a notice or statement of registration telling you that a support order is being registered in a California court but you do not want that support order registered. To request a hearing regarding an International Hague Convention Support Order, use form FL-594.

You must file your completed request for hearing with the court clerk. You must also give the court clerk addressed envelopes with postage paid to mail copies of your request for hearing to the other parties. The address of the court clerk is the same as the one shown for the superior court on the notice or statement of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file an *Application for Waiver of Court Fees and Costs* (form FW-001). You can get this form from the court clerk, family law facilitator, or California Courts website at *www.courts.ca.gov.*

INSTRUCTIONS FOR COMPLETING THE REQUEST FOR HEARING REGARDING REGISTRATION FORM (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN INK):

Page 1, first box, top of form, left side: Print your name, address, and phone number in this box.

Page 1, second box, left side: Print the name of your county and the court's address in this box. Use the same address for the court that is on the notice or statement of registration form you received.

Page 1, third box, left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as listed on the notice or statement of registration you received.

Page 1, fourth box, left side: Check the box by "California Support Order" if the order being registered was established in California, or check the box by "Out-of-State Order" if the order being registered was **NOT** established in California.

Page 1, first box, top of form, right side: Leave this box blank for the court's use.

Page 1, second box, right side: Print your case number in this box. This number is also shown on the notice or statement of registration you received.

1. Before you file your request for hearing with the court clerk you must ask the court clerk to set a hearing date for you. The court clerk will give you the information you need to complete this section.

2. In this section you are telling the court why you do not want the support order to be registered. You must check the box by your reason.

   a. Check this box if you are not a person named in the notice or statement of registration you received.

   b. You should check this box if the court that issued the support order did not have jurisdiction over you to issue the order. You may need legal advice to find out if this is a valid reason in your case.

   c. Check this box if your support order was obtained by fraud. You may need legal advice to find out if this is a valid reason in your case.

   d. You should check this box if a court has suspended or vacated your support order. You should also check this box if your support order was modified by a later order. **If the order was modified, you must attach a copy of your most recent support order to your request for hearing.**

   e. Check this box if you have already filed an appeal to your support order and a court has stopped the order until the appeal is decided.

Information Sheet for Request for Hearing Regarding Registration of Support Order (continued)

2f. You should check this box if you disagree with the amount of arrearage shown on the notice or statement of registration. You must write in the correct amount of the arrearage in the space provided.

g. Check this box only if your support order was made by a court outside California and cannot be enforced due to the statute of limitations in that jurisdiction.

h. Check this box if you have another reason to object to the registration of the support order.

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Page 2, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as on the front page.

Page 2, box on right side: Print your case number in this box. Use the same number as on the front page.

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/ Plaintiff, Respondent/Defendant, and Other Parent.

You must print the name and address of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in the brackets. The names are the same as those at the top of the page. You also must provide the court clerk with stamped envelopes addressed to each of the other parties.

If you need assistance with this form, contact an attorney or the family law facilitator in your county.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

UIFSA CHILD SUPPORT ORDER JURISDICTIONAL ATTACHMENT

TO ☐ ***Order After Hearing*** **(form FL-687)**
☐ ***Stipulation and Order*** **(form FL-625)**
☐ **Other** *(specify):*

THE COURT FINDS THE FOLLOWING:

1. ☐ All parties have left *(issuing state or foreign country):* . ☐ Petitioner ☐ Respondent ☐ Other Parent is the party requesting modification and resides in *(state or foreign country):* ☐ Petitioner ☐ Respondent ☐ Other Parent is the non-requesting party and resides in California. This court assumes continuing, exclusive jurisdiction under Family Code section 5700.611 and modifies the order.

2. ☐ *(State):* is the issuing state of the support order. ☐ Petitioner ☐ Respondent ☐ Other Parent resides in the issuing state. ☐ Petitioner ☐ Respondent ☐ Other Parent resides in California. Under Family Code section 5700.611(a)(2), the court finds that the parties consented in the issuing state for California to assume continuing, exclusive jurisdiction over support. This court assumes jurisdiction and modifies the order accordingly.

3. ☐ California is the issuing state of the support order. ☐ Petitioner ☐ Respondent ☐ Other Parent is the party requesting modification and resides in *(state or foreign country):* . ☐ Petitioner ☐ Respondent ☐ Other Parent resides outside the United States, in *(country):* . Under Family Code section 5700.611(f), California retains jurisdiction to modify the order.

4. ☐ All parties have left *(issuing state):* and reside in California. This court assumes jurisdiction under Family Code section 5700.613 to modify support and domesticates the support issues.

5. ☐ Under Family Code section 5700.615, this court finds that the foreign country that issued the foreign support order *(country):* , cannot or will not modify its order. This court assumes jurisdiction and modifies the order accordingly.

6. ☐ The parties have agreed that neither of them currently reside in California, which is the state that issued the support order.
☐ Petitioner ☐ Respondent ☐ Other Parent resides in *(state or foreign country):* .
☐ Petitioner ☐ Respondent ☐ Other Parent resides in *(state or foreign country):* .
Under Family Code section 5700.205(a)(2), the parties consent for California to retain continuing, exclusive jurisdiction to modify the support order.

7. ☐ The parties have agreed that California is the state that issued the support order. ☐ Petitioner ☐ Respondent ☐ Other Parent resides in California. ☐ Petitioner ☐ Respondent ☐ Other Parent resides in *(state):* . The parties consent under Family Code section 5700.205(b)(1) for *(state):* to assume continuing, exclusive jurisdiction and modify the order.

8. ☐ Other:

THIS IS A COURT ORDER.

Form Adopted for Mandatory Use
Judicial Council of California
FL-590A [New January 1, 2017]

Family Code, §§ 5700.102, 5700.205, 5700.611, 5700.613, 5700.615
www.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
NOTICE OF REGISTRATION OF AN INTERNATIONAL HAGUE CONVENTION SUPPORT ORDER	CASE NUMBER:

1. To *(name)*:

2. You are notified that an International Hague Convention Support Order has been registered with this court. A copy of the following is attached:
   - ☐ Complete text of the order
   - ☐ Abstract of the order
   - ☐ Record stating the support order is enforceable in the issuing country
   - ☐ Record attesting proper notice and opportunity to be heard, if respondent did not appear and was not represented
   - ☐ Record showing the amount of arrears, if any
   - ☐ Record showing a requirement for automatic adjustment of support, if any
   - ☐ Record showing the extent to which the applicant received free legal assistance, if necessary

3. The amount of arrears is specified in item 1 on the attached Transmittal Form under Article 12(2).

   ☐ The amount of the alleged arrears is $ as of , having a U.S. dollar equivalence of as of .

4. The registered order is enforceable in the same manner as a support order made by a California court as of the date the Transmittal Form under article 12(2) is filed.

5. If you want to contest the validity or enforcement of the registered order, you must request a hearing within 30 days if you reside in the United States, or within 60 days if residing outside the United States, of the date that the notice was mailed to you *(see below for clerk's date of mailing).* You can request a hearing by completing and filing a *Request for Hearing Regarding Registration of an International Hague Convention Support Order* (form FL-594).

6. If you fail to contest the validity or enforcement of the attached order within 30 days, or 60 days if residing outside the United States, of the date this notice was mailed, the order will be confirmed by the court and you will be unable to contest any portion of the order including the amount of arrears as specified in item 1 of the Transmittal Form under article 12(2).

CLERK'S CERTIFICATE OF MAILING

7. I certify that I am not a party to this cause and that a copy of the Transmittal Form with a copy of the International Hague Convention Support Order were sent to the person named in item 1 by first-class mail. The copies were enclosed in an envelope with postage fully prepaid. The envelope was addressed to the person named in item 1 only at the address in the Transmittal Form, sealed, and deposited with the U.S. Postal Service

   at *(place)*:

   on *(date)*:

8. Copy sent to local child support agency on *(date):*

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
FL-592 [New January 1, 2017]

Family Code, §§ 5700.706, 5700.707
www.courts.ca.gov

PARTY WITHOUT ATTORNEY *OR* ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST FOR HEARING REGARDING REGISTRATION OF AN INTERNATIONAL HAGUE CONVENTION SUPPORT ORDER	CASE NUMBER:

NOTICE OF HEARING

1. A hearing on this application will be held as follows *(see instructions on how to get a hearing date and for more information about what an International Hague Convention Support Order is and how to fill out this form):*

a. Date:	Time:	Dept.:	Div.:	Room:

b. The address of the court is: ☐ same as noted above ☐ other *(specify):*

2. I request that the court refuse recognition and enforcement of the International Hague Convention Support Order because

a. ☐ recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing court or tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.

b. ☐ the court or tribunal that issued the order did not have personal jurisdiction as listed in Family Code section 5700.201.

c. ☐ the order is not enforceable in the country that issued it.

d. ☐ the order was obtained by fraud in connection with a matter of procedure.

e. ☐ a record registering this order as required by Family Code section 5700.706 is not authentic or lacks integrity.

f. ☐ a case between the same parties and having the same purpose is pending before a court in California, and that case was the first to be filed.

g. ☐ the order is incompatible with a more recent support order involving the same parties and having the same purpose. The more recent support order is entitled to recognition and enforcement under Family Code sections 5700.101—5700.905.

h. ☐ the alleged arrears have been paid in whole or in part.

i. ☐ I did not attend the hearing, nor did I have a lawyer in the country that issued the order. The law of the issuing country provides for prior notice of proceedings, but I did not have proper notice of the proceedings or an opportunity to be heard.

j. ☐ I did not attend the hearing, nor did I have a lawyer in the country that issued the order. The law of that county **does not** provide for prior notice of the proceedings, and I did not have proper notice of the order or an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.

k. ☐ the order was made in violation of Family Code section 5700.711.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the *Request for Hearing Regarding Registration of an International Hague Convention Support Order* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed

at *(place):* , California

on *(date):*

Date: Clerk, by _____ , Deputy

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF AN INTERNATIONAL HAGUE CONVENTION SUPPORT ORDER

(Do NOT deliver this information sheet to the court clerk.)

Please follow these instructions to complete the *Request for Hearing Regarding Registration of an International Hague Convention Support Order* (form FL-594) if you do not have an attorney representing you. Your attorney, if you have one, should complete this form.

This form should be used if you received a notice or statement of registration telling you that a support order made in another country is being registered in a California court but you do not want that support order registered. To request a hearing regarding an out-of-state or foreign order, which is not an International Hague Convention Support Order, use form FL-575.

An International Hague Convention Support Order is one that was made under the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007. The Convention is now part of Family Code sections 5700.101-5700.905.

You must file your completed request for hearing with the court clerk. You must also give the court clerk addressed envelopes with postage paid to mail copies of your request for hearing to the other parties. The address of the court clerk is the same as the one shown for the superior court on the notice or statement of registration you received. You may have to pay a filing fee to request a hearing. If you cannot afford to pay the filing fee, you must file a *Request to Waive Court Fees* (form FW-001). You can get this form from the court clerk, family law facilitator, or California Courts website at *www.courts.ca.gov*.

INSTRUCTIONS FOR COMPLETING THE REQUEST FOR HEARING REGARDING REGISTRATION FORM (YOU CAN COMPLETE THE FORM ON A COMPUTER, BY TYPING, OR BY PRINTING IN INK):

Page 1, first box, top of form, left side: Print your name, address, and phone number in this box.

Page 1, second box, left side: Print the court's address in this box. Use the same address for the court that is on the notice or statement of registration form you received.

Page 1, third box, left side: Print the names of the Petitioner/Plaintiff, Respondemt/Defendant, and Other Parent in this box. Use the same names as listed on the notice or statement of registration form you received.

Page 1, first box, top of form, right side: Leave this box blank for the court's use.

Page 1, second box, right side: Print your case number in this box. This number is also shown on the notice or statement of registration you received.

1. Before you file your request for hearing with the court clerk, ask the court clerk to set a hearing date for you. The court clerk will give you the information you need to complete this section.
2. In this section you are telling the court why you do not want the support order to be recognized or enforced in California. Check the box by your reason(s). Check the corresponding box, a–k, if
   a. recognition and enforcement of the order conflicts with public policy. This includes the failure of the court or tribunal issuing the order to provide you with an opportunity to be heard through notice and due process.
   b. the court or tribunal that issued the support order did not have jurisdiction over you to issue the order.
   c. the order cannot be enforced in the country that issued it.
   d. your support order was obtained by fraud.
   e. the required document(s) accompanying this order is not authentic or lacks integrity.
   f. if there is a case between the same parties and having the same purpose awaiting a decision before a court in California, and that case was filed first.
   g. the order is conflicting with a more recent support order between the same parties and having the same purpose.
   h. you have paid all of the alleged arrears or some of the alleged arrears.
   i. the country issuing the order requires prior notice of a hearing, but you did not receive notice of the hearing and you did not attend the hearing, and you did not have an attorney representing you in the hearing.
   j. the country issuing the order **does not** require prior notice of proceedings, you did not receive notice of the hearing and you did not have the opportunity to be heard in the proceeding.
   k. the order was made in violation of Family Code section 5700.711 because it was changed when you were a resident of the country where the support order was issued, and you did not agree to the case being heard in California either expressly or by defending yourself without objecting to the case being heard in California as soon as possible. If the country where your order was issued will not or cannot change the support order or make a new one, the case may be heard in California.

INFORMATION SHEET FOR REQUEST FOR HEARING REGARDING REGISTRATION OF AN INTERNATIONAL HAGUE CONVENTION SUPPORT ORDER (continued)

You must date the form, print your name, and sign the form under penalty of perjury. When you sign the form, you are stating that the information you have provided is true and correct.

Top of page 2, box on left side: Print the names of Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in this box. Use the same names as on the front page.

Top of page 2, box on right side: Print your case number in this box. Use the same number as on the front page.

The court clerk will sign and date the request for hearing form before mailing it to the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent.

You must print the name and address of the Petitioner/Plaintiff, Respondent/Defendant, and Other Parent in the brackets. The names are the same as those at the top of the page. You also must provide the court clerk with stamped envelopes addressed to each of the other parties.

If you need assistance with this form, contact an attorney or the family law facilitator in your county. The family law facilitator can help you with this form for free.

SPR16-17

Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	The proposal addresses the stated purpose well. Changes to the forms are necessary to address the statutory changes due to enactment in California of the 2008 version of the Uniform Interstate Family Support Act (UIFSA). The Judicial Council proposal to add forms specific to registration of support orders from countries who are party to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance will lessen confusion for litigants and practitioners, as the Convention provides for alternate timeframes and defenses to registration. Likewise, the proposal to adopt a standard jurisdictional orders attachment form will ensure that orders produced in California clearly delineate the basis upon which our courts exercise jurisdiction under UIFSA. With regard to the specific changes, DCSS recommends several minor changes: Notice of Registration of Out-of-State Support Order (FL-570): • Change the title "Registration Statement" to "Letter of Transmittal Requesting Registration." The Federal Office of Child Support Enforcement is in the final stages of updating their mandatory use forms. The current "Registration Statement" form, OMB 0970-0085, will be renamed the "Letter of Transmittal Requesting Registration," to correspond with the	The committee agrees with these suggestions and have incorporated them, with minor alterations, into the amendments that it is recommending for adoption.

	Commentator	Position	Comment	Committee Response
			language utilized in UIFSA. If this change cannot be made at this time, the Department will notify Judicial Council upon final release of the updated forms. • Add check box to Item 3, which currently reads "The amount of arrears is specified in item 1 on the attached Registration Statement." Check box should include language to the effect that, when checked, the order being registered is denominated in foreign currency, and providing space to list the current U.S. dollar equivalency, as of a specified date. Conversion to U.S. dollars does not modify the underlying out-of-state support order, but merely apprises the obligor of the current amount of the arrears that the registering party will enforce. Under Family Code section 5700.305(f), if a responding tribunal is requested to enforce or modify an order stated in a foreign currency, the tribunal shall convert the amount to the equivalent amount in dollars. • Alter Items 5 and 6 to reflect that UIFSA provides for a notice period of 20 days, rather than 25. The current form incorporated the standard 5 days' additional time pursuant to Code of Civil Procedure (CCP) section 1013 for mailing within California. However, the addition of this time has led to confusion for courts and parties. The Department believes that it is more appropriate to cite the statutory 20 day period, as the notice date includes the CCP	

	Commentator	Position	Comment	Committee Response
			mailing time as appropriate. UIFSA Child Support Order Jurisdictional Attachment (FL-590): • Add to Item 1, Line 1, "(state or foreign country)" before the check boxes to indicate which party is the party requesting modification, to conform style throughout the form. • Alter Item 2, Line 3, to read "…the court finds that the parties consented in the issuing state…" to clarify that consent may be made in writing or on the record. • Add to Item 4, Line 1, "(state)" after the blank space for entry of the issuing state, to conform style throughout the form. • Add Item 8, "Other" to ensure that parties have an option on the proposed mandatory use form that may be contemplated by the Determination of Controlling Order process under Family Code section 5700.207. Notice of Registration of a Convention Support Order (FL-594): • Add check box to Item 3, which currently reads "The amount of arrears is specified in item 1 on the attached Transmittal Form under Article 12(2)." Check box should include language to the effect that, when checked, the order being registered is denominated in foreign currency, and providing space to list the current U.S.	

	Commentator	Position	Comment	Committee Response
			dollar equivalency, as of a specified date. Conversion to U.S. dollars does not modify the underlying out-of-state support order, but merely apprises the obligor of the current amount of the arrears that the registering party will enforce. Under Family Code section 5700.305(f), if a responding tribunal is requested to enforce or modify an order stated in a foreign currency, the tribunal shall convert the amount to the equivalent amount in dollars.	
2.	Child Support Directors' Association of California by Ronald Ladage Chair, CSDA Judicial Council Forms Committee Principal Attorney, Sacramento County Department of Child Support Services	NI	a. Form FL-590, *UIFSA Child Support Order Jurisdictional Attachment* We recommend that this form be optional, not mandatory. We suggest making Item 1 and Item 4 consistent by inserting the same guidance "(state or county or foreign country)" in Item 4. We suggest Item 2. state "consented" in place of "filed consent." We suggest adding "8. Other (specify):" b. FL-592, *Request for Hearing Regarding Registration of a Convention Support Order*	a. The committee discussed the suggestion to make this form optional; however, to ensure that the proper requisite findings are made in determining jurisdiction in all UIFSA cases, the committee recommends that this form be mandatory. Further, the committee believes that unrepresented litigants, generally unaware of the required jurisdictional findings, will benefit from a mandatory from, which details scenarios in which a court can or cannot assume jurisdiction. The committee agrees with the suggested changes in language for items 1, 2, and 4 and with the addition of an item 8 and has incorporated these suggestions, with minor alterations, into the amendments that it is recommending for adoption. b. No response required.

SPR16-17
Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			We have no comments. c. FL-570, *Notice of Registration of Out-of-State Support Order* For Items 5 and 6, we suggest stating the hearing must be requested "within 20 days of the date of this notice" since the number of additional days required for service depends on how and where service is effected or received. Therefore, use of the statutorily required days after notice is given would be more accurate.	c. The committee agrees with this suggestion and has incorporated it, with minor alterations, into the amendments that it is recommending for adoption.
3.	Orange County Bar Association by Todd G. Friedland, President	A	Are there specific changes that would improve the forms in this proposal? AN NFORMATION FORM THAT SHOWS WHICH FORMER CODE SECTIONS (FAMILY CODE SECTIONS 4900, et seq.) COMPARE TO THE NEW CODE SECTIONS (FAMILY CODE SECTIONS 5700, et seq.) Does the proposal appropriately address the stated purpose? YES What is the impact of this proposal on low- and moderate-income persons? THERE WILL BE SOME CONFUSION ON HOW THE OLD CODE SECTIONS APPLY TO CURRENT AND FUTURE INTER-STATE ENFORCEMENT AND MODIFICATION ACTIONS.	The committee appreciates the suggestion regarding an informational form and will recommend the posting of the UIFSA Conversion Chart (pages 27-30 of the Invitation To Comment) to the Judicial Council website as well as dissemination of this informational to local courts, child support commissioners, family law facilitators, local child support agencies, and local bar associations.
4.	State Bar of California Executive Committee of the Family Law Section	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the changes to Judicial Council forms and	The committee agrees with the suggestion regarding the placement of the Spanish translation and has incorporated it, with minor alterations,

SPR16-17
Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	by Fariba R. Soroosh and Saul Bercovitch		California Rules of Court set out in this proposal required by last year's modifications to the Uniform Interstate Family Support Act (SB 646). With respect to the specific request for comments, FLEXCOM responds as follows: 1. Are there specific changes that would improve the forms in this proposal? (If so, please specify the individual form and the particular recommended changes.) Yes. Form FL-510 would be simpler to read if the Spanish translation was on the back of the page rather than underneath the English text. 2. Does the proposal appropriately address the stated purpose? Yes. 3. What is the impact of this proposal on low- and moderate-income persons? These forms should positively impact low and moderate income persons because the forms have highlighted the availability of free assistance from the Family Law Facilitator's Office.	into the amendments that it is recommending for adoption. Specifically, rather than place the Spanish translation on the back of the form, the committee recommends placing the translation side-by-side with the English text to be consistent with the format of other existing family law summons forms.
5.	State Bar of California Standing Comm. On the Delivery of Legal Services by Phong S. Wong Chair, Standing Committee on the	A	• Are there any specific changes that would improve the forms in this proposal? (If so, please specify the individual form and the particular recommended changes.) No. FL-510 is improved by providing language guiding a	No response required.

	Commentator	Position	Comment	Committee Response
	Delivery of Legal Services		litigant on how to obtain assistance. FL-520 is improved by automatically allowing for genetic testing when a parent states that the child named in the Petition is not theirs; FL-520 and FL-575 now contain specific guidance to litigants as to where they can find help. • Does the proposal appropriately address the stated purpose? Yes. • What is the impact of this proposal on low- and moderate-income persons? The new forms and changes to existing forms can only improve things for low and moderate-income persons. In particular, FL-520 and FL-575 provide guidance on how to obtain forms, and also mention a free legal resource, the family law facilitator. The new forms FL-590, FL-592 and FL-594 are important because they standardize findings under UIFSA; provide a Notice of Registration of Convention Support Order; and provide a form for requesting a hearing on the Registered Convention order. These items have not previously existed, and this often can lead to a low or moderate-income litigant getting frustrated and not pursuing the legal process. Additional Comments This proposal provides vital forms and guidance for self-represented litigants and the court regarding Interstate and Hague Convention registration/modification of child support	

SPR16-17
Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			orders. Also, this proposal can only be a positive change in the realm of low and moderate-income litigants who previously have not had readily available tools, in terms of forms and findings, that would allow them access to meaningful participation in UIFSA/Hague matters.	
6.	Superior Court of Los Angeles County (no name provided)	AM	**Suggested modifications:** Page 10, Title of Document: Order to Show Cause (UIFSA) **For consistency with other Family Law forms, it is recommended that the form be titled, Request for Order.** Page 12, 2a.: **Allow for process server registration number for consistency with other proof of service forms.** Page 14, ORDER at bottom of page: It is	The committee considered the suggestion regarding the title of form FL-515 and, given the abundance of motion forms already in existence which could adequately address a request of either an LCSA or a private litigant to establish or modify support and the potential confusion that may arise among unrepresented litigants with so many motion forms from which to choose, the committee recommends that form FL-515 be revoked. The committee considered the suggestion to add an item for a process server registration number on page 2 of FL-520, but has declined to make that change to maintain consistency with the proof of services incorporated into other governmental response forms (e.g., forms FL-662 and FL-685). Additionally, the committee was concerned that included such an item may inaccurately convey to unrepresented litigants that a registered process server is necessary for the service of process, whereas one should expect little confusion for process servers, who should be more familiar with completion of proof of service forms. The committee agrees with the suggestions

	Commentator	Position	Comment	Committee Response
			ordered that the clerk of the court transfer this Order and all other documents filed in this case….to the tribunal specified in item 5 without payment of any fee. **Recommended that name as well as details necessary for transfer to tribunal be required in item 5 to allow clerk to fully comply with order without delay.** Page 22, Title of Document: Request for Hearing regarding Registration of a Convention Support Order. Recommend that "**Convention" be modified to "International"** for clarity. Page 22, 2(a): including the failure of the issuing **court** or tribunal to observe minimum…**(Add "court" for clarity.)** Page 24, 2e: Check this box if the required document(s) accompany this order is not authentic or **lacks integrity**. (**Change "whole" to "lacks integrity" so that verbiage is consistent with *Request for Hearing Regarding Registration of a Convention Support Order* form, page 22, e.)** Page 26, 6: If you fail to **contest** the validity… **(Correct word from contents to contest.)** **Request for Specific Comments:** **Are there specific changes that would improve the forms in this proposal? (If so, please specify the individual form and the**	regarding pages 14, 22, 24, and 26 and have incorporated them, with minor alterations, into the amendments that it is recommending for adoption.

	Commentator	Position	Comment	Committee Response
			particular recommended changes.) Modifications recommended as noted on next page. **Does the proposal appropriately address the stated purpose?** Yes. **What is the impact of this proposal on low- and moderate-income persons?** Self-represented litigants may require the assistance of an attorney or the assistance of the facilitator. **Would the proposal provide cost savings? If so please quantify.** No. **What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?** Training would have to be provided by those with a higher level of UIFSA expertise. There is concern regarding the logistics of telephone appearances for out-of-country litigants. Our Court will need to revise its current telephonic appearance procedure because our current service does not provide for international calls. The cost of service for an outside vendor for any persons above the federal low income guideline is undetermined.	

SPR16-17
Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. However, due to the current environment our Computer Technology Services Department is over committed. **How well would this proposal work in courts of different sizes?** No difference for Courts of different size.	
7.	Superior Court of Orange County Family and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	What happens when the incorrect form is used? Should we reject these forms? We request feedback from JCC to clarify this in the informational section and to give the courts clarity so all of the courts may have a uniformed process. The FL-590 and FL-575 forms should cross-reference each other so the public know exactly when to use one form or the other.	Regarding the use of an improper form, the committee encourages courts to seek the guidance of their administration regarding when a clerk can or cannot reject a filing, recognizing in some circumstances it may be most appropriate to accept the filing and defer to the judicial officer assigned to the case to determine how to proceed. The committee agrees with the suggestion to have forms FL-575 and FL-592 cross-reference one another and has incorporated it into the amendments that it is recommending for adoption. (note: the committee assumed that form FL-592 was the intended form to cross-reference and the reference to form FL-590 was a typographic error).
8.	Superior Court of Riverside County by Marita Ford Sr. Management Analyst	NI	Rename the proposed stand-alone forms for the registration of International support orders as follows: 1. Rename FL-592 to: "Request for Hearing Regarding Registration of an International Hague Convention Support Order – Family" ; and	The committee agrees with the suggestions regarding the renaming of form FL-592 and FL-594 and regarding the typographic error on form FL-594 and has incorporated them into the amendments that it is recommending for adoption.

SPR16-17

Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)

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

	Commentator	Position	Comment	Committee Response
			2. Rename FL-594 to: "Notice of Registration of an International Hague Convention Support Order- Family". 3. Also FL-594, item 6 should be modified as follows: "If you fail to ~~contents~~ contest the validity or enforcement of the attached order . . ." This change would make clear the forms are specifically for use with International foreign support orders. Also the proposal is vague regarding the use and application of the mandatory Hague Convention forms upon ratification of the Convention by the U.S. It is unclear whether the stand alone forms will be used in conjunction with the mandatory forms.	The committee appreciates the comment regarding the vagueness of the proposal as to the use of the mandatory Convention forms and, as recommended by another commentator, will cross-reference forms FL-575 and FL-592 to one another in each's informational sheet in hopes of providing better clarity regarding their appropriate use. The committee anticipates that the Hague will be ratified prior to the effective date of the forms, thereby allowing for their immediate use on January 1, 2017, which hopefully will reduce some confusion. In the unlikely event that the Hague is not ratified prior to the forms' effective date, the committee recommends prompt notification of the ratification of the Convention by the U.S. by information posted on the Judicial Council website and dissemination of information to affected stakeholders to let parties know when the forms can begin to be used.
9.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	Q: Are there specific changes that would improve the forms in this proposal?	

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

SPR16-17

Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)

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

	Commentator	Position	Comment	Committee Response
			FL-515: Why is this form titled Order to Show Cause and not Request for Order? Is it anticipated this form will be served with the Summons and Uniform Support Petition and must be personally served? If so, there should be some information about this form having to be personally served.	The committee considered the comment regarding the title of form FL-515 and, given the abundance of motion forms already in existence which could adequately address a request of either an LCSA or a private litigant to establish or modify support and the potential confusion that may arise among unrepresented litigants with so many motion forms from which to choose, the committee recommends that form FL-515 be revoked.
			FL-560: The wording on this (old) form stating "IT IS ORDERED that the clerk of the court transfer this Order and all other documents filed in this case, including all pleadings and orders, to the tribunal specified in item 5, without payment of any fee." sounds very odd. **Suggested wording**: "IT IS ORDERED that the clerk of the court transfer *this case, including all pleadings, orders, and other documents in the case file, to the tribunal specified in Item 5.*" The suggested language follows the language in the request made in Item 5	The committee agrees with the suggestion regarding a change in language on form FL-560 and regarding the typographic error on form FL-575 and have incorporated them into the amendments that it is recommending for adoption. As form FL-490 is not included in this forms proposal, the committee has no response regarding this suggestion. Instead, this comment will be considered in the proposal regarding statutory relief for incarcerated and involuntarily institutionalized obligors, within which form FL-490 is addressed.
			FL-575: Item 2g on page 4: the word "order" should be inserted between "support" and "was"	
			FL-490: Item 3.c. delete "Jail, prison, or an institution (juvenile facility or mental health facility)" and make item 3.c.(1) item 3.c. Additionally, renumber 3.c.(2) and 3.c.(3) to 3.c.(1) and 3.c.(2) respectively.	

SPR16-17
Family Law: Child Support Forms; Uniform Interstate Family Support Act (amend Cal. Rules of Court, rule 5.324; adopt forms FL-590, FL-592, and FL-594; revise forms FL-510, FL-520, FL-560, FL-570, and FL-575; revoke forms FL-511 and FL-515)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Q: Does the proposal appropriately address the stated purpose? Yes Q: What is the impact of this proposal on low and moderate income persons? Unable to determine. Q: Would the proposal provide cost savings? No Q: What are implementations requirements for courts? Updating training materials and training affected staff. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes The new forms aid litigants in understanding rights and responsibilities under the new law.	

Convention Support Order Contest

SECTION 707. CONTEST OF REGISTERED CONVENTION SUPPORT ORDER.

5700.707

(a) Except as otherwise provided in this [article], Sections 605 through 608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in Section 708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

SECTION 708. RECOGNITION AND ENFORCEMENT OF REGISTERED CONVENTION SUPPORT ORDER.

5700.708

(a) Except as otherwise provided in subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with Section 201;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 706 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this [act] in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 711.

(c) If a tribunal of this state does not recognize a Convention support order under subsection (b)(2), (4), or (9):

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the [governmental entity] shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under Section 704.

Attachment C

UIFSA Conversion Chart (California Statutes)

Current Family Code	Future Family Code	Title
Article I – General Provisions		
4900	5700.101	Short Title
4901	5700.102	Definitions
4902	5700.103	State Tribunal and Support Enforcement Agency
4903	5700.104	Remedies Cumulative
n/a	5700.105	Application of UIFSA to Resident of Foreign Country and Foreign Support Proceeding
Article II – Jurisdiction		
4905	5700.201	Bases for Jurisdiction over Nonresident
4906	5700.202	Duration of Personal Jurisdiction
4907	5700.203	Initiating and Responding Tribunal of State
4908	5700.204	Simultaneous Proceedings
4909	5700.205	Continuing, Exclusive Jurisdiction to Modify Child Support Order
4910	5700.206	Continuing, Exclusive Jurisdiction to Enforce Child Support Order
4911	5700.207	Determination of Controlling Child Support Order
4912	5700.208	Child Support Orders for Two or More Obligees
4913	5700.209	Credit for Payments
4913.5*	5700.210	Application of UIFSA to Nonresident Subject to Personal Jurisdiction
4914*	5700.211	Continuing, Exclusive Jurisdiction to Modify Spousal Support Order
Article III – Civil Provisions of General Application		
4915	5700.301	Proceedings under UIFSA
4916	5700.302	Proceedings by Minor Parent
4917	5700.303	Application of Law of State
4918	5700.304	Duties of Initiating Tribunal
4919	5700.305	Duties and Powers of Responding Tribunal
4920	5700.306	Inappropriate Tribunal
4921	5700.307	Duties of Support Enforcement Agency
4922	5700.308	Duty of Attorney General
4923	5700.309	Private Counsel
4924	5700.310	Duties of State Information Agency
4925	5700.311	Pleadings and Accompanying Documents
4926	5700.312	Nondisclosure of Information in Exceptional Circumstances

4927	5700.313	Costs and Fees
4928	5700.314	Limited Immunity of Petitioner
4929	5700.315	Nonparentage as Defense
4930	5700.316	Special Rules of Evidence and Procedure
4931	5700.317	Communications Between Tribunals
4932	5700.318	Assistance with Discovery
4933	5700.319	Receipt and Disbursement of Payments
Article IV – Establishment of Support Order or Determination of Parentage		
4935	5700.401	Establishment of Support Order
n/a	5700.402	Proceeding to Determine Parentage
Article V – Enforcement of Support Order Without Registration		
4940	5700.501	Employer's Receipt of Income Withholding Order of Another State
4941	5700.502	Employer's Compliance with Income Withholding Order of Another State
4942	5700.503	Employer's Compliance with Two or More Income Withholding Orders
4943	5700.504	Immunity from Civil Liability
4944	5700.505	Penalties for Noncompliance
4945	5700.506	Contest by Obligor
4946	5700.507	Administrative Enforcement of Orders
Article VI – Registration, Enforcement, and Modification of Support Order		
Part 1 – Registration for Enforcement of Support Order		
4950	5700.601	Registration of Order for Enforcement
4951	5700.602	Procedure to Register Order for Enforcement
4952	5700.603	Effect of Registration for Enforcement
4953	5700.604	Choice of Law
Part 2 – Contest of Validity or Enforcement		
4954	5700.605	Notice of Registration of Order
4955	5700.606	Procedure to Contest Validity or Enforcement of Registered Support Order
4956	5700.607	Contest of Registration or Enforcement
4957	5700.608	Confirmed Order
Part 3 – Registration and Modification of Child Support Order of Another State		
4958	5700.609	Procedure to Register Child Support Order of Another State for Modification
4959	5700.610	Effect of Registration for Modification
4960	5700.611	Modification of Child Support Order of Another State
4961	5700.612	Recognition of Order Modified in Another State
4962	5700.613	Jurisdiction to Modify Child Support Order of Another State when Individual Parties Reside in this State
4963	5700.614	Notice to Issuing Tribunal of Modification
Part 4 – Registration and Modification of Foreign Child Support Order		

4964*	5700.615	Jurisdiction to Modify Child Support Order of Foreign Country
n/a	5700.616	Procedure to Register Child Support Order of Foreign Country for Modification
Article VII – Support Proceeding Under Convention		
n/a	5700.701	Definitions
n/a	5700.702	Applicability
n/a	5700.703	Relationship of Department to United States Central Authority
n/a	5700.704	Initiation by Department of Support Proceeding Under Convention
n/a	5700.705	Direct Request
n/a	5700.706	Registration of Convention Support Order
n/a	5700.707	Contest of Registered Convention Support Order
n/a	5700.708	Recognition and Enforcement of Registered Convention Support Order
n/a	5700.709	Partial Enforcement
n/a	5700.710	Foreign Support Agreement
n/a	5700.711	Modification of Convention Child Support Order
n/a	5700.712	Personal Information; Limit on Use
n/a	5700.713	Record in Original Language; English Translation
Article VIII – Interstate Rendition		
4970	5700.801	Grounds for Rendition
4971	5700.802	Conditions of Rendition
Article IX – Miscellaneous Provisions		
4975	5700.901	Uniformity of Application and Construction
n/a	5700.902	Transitional Provision
4976	5700.903	Severability Clause
n/a	5700.905	Emergency regulations
Additional Provisions		
4977	REPEAL	Repealed; not part of uniform law
4978	REPEAL	Repealed; not part of uniform law
5000	17404.1	Relocated within Family Code; not part of UIFSA
5001	17404.2	Relocated within Family Code; not part of UIFSA
5002	17404.1	Relocated within Family Code; not part of UIFSA
5003	17404.3	Relocated within Family Code; not part of UIFSA
5005	17407.5	Specific authority relocated within Family Code; not part of UIFSA; see this section regarding

		validity and revocation of State Reciprocal agreements

*Section exists in UIFSA 2001, but not UIFSA 1996. California codified UIFSA 2001, but with contingent operation. UIFSA 2001 never became operative under those terms, but is mentioned here as many are familiar with those sections.

Item number: 05

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Termination of Jurisdiction Over Nonminor

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Daniel Richardson, 415-865-7619, daniel.richardson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2015
Project description from annual agenda: Amend JV-365, Termination of Juvenile Court Jurisdiction—Nonminor

JV-365 is a mandatory Judicial Council form. This means that courts are required to use this form at the hearing to terminate jurisdiction for a youth who is 18 years of age or older. As a mandatory form, it is important that the form closely follow the legislative mandates. However, the Department of Social Services has requested that the Judicial Council consider amending this form to include other important, but not mandated, information to make the nonminors transition to their eligible benefits as seamless as possible.

If requesting July 1 or out of cycle, explain:
.n/a

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
The Report to the Judicial Council is written as if pending Assembly Bill 1849 had become law. AB 1849 would amend section 391 of the Welfare and Institutions Code to make it consistent with section 14005.28 and this proposal. It passed the Assembly by unanimous consent, has received no opposing votes in committee, and is currently in the Senate floor process. The committee anticipates that the bill will be enacted and signed into law by Governor Brown before the October Judicial Council meeting. If it is enacted with language different from the current version, the committee anticipates that the proposal may be modified to accommodate any differences without further public comment because any amendments are likely to be technical or minor substantive changes unlikely to create controversy. Rule 10.22(d)(2). If the bill is not enacted and section 391 retains the language of the superseded requirements, the committee recommends revising item 7a of form JV-365 to reflect the current requirements in section 14005.28.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Juvenile Law: Termination of Jurisdiction Over Nonminor

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.555; revise forms JV-365 and JV-367

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 19, 2016

Contact
Daniel Richardson, 415-865-7619
daniel.richardson@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one of the California Rules of Court and revising two Judicial Council forms to provide legally accurate information about available benefits to nonminors facing termination of juvenile court jurisdiction. Certain form revisions implement amended statutory entitlements in response to suggestions received from the California Department of Social Services and are consistent with Assembly Bill 1849. The rule amendments and other form revisions make technical corrections to ensure consistency with existing law and each other, to improve readability, and to reduce unnecessary repetition of statutory language.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rule 5.555 of the California Rules of Court to ensure consistency with current law, reduce the unnecessary restatement of statutory language, and promote internal consistency and readability;

2. Revise *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) to conform to amended statutory eligibility requirements for Medi-Cal and other benefits, ensure the accuracy of the information provided to and receipt of the required assistance or services by nonminors facing termination of juvenile court jurisdiction and to make nonsubstantive technical changes; and

3. Revise *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to conform to current law, ensure consistency with the amendments to rule 5.555 and the revisions to form JV-365, and to make nonsubstantive technical changes.

Text of the amended rule and revised forms is attached at pages 8–17.

Previous Council Action

The Judicial Council adopted form JV-365 for mandatory use in 2002 to clarify the criteria that a court must apply before terminating juvenile dependency jurisdiction when a dependent reaches the age of majority, to provide a checklist for the county welfare department and the judicial officer to ensure that all the proper information and services have been provided to the dependent, and to ensure implementation of Assembly Bill 686 (Aroner; Stats. 2000, ch. 911). The council has subsequently revised form JV-365 to clarify existing items, correct typographical errors, and comply with statutory mandates, such as assistance in maintaining relationships with individuals important to the dependent (Assem. Bill 1412 [Leno]; Stats. 2005, ch. 640). In 2010, the council revised form JV-365 to clarify that the form must also be completed for a foster child under delinquency jurisdiction.

The Judicial Council cosponsored Assembly Bill 12 (Beall; Stats 2010, ch. 559), the original legislation that authorized extended foster care for young adults ages 18 to 21, which was enacted in 2010, with most of its provisions effective January 1, 2012. The council adopted rule 5.555 and form JV-367 for mandatory use in 2012 to ensure that the provisions of AB 12 could be implemented by the courts when the statute took effect. The council subsequently amended rule 5.555 and revised forms JV-365 and JV-367, effective July 1, 2012, to implement modifications of AB 12 made by Assembly Bill 212 (Beall; Stats. 2011, ch. 459) as well as changes required in rules and forms that were adopted before circulation for public comment.

Rationale for Recommendation

Sections 391, 607.2, and 607.3 of the Welfare and Institutions Code require the juvenile court, before it terminates jurisdiction over a dependent youth or ward of the court who is more than 18 years old, to hold a hearing at which it must, as a condition to terminating jurisdiction, make

certain factual findings and legal orders.[1] The required findings include whether the county welfare department or the probation department has provided the youth with the information, documents, and services required by sections 391(e) and 607.3(f) to help him or her prepare for the transition from foster care to independence. If the court determines that the department has complied with the statutory requirements, it may terminate jurisdiction. Otherwise, the court must determine whether jurisdiction should be continued until the department has done so.

Termination of Juvenile Court Jurisdiction—Nonminor (form JV-365) is used by the child welfare or probation department to verify that it has provided the required information, documents, and services to a nonminor in anticipation of his or her transition to independent living when the juvenile court terminates its jurisdiction over the youth. After the department completes the form, the youth has an opportunity to review it, make corrections, and initial after each item to confirm his or her receipt of the specified information, document, or service. The youth then signs the completed form and returns it to the social worker or probation officer, who, under rule 5.555 of the California Rules of Court, must attach it to the report submitted to the court before the hearing on termination of jurisdiction.

On November 3, 2015, the Family and Juvenile Law Advisory Committee received a formal letter from Mr. Will Lightbourne, Director of the California Department of Social Services (CDSS), suggesting several revisions to form JV-365. Most of the information, documents, and services listed on the form are needed to help a foster youth obtain benefits and access services after he or she leaves foster care. CDSS's suggestions, stemming from collaboration with the California Department of Health Care Services, are intended to promote conformity to the federal Affordable Care Act[2] as implemented in section 14005.28 by enabling a former foster youth to maintain his or her good health through access to health insurance, health care, and wholesome food. Assembly Bill 1849 (Gipson; Stats. 2016, ch. xxx) amends section 391, effective January 1, 2017, to bring it into conformity with section 14005.28.[3] The amendments and revisions recommended in this proposal are designed to bring rule 5.555 and forms JV-365 and JV-367 into conformity with section 14005.28 and AB 1849.[4]

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

[2] Patient Protection and Affordable Care Act, Pub.L. No. 111-148 (Mar. 23, 2010) 124 Stat. 119; Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152 (Mar. 30, 2010) 124 Stat. 1029.

[3] In addition, this bill amended section 16501.1 to require verification of the placement agency's compliance with section 14005.28 in the youth's 90-day Transition Plan.

[4] **[Note to RUPRO:** AB 1849 has not been enacted. If it is enacted with language different from the current version, the committee anticipates that the proposal may be modified to accommodate any differences without further public comment because any amendments are likely to be technical or minor substantive changes unlikely to create controversy. Rule 10.22(d)(2). If the bill is not enacted and section 391 retains the language of the superseded requirements, the committee recommends revising form JV-365 to reflect the current requirements in section 14005.28.**]**

The committee recommends revising item 7 on form JV-365 in four respects. First, item 7a is used to verify the department's provision of assistance with the former foster youth's application for Medi-Cal or other health insurance. Recent amendments to sections 391 and 14005.28 of the code have rendered that specific assistance unnecessary.[5] As amended, section 14005.28 entitles a youth who was in foster care on his or her 18th birthday to continued enrollment in Medi-Cal without any interruption in coverage and without requiring a new application.[6] Section 391 now requires verification of continued enrollment before the court terminates jurisdiction. The county eligibility worker is responsible for ensuring each youth's continued enrollment.[7] Revised item 7a affirms the youth's continued enrollment in Medi-Cal.

Second, both rule 5.555 and item 7a on form JV-365 require the provision of information regarding availability of Medi-Cal coverage to former foster youth up to age 21. Section 14005.28(a)(1) extends eligibility for Medi-Cal coverage to youth who were in foster care on their 18th birthdays until they reach age 26. The committee recommends revising item 7a to reflect the higher age limit in section 14005.28(a)(1).

Third, the committee recommends adding language to item 7a to document the youth's receipt of written verification of his or her continued enrollment in Medi-Cal, his or her Medi-Cal Benefits Identification Card, and information regarding extended Medi-Cal eligibility. This information falls within the scope of assisting the youth with continuous enrollment in Medi-Cal as required by section 14005.28. Furthermore, Assembly Bill 1849 amended section 391 to require provision of these documents, or reasonable efforts to provide them, before the court may terminate jurisdiction.[8]

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[5] Section 14005.28 was amended by Senate Bill 508 (Hernandez; Stats. 2014, ch. 831, § 4). Section 391 was amended by Assembly Bill 1849. Another pending bill, Assembly Bill 2000 (Campos; Stats. 2016, ch. xxx), would add section 607.6 to the code to preclude the juvenile court from terminating jurisdiction over a ward to whom section 607.3 does not apply unless and until the probation department has provided specified information, documents, and services to the ward. The committee has elected not to recommend changes in response to AB 2000 in this proposal. That bill would add a section to an already complex statutory scheme and would therefore benefit from further legal analysis and public comment.

[6] Welf. & Inst. Code, § 14005.28(a)(1). The statute also requires the Department of Health Care Services to develop procedures to identify and enroll eligible youth in Medi-Cal (§ 14005.28(a)(2)) and to develop a simplified redetermination form to update the youth's information, if necessary (§ 14005.28(a)(3)(A)).

[7] Dept. of Health Care Svcs., Health and Human Svcs. Agency, Letter No. 15-32 to All County Welfare Directors, Oct. 7, 2015.

[8] AB 1849 also inserted the word "eligible" before a reference to the nonminor's enrollment in Medi-Cal. The committee chose not to add this language to form JV-365 because if a nonminor were ineligible (which is an exceedingly rare occurrence), the nonminor and the social worker or probation officer would almost certainly decline to check the box. This omission should prompt a judicial inquiry, the response to which would explain the nonminor's ineligibility. Ensuring that nonminors who are otherwise eligible for enrollment in Medi-Cal do not leave the court's jurisdiction without verification that they are enrolled in Medi-Cal is consistent with the broad scope of Medi-Cal eligibility under section 14005.28 and promotes the welfare of nonminors facing termination of juvenile court jurisdiction. Inserting language into the form such as "if eligible" could potentially mislead nonminors, the courts, and social workers or probation officers into thinking that the class of ineligible nonminors is larger than it actually is. Section 14005.28(a)(1) states: "A foster care adolescent who was in foster care in this state on his or her 18th birthday . . . shall be enrolled to receive benefits under this section without any interruption in

Fourth, and finally, the committee proposes adding clarifying language to form JV-365 to document the department's assistance to youth who would benefit from enrollment in the CalFresh program. The committee proposes adding a checkbox to item 7e before the reference to CalFresh. All former foster youth are eligible for CalFresh; many, however, may not know how to enroll or have the wherewithal to do so. Adding this checkbox to item 7e emphasizes the department's role in ensuring that each former foster youth leaving juvenile court supervision is aware of this benefit and able to take advantage of it, to have access to nutritious food.

The statutory changes and proposed revisions to form JV-365 also require conforming amendments to rule 5.555, which addresses hearings to consider termination of juvenile court jurisdiction, as well as revisions to *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367).

When examining rule 5.555 and forms JV-365 and JV-367, the committee identified additional nonsubstantive technical corrections to improve the rule's and forms' internal consistency and readability. These amendments and revisions remove unnecessary statutory language, simplify the rule and forms, and ensure consistent application of legal requirements.

Comments, Alternatives Considered, and Policy Implications

External comments

The invitation to comment on this proposal circulated from April 15 through June 14, 2016, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which includes judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. The proposal was also sent to the California Department of Social Services. Six comments were received.[9] Four commentators agreed with the proposal as circulated. Two commentators agreed with the proposal if modified. No commentators opposed the proposal.

One commentator suggested changing the language on form JV-365 to reflect that section 14005.28 entitles youth exiting foster care at age 18 or older to ongoing enrollment in Medi-Cal coverage with no interruption in coverage and no application required. The commentator recommended changing 7a of the form to read, "Continued enrollment in Medi-Cal with no interruption in coverage" as opposed to "Completing enrollment in Medi-Cal with no interruption in coverage." The commentator noted that this revision would further clarify the duties of social workers and probation officers before termination of juvenile court jurisdiction. The committee agrees with this revision. Section 14005.28 emphasizes continuity of the youth's enrollment. Maintaining continuity requires administrative action by the county eligibility

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coverage and without requiring a new application." It is consistent with the breadth of section 14005.28 to assume on form JV-365 that a nonminor is eligible. To do otherwise risks creating confusion and implying ineligibility when none exists.

[9] A chart providing the full text of the comments and the committee responses is attached at pages 18–27.

worker.[10] Verification of that action is critical for a youth leaving foster care. The committee therefore recommends revising the language to require "[w]ritten verification of continued enrollment . . . ." This language emphasizes that the nonminor must be enrolled without interruption in Medi-Cal, which is required by section 14005.28.

In addition, the commentator requested that the form specify separately that written verification of enrollment in Medi-Cal also be provided to the nonminor. The committee agrees with this suggestion but—rather than adding written verification as a separate, additional requirement—has incorporated it into the principal item relating to Medi-Cal enrollment. AB 1849 also amended section 391 to require that the nonminor be provided with written verification of the nonminor's enrollment in Medi-Cal before the court terminates jurisdiction. **[Note to RUPRO:** The committee recommends adding this requirement regardless of whether AB 1849 becomes law because it furthers the purpose of both the form and the statutory termination hearing by ensuring that the nonminor has received the information, documents, and services to which he or she is legally entitled.**]**

In response to the committee's request, several commentators provided input about whether requiring the social worker or probation officer to verify that he or she had provided the assistance identified in items 7a and 7e would place an undue burden on the worker or officer. These commentators all indicated that these verification requirements would not place an undue burden on the worker or officer because they were already providing these services as required by law. Based on these comments, the committee is recommending that these verification requirements be included in the form.

One court suggested that rule 5.555(b) be clarified to indicate how notice of a hearing under section 391 should be provided to the nonminor and whose responsibility it is to give notice. Section 295 is the applicable statute and provides the manner in which notice must be given for a section 391 termination hearing. To reflect this, the committee has added rule new paragraph (3) to 5.555(b): "Notice of the hearing must be given as provided in section 295."

A court also perceived an inconsistency in form JV-365, item 2g, regarding the nonminor's right to inspect and receive a copy of his or her juvenile case file without a court order. Portions of some nonminors' juvenile case files may be sealed. Under section 786(f)(1)(F), a sealed record requires the person whose record has been sealed to petition the court for permission to inspect those records. Form JV-365, item 2g, however, states that the nonminor is to be informed in

[10] Virtually all nonminor former foster youth living in California are eligible for uninterrupted enrollment in Medi-Cal. One class of nonminors who may be ineligible are nonminors who establish residence in another state without the intention of returning to California. These nonminors need to arrange medical insurance in their new state of residence. However, if these nonminors return to California, they would be eligible on their return. Nonminors who move out of state with the intention of coming back—for instance, a college student going to college out of state and maintaining residence in California—would maintain eligibility for Medi-Cal. Likewise, a nonminor's immigration status would not cause a disruption in coverage or make a nonminor ineligible for Medi-Cal. (Dept. of Health Care Svcs., Health and Human Svcs. Agency, Letter No. 15-32 to All County Welfare Directors, Oct. 7, 2015.)

writing of the right to inspect and receive a copy of his or her juvenile case file without a court order. In response to this issue, the committee recommends that form JV-365 include clarifying language regarding sealed records. The committee recommends that item 2g of form JV-365 now read: "Instructions on how the nonminor may exercise his or her right to inspect, receive, and copy his or her juvenile case file, including how to access sealed records. (See Welf. & Inst. Code, §§ 389(a), 781(a)(4), 786(f)(1)(F), 826.6 & 827; Cal. Rules of Court, rule 5.552.)"

One commentator recommended that the following finding be added to form JV-367: "The nonminor is, or is at risk of becoming, a victim of commercial sexual exploitation, and the case plan documents the services provided to address that issue." This language is taken from section 16501.1(g)(19). The committee does not recommend the suggested change. The findings in item 22 address only elements of the Transitional Independent Living Case Plan, Transitional Independent Living Plan, and 90-day Transition Plan directly related to promoting the youth's transition to independence and successful adulthood. The suggested finding addresses an element of the case plan that is required throughout the life of the youth's case; it is not specific to a section 391 termination hearing. Although a judicial determination of the adequacy of the services provided to the youth, including services designed to address the danger of becoming a victim of commercial sexual exploitation, is critical, that determination is more appropriately made at each review hearing under section 366.3 or 366.31.

Alternatives

The committee considered not revising the forms or amending the rule but elected to proceed with the proposal for the reasons stated above. The committee also considered recommending more extensive amendments intended to promote clarity and consistency, but determined that those amendments would be more appropriate in the context of a proposal with broader scope.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs in courts that continue to distribute printed copies of blank forms.

Attachments and Links

1. Cal. Rules of Court, rule 5.555, at pages 8–11
2. Forms JV-365 and JV-367, at pages 12−17
3. Chart of comments received and committee responses, at pages 18–27
4. AB 1849, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1849*

Rule 5.555 of the California Rules of Court is amended, effective January 1, 2017, to read:

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1~~(f)~~(g)(16))

(a) * * *

(b) Setting a hearing

(1) A court hearing must be placed on the appearance calendar and ~~held~~ completed before ~~prior to terminating~~ juvenile court jurisdiction is terminated.

(2) The hearing under this rule may be held during any regularly scheduled review hearing or a hearing ~~required~~ on a petition filed under section ~~366 (g), 366.3, 366.31, 727.2, or 727.3 or rule 5.903~~ 388 or section 778.

(3) Notice of the hearing must be given as required by section 295.

(4) Notice of the hearing to the parent~~s~~ of a nonminor dependent as defined in section 11400(v) is not required, unless the parent~~s are~~ is receiving court-ordered family reunification services or the nonminor is living in the home of the parent or former legal guardian.

~~(4)~~(5) * * *

~~(5)~~(6) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court determines that the report, the Transitional Independent Living Plan, the Transitional Independent Living Case Plan, ~~(TILCP)~~ if required, or the 90-day Transition Plan submitted by the social worker or probation officer does not provide the information required by (c) and the court is unable to make the findings and orders required by (d).

(c) Reports

(1) ~~In addition to complying with all other statutory and rule requirements applicable to the report prepared by the social worker or probation officer for any hearing during which termination of the court's jurisdiction will be considered,~~ The report prepared by the social worker or probation officer for a hearing under this rule must, in addition to any other elements required by law, include:

(A)–(C) * * *

(D) Whether the nonminor has applied for title XVI Supplemental Security Income benefits and, if so, the status of ~~any in-progress~~ that application ~~pending for title XVI Supplemental Security Income benefits~~, and whether remaining under juvenile court jurisdiction until a final decision has been issued is in the nonminor's best interests;

(E) Whether the nonminor has applied for Special Immigrant Juvenile status or other immigration relief and, if so, the status of ~~any in-progress~~ that application, ~~pending for Special Immigrant Juvenile Status or other applicable application for legal residency~~ and whether an active juvenile court case is required for that application;

(F)–(H) * * *

(I) ~~For a nonminor who is not present for the hearing:~~ If the social worker or probation officer has reason to believe that the nonminor will not appear at the hearing, documentation of the basis for that belief, including:

(i) Documentation of the nonminor's statement that he or she ~~did~~ does not wish to appear in ~~court~~ person or by telephone for the ~~scheduled~~ hearing; or

(ii) Documentation of ~~the~~ reasonable efforts ~~made~~ to ~~locate~~ find the nonminor when his or her ~~current~~ location is unknown;

(J)–(K) * * *

(2) The social worker or probation officer must file with the report a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365).

(3) The social worker or probation officer must also file with the report the nonminor's:

(A) * * *

(B) Most recent Transitional Independent Living Plan ~~(TILP)~~; and

(C) * * *

(4) The social worker's or probation officer's report and all documents required by ~~(c)~~(2)–(3) must be filed with the court at least 10 calendar days before the hearing, and the social worker or probation officer must provide copies of the report and other documents to the nonminor, the nonminor's parent~~s~~, and all attorneys of record. If the nonminor is under juvenile court jurisdiction as a nonminor dependent, the social worker or probation officer is not required to

provide copies of the report and other documents to the nonminor dependent's parent~~s~~, unless the ~~nonminor dependent's~~ parent~~s are~~ is receiving court-ordered family reunification services.

(d) Findings and orders

~~In addition to complying with all other statutory and rule requirements applicable to the hearing,~~ The court must, in addition to any other determinations required by law, make the following ~~judicial~~ findings and orders ~~must be made~~ and include~~d~~ them in the written ~~court~~ documentation of the hearing:

(1) *Findings*

(A)–(D) * * *

(E) Whether the nonminor has an ~~in-progress~~ application pending for title XVI Supplemental Security Income benefits, and if ~~such an application is pending~~ so, whether it is in the nonminor's best interests to continue juvenile court jurisdiction until a final decision has been issued to ensure that the nonminor receives continued assistance with the application process;

(F) Whether the nonminor has an ~~in-progress~~ application pending for Special Immigrant Juvenile status or other ~~applicable application for legal residency~~ immigration relief, and whether an active juvenile court case is required for that application;

(G)–(K) * * *

(L) Whether the nonminor's

(i) * * *

(ii) Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and ~~the~~ specific skills ~~he or she~~ needs~~ed~~ to prepare ~~to live independently~~ for independence and successful adulthood ~~up~~on leaving foster care; and

(iii) * * *

(M) For a nonminor who ~~is not present~~ does not appear in person or by telephone for the hearing, whether ~~the reason for his or her failure to appear was~~:

(i) The nonminor~~'s~~ expressed a wish ~~to~~ not to appear ~~in court~~ for the ~~scheduled~~ hearing; or

(ii) The nonminor's ~~current~~ location remains unknown ~~although~~ and, if so, whether reasonable efforts were made to ~~locate~~ find the nonminor.

(N) * * *

(2) *Orders*

(A)–(B) * * *

(C) For a nonminor who does not meet and does not intend to meet the eligibility requirements for nonminor dependent status but who is otherwise eligible to and will remain under juvenile court jurisdiction in a foster care placement, the court must set an appropriate statutory review hearing ~~under section 366.21, 366.22, 366.25, 366.3, 727.2, or 727.3~~ within six months of the date of the nonminor's most recent status review hearing.

(D) * * *

(E) For a nonminor ~~(1)~~ who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction~~, (2) who does~~ or, alternatively, who meets one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent~~, or (3) who does meet one or more of the eligibility criteria of section 11403(b) but~~ or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings ~~and orders~~:

(i)–(ii) * * *

(iii) The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and ~~to file a request to~~ have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she has ~~attained the age of~~ reached 21 years of age;

(iv)–(vi) * * *

(F) * * *

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:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:	
TERMINATION OF JUVENILE COURT JURISDICTION—NONMINOR	CASE NUMBER:

Directions for the social worker or probation officer: Check the appropriate boxes in items 1 through 7, complete item 8, attach documents as required, and sign and date item 9.

Directions for the nonminor *(if nonminor is available):* Review the boxes checked by the social worker or probation officer in items 1 through 7. If the box checked in item 1 is wrong, check the correct box and sign your initials next to the box. Sign your initials on the lines after items 2a–h, 3a–j, 4, 5a–b, 6, and 7a–h ***only if*** you received the information, document, or service described in that item. Then sign and date item 10. You may give the form to the judge on the day of the hearing if you didn't give it to your social worker, probation officer, or attorney before the hearing.

1. a. ☐ The nonminor wants to attend the termination hearing ☐ in person ☐ by telephone.
   b. ☐ The nonminor does not want to attend the termination hearing. The petitioner has attached verification that the nonminor has been informed of the potential consequences of failure to attend the termination hearing.
   c. ☐ The nonminor is unavailable or has refused to sign this form. Documentation of reasonable efforts to locate the nonminor and to obtain his or her signature is attached.

2. An attached report verifies that the nonminor has received written information about his or her juvenile court case, including *(check all that apply):*
   a. ☐ The nonminor's Indian heritage or tribal connections _____
   b. ☐ The nonminor's family history _____
   c. ☐ The nonminor's placement history _____
   d. ☐ The nonminor's educational history and medical history _____
   e. ☐ Any photographs of the nonminor or his or her family in the possession of the county welfare department or probation department, other than forensic photographs _____
   f. ☐ Contact information for all siblings under juvenile court jurisdiction, except for any siblings whose safety or welfare would be jeopardized by contact with the nonminor, as determined by the court _____
   g. ☐ Instructions on how the nonminor may exercise his or her right to inspect, receive, and copy his or her juvenile case file, including how to access sealed records (see Welf. & Inst. Code, §§ 389(a), 781(a)(4), 786(f)(1)(F), 826.6 & 827; Cal. Rules of Court, rule 5.552) _____
   h. ☐ The date on which the jurisdiction of the court would be terminated _____

3. The nonminor has been provided with the following documents *(check all that apply):*
   a. ☐ A certified copy of his or her birth certificate _____
   b. ☐ His or her social security card _____
   c. ☐ His or her California identification card or driver's license _____
   d. ☐ Proof of his or her citizenship or lawful permanent resident status _____
   e. ☐ A copy of the death certificate of his or her parent or parents _____
   f. ☐ His or her Health and Education Passport _____

Form Adopted for Mandatory Use
Judicial Council of California
JV-365 [Rev. January 1, 2017]

Welfare & Institutions Code, §§ 391, 607.2, 607.3;
Cal. Rules of Court, rule 5.555
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

3. g. ☐ A blank advance health care directive form _____
   h. ☐ A letter prepared by the county welfare department that includes the nonminor's name and date of birth, the dates during which he or she was within the jurisdiction of the juvenile court, and a statement that the nonminor was a foster child in compliance with state and federal financial aid documentation requirements _____
   i. ☐ The nonminor's 90-day Transition Plan _____
   j. ☐ A copy of each of the following: *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO), a blank *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466), and a blank *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) _____

4. ☐ The nonminor continues to be eligible for services or accommodations under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, or section 504 of the Rehabilitation Act of 1973, and he or she has been provided with his or her most recent service or accommodation plan. _____

5. ☐ The nonminor has been receiving services as provided in the Individuals with Disabilities Education Act (see 34 C.F.R. §§ 300.320(b)–(c) & 300.321(b)) and
   a. ☐ has received a copy of his or her transition service plan. _____
   b. ☐ has been informed of the rights that will transfer to him or her under this Act. _____

6. ☐ The nonminor was informed that state agencies, when hiring for internships and student assistant positions, must give preference to qualified applicants up to 26 years of age who are or have been dependent children in foster care. _____

7. The nonminor received the following assistance or services:
   a. ☐ Written verification of continued enrollment in Medi-Cal with no interruption in coverage, and provision of _____
      i. ☐ His or her Medi-Cal Benefits Identification Card (BIC) _____
      ii. ☐ Information about eligibility for extended Medi-Cal benefits until age 26 _____
   b. ☐ Help applying to college, a vocational training program, or another educational or employment program _____
   c. ☐ Help obtaining financial aid for college, a vocational training program, or another educational or employment program _____
   d. ☐ A referral to transitional housing, if available, or assistance in securing other housing _____
   e. ☐ Help obtaining employment or other financial support _____
      ☐ including completing enrollment in CalFresh _____
   f. ☐ Help maintaining relationships with individuals important to him or her, consistent with his or her best interests *(required only if the nonminor has been in an out-of-home placement for six months or longer)* _____
   g. ☐ Help accessing the Independent Living Aftercare Program in the nonminor's county of residence _____
   h. ☐ Other services ordered by the court *(specify):*

_____

8. Number of pages attached: _____

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 SOCIAL WORKER OR PROBATION OFFICER)

I certify that I have received the information and services that I initialed above.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF NONMINOR)

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:	
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME: DEPT:	

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR

CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

	Present	Attorney *(name)*	Present
1. Parties *(name)*			
a. Nonminor:	☐		☐
b. Probation officer:	☐		☐
c. County agency social worker:	☐		☐
d. Other *(specify):*	☐		☐
2. Parent			
a. ☐ Father ☐ Mother *(name):*	☐		☐
b. ☐ Father ☐ Mother *(name):*	☐		☐
3. Legal guardian *(name):*	☐		☐
4. Indian custodian *(name):*	☐		☐
5. Tribal representative *(name):*	☐		☐

6. Others present
   a. Other *(name):*
   b. Other *(name):*
   c. Other *(name):*

7. **The court has read and considered and admits into evidence**
   a. ☐ The report of the social worker dated:
   b. ☐ The report of the probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

NONMINOR'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

Findings

8. ☐ Notice of the date, time, and location of the hearing was given as required by law.

9. ☐ The nonminor is neither present in court nor participating by telephone and
   a. ☐ the nonminor expressed a wish not to appear for the hearing and did not appear.
   b. ☐ the nonminor's current location is unknown. Reasonable efforts ☐ were ☐ were not made to find him or her.

10. ☐ The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.

11. Remaining under juvenile court jurisdiction ☐ is ☐ is not in the nonminor's best interests. The facts supporting this determination were stated on the record.

12. a. ☐ The nonminor does not now meet any of the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
    b. ☐ The nonminor meets the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
       (1) ☐ The nonminor attends high school or a high school equivalency certificate (GED) program.
       (2) ☐ The nonminor attends a college, a community college, or a vocational education program.
       (3) ☐ The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
       (4) ☐ The nonminor is employed at least 80 hours per month.
       (5) ☐ The nonminor is incapable of doing any of the activities in (1)–(4) due to a medical condition.

13. ☐ The nonminor has an application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process ☐ is ☐ is not in the nonminor's best interests.

14. ☐ The nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief for which an active juvenile court case is required.

15. ☐ The nonminor was informed of the options available to make the transition from foster care to independence and successful adulthood.

16. ☐ The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.

17. ☐ The nonminor was informed that if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that if jurisdiction is then terminated, the court will maintain general jurisdiction for the purpose of reviewing a request to resume jurisdiction over him or her as a nonminor dependent.

18. ☐ The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition asking the court to resume dependency jurisdiction or transition jurisdiction over him or her as a nonminor dependent as long as he or she has not yet reached 21 years of age.

19. a. ☐ The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
    b. ☐ The nonminor cannot be located despite the department's reasonable efforts, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.

20. ☐ The nonminor is subject to delinquency jurisdiction and either was previously a dependent of the court under section 300 or was placed in foster care under section 727. The requirements of Welfare and Institutions Code, § 607.5, ☐ were ☐ were not met.

NONMINOR'S NAME:	CASE NUMBER:

21. ☐ The nonminor is an Indian child under the Indian Child Welfare Act and ☐ was ☐ was not informed of his or her right to choose whether the Act will continue to apply to him or her as a nonminor dependent.
☐ The nonminor ☐ wants ☐ does not want the Indian Child Welfare Act to continue to apply.

22. a. ☐ The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.
b. ☐ The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare for successful adulthood upon leaving foster care.
c. ☐ The 90-day Transition Plan is a concrete, individualized plan that specifically covers housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

Orders

23. ☐ The nonminor meets at least one of the conditions listed in item 12(b)(1)–(5) and
a. ☐ **dependency jurisdiction** ☐ **transition jurisdiction over the nonminor as a nonminor dependent is ordered.**
b. The nonminor's permanent plan is
(1) ☐ independence after a period of placement in a supervised setting specified in Welfare and Institutions Code, § 11402.
(2) ☐ other *(specify):*
c. The Indian Child Welfare Act ☐ does ☐ does not continue to apply.
d. The matter is set for further hearing under Welfare and Institutions Code, § 366(f), and California Rules of Court, rule 5.903, on the date set in item 29, which is within six months of the nonminor's most recent status review hearing.

24. ☐ The nonminor does not meet and does not intend to meet the eligibility criteria for status as a nonminor dependent but is otherwise eligible to and will remain under the juvenile court's jurisdiction in a foster care placement, and the matter is set for a status review hearing on the date indicated in item 29, which is within six months of the nonminor's most recent status review hearing.

25. ☐ Reasonable efforts were made to find the nonminor, and his or her location remains unknown. **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

26. ☐ The nonminor
a. ☐ does not meet the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction;
b. ☐ meets the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; or
c. ☐ meets the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and

the findings required in items 10, 16, 19a, and 22c of this form were made, and the nonminor was given an endorsed, filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365). **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

NONMINOR'S NAME:	CASE NUMBER:

27. ☐ The nonminor is 21 years of age or older and no longer subject to the jurisdiction of the juvenile court under section 303. The findings required by items 19 and 22c were made. **Juvenile court jurisdiction over the nonminor is dismissed.** The attorney for the nonminor is relieved 60 days from today's date.

28. ☐ **Other findings and orders**

a. See attachment 28a.

b. Other *(specify):*

29. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)

b. ☐ Other *(specify):*

30. Number of pages attached: _____

Date:

JUDICIAL OFFICER

SPR16-19

Juvenile Law: Termination of Jurisdiction Over Nonminor (amend Cal. Rules of Court, rule 5.555; revise forms JV-365 and JV-367)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association Newport Beach, California by Todd G. Friedland, President	A	No specific comment.	The committee notes the commentator's support for the proposal. No further response required.
2.	The State Bar of California Standing Committee on the Delivery of Legal Services San Francisco by Phong S. Wong, Chair	A	• Does the proposal appropriately address the stated purpose? Yes. It provides a way to ensure that nonminors are getting the assistance needed to enroll in benefits program by qualified persons. • Will requiring the social worker or probation officer to verify, in items 7a and 7e of form JV-365, that he or she has assisted the youth in "completing enrollment" in Medi-Cal and CalFresh place an undue burden on the worker or officer? No. It provides and ensures that the court is made aware that the probation or social work staff is declaring that he or she assisted the youth in completing the enrollment process for such programs. This is a training issue for probation and social work staff. It should be included in the duties of the staff of such organizations. **Additional Comments** This proposal would have a huge impact on those nonminors who are in dependency and/or delinquency, especially those who are low income. It will ensure that nonminors are receiving information about and/or assistance to access public benefits and other programs, services or relief, and are not terminated from the Juvenile Court Jurisdiction without access to resources.	The committee appreciates this input. No further response is required. No response required. No response required.

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

SPR16-19
Juvenile Law: Termination of Jurisdiction Over Nonminor (amend Cal. Rules of Court, rule 5.555; revise forms JV-365 and JV-367)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Superior Court of Los Angeles County	A	**Are there specific changes that would improve the rules and forms in this proposal? (If so, please specify the individual rule or form, and the particular recommended changes.)** *No*	No response required.
			Will requiring the social worker or probation officer to verify, in items 7a and 7e of form JV-365, that he or she has assisted the youth in "completing enrollment" in Medi-Cal and CalFresh place an undue burden on the worker or officer? *It should not cause an undue burden, as the social worker or probation officer is already offering these services that are provided for the youth. It would require additional boxes to check on the JV forms confirming that the youth received those services.*	No response required.
			Would the proposal provide cost savings? If so please quantify. *At this time, there should not be a difference in cost other than the normal printing costs for the forms. Once juvenile implements the new case management system, scheduled for September 2017, the printing costs should be reduced considerably. However, making certain that the youth is aware of all the services available to them can potentially eliminate the need to have them returning through the system.*	No response required.
			What are the implementation requirements for courts—for example, training staff (please	

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

	Commentator	Position	Comment	Committee Response
			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? *Once the new case management system is in place, there will need to be training on the process of scanning and imaging documents into the system. However, the social worker or probation officer will still need to provide copies of the forms and the report to the parties.* **Keeping in mind that rule 5.504(c) grants courts one year from their effective date to implement production of new and revised mandatory juvenile forms, would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** *Yes*	No response required. No response required.
4.	Superior Court of Riverside County by Marita Ford	AM	Recommend that rule 5.555, section (b) be clarified to indicate how the notice of hearing should be provided to the non-minor and whose responsibility it is to give notice. Line 2g of the proposed Termination of Juvenile Court Jurisdiction – Nonminor form (JV-365) states the nonminor's right to inspect and receive copy of juvenile case file "without a court order". With the recent changes in sealing statutes, Riverside is seeking clarification of this	The committee agrees with this suggestion. Section 295 prescribes the manner in which notice must be given for a section 391 termination hearing. The committee has modified its recommendation to add paragraph 5.555(b)(3). The new paragraph reads: "Notice of the hearing must be given as required by section 295." The committee agrees and recommends clarifying item 2g on form JV-365 to read: "Instructions on how the nonminor may exercise his or her right to inspect, receive, and copy his or her juvenile case file, including how to access sealed records. (See Welf. & Inst. Code, §§ 389(a), 781(a)(4),

	Commentator	Position	Comment	Committee Response
			would apply to sealed cases and/or documents? Under WIC 786(f)(1)(F) it states that a "*record that has been ordered sealed by the court under this section may be accessed, inspected, or utilized by the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records.*"	786(f)(1)(F), 826.6 & 827; Cal. Rules of Court, rule 5.552)."
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	CRC 5.555(c)(1)(D): See, e.g., WIC § 16501.1(g)(16)(A)(ii): … for ~~t~~Title XVI Supplemental Security Income … CRC 5.555(d)(1)(E): Suggest change to: Whether the nonminor has an application pending for ~~t~~Title XVI Supplemental Security Income benefits and, if so, whether it is in the nonminor's best interests for the ~~continued~~ juvenile court to continue jurisdiction until a final decision has been issued to ensure that the nonminor receives continued assistance with the application process ~~is in the nonminor's best interests~~; CRC 5.555(d)(1)(L)(ii): Per SB 794 amendment to WIC § 16501.1, suggest change to: Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and the specific skills he or she needs to prepare ~~to live independently~~ for successful adulthood upon leaving foster care; and CRC 5.555(d)(1)(M)(ii): For consistency with 5.555(c)(1)(I)(ii), suggest change to: The nonminor's current location remains unknown	The committee does not recommend the suggested change. Judicial Council style calls for lowercase letters to begin words that designate parts of codes. The committee does not recommend the first suggested change for the reason stated above. The committee agrees with the second suggestion and has revised the recommended rule accordingly. The committee agrees with the suggestion and has revised the recommended rule accordingly. The committee agrees with the suggestion and has revised the recommended rule accordingly.

	Commentator	Position	Comment	Committee Response
			although and, if so, whether reasonable efforts were made to ~~locate~~ find the nonminor.	
			CRC 5.555(d)(2)(E)(iii): For readability, suggest change to: … have the juvenile court resume jurisdiction over him or her as a nonminor dependent until he or she ~~has attained the age of~~ is 21 years of age;	The committee agrees with the suggestion in part and has revised the recommended rule to improve readability.
			JV-365: Boxed "Directions for the nonminor…": Sign your initials on the lines after items 2a–h, ~~items~~ 3a–j, ~~item~~ 4, ~~items~~ 5a–b, ~~item~~ 6, and ~~items~~ 7a–h *only* if you received the information, document, or service described in that item.	The committee agrees with the suggestion and has deleted repeated uses of the words "item" and "items" and added "*only*" and "described in that item" in the instruction box.
			JV-365: item 2d: The nonminor's educational history and medical history	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-365: item 2g: The nonminor's right to inspect and receive a copy of his or her juvenile case file without a court order by going to the court clerk's office and ~~demonstrating~~ ~~his or her~~ showing proof of identity, e.g., driver's license, photo ID card ~~using an identification card or other means~~ (see …)	The committee does not recommend this suggestion. Item 2g has been revised to require that the department provide the nonminor with instruction on how to access his or her records. It no longer specifies the methods or documents required.
			JV-365: item 3b: ~~A~~ His or her social security card	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-365: item 3c: ~~An~~ His or her identification card or driver's license	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-365: item 3g: ~~An~~ His or her advance health care directive form	The committee does not recommend the suggested change. An advance health care directive form is

	Commentator	Position	Comment	Committee Response
				not specific to the nonminor. Rather, it is a blank form for the nonminor to fill out if he or she chooses.
			JV-365: items 4, 5: Lower case "w" – Individuals with Disabilities Education Act (20 U.S.C. § 1400) Americans with Disabilities Act (PL 101–336, July 26, 1990, 104 Stat 327.)	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-367: item 9: The nonminor is ~~not~~ neither present in court nor participating by telephone and	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-367: item 9b: For consistency with 5.555(c)(1)(I)(ii), suggest change to: Reasonable efforts □ were □ were not made to ~~locate~~ find him or her.	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV-367: item 13: See, e.g., WIC § 16501.1(g)(16)(A)(ii): … for ~~t~~Title XVI Supplemental Security Income …	The committee does not recommend the suggested change. Judicial Council style calls for words designating parts of codes to begin with lowercase letters.
			JV-367: item 22b: Per SB 794 amendment to WIC § 16501.1(g)(16)(A)(ii): The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare ~~to live independently~~ for successful adulthood upon leaving foster care.	The committee agrees with the suggestion and has revised the recommended rule accordingly.
			JV 367, p. 3: Add item 22d to "Findings" per SB 794 amendment to WIC § 16501.1(g)(19):	The committee does not recommend the suggested change. The findings in item 22 are intended to

	Commentator	Position	Comment	Committee Response
			The nonminor is, or is at risk of becoming, a victim of commercial sexual exploitation, and the case plan documents the services provided to address that issue. JV-367: item 23b: Independence after a period of placement in a supervised setting~~s~~ specified in Welfare and Institutions Code, § 11402.	address only elements of the TILCP, TILP, and 90-day transition plan directly related to promoting the youth's transition to independence and successful adulthood. The suggested finding addresses an element of the case plan required throughout the life of the youth's case; it is not specific to a section 391 termination hearing. Although a judicial determination of the adequacy of the services provided to the youth, including services designed to address the danger of becoming a victim of commercial sexual exploitation, is critical, that determination is more appropriately made at a review hearing under section 366.3 or 366.31. The committee agrees with the suggestion and has revised the recommended rule accordingly.
6.	Youth Law Center and Children Now San Francisco by Virginia Corrigan and Jessica Haspel	A	**Comments on the Proposal as a Whole** We strongly support the Family and Juvenile Law Advisory Committee's recommendation to amend the JV-365 court form to conform to existing law on Medi-Cal coverage for former foster youth. As the Committee notes in its invitation for public comment, Welfare and Institutions Code (WIC) section 14005.28 entitles youth exiting foster care at age 18 or older to ongoing enrollment in Med-Cal with no interruption in coverage and no application required. However, the JV-365 and WIC section 391 still retain outdated instructions for social workers preparing youth to transition out of foster care. These outdated instructions have at	The committee appreciates this input. No further response is required.

	Commentator	Position	Comment	Committee Response
			times resulted in youth leaving foster care without receiving accurate information about their ongoing eligibility for Medi-Cal up to age 26. Additionally, some youth have been incorrectly instructed to apply for coverage or dropped from coverage as they have exited foster care because of confusion stemming from these outdated instructions. Amending the JV-365 form to conform to existing law is a critical step towards ensuring that these youth receive the health insurance coverage to which they are legally entitled. **Specific Comments** • <u>Are there specific changes that would improve the rules and forms in this proposal? (If so, please specify the individual rule or form, and the particular recommended changes.)</u> We appreciate the Advisory Committee's proposal to revise the form to reflect the new age limit of 26 and to replace outdated instructions about assisting youth with completing an application with language reflecting that youth are entitled to continuous enrollment in Medi-Cal. Additionally, we agree that adding language to the form regarding assistance needed to maintain access to Medi-Cal benefits, including providing information about Medi-Cal eligibility and the Medi-Cal Benefits Identification Card, falls within the scope of assisting the youth with continuous enrollment in Medi-Cal as required by section 14005.28.	No response required.

	Commentator	Position	Comment	Committee Response
			While the revisions proposed by the Committee would bring the form more closely in line with existing law, we believe that the following small changes to the proposed language will further clarify the duties of social workers and probation officers prior to termination of juvenile court jurisdiction. We suggest that the proposed language for item 7a on form JV-365 be amended as follows: 7a. ~~Completing~~ Continued enrollment in Medi-Cal with no interruption in coverage, including confirming the nonminor has: i. ~~Obtaining a~~ A Medi-Cal Benefits Identification Card (BIC) ii. ~~Obtaining i~~Information about eligibility for extended Medi-Cal benefits until age 26. iii. Written verification of enrollment in Medi-Cal.	The committee agrees in principle with these suggestions and has incorporated them, with some alterations, into its recommendation. Assembly Bill 1849 imposes similar requirements on county departments.
			We recommend changing "completing" to "continued" enrollment to reflect that no application must be completed and that enrollment is continuing. Additionally, we suggest small revisions to 7a(i) and (ii) to reflect that the youth should leave care with their BIC and information about extended Medi-Cal eligibility until age 26.	The committee agrees that continuous enrollment should be emphasized and that the nonminor should be provided with his or her Medi-Cal Benefits Identification Card.
			Moreover, we recommend adding 7a(iii). These small changes will help ensure the youth has ongoing coverage and accurate information and	The committee agrees that written verification is critical to notify the youth that the county eligibility worker has performed the actions

	Commentator	Position	Comment	Committee Response
			documents to access Medi-Cal, in compliance with section 14005.28.	necessary to ensure continued enrollment. The committee recommends incorporating written verification into the principal requirement of item 7a rather than as a separate, additional requirement.
			• Will requiring the social worker or probation officer to verify, in items 7a and 7e of form JV-365, that he or she has assisted the youth in "completing enrollment" in Medi-Cal and CalFresh place an undue burden on the worker or officer? The proposed revisions to the JV-365 do not place an undue burden on the worker or officer. They merely update the form to conform with existing law and responsibilities. Moreover, complying with existing law by ensuring and verifying the youth's seamless transition into the Medi-Cal program for former foster youth poses less of a burden than the outdated requirement that social workers and probation officers assist youth with applying for coverage. Additionally, social workers and probation officers should already be asking youth if they have their Medi-Cal Benefits Identification Cards before they exit care. Youth can continue to use the same BIC after they exit care; a new card is not needed unless the card has been lost or misplaced. If a new card is needed, assisting the youth is often as simple as providing the youth with the phone number to call to ask for a new card.	No response required.

Item number: 06

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Dependency Hearings (Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688; revise form JV-421)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail):
Tracy Kenny,(916) 263-2838, tracy.kenny@jud.ca.gov; 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, 2015
Project description from annual agenda: Item 23: Juvenile Dependency Rules
Review hearing rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Juvenile Law: Dependency Hearings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730, 5.735, 5.740; repeal rules 5.680, 5.686, 5.688; revise form JV-421

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 29, 2016

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending the rules in title 5 of the California Rules of Court that set forth the procedures to be followed during dependency court hearings, from the initiation of the case through each of the status review hearings, to delete unnecessary repetitions of statutory text or replace them with references to the relevant code sections. These amendments will enhance the brevity and accuracy of the rules while also consolidating some shorter rules where appropriate and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text. In addition, proposed amendments clarify and update provisions in the rules concerning case plan requirements, relative placement, notice of subsequent dependency guardianship proceedings, and the legal distinctions between admitting petition allegations and submitting on the facts set forth in the petition.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017, amend or repeal the following rules of the California Rules of Court:

1. Amend rule 5.534 to delete subdivisions (a), (b), (c), (d), (o), and (p) that restate provisions of Welfare and Institutions Code sections[1] 349, 350, and 365;

2. Amend rule 5.668 to clarify subdivision (a) and delete language from subdivision (b) that restates provisions of sections 316.2;

3. Amend rule 5.670 to delete subdivisions (b), (c), (d), and (f) that restate provisions of sections 311, 313, 309(b), 315, and 334, and include a reference to section 309(b) in former subdivision (e);

4. Amend rule 5.674 to delete subdivision (c) that restates section 319 and substitute a reference to this deleted subdivision with a reference to section 319, and add provisions from repealed rule 5.680 concerning the procedures for detention hearings;

5. Amend rule 5.682 to delete subdivision (a) that restates section 353, delete the reference to rule 5.686, which is recommended to be repealed, delete provisions in subdivision (b) that restate provisions of section 353, and revise subdivisions (e) and (f) to clarify the differences between a parent or guardian admitting or not contesting the jurisdictional allegations, as distinguished from submitting the jurisdictional determination to the court based upon the report of the social worker;

6. Amend rule 5.684 to remove restatement of statutory text from subdivisions (c) and (d) concerning testimony of the social worker and hearsay exceptions and replace with a reference to section 355(c), and add provisions on the continuance pending a disposition hearing from repealed rule 5.686 to subdivision (f);

7. Amend rule 5.690 to update case plan finding requirements to reflect recent statutory changes, and include a provision concerning sibling placement;

8. Amend rule 5.695 to delete subdivision (b) that repeats provisions of section 360 and clarify and add clerk requirements to subdivision (a), delete specific required removal findings from subdivision (d) and replace with a reference to subdivision (c) of section 361, delete extensive text sections drawn from section 361.5 contained in subdivision (h) of the rule and replace with appropriate code references, and delete subdivision (j) that restates timing for status reviews contained in various sections, and subdivision (k) that restates section 367 timing provisions;

[1] Hereinafter all future statutory references are to the Welfare and Institutions Code, unless otherwise stated.

9. Amend rule 5.706 to delete subdivisions (a), (c), and (e) that restate provisions of section 364;

10. Amend rule 5.708 to delete all or part of subdivisions (a), (d), (e), (h), (i), (m), and (n) that restate provisions of sections 366, 366.21, 366.22, and 366.25, and incorporate recently enacted case plan requirements for older youth into the required determinations of the court concerning the case plan;

11. Amend rule 5.710 to delete all or part of subdivisions (a), (b), and (d), and redraft subdivision (c) to remove restated language from sections 364, 366, and 366.21;

12. Amend rule 5.715 to delete language from subdivisions (a) and (b) that restates sections 293 and 366.21;

13. Amend rule 5.720 to delete subdivision (a) and language in subdivision (b) that restate provisions of sections 293 and 366.22;

14. Amend rule 5.722 to delete subdivision (a) and language in subdivision (b) that restate provisions of section 366.25;

15. Amend rule 5.725 to delete language from subdivisions (a), (d), and (e) that restates language that is duplicative of section 366.26, and add a missing reference to section 727.31 to subdivision (a);

16. Amend rule 5.726 to redraft subdivisions (b), (c), and (e) to delete restatements of section 366.26(n), to change a reference to the rule to a reference to section 366.26(n)(1), and to clarify the existing procedures in the rule;

17. Amend rule 5.727 to replace references to rule 5.726 in subdivisions (a) and (b) with references to section 366.26(n)(1), and clarify the procedures in the rule;

18. Amend rule 5.728 to substitute references to rule 5.726 in subdivisions (a) and (b) with references to section 366.26(n)(1), and clarify the procedures and notice requirements in the rule;

19. Amend rule 5.730 to add code references to the title of the rule;

20. Amend rule 5.735 to delete subdivision (c) that restates section 366.26(d), update provisions on visitation in subdivision (d) to be consistent with current law, and correct an erroneous rule citation in subdivision (e);

21. Amend rule 5.740 to delete language from subdivision (b) that restates provisions of section 366.3, clarify that notice of a petition to terminate, modify, or appoint a successor guardian shall be accomplished by the court, and not the petitioner, and include required findings concerning identifying relatives who may present placement options;

22. Repeal rule 5.680 and move its key provisions into rule 5.674;

23. Repeal rule 5.686 and add its substance to rule 5.684;

24. Repeal rule 5.688 as it simply restates section 360(b);

25. Revise *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent* (form JV-421) to add recently enacted statutory grounds for bypassing reunification services at item 20a, conform item 32 to recent statutory changes on case plan requirements, correct legal inaccuracies concerning the date a permanency hearing must be set in item 33a, and to reflect new Judicial Council form names in items 27b and 35d.

The text of the amended or repealed rules and the revised form are attached at pages 10–96.

Previous Council Action

The Judicial Council adopted rules 5.686, 5.688, 5.710, 5.715, and 5.720 effective January 1, 1990, as rules 1451, 1452, 1460, 1461, and 1462 respectively. Rules 5.534, 5.682, 5.684, 5.690, 5.695, 5.725, 5.735, and 5.740 were adopted effective January 1, 1991, as rules 1412, 1449, 1450, 1455, 1456, 1463, 1464, and 1465 respectively. Rules 5.668, 5.670, 5.674, and 5.680 were adopted effective January 1, 1998, as rules 1441, 1442, 1444, and 1447 respectively. Rules 5.726, 5.727, and 5.728 were adopted effective July 1, 2006, as rules 1463.1, 1463.3, and 1463.5 respectively. All of these rules were renumbered effective January 1, 2007. Rules 5.706, 5.708, and 5.722 were adopted effective January 1, 2010. Many of these rules have been amended numerous times, frequently to reflect amendments in the statutory text that they restate.

The Judicial Council approved optional form JV-421 effective January 1, 2006, as part of a large package of optional forms designed to assist the courts in documenting required findings and orders. It was most recently revised effective January 1, 2014, to clarify references and numbering within the form.

Rationale for Recommendation

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far less available to judicial officers and the public than at present. To ensure that juvenile courts and the public had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and

more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year due to the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily at no cost. This major change in the information infrastructure for juvenile courts warrants a reexamination of the roles of the rules of court in these proceedings. This proposal was spurred by recent legislation[2] that would have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions, under the council's past practices. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text or by deleting those provisions of the rule that restate the statutory text.

Rule amendments to delete unnecessary statutory text

This proposal would amend numerous juvenile dependency proceedings rules to delete unnecessary statutory text or, when necessary, replace that text with appropriate references to the underlying code sections. These changes would streamline the rules and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text. Notably, legislation is currently pending [will update report as status changes] that would have required rule changes under the current text of the rules, but would not require any changes if this proposal is approved.[3]

Clarifying legal distinctions between admission and submitting on petition at jurisdiction hearing

Rule 5.682, which concerns jurisdiction hearings, currently treats an admission or noncontest of jurisdictional allegations as equivalent to a parent or guardian entering a submission to the facts of the report of the social worker in support of the petition allegations. This blurring of the concepts implies that the court would be required to find that jurisdiction was established in all submission cases, even if the court found that the report did not support the petition allegations. To eliminate this blurring of the concepts, the committee recommends amending rule 5.682 to clarify that when a party submits to the report of the social worker, the court is still required to find that the petition allegations are true as alleged—rather than treating the submission as a waiver of any further jurisdictional hearing.

Updating and streamlining case plan finding provisions

There are many requirements placed on child welfare agencies when developing case plans for children and families in dependency proceedings, which are set forth in section 16501.1. Rule 5.708, which sets forth the general provisions that apply in dependency proceedings, sets forth a set of specific findings that the court is required to make to ensure that the agency has fulfilled its

[2] Assem. Bill 217 (Maienschein); Stats. 2015, ch. 36; Sen. Bill 68 (Liu); Stats. 2015, ch. 284; and Sen. Bill 794 (Human Services); Stats. 2015, ch. 425.

[3] Assem. Bill 1702 (Stone), as amended June 16, 2016.

obligation Recent amendments to section 16501.1 require that these findings be expanded. Consistent with the efforts to generally streamline the rules, the committee proposes including those additional case plan findings in rule 5.708(e) by requiring the court to find that the case plan was created in compliance with section 16501.1(g), which contains the recently enacted additional requirements. For consistency, the committee also proposes amending the rule provisions concerning case plans in rules 5.725 and 5.740 to delete specific findings and instead require the court to make the relevant findings and determinations from rule 5.708.

Relative placement

Legislation enacted last year[4] amended Family Code section 7950 to require the court to make a finding that the county child welfare agency has made diligent efforts to locate an appropriate relative, and that each relative whose name has been submitted to the agency or entity as a possible caregiver has been evaluated as an appropriate placement resource:

- At any permanency hearing in which the court terminates reunification services; or
- At any postpermanency hearing for a child not placed for adoption.

Before this amendment, the court was required to make this finding only before a child was placed in long-term foster care. Because this is such an important change in the law to help ensure both relative placement and permanency for children, and because it is in a code not often reviewed by juvenile court judges and attorneys, the committee proposes adding these new requirements to the rules governing permanency and postpermanency hearings.[5]

Clarify responsibility for service of a petition to terminate or modify dependency guardianship

The current text of rule 5.740(c)(2), which sets forth the procedures to be followed when a petition is filed to terminate, modify, or appoint a successor guardian for a juvenile court guardianship, expressly requires the petitioner to serve notice of the hearing on the other parties. However, the rule also provides that these proceedings shall be subject to the procedures in rule 5.570, which directs the clerk of the court to cause notice to be served on the parties. This requirement is in keeping with section 297(c), which governs notice for supplemental petitions in dependency cases and also provides that the clerk must arrange for service when a hearing is set on the petition. Given this inconsistency between the two provisions, the committee opted to clarify the rule to require the clerk to cause notice to be served rather than the petitioner. The committee was concerned that the petitioner in these matters would often be the guardian who would not be well equipped or informed to accomplish this service, whereas the court regularly provides notice of hearings in analogous proceedings and has the information on who needs to be served and the best means of accomplishing that service.

[4] Sen. Bill 794 (Human Services); Stats. 2015, ch. 425.

[5] Cal. Rules of Court, rules 5.715, 5.720, 5.722, 5.740.

Update and clarify *Dispositional Attachment: Removal from Custodial Parent—Placement With Nonparent* (form JV-421)

Form JV-421 currently misstates the law. Item 33a provides the option for the court to record that it has informed all parties that, for a child under the age of three, failure to participate and make substantive progress in court-ordered treatment programs may result in the termination of reunification services at the hearing scheduled within six months from the date the child entered foster care under section 366.21(e). This language, however, does not track the requirement in section 366.21(e) that the hearing should be scheduled on a date within six months of the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier. The form is therefore legally inaccurate, and the committee proposes amending it to accurately reflect the law.

The committee also proposes amending form JV-421 at item 32 to conform to changes in section 16501.1, made by Senate Bill 794—that lowered the age of children for whom the case plan must include a description of the services that will help the child transition to successful adulthood—from 16 years of age to 14 years of age or older.

The committee further proposes amending form JV-421 to reflect new Judicial Council form names at item 27(b), updating a rule reference consistent with this proposal at item 35(d), and adding two additional statutory findings to item 20 of the form to reflect recent changes in law establishing additional bases for bypassing reunification services.[6]

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2016 invitation-to-comment cycle, from April 15, 2016, to June 14, 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. Four organizations provided comment: two agreed with the proposal, and two agreed with the proposal if modified; no commentators opposed the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 76–79, as well as an attachment containing one commentator's extensive proposed modifications that were too long to include verbatim in the chart at pages 80-119.

The bulk of the comments received on the proposal suggested modifications to clarify the text of the amended rules and forms, to correct statutory and rule references, and to improve the style and clarity of the rule text. The committee adopted nearly all of these suggested modifications to improve the accessibility and effectiveness of the rules proposed to be amended.

[6] Sen. Bill 1702 (Stone); Stats. 2016, ch. 324, and Sen Bill 1521 (Liu); Stats. Of 2012, ch. 847.

The committee also made changes to rules 5.708, 5.725, and 5.740 regarding the findings to be made by the court concerning the case plan to make these rules internally consistent and to include recent statutory changes as suggested by a commentator. The committee opted to make these changes in a more succinct and streamlined manner than the approach proposed by the commentator by adding a provision to rule 5.708 referencing the relevant statutory case plan requirements, and then cross-referencing rule 5.708 in the subsequent case plan provisions in rules 5.725 and 5.740.

A commentator noted that the rules are currently internally inconsistent with regard to who (the court or the petitioner) should provide notice of a hearing to modify or terminate a juvenile court guardianship, and that the provision in the rule placing the responsibility for notice on the petitioner would be onerous and unrealistic if the petitioner was the child's guardian. As noted above, to remedy this inconsistency, the committee proposes to delete the requirement that the petitioner serve notice and instead require the clerk of the court to ensure that notice is provided.

Alternatives

In addition to the alternatives considered in response to the public comments, initially the committee considered simply amending the existing rules of court to reflect the new statutory language, but determined that it would be preferable in the long run to abbreviate the rules by replacing unneeded text with code references in order to obviate the need for further amendments in the future when these statutes are again amended.

Implementation Requirements, Costs, and Operational Impacts

Because this proposal chiefly amends rules of court to make them more concise without changing the underlying statutory requirements, it should have very little cost to the courts and the main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute. The proposed revision to require the court to provide notice of hearings to terminate or modify dependency guardianships may impose a small additional workload for a task that courts are already routinely performing for notice of other juvenile dependency hearings. In implementing the changes to form JV-421, courts that use this optional form may incur costs for reproducing the revised form.

Attachments and Links

1. Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.680, 5.682, 5.684, 5.686, 5.688, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730, 5.735, and 5.740 at pages 10–68.
2. Judicial Council form JV-421 at pages 69–75
3. Chart of comments, at pages 76–79
4. Attachment A: Comments from the Superior Court of San Diego County, at pages 80–99.

5. Assembly Bill 217
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB217
6. Senate Bill 68
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB68
7. Senate Bill 794
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB794
8. Assembly Bill 1702
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1702

Rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.730, 5.735, and 5.740 of the California Rules of Court are amended, and rules 5.680, 5.686, and 5.688 are repealed, effective January 1, 2017, to read:

Rule 5.534. General provisions—all proceedings

~~**(a) Control of proceedings (§§ 350, 680)**~~

~~The court must control all proceedings with a view to quickly and effectively ascertaining the jurisdictional facts and all information relevant to the present condition and welfare of the child.~~

~~**(b) Conduct of proceedings (§§ 350, 680)**~~

~~Unless there is a contested issue of fact or law, the proceedings must be conducted in a nonadversarial atmosphere.~~

~~**(c) Testimony of child in chambers (§ 350)**~~

~~In a hearing under section 300 et seq., a child may testify in chambers and outside the presence of the child's parent or guardian if the parent or guardian is represented by counsel who is present, subject to the right of the parent or guardian to have the court reporter read back the child's testimony, and if the court determines, based on the petitioner's report or other offers of proof or other evidence, that any of the following circumstances exist:~~

~~(1) Testimony in chambers is necessary to ensure truthful testimony;~~

~~(2) The child is likely to be intimidated by a formal courtroom setting; or~~

~~(3) The child is afraid to testify in front of the parent or guardian.~~

~~**(d) Burden of proof (§§ 350, 701.1)**~~

~~Meeting the burden of proof:~~

~~(1) In any hearing under section 300 in which the county welfare agency has the burden of proof, the court may consider whether the burden of proof has been met only after completion of the agency's case and the presentation of any material evidence offered by the child. The court may then, on motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof has not been met.~~

~~(2) In any hearing under section 601 or 602, after the completion of the petitioner's case, the court may, on the motion of any party or on the court's own motion, order whatever action the law requires if the court, based on all the evidence then before it, finds that the burden of proof has not been met.~~

~~(e)~~(a) * * *

~~(f)~~(b) * * *

~~(g)~~(c) * * *

~~(h)~~(d) * * *

~~(i)~~(e) * * *

~~(j)~~(f) * * *

~~(k)~~(g) Advisement of hearing rights (§§ 301, 311, 341, 630, 702.5, 827)

(1) The court must advise the child, parent, and guardian in section 300 cases, and the child in section 601 or section 602 cases, of the following rights:

(A) ~~Any~~ The right to assert the privilege against self-incrimination;

(B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing;

(C) The right to use the process of the court to bring in witnesses; and

(D) The right to present evidence to the court.

(2) – (3)* * *

~~(l)~~(h) * * *

~~(m)~~(i) * * *

~~(n)~~(j) * * *

~~(o) Periodic reports (§ 365)~~

~~The court may require the petitioner or any other agency to submit reports concerning a child or youth subject to the jurisdiction of the court.~~

~~**(p) Presence of child (§ 349)**~~

~~(1) A child who is the subject of a juvenile court hearing is entitled to be present at the hearing. If the child is present at the hearing, the court must allow the child, if the child so desires, to address the court and participate in the hearing.~~

~~(2) If the child is 10 years of age or older and he or she is not present at the hearing, the court must determine whether the child was properly notified of his or her right to attend the hearing and ask why the child is not present at the hearing and whether the child was given an opportunity to attend. If the court finds that the child was not properly notified or that the child wished to be present and was not given an opportunity to be present, the court must continue the hearing to allow the child to attend unless the court finds that it is in the best interest of the child not to continue the hearing. Any such continuance must be only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend.~~

Advisory Committee Comment

Because the intent of subdivision ~~(n)~~ (j) is to expand access to the courts for caregivers of children in out-of-home care, the rule should be liberally construed. To promote caregiver participation and input, judicial officers are encouraged to permit caregivers to orally address the court when caregivers would like to share information about the child. In addition, court clerks should allow filings by caregivers even if the caregiver has not strictly adhered to the requirements in the rule regarding number of copies and filing deadlines.

Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

(a) Commencement of hearing

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court must give advisement as required by rule 5.534 and must inform each parent and guardian present, and the child, if present:

(1) Of the contents of the petition;

(2) Of the nature of, and possible consequences of, juvenile court proceedings;

(3) If the child has been taken into custody, of the reasons for the initial detention and the purpose and scope of the detention hearing; and

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, the court-ordered reunification services must be considered to have been offered or provided on the date the petition is sustained or 60 days after the child's initial removal, whichever is earlier. The time for services must not exceed 12 months for a child three years of age or older ~~aged three or over~~ at the time of the initial removal and must not exceed 6 months for a child who was under ~~the age of~~ three years of age or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.

(b) Parentage inquiry

The court must also inquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child as set forth in section 316.2. ~~Questions, at the discretion of the court, may include:~~

~~(1) Has there been a judgment of parentage?~~

~~(2) Was the mother married, or did she believe she was married, at or any time after the time of conception?~~

~~(3) Was the mother cohabiting at the time of conception?~~

~~(4) Has the mother received support payments or promises of support for the child or for the mother during her pregnancy?~~

~~(5) Has anyone formally or informally acknowledged parentage, including through the execution of a voluntary declaration under Family Code section 7571?~~

~~(6) Have tests to determine biological parentage been administered and, if so, what were the results?~~

(c) * * *

Rule 5.670. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation (§§ 309, 311, 313, 315, 362.1)

(a) * * *

~~**(b) Time limit on custody, filing petition, setting hearing (§§ 311, 313)**~~

~~If the social worker takes the child into custody, the social worker must immediately file a petition with the clerk of the juvenile court, and the clerk must immediately set the matter for hearing on the detention hearing calendar. A child who is detained must be released within 48 hours, excluding noncourt days, unless a petition has been filed.~~

~~**(c) Detention—child in medical facility (§ 309(b))**~~

~~For purposes of these rules, a child is deemed taken into custody and delivered to the social worker if the child is under medical care and cannot immediately be moved and there is reasonable cause to believe the child is described by section 300.~~

~~**(d) Detention hearing—time of (§ 315)**~~

~~Unless the child has been released sooner, the matter concerning a child who is taken into custody must be brought before the juvenile court for a detention hearing as soon as possible, but in any event before the end of the next court day after a petition has been filed. At the detention hearing, the court must determine whether the child is to continue to be detained in custody. If the detention hearing is not commenced within that time, the child must be immediately released from custody.~~

~~(e)~~(b) Detention hearing—warrant cases, transfers in, changes in placement

Notwithstanding ~~(c)~~ section 309(b), and unless the child has been released sooner, a detention hearing must be held as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a facility within the county if:

(1) The child was taken into custody in another county and transported in custody to the requesting county under a protective custody warrant issued by the juvenile court;

(2) The child was taken into custody in the county in which a protective custody warrant was issued by the juvenile court; or

(3) The matter was transferred from the juvenile court of another county under rule 5.610 and the child was ordered transported in custody.

At the hearing the court must determine whether the child is to continue to be detained in custody. If the hearing is not commenced within that time, the child must be immediately released from custody.

~~**(f) Setting jurisdiction hearing (§ 334)**~~

~~If the child is not detained, the court must set a jurisdiction hearing to be held within 30 days of the date the petition is filed. If the court orders the child to be detained, the court must set a jurisdiction hearing within 15 court days of the order of detention.~~

~~(g)~~(c) * * *

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) – (b)* * *

~~**(c) Detention hearing; examination by court (§ 319)**~~

~~Subject to (d), the court must examine the child's parent, guardian, or other person having knowledge relevant to the issue of detention and must receive any relevant evidence that the petitioner, the child, a parent, a guardian, or counsel for a party wishes to present.~~

~~(d)~~(c) Detention hearing; rights of child, parent, or guardian (§§ 311, 319)

At the detention hearing, the child, the parent, and the guardian have the right to assert the privilege against self-incrimination and the right to confront and cross-examine:

(1) The preparer of a police report, probation or social worker report, or other document submitted to the court; and

(2) Any person examined by the court under ~~(c)~~ section 319. If the child, parent, or guardian asserts the right to cross-examine preparers of documents submitted for court consideration, the court may not consider any such report or document unless the preparer is made available for cross-examination.

(d) No parent or guardian present and not noticed (§ 321)

If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.

(e) Hearing for further evidence; prima facie case (§ 321)

If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing the petitioner fails to establish the prima facie case, the child must be released from custody.

~~**Rule 5.680. Detention rehearings; prima facie hearings**~~

~~**(a) No parent or guardian present and not noticed (§ 321)**~~

~~If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing for a time within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing the court must proceed under rules 5.670–5.678.~~

~~**(b) Parent or guardian noticed, not present (§ 321)**~~

~~If the court determines that the parent or guardian received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, the request of the parent or guardian for a detention rehearing must be denied absent a finding that the failure to appear at the hearing was due to good cause.~~

~~**(c) Parent or guardian present; preparers available (§ 321)**~~

~~If a parent or guardian has received notice of the detention hearing, is present at the hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present in court or otherwise available for cross-examination, the request for a detention rehearing must be denied.~~

~~**(d) Hearing for further evidence; prima facie case (§ 321)**~~

~~If the court orders the child detained, and the child, a parent, a guardian, or counsel requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within 3 court days to consider evidence of the prima facie case or set the matter for jurisdiction hearing within 10 court days. If at the hearing petitioner fails to establish the prima facie case, the child must be released from custody.~~

Rule 5.682. Commencement of jurisdiction hearing—advisement of trial rights; admission, no contest, submission

~~(a) Petition read and explained (§ 353)~~

~~At the beginning of the jurisdiction hearing, the petition must be read to those present. On request of the child or the parent, guardian, or adult relative, the court must explain the meaning and contents of the petition and the nature of the hearing, its procedures, and the possible consequences.~~

~~(b)~~(a) Rights explained (§§ 341, 353, 361.1)

After giving the advisement required by rule 5.534, the court must advise the parent or guardian of the following rights:

(1) The right to a hearing by the court on the issues raised by the petition; and

~~(2) The right to assert any privilege against self-incrimination;~~

~~(3) The right to confront and to cross-examine all witnesses called to testify;~~

~~(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and~~

~~(5)~~(2) * * *

~~(c)~~(b) Admission of allegations; prerequisites to acceptance

The court must then inquire whether the parent or guardian intends to admit or deny the allegations of the petition. If the parent or guardian neither admits nor denies the allegations, the court must state on the record that the parent or guardian does not admit the allegations. If the parent or guardian wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the parent or guardian understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in ~~(b)~~ (a) and (e)(3).

~~(d)~~(c) * * *

~~(e)~~(d) Admission, no contest, submission

The parent or guardian may elect to admit the allegations of the petition~~,~~ or plead no contest~~, or submit the jurisdictional determination to the court based on the information provided to the court~~ and waive further jurisdictional hearing. The parent or guardian may elect to submit the jurisdictional determination to the court based on the information provided to the court and choose whether to waive further jurisdictional hearing. *Waiver of Rights—Juvenile Dependency* (form JV-190) ~~may~~ must be completed by the parent or guardian and counsel and submitted to the court.

~~(f)~~(e) Findings of court (§ 356)

After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court:

(1) – (6)* * *

(7) Those allegations of the petition as admitted are true as alleged; or ~~and~~

(8) Whether the allegations of the petition as submitted are true as alleged; and

~~(8)~~(9) The child is described ~~under~~ by one or more specific subdivisions of section 300.

~~(g)~~(f) Disposition

After accepting an admission, plea of no contest, or submission, the court must proceed to a disposition hearing under rule~~s 5.686 and~~ 5.690.

Rule 5.684. Contested hearing on petition

(a) * * *

(b) Admissibility of evidence—general (§§ 355, 355.1)

Except as provided in section~~s~~ 355(c) and 355.1 and (c)~~, (d),~~ and ~~(e)~~ (d) of this rule, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies to civil cases.

(c) Reports

(1) A social study, with hearsay evidence contained in it, is admissible ~~and is sufficient to support a finding that the child is described by section 300.~~ as provided in section 355.

~~(1)~~ (2) The social study must be provided to all parties and their counsel by the county welfare department within a reasonable time before the hearing.

~~(2) The preparer of the report must be made available for cross-examination on the request of any party. The preparer may be on telephone standby if the preparer can be present in court within a reasonable time.~~

~~**(d) Hearsay in the report (§ 355)**~~

~~If a party makes an objection with reasonable specificity to particular hearsay in the report and provides petitioner a reasonable period to meet the objection, that evidence must not be sufficient in and of itself to support a jurisdictional finding, unless:~~

~~(1) The hearsay is admissible under any statutory or judicial hearsay exception;~~

~~(2) The hearsay declarant is a child under 12 years of age who is the subject of the petition, unless the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;~~

~~The hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher and the statement would be admissible if the declarant were testifying in court; or~~

~~The hearsay declarant is available for cross-examination.~~

~~**(e)**~~**(d)** *** * ***

~~**(f)**~~**(e) Findings of court—allegations true (§ 356)**

If the court determines by a preponderance of the evidence that the allegations of the petition are true, the court must make findings on each of the following, noted in the minutes:

(1) * * *

(2) * * *

(3) * * *

(4) The child is described ~~under~~ by one or more ~~specific~~ subdivisions of section 300.

~~(g)~~(f) Disposition and continuance pending disposition hearing (§§ 356, 358)

After making the findings in ~~(f)~~ (e), the court must proceed to a disposition hearing under rules~~ 5.686 and~~ 5.690. The court may continue the disposition hearing as provided in section 358.

~~(h)~~(g)* * *

~~**Rule 5.686. Continuance pending disposition hearing**~~

~~**(a) Continuance pending disposition hearing (§ 358)**~~

~~Except as provided in (b), the court may continue the disposition hearing to a date not to exceed 10 court days if the child is detained or, if the child is not detained, to a date not to exceed 30 calendar days from the date of the finding under section 356. The court may for good cause continue the hearing for an additional 15 calendar days if the child is not detained.~~

~~**(b) Continuance if nonreunification is requested**~~

~~If petitioner alleges that section 361.5(b) is applicable, the court must continue the proceedings not more than 30 calendar days. The court must order the petitioner to notify each parent or guardian of the contents of section 361.5(b) and must inform each parent that if reunification is not ordered at the disposition hearing, a section 366.26 implementation hearing will be held and parental rights may be terminated.~~

~~**(c) Detention pending continued hearing (§ 358)**~~

~~The court in its discretion may order release or detention of the child during the continuance.~~

~~**Rule 5.688. Failure to cooperate with services (§ 360(b))**~~

~~**(a) Petition**~~

~~If the court has ordered services under section 360(b), and within the time period consistent with section 301 the family is unable or unwilling to cooperate with the services provided, a petition may be filed as provided in section 360(c).~~

~~**(b) Order**~~

~~At the hearing on the petition the court must dismiss the petition or order a new disposition hearing to be conducted under rule 5.690.~~

Rule 5.690. General conduct of disposition hearing

(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner must comply with the following when preparing the social study:

(A) – (B)* * *

(C) The social study ~~should~~ must include a discussion of the social worker's efforts to comply with rule 5.637, including but not limited to:

(i) – (iv)* * *

(D) If siblings are not placed together, the social study must include an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.

~~(D)~~(E) * * *

~~(E)~~(F) * * *

(2) * * *

(b) * * *

(c) Case plan (§ 16501.1)

Whenever child welfare services are provided, the social worker must prepare a case plan.

(1) – (2)* * *

(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:

(A) – (B)* * *

(C) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g) the court must order the agency to comply with the requirements of section 16501.1(g).

Rule 5.695. Findings and orders of the court—disposition

(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)

At the disposition hearing, the court may:

(1) * * *

(2) Place the child under a program of supervision ~~as provided in~~ for a time period consistent with section 301 and order that services be provided;

(3) Appoint a legal guardian for the child without declaring dependency and order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827;

(4) Declare dependency and appoint a legal guardian for the child if the requirements of section 360 are met and order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827;

(5) – (7)* * *

~~(b) Appointment of a legal guardian (§ 360)~~

~~(1) At the disposition hearing, the court may appoint a legal guardian for the child if:~~

~~(A) The parent has advised the court that the parent does not wish to receive family maintenance services or family reunification services;~~

~~(B) The parent has executed and submitted *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195);~~

~~(C) The court finds that the parent, and the child if of sufficient age and comprehension, knowingly and voluntarily waive their rights to reunification services and agree to the appointment of the legal guardian; and~~

~~(D) The court finds that the appointment of the legal guardian is in the best interest of the child.~~

~~(2) If the court appoints a legal guardian, it must:~~

~~(A) State on the record or in the minutes that it has read and considered the assessment;~~

~~(B) State on the record or in the minutes its findings and the factual bases for them;~~

~~(C) Advise the parent that no reunification services will be offered or provided;~~

~~(D) Make any appropriate orders regarding visitation between the child and the parent or other relative, including any sibling; and~~

~~(E) Order the clerk to issue letters of guardianship, which are not subject to the confidential protections of juvenile court documents as described in section 827.~~

~~(3) The court may appoint a legal guardian without declaring the child a dependent of the court. If dependency is declared, a six-month review hearing must be set.~~

~~(c)~~**(b)** *** * ***

~~(d)~~(c) Removal of custody—required findings (§ 361)

The court may not order a dependent removed from the physical custody of a parent or guardian with whom the child resided at the time the petition was filed, unless the court ~~finds~~ makes one or more of the findings in subdivision (c) of section 361 by clear and convincing evidence. ~~any of the following:~~

~~(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child, or will be if the child is returned home, and there is no reasonable alternative means to protect that child;~~

~~(2) The parent or guardian is unwilling to have physical custody of the child and has been notified that if the child remains out of the parent's or guardian's physical custody for the period specified in section 366.26, the child may be declared permanently free of his or her custody and control;~~

~~(3) The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and no reasonable alternative means to protect the child's emotional health exists;~~

~~(4) The child has been sexually abused by a parent or guardian or member of the household or other person known to his or her parent and there is no reasonable alternative means to protect the child or the child does not wish to return to the parent or guardian; or~~

~~(5) The child has been left without any provisions for his or her support and there is no parent or guardian available to maintain or provide for the care, custody, and control of the child.~~

~~(e)~~(d) Reasonable efforts finding

The court must consider whether reasonable efforts to prevent or eliminate the need for removal have been made and make one of the following findings:

(1) Reasonable efforts have been made to prevent removal; or

(2) Reasonable efforts have not been made to prevent removal.

~~(f)~~(e) Family-finding determination (§ 309)

(1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in ~~(g)~~(f) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

(2) * * *

~~(g)~~(f) Due diligence (§ 309)

When making the determination required in ~~(f)~~(e), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:

(1) – (7)* * *

~~(h)~~(g) Provision of reunification services (§ 361.5)

(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 ~~Except as provided in (6),~~ if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child's mother and statutorily presumed parent, or the child's legal guardian, to facilitate reunification of the family as required in section 361.5. ~~For a child who was three years of age or older on the date of initial removal, services must be provided during the time period beginning with the dispositional hearing and ending 12 months after the date the child entered foster care, as defined by section 361.49. For a child who was under three years of age on the date of initial removal, services must be provided for a period of 6 months from the dispositional hearing, but no longer than 12 months from the date the child entered foster care, as defined by section 361.49. The time period for the provision of family reunification services must be calculated consistent with section 361.5(a). The court must inform the parent or legal guardian of a child who was under three when initially~~

~~removed that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification efforts after 6 months from the date of the dispositional hearing.~~

~~(2) If a child is a member of a sibling group removed from parental custody at the same time, and one member of the sibling group was under three at the time of the initial removal, reunification services for some or all members of the sibling group may be limited to 6 months from the dispositional hearing, and no later than 12 months from the date the children entered foster care. The court must inform the parent or legal guardian of a child who is a member of such a sibling group that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in termination of reunification efforts after 6 months for one or more members of the sibling group.~~

~~(3)~~(2) * * *

~~(4) Any motion to terminate reunification services before the permanency hearing set under section 366.21(f) for a child age three or older, or before the 6-month review hearing set under section 366.21(e) for a child under age three, must follow the requirements in section 388(c) and rule 5.570. A motion to terminate reunification services at the 6-month review hearing is not required if the court finds by clear and convincing evidence that one or more of the circumstances described in section 361.5(a)(2) and rule 5.710(c)(1)(A) is true.~~

~~(5)~~(3) * * *

~~(6)~~(4) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360. ~~Reunification services need not be provided to a parent or guardian if the court finds, by clear and convincing evidence, any of the following:~~

~~(A) The whereabouts of the parent or guardian are unknown. This finding must be supported by a declaration or by proof that a reasonably diligent search has failed to locate the parent. Posting or publishing notice is not required.~~

~~(B) The parent or guardian is suffering from a mental disability described in chapter 2 (commencing with section 7820) of part 4 of division 12 of~~

~~the Family Code that renders the parent incapable of using those services.~~

~~(C) The child had been previously declared a dependent under any subdivision of section 300 as a result of physical or sexual abuse; following that adjudication the child had been removed from the custody of the parent or guardian under section 361; the child has been returned to the custody of the parent or guardian from whom the child had been taken originally; and the child is being removed under section 361 because of additional physical or sexual abuse.~~

~~(D) The parent or guardian of the child has caused the death of another child through abuse or neglect.~~

~~(E) The child was brought within the jurisdiction of the court under (e) of section 300 because of the conduct of that parent or guardian.~~

~~(F) The child is a dependent as a result of the determination that the child, a sibling, or a half-sibling suffered severe sexual abuse, as defined in section 361.5(b)(6), by the parent or guardian or that the parent or guardian inflicted severe physical harm, as defined in section 361.5(b)(6), on the child, a sibling, or a half-sibling, and the court finds that attempts to reunify would not benefit the child. The court must specify on the record the basis for the finding that the child suffered severe sexual abuse or the infliction of severe physical harm.~~

~~(G) The parent or guardian is not receiving reunification services for a sibling or half-sibling of the child, for reasons under (C), (E), or (F).~~

~~(H) The child was conceived as a result of the parent having committed an offense listed in Penal Code section 288 or 288.5, or by an act described by either section but committed outside California.~~

~~(I) The court has found that the child is described by (g) of section 300, that the child was willfully abandoned by the parent or guardian, and that the abandonment constituted serious danger to the child as defined in section 361.5(b)(9).~~

~~(J) The court has terminated reunification services for a sibling or half-sibling of the child because the parent failed to reunify with the sibling or half-sibling, and the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling from that parent or guardian.~~

~~(K) The parental rights of a parent over any sibling or half-sibling of the child have been terminated, and the parent has not subsequently made a reasonable effort to treat the problem that led to the removal of the sibling or half-sibling.~~

~~(L) The parent or guardian has been convicted of a violent felony as defined in Penal Code section 667.5(c).~~

~~(M) The parent or guardian has a history of extensive, abusive, and chronic use of alcohol or other drugs and has not sought or participated in treatment during the three years immediately prior to the filing of the petition under section 300, or has failed, on at least two prior occasions, to comply with an available and accessible treatment program described in the case plan required by section 358.1, and the removal of the child is based in whole or in part on the risk to the child presented by the use of alcohol or other drugs.~~

~~(N) The parent or guardian, who must be represented by counsel, has advised the court through the execution and submission of *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195) that that parent or guardian does not wish to receive family maintenance or reunification services and does not wish the child returned or placed in the custody of that parent or guardian. The court may accept the waiver only on a finding on the record that the parent or guardian has knowingly and intelligently waived the right to services.~~

~~(O) On at least one occasion, the parent or guardian has abducted the child or a sibling or half-sibling from placement and has refused to disclose the abducted child's whereabouts or has refused to return custody of the abducted child to the placement or to the social worker.~~

~~(7) In deciding whether to order reunification in any case in which petitioner alleges that section 361.5(b) applies, the court must consider the report prepared by petitioner, which must discuss the factors contained in section 361.5(c).~~

~~(8) If the petitioner alleges that section 361.5(c) applies, the report prepared for disposition must address the issue of reunification services. At the disposition hearing, the court must consider the factors stated in section 361.5.~~

~~(9) If the court finds under (6)(A) that the whereabouts of the parent or guardian are unknown and that a diligent search has failed to locate the parent or~~

~~guardian, the court may not order reunification services and must set the matter for a 6-month review hearing. If the parent or guardian is located prior to the 6-month review and requests reunification services, the welfare department must seek a modification of the disposition orders. The time limits for reunification services must be calculated from the date of the initial removal, and not from the date the parent is located or services are ordered.~~

~~(10) If the court finds that allegations under (6)(B) are proved, the court must nevertheless order reunification services unless evidence by mental health professionals establishes by clear and convincing evidence that the parent is unlikely to be able to care for the child within the next 12 months.~~

~~(11) If the court finds that the allegations under (6)(C), (D), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (O) have been proved, the court may not order reunification services unless the party seeking the order for services proves by clear and convincing evidence that reunification is in the best interest of the child. If (6)(F) is found to apply, the court must consider the factors in section 361.5(h) in determining whether the child will benefit from services and must specify on the record the factual findings on which it based its determination that the child will not benefit.~~

~~(12) If the court finds that the allegations under (6)(E) have been proved, the court may not order reunification services unless it finds, based on consideration of factors in section 361.5(b) and (c), that services are likely to prevent reabuse or continued neglect or that failure to attempt reunification will be detrimental to the child.~~

~~(13) If the parent or guardian is institutionalized, incarcerated, or detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, the court must order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). The court may order reunification services with an institutionalized, incarcerated, detained, or deported biological father whose paternity has been declared by the juvenile court or another court of competent jurisdiction, if the court determines that such services would benefit the child, with consideration of the factors in section 361.5(e).~~

~~(14)~~ (5) ~~If, with the exception of (6)(A)~~Except when the order is made under paragraph (1) of subdivision (b) of section 361.5, if the court orders no reunification services for every parent otherwise eligible for such services ~~under (1) and (2)~~, the court must conduct a hearing under section 366.26 within 120 days and:

(A) – (B)* * *

~~(15)~~ (6) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rules 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record, and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450 and 8.452.

~~(16)~~ (7) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A) An extraordinary writ was sought by the timely filing of a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rules 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ; and

(B) * * *

~~(17)~~ (8) * * *

~~(18)~~ (9) Failure to file a notice of intent to file a writ petition and request for record and a petition for extraordinary writ review within the period specified by rules 8.450 and 8.452, to substantively address the issues challenged, or to support the challenge by an adequate record precludes subsequent review on appeal of the findings and orders made under this rule.

~~(19)~~ (10) * * *

**~~(i)~~(h) * * *

~~**(j) Setting 6-month review (§§ 361.5, 366)**~~

~~Review of the status of every dependent child must be performed within 6 months after the date of the original disposition order, and no later than 6 months after the date the child is determined to have entered foster care; the review must be~~

~~scheduled on the appearance calendar. The court must advise the dependent child of the child's right to petition for modifications of court orders as required in section 353.1.~~

~~(k) Fifteen-day reviews (§ 367)~~

~~If a child is detained pending the execution of the disposition order, the court must review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court must inquire about the action taken by the probation or welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay on the child.~~

~~(l)~~(i) * * *

Rule 5.706. Family maintenance review hearings (§ 364)

~~(a) Setting of hearing (§ 364)~~

~~If the child remains in the custody of the parent or legal guardian, a review hearing must be held within six months after the date of the original dispositional hearing and no less frequently than once every six months thereafter as long as the child remains a dependent.~~

~~(b)~~(a) * * *

~~(c) Reports (§ 364)~~

~~At least 10 calendar days before the hearing, the petitioner must file a supplemental report with the court describing the services offered to the family, the progress made by the family in eliminating the conditions or factors requiring court supervision, and the petitioner's recommendation regarding the necessity of continued supervision. A copy of the report must be provided to all parties at least 10 calendar days before the hearing.~~

~~(d)~~(b) * * *

~~(e)~~(c) Conduct of hearing (§ 364)

~~(1) The court must determine whether continued supervision is necessary. The court must terminate its dependency jurisdiction unless the court finds that the petitioner has established by a preponderance of the evidence that existing conditions would justify initial assumption of jurisdiction under section 300 or that such conditions are likely to exist if supervision is withdrawn. Failure~~

~~of the parent or legal guardian to participate regularly in any court-ordered treatment program constitutes prima facie evidence that the conditions that justified initial assumption of jurisdiction still exist and that continued supervision is necessary.~~

~~(2)~~ If the court retains jurisdiction, the court must order continued services and set a review hearing within six months. ~~under this rule.~~ The court must determine whether continued supervision is necessary under section 364(c).

~~(f)~~(d) * * *

~~(g)~~(e) Child's education (§§ 361, 366, 366.1)

The court must consider the child's education, including whether it is necessary to limit the right of the parent or legal guardian to make educational or developmental services decisions for the child, following the requirements and procedures in rules 5.649, 5.650, and 5.651 and in section 361(a).

Rule 5.708. General review hearing requirements

~~(a) Setting of review hearings (§ 366)~~

~~The status of every dependent child who has been removed from the custody of the parent or legal guardian must be reviewed periodically but no less frequently than once every 6 months until the section 366.26 hearing is completed. Review hearings must be set as described in rule 5.710 (for 6-month review hearings), rule 5.715 (for 12-month permanency hearings), rule 5.720 (for 18-month permanency review hearings), or rule 5.722 (for 24-month subsequent permanency review hearings).~~

~~(b)~~(a) Notice of hearing (§ 293)

The petitioner or the clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in sections 224.2 or 293 as appropriate, to all persons or entities entitled to notice under sections 224.2 and 293 and to any CASA volunteer, educational rights holder, or surrogate parent appointed to the case.

~~(c)~~(b) * * *

~~(d) Return of child – detriment finding (§§ 366.21, 366.22, 366.25)~~

~~(1) If the child was removed from the custody of the parent or legal guardian, the court must order the child returned unless the court finds by a preponderance of the evidence that return of the child to the parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker has the burden of establishing that detriment.~~

~~(2) The court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.~~

~~(3) Failure of the parent or legal guardian to regularly participate and make substantive progress in any court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental.~~

~~(4) In making its determination about whether returning the child would be detrimental, the court must consider the following:~~

~~(A) The social worker's report and recommendations and the report and recommendations of any CASA volunteer who has been appointed on the case;~~

~~(B) The efforts or progress demonstrated by the parent or legal guardian; and~~

~~(C) The extent to which the parent or legal guardian availed himself or herself of the services provided, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to court-mandated services and the ability to maintain contact with his or her child.~~

~~(5) If the parent or legal guardian agreed to submit fingerprints to obtain criminal history information as part of the case plan, the court must consider the criminal history of the parent or legal guardian after the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child.~~

~~(6) Regardless of whether the child is returned home, the court must specify the factual basis for its conclusion that the return would or would not be detrimental.~~

~~(e)~~(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25, 366.3)

(1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that~~:~~

~~(A) R~~reasonable services have been offered or provided~~;~~ or

(~~B) Reasonable services~~ have not been offered or provided.

(2) If the child is not returned to the custody of the parent or legal guardian, the court must consider the safety of the child and make the findings listed in sections 366(a) and 16002.

~~(2) The following factors are not sufficient, in and of themselves, to support a finding that reasonable services have not been offered or provided:~~

~~(A) The child has been placed in a preadoptive home or with a family that is eligible to adopt the child;~~

~~(B) The case plan includes services to achieve legal permanence for the child if reunification cannot be accomplished; or~~

~~(C) Services to achieve legal permanence for the child if reunification efforts fail are being provided concurrently with reunification services.~~

~~(f)~~(d) * * *

~~(g)~~(e) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must determine:

(1) Whether the child was actively involved, as age- and developmentally appropriate, in the development of ~~his or her own~~ the case plan and plan for permanent placement. If the court finds ~~that~~ the child ~~or youth~~ was not appropriately involved, the court must order the agency to actively involve the child in the development of ~~his or her own~~ the case plan and plan for permanent placement, unless the court finds ~~that~~ the child is unable, unavailable, or unwilling to participate.

(2) Whether each parent or legal guardian was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court

must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate.

(3) – (4)* * *

(5) Whether the case plan was developed in compliance with and meets the requirements of section 16501.1(g). If the court finds that the development of the case plan does not comply with section 16501.1(g), the court must order the agency to comply with the requirements of section 16501.1(g).

~~**(h) Out-of-state placement (§§ 361.21, 366)**~~

~~If the child has been placed out of the state, the court must consider whether the placement continues to be the most appropriate placement for the child and in the child's best interest. If the child is in an out-of-state group home, the court must follow the requirements in section 361.21.~~

~~**(i) Title IV-E findings (§ 366)**~~

~~Regardless of whether or not the child is returned home, the court must consider the safety of the child and must determine all of the following:~~

~~(1) The continuing necessity for and appropriateness of the placement;~~

~~(2) The extent of the agency's compliance with the case plan in making reasonable efforts or, in the case of an Indian child, active efforts as described in section 361.7, to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child. These steps include efforts to maintain relationships between a child who is 10 years or older who has been in an out-of-home placement for 6 months or longer and individuals other than the child's siblings who are important to the child, consistent with the child's best interest;~~

~~(3) The extent of progress that has been made by the parents or legal guardians toward alleviating or mitigating the causes necessitating placement in foster care; and~~

~~(4) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.~~

~~(j)~~**(f)** * * *

~~(k)~~**(g)** * * *

~~(l)~~**(h)** * * *

~~**(m) Setting a hearing under section 366.26; reasonable services requirement (§§ 366.21, 366.22)**~~

~~At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.~~

~~(n)~~**(i) 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 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)~~(1) The court must ensure that notice is provided as required by section 294.

~~(6)~~(2) The court must follow all procedures in rule 5.590 regarding writ petition rights, advisements, and forms.

~~(c)~~(j) * * *

Rule 5.710. Six-month review hearing

~~(a) Setting 6-month review; notice (§§ 364, 366, 366.21)~~

~~The case of any dependent child whom the court has removed from the custody of the parent or legal guardian under section 361 or 361.5 must be set for a review hearing within 6 months of the date of the dispositional hearing, but no later than 12 months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier. Notice must be provided as described in section 293 and rule 5.708.~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(e) and as follows:

(1) *Order return of the child or find that return would be detrimental*

~~The court must order the child returned to the custody of the parent or legal guardian unless the court finds that the petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the~~

~~child. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) must be followed in entering a reasonable services finding.~~ If the child is returned, the court may order the termination of dependency jurisdiction or order continued dependency services and set a review hearing within 6 months.

(2) *Place with noncustodial parent*

If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

(3) *Set a section 366.26 hearing*

If the court does not return custody of the child to the parent or legal guardian, the court may set a hearing under section 366.26 within 120 days, as provided in ~~(c)~~(b).

(4) *Continue the case for a 12-month permanency hearing*

If the child is not returned and the court does not set a section 366.26 hearing, the court must order that any reunification services previously ordered will continue to be offered to the parent or legal guardian, if appropriate. The court may modify those services as appropriate or order additional services reasonably believed to facilitate the return of the child to the parent or legal guardian. The court must set a date for the next hearing no later than 12 months from the date the child entered foster care as defined in section 361.49.

~~(c)~~(b) Setting a section 366.26 hearing (§§ 366.21, 366.215)

(1) The court may set a hearing under section 366.26 within 120 days if any of the conditions in section 366.21(e) are met; or ~~:~~

~~(A) The child was removed under section 300(g) and the court finds by clear and convincing evidence that the parent's whereabouts are still unknown, or the parent has failed to contact and visit the child, or the parent has been convicted of a felony indicating parental unfitness. The court must take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization;~~

~~(B) The court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness;~~

~~(C)~~ ~~T~~the parent is deceased. ~~; or~~

~~(D) The child was under the age of three when initially removed, or a member of a sibling group described in section 361.5(a)(1)(C), and the court finds by clear and convincing evidence that the parent has failed to participate regularly and make substantive progress in any court-ordered treatment plan. If, however, the court finds a substantial probability that the child may be returned within 6 months or within 12 months of the date the child entered foster care, whichever is sooner, or that reasonable services have not been offered or provided, the court must continue the case to the 12-month permanency hearing.~~

~~(i) In order to find a substantial probability that the child may be returned within the applicable time period, the court should consider the following factors along with any other relevant evidence:~~

~~a. Whether the parent or legal guardian has consistently and regularly contacted and visited the child;~~

~~b. Whether the parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and~~

~~c. Whether the parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(ii) The court, in determining whether court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's or guardian's ability to maintain contact with his or her child due to the parent's or guardian's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. The court may also consider, among other factors, whether the incarcerated, institutionalized, detained, or deported parent or guardian has made good faith efforts to maintain contact with the child and~~

~~whether there are any other barriers to the parent's or guardian's access to services.~~

(2) * * *

~~**(d) Sibling groups (§ 366.21)**~~

~~In determining whether to set a hearing under section 366.26 for one or more members of a sibling group when one member of that group was under the age of three at the time of the initial removal, the court may terminate or continue services for any or all members of the group, based on the following considerations and for reasons specified on the record:~~

~~(1) Whether the siblings were removed as a group;~~

~~(2) The closeness and strength of the sibling bond;~~

~~(3) The ages of the siblings;~~

~~(4) The appropriateness of maintaining the sibling group together;~~

~~(5) The detriment to the child if sibling ties are not maintained;~~

~~(6) The likelihood of finding a permanent home for the group;~~

~~(7) Whether the group is placed together in a preadoptive home, if there is a concurrent plan for permanency for all siblings in the same home;~~

~~(8) The wishes of each child; and~~

~~(9) The best interest of each member of the sibling group.~~

Rule 5.715. Twelve-month permanency hearing

(a) Requirement for 12-month review; setting of hearing; ~~notice~~ (§§ 293, 366.21)

The case of any dependent child whom the court has removed from the custody of the parent or legal guardian must be set for a permanency hearing within 12 months of the date the child entered foster care, as defined in section 361.49, and no later than 18 months from the date of the initial removal. ~~Notice of the hearing must be provided as described in section 293 and rule 5.708.~~

(b) Determinations and conduct of hearing (§§ 309(e), 361.5, 366, 366.1, 366.21)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(f) and as follows:

~~(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment.~~

~~(2)~~(1) The requirements in rule 5.708~~(e)~~(c) must be followed in entering a reasonable services finding.

~~(3)~~(2) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

~~(4)~~(3) ~~If the court does not order return of the child to the parent or legal guardian and the time period for providing court-ordered services has been met or exceeded, as provided in section 361.5(a)(1), the court must specify the factual basis for its finding of risk of detriment to the child and proceed as follows in selecting a permanent plan:~~

~~(A) If the court finds that there is a substantial probability that the child will be returned within 18 months or that reasonable services have not been offered or provided, the court must continue the case for a permanency review hearing to a date not later than 18 months from the date of the initial removal. If the court continues the case for an 18-month permanency review hearing, the court must inform the parent or legal guardian that if the child cannot be returned home by the next hearing, a proceeding under section 366.26 may be instituted.~~

~~(i) In order to find a substantial probability that the child will be returned within the 18-month period, the court must find all of the following:~~

a. The parent or legal guardian has consistently and regularly contacted and visited the child;

b. The parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and

c. The parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.

(ii) In determining whether court-ordered services may be extended to the 18-month point, the court must consider the special circumstances of a parent or legal guardian who is incarcerated, institutionalized or court-ordered to a residential substance abuse treatment program, or arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, including, but not limited to, barriers to the parent's or legal guardian's access to services and ability to maintain contact with his or her child. The court must also consider, among other factors, good faith efforts that the parent or legal guardian has made to maintain contact with the child.

(B) If (1), (4)(A), or (4)(C) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, findings, and orders related to section 366.26 hearings in rule 5.708.

(C) If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship:

(i) The court must terminate reunification services and order that the child remain in a planned permanent living arrangement.

~~(ii) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(iii)~~ The court may order that the name and address of the foster home remain confidential.

~~(iv) 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.~~

~~(v) If the child is 10 years of age or older and is placed in out-of-home placement for six 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.~~

~~(5)~~(4) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court or administrative review panel must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource, each relative whose name has been submitted to the agency as a possible caregiver.

Rule 5.720. Eighteen-month permanency review hearing

~~**(a) Requirement for 18-month permanency review hearing; setting of hearing; notice (§§ 293, 366.22)**~~

~~For any dependent child whom the court has removed from the custody of the parent or legal guardian, and who was not returned at the 6- or 12-month review hearing, a permanency review hearing must be held no later than 18 months from the date of the initial removal. Notice of the hearing must be given as provided in section 293 and rule 5.708(b).~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 309(e), 361.5, 366.22)

At the hearing the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.22 and as follows:

~~(1) The court must order the child returned to the custody of the parent or legal guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that continued supervision is necessary or that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment. The requirements in rule 5.708(e) must be followed in entering a reasonable services finding.~~

~~(2)~~(1) If the court has previously placed or at this hearing places the child with a noncustodial parent, the court must follow the procedures in rule 5.708~~(k)~~(g) and section 361.2.

~~(3)~~(2) ~~If the court does not order return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment and do one of the following:~~

~~(A) Continue the case for a subsequent permanency review hearing not later than 24 months from the date of the initial removal if the court finds that there is a substantial probability that the child will be returned within that time or that reasonable services have not been offered or provided. To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent or legal guardian has recently been discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and is making significant and consistent progress in establishing a safe home for the child's return. The court must also inform the parent or legal guardian that, if the child cannot be returned home by the subsequent permanency review hearing, a hearing under section 366.26 may be instituted.~~

~~In order to find a substantial probability that the child will be returned within the 24-month period, the court must find all of the following:~~

~~(i) The parent or legal guardian has consistently and regularly contacted and visited the child;~~

~~(ii) The parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving the problems that led to the removal of the child; and~~

~~(iii) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider, as applicable, or to complete a treatment plan postdischarge from incarceration, institutionalization, or detention or following deportation to his or her country of origin or his or her return to the United States, and to provide for the child's safety, protection, physical and emotional health, and special needs.~~

~~(B) Terminate reunification services and order that the child remain in a planned permanent living arrangement, if it finds by clear and convincing evidence already presented, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship.~~

~~(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(ii)~~ The court may order that the name and address of the foster home remain confidential.

~~(iii) 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;~~

~~(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six 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.~~

~~(C) If (1), (3)(A), or (3)(B) do not apply, the court must terminate reunification services and order a hearing under section 366.26 within 120 days. The court and all parties must comply with all relevant requirements, procedures, and findings and orders related to section 366.26 hearings in rule 5.708.~~

~~(4)~~(3) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(4) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource, each relative whose name has been submitted to the agency as a possible caregiver.

Rule 5.722. Twenty-four-month subsequent permanency review hearing

~~**(a) Requirement for 24-month subsequent permanency review hearing; setting of hearing; notice (§ 366.25)**~~

~~For any dependent child whom the court has removed from the custody of the parent or legal guardian, and whose case has been continued under section 366.22(b), the subsequent permanency review hearing must be held no later than 24 months from the date of initial removal. Notice must be provided as described in rule 5.708.~~

~~(b)~~(a) Determinations and conduct of hearing (§§ 309(e), 366, 366.1, 366.25)

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708, and proceed under section 366.25 and as follows:

(1) ~~The court must order the child returned to the custody of the parent or legal guardian unless the court finds that petitioner has established by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Failure of the parent or legal guardian to regularly participate and make substantive progress in a court-ordered treatment program is prima facie evidence that return would be detrimental. The requirements in rule 5.708(d) must be followed in establishing detriment.~~ The requirements in rule 5.708~~(e)~~(c) must be followed in entering a reasonable services finding.

(2) If the court does not order the return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment ~~and do one of the following:~~.

~~(A)~~ ~~If the court finds by clear and convincing evidence, including a recommendation by the appropriate state or county adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a~~

~~proper subject for adoption and has no one willing to accept legal guardianship, the court must terminate reunification services and order that the child remain in a planned permanent living arrangement.~~

~~(i) If the court orders that the child remain in a planned permanent living arrangement, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~

~~(ii)~~(3) The court may order that the name and address of the foster home remain confidential.

~~(iii) 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.~~

~~(iv) If the child is 10 years of age or older and is placed in out-of-home placement for six 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.~~

~~(B) If (1) or (2)(A) do not apply, the court must terminate reunification services and order that a hearing be held under section 366.26 within 120 days.~~ The court and all parties must comply with all relevant requirements, procedures, findings, and orders related to section 366.26 hearings in rule 5.708~~*(l)* (o).~~ (h)–(j).

~~(3)~~(4) In the case of an Indian child, ~~I~~if the child is not returned to his or her parent or legal guardian, the court must ~~consider and state, for the record, in-state and out-of-state options for permanent placement, including, in the case of an Indian child,~~ determine whether:

(A) The agency has consulted the child's tribe about tribal customary adoption;

(B) The child's tribe concurs with tribal customary adoption; and

(C) Tribal customary adoption is an appropriate permanent plan for the child.

(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:

(A) The agency has made diligent efforts to locate an appropriate relative; or

(B) The agency has not made diligent efforts to locate an appropriate relative. If the court makes such a finding, the court must order the agency to make diligent efforts to locate an appropriate relative; and

(C) Each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource; or

(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource. If the court makes such a finding, the court must order the agency to evaluate as an appropriate placement resource, each relative whose name has been submitted to the agency as a possible caregiver.

Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)

(a) Application of rule

This rule applies to children who have been declared dependents or wards of the juvenile court.

~~(1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code or Family Code sections 8604, 8605, 8606,~~

~~and 8700 apply for the termination of parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code does not apply.~~

~~(2)~~(1) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated ~~under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606~~ by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or unless the other parent has relinquished custody of the child to the welfare department.

~~(3)~~(2) Only sections 366.26 and 727.31 apply ~~applies~~ for establishing legal guardianship.

~~(4)~~(3) For termination of the parental rights of an Indian child, the procedures in this rule and in rule 5.485 must be followed.

(b) Notice of hearing (§ 294)

In addition to the requirements stated in section 294, notice must be given to any CASA volunteer, ~~the child's present caregiver~~ Indian custodian, and ~~any~~ de facto parent on *Notice of Hearing on Selection of a Permanent Plan* (form JV-300).

(c) * * *

(d) Conduct of hearing

At the hearing, the court must state on the record that the court has read and considered the report of petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, any report submitted by the child's caregiver under section 366.21(d), and any other evidence, and must proceed under section 366.26 and as follows:

(1) In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24.~~; or~~

~~(2) Order parental rights terminated and the child placed for adoption if the court determines, by clear and convincing evidence, that it is likely the child will be adopted, unless:~~

~~(A) At each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided; or~~

~~(B) The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and removal from the home of the relative would be detrimental to the emotional well-being of the child. For an Indian child, "relative" includes an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. §1903(2)); or~~

~~(C) The court finds a compelling reason to determine that termination would be detrimental to the child because of the existence of one of the following circumstances:~~

~~(i) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship;~~

~~(ii) A child 12 years of age or older objects to termination of parental rights;~~

~~(iii) The child is placed in a residential treatment facility and adoption is unlikely or undesirable while the child remains in that placement, and continuation of parental rights will not prevent the finding of an adoptive home if the parents cannot resume custody when residential care is no longer needed;~~

~~(iv) The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances, but who is willing and capable of providing the child with a stable and permanent home, and removal from the home of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This exception does not apply to (1) a child under 6 or (2) a child who has a sibling under 6 who is also a dependent and with whom the child should be placed permanently; or~~

~~(v) There would be a substantial interference with the child's relationship with a sibling, taking into consideration the nature and extent of the relationship. To make this determination, the court may consider whether the child was raised in the same home as the sibling, whether the child and the sibling shared common experiences or have close and strong bonds, and whether ongoing contact with the sibling is in the child's best interest. For purposes of this subdivision, determination of the child's best interest may include a comparison of the child's long-term emotional interest with the benefit of legal permanence in an adoptive home.~~

~~(vi) The child is an Indian child and termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights, or the child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another planned permanent living arrangement as the appropriate permanent plan for the child.~~

~~(3) The court must not fail to find that the child is likely to be adopted based on the fact that the child is not yet placed in a preadoptive home or with a relative or foster family willing to adopt the child.~~

~~(4)~~(2) The party claiming that termination of parental rights would be detrimental to the child has the burden of proving the detriment.

~~(5) If the court finds termination of parental rights to be detrimental to the child for reasons stated in (2)(B), the court must state the reasons in writing or on the record.~~

~~(6) If termination of parental rights would not be detrimental to the child, but the child is difficult to place for adoption because the child (1) is a member of a sibling group that should stay together; (2) has a diagnosed medical, physical, or mental handicap; or (3) is 7 years of age or older and no prospective adoptive parent is identified or available, the court may, without terminating parental rights, identify adoption as a permanent placement goal and order the public agency responsible for seeking adoptive parents to make efforts to locate an appropriate adoptive family for a period not to exceed 180 days. During the 180-day period, in order to identify potential adoptive parents, the agency responsible for seeking adoptive parents for each child must, to the extent possible, ask each child who is 10 years of age or older and who is placed in out-of-home placement for six months or longer to identify any~~

~~individuals who are important to the child. The agency may ask any other child to provide that information, as appropriate. After that period the court must hold another hearing and proceed according to (1), (2), or (7).~~

~~(7)~~(3) If the court finds that ~~(2)(A) or (2)(B)~~ section 366.26(c)(1)(A) or section 366.26(c)(2)(A) applies, the court must appoint the present custodian or other appropriate person to become the child's legal guardian or must order the child to remain in foster care.

(A) ~~If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child.~~ If the court orders that the child remain in foster case, ~~The court~~ it may order that the name and address of the foster home remain confidential.

~~(B) Legal guardianship must be given preference over foster care when it is in the interest of the child and a suitable guardian can be found.~~

~~(C) A child who is 10 years of age or older who is placed in a out-of-home placement for six months or longer must be asked to identify any adults who are important to him or her in order for the agency to investigate and the court to determine whether any of those adults would be appropriate to serve as legal guardians. Other children may be asked for this information, as age and developmentally appropriate.~~

~~(D)~~(B) If the court finds that removal of the child from the home of a foster parent or relative who is not willing to become a legal guardian for the child would be seriously detrimental to the emotional well-being of the child, then the child must not be removed. The foster parent or relative must be willing to provide, and capable of providing, a stable and permanent home for the child and must have substantial psychological ties with the child.

~~(E) The court must make an order for visitation with each parent or guardian unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the child.~~

~~(8)~~(4) The court must consider the case plan submitted for this hearing and must ~~find as follows:~~ make the required findings and determinations in rule 5.708(e).

~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and~~

~~developmentally appropriate, including being asked for a statement regarding his or her permanent placement plan, and the case plan contains the social worker's assessment of those stated wishes; or~~

~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement, including being asked for a statement regarding his or her permanent placement plan and the case plan does not contain the social worker's assessment of those stated wishes. If the court makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, including asking the child for a statement regarding his or her permanent plan, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds that the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court; and~~

~~(C) In the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or~~

~~(D) In the case of an Indian child, the agency did not consult with the child's tribe. If the court makes such a finding, the court must order the agency to consult with the tribe, unless the court finds that the tribe is unable, unavailable, or unwilling to participate.~~

~~(9) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:~~

~~(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or~~

~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.~~

~~(10) If no adult is available to become legal guardian, and no suitable foster home is available, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, subject to further orders of the court.~~

(e) Procedures—adoption

(1) The court must follow the procedures in section 366.24 or 366.26, as appropriate.

~~(1) The court may not terminate parental rights or order adoption if a review of the prior findings and orders reveals that at each and every prior hearing at which the court was required to consider reasonable efforts or services the court found that reasonable efforts had not been made or that reasonable services had not been offered or provided. If at any prior hearing the court found that reasonable efforts had been made or that reasonable services had been offered or provided, the court may terminate parental rights.~~

(2) An order of the court terminating parental rights, ordering adoption under section 366.26, or, in the case of an Indian child, ordering tribal customary adoption under section 366.24 is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. The order may not be set aside or modified by the court, except as provided in section 366.26(i)(3) and rules 5.538, 5.540, and 5.542 with regard to orders by a referee.

~~(3) If the court declares the child free from custody and control of the parents, the court must at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child may be filed and heard in the juvenile court but may not be granted until the appellate rights of all parents have been exhausted.~~

~~(4) In the case of an Indian child for whom tribal customary adoption has been ordered in accordance with section 366.24, the court may continue the hearing for up to 120 days to permit the tribe to complete the process for tribal customary adoption. In its discretion, the court may grant a further continuance not exceeding 60 days.~~

~~(A) No less than 20 days before the date set for the continued hearing, the tribe must file the completed tribal customary adoption order with the court.~~

~~(B) The social worker must file an addendum report with the court at least 7 days before the hearing.~~

~~(C) If the tribe does not file the tribal customary adoption order within the designated time period, the court must make new findings and orders under section 366.26(b) and select a new permanent plan for the child.~~

(f) – (h)* * *

Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)

(a) * * *

(b) ~~Criteria for designation as prospective adoptive parent~~ Facilitation steps

~~A caregiver must meet the following criteria to be designated as a prospective adoptive parent:~~

~~(1) The child has lived with the caregiver for at least six months;~~

~~(2) The caregiver currently expresses a commitment to adopt the child; and~~

~~(3) The caregiver has taken at least one step to facilitate the adoption process.~~ Steps to facilitate the adoption process include~~:~~ those listed in section 366.26(n)(2) and, in

(~~A) Applying for an adoption home study;~~

~~(B) Cooperating with an adoption home study;~~

~~(C) Being designated by the court or the licensed adoption agency as the adoptive family;~~

~~(D)~~ ~~In~~ the case of an Indian child when tribal customary adoption has been identified as the child's permanent plan, the child's identified Indian tribe has designated the caregiver as the prospective adoptive parent.~~;~~

~~(E) Requesting de facto parent status;~~

~~(F) Signing an adoptive placement agreement;~~

~~(G) Discussing a postadoption contact agreement with the social worker, child's attorney, child's CASA volunteer, adoption agency, or court;~~

~~(H) Working to overcome any impediments that have been identified by the California Department of Social Services and the licensed adoption agency; and~~

~~(I) Attending any of the classes required of prospective adoptive parents.~~

(c) Hearing on request for prospective adoptive parent designation

(1) The court must ~~evaluate~~ determine whether the caregiver meets the criteria in ~~(b)~~ section 366.26(n)(1).

~~(1) The petitioner must show on the request that the caregiver meets the criteria in (b).~~

(2) If the court finds ~~that the petitioner does not show~~ that the caregiver does not meet~~s~~ the criteria in ~~(b),~~ section 366.26(n)(1), the court may deny the request without a hearing.

(3) If the court finds ~~that the petitioner has shown~~ that the ~~current~~ caregiver meets the criteria in ~~(b),~~ section 366.26(n)(1), the court must set a hearing as set forth in (4) below.

(4) If it appears to the court that the request for designation as a prospective adoptive parent will be contested, or if the court wants to receive further evidence on the request, the court must set a hearing.

(A) If the request for designation is made at the same time ~~as an objection~~ a petition is filed to object to removal of the child from the caregiver's home, the court must set a hearing as follows:

(i) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court.

(ii) If the court for good cause ~~is unable to~~ cannot set the matter for hearing five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(iii) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(B) If the request for designation is made before ~~a request for removal is filed~~ the agency serves notice of a proposed removal or before an emergency removal has occurred, the court must ~~order that the~~ set a hearing ~~be set at a time~~ within 30 calendar days after the ~~filing of the~~ request for designation is made.

(5) If all parties stipulate to the ~~request for~~ designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.

(d) Notice of designation hearing

After the court has ordered a hearing on a request for prospective-adoptive-parent designation, notice of the hearing must be as described below.

(1) * * *

(2) If the request for designation ~~was~~ is made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the hearing on proposed removal ~~hearing~~, as stated in rule 5.727(f).

(3) If the request for designation ~~was~~ is made before ~~a request for removal was filed~~ the agency serves notice of a proposed removal or before an emergency removal occurred, notice must be as follows:

(A) – ((E) * * *

(e) Termination of designation

If the prospective adoptive parent no longer meets the criteria in ~~rule 5.726(b),~~ section 366.26(n)(1), a request to vacate the order designating the caregiver as a prospective adoptive parent may be filed under section 388 and rule 5.570.

(f) * * *

Rule 5.727. Proposed removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from a prospective adoptive parent ~~under rule 5.726(b)~~ or from a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1). This rule does not apply if the caregiver requests the child's removal.

(b) Participants to be served with notice

Before removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ as defined in section 366.26(n)(1) or from the home of a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1), and as soon as possible after a decision is made to remove the child, the agency must notify the following participants of the proposed removal:

(1) * * *

(2) The current caregiver, if that caregiver either is a designated prospective adoptive parent or, on the date of service of the notice, meets the criteria in ~~rule 5.726(b)~~ section 366.26(n)(1);

(3) – (7) * * *

(c) Form of notice

DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided to all participants listed in (b) except the court.

(d) Service of notice

DSS or the agency must serve notice of its intent to remove a child as follows:

(1) – (2) * * *

(3) Notice to the child's identified Indian tribe and Indian custodian must ~~be given under rule 5.481~~ comply with the requirements of section 224.2.

(4) ~~Proof of service of the notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(e) Objection to proposed removal

Each participant who receives notice under (b) may object to the proposed removal of the child and may request a hearing.

(1) * * *.

(2) A request for hearing on the proposed removal must be made within five court or seven calendar days from the date of notification, whichever is longer. If service of the notification is by mail, time to ~~respond~~ request a hearing is extended by five calendar days.

(3) The court must ~~order~~ set a hearing as follows:

(A) – (C) * * *

(f) Notice of hearing on proposed removal

After the court has ordered a hearing on a proposed removal, notice of the hearing must be as follows:

(1) – (2) * * *

(3) Notice must be ~~either~~ by personal service or by telephone. Notice by personal service must include a copy of the completed forms *Notice of Intent to Remove Child* (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-323 and JV-325.

(4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(g) – (h) * * *

(i) Appeal

If the court order made after a hearing on an intent to remove a child is appealed, the appeal must be ~~made~~ brought as petition for writ review under rules 8.454 and 8.456.

Rule 5.728. Emergency removal (§ 366.26(n))

(a) Application of rule

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ or ~~from~~ a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1) when the DSS or the licensed adoption agency has determined a removal must occur immediately due to a risk of physical or emotional harm. This rule does not apply if the child~~'s removal is carried out~~ is removed at the request of the caregiver.

(b) Participants to be noticed

After removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~, or from the home of a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1), because of ~~immediate~~ risk of physical or emotional harm, the agency must notify the following participants of the emergency removal:

(1) * * *

(2) The ~~current~~ caregiver, ~~if that caregiver either~~ who is a ~~designated~~ prospective adoptive parent or who, on the date of service of the notice, ~~meets~~ may meet the criteria in ~~rule 5.726(b)~~ section 366.26(n)(1);

(3) – (7) * * *

(c) Form and service of notice

Notice of Emergency Removal (form JV-324) must be used to provide notice of an emergency removal, as described below.

(1) – (3) * * *

(4) Whenever possible, the agency, at the time of the removal, must give a blank copy of ~~the form~~ *Request for Prospective Adoptive Parent Designation* (form JV-321) and a blank copy of *Objection to Removal* (form JV-325) to the caregiver and, if the child is 10 years of age or older, to the child.

(5) Notice to the court must be served by filing ~~of the form~~ *Notice of Emergency* Removal (form JV-324) and *Proof of Notice* (form JV-326) with the court. ~~The proof of notice included on the form must be completed when the form is filed with the court.~~

(6) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

(d) Objection to emergency removal

Each participant who receives notice under (b) may object to the removal of the child and may request a hearing.

(1) * * *

(2) The court must ~~order~~ set a hearing as follows:

(A) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court.

(B) If the court for good cause ~~is unable to~~ cannot set the matter for hearing within five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible.

(C) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.

(e) Notice of ~~emergency removal~~ hearing on emergency removal

After the court has ordered a hearing on an emergency removal, notice of the hearing must be as follows:

~~(1) Notice must be either by personal service or by telephone. Notice by personal service must include a copy of *Notice of Emergency Removal* (form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325.~~

~~(2)~~(1) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, ~~the~~ caregiver, or ~~the~~ child requested the hearing.

~~(3)~~(2)* * *

(3) Notice must be by personal service or by telephone. Notice by personal service must include a copy of the completed *Notice of Emergency Removal* (form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325.

(4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the emergency removal.

**(f) – (g) * * *

Rule 5.730. Adoption (§§ 366.24, 366.26(e), Fam. Code, § 8600 et seq.)

* * *

Rule 5.735. Legal guardianship

**(a) – (b) * * *

~~**(c) Conduct of hearing**~~

~~(1) Before appointing a guardian, the court must read and consider the social study report specified in section 366.26 and note its consideration in the minutes of the court.~~

~~(2) The preparer of the social study report may be called in and examined by any party to the proceedings.~~

~~(d)~~(c) Findings and orders

(1) If the court finds that legal guardianship is the appropriate permanent plan, the court must appoint the guardian and order the clerk to issue letters of guardianship, which will not be subject to the confidentiality protections ~~of juvenile court documents as~~ described in section 827.

(2) The court ~~may~~ must issue orders regarding visitation of the child by a parent or ~~other relative~~ former guardian, unless the court finds that visitation would be detrimental to the physical or emotional well-being of the child.

(3) The court may issue orders regarding visitation of the child by a relative.

~~(3)~~ (4) On appointment of a guardian under section 366.26, the court may terminate dependency.

~~(e)~~(d) Notification of appeal rights

The court must advise all parties of their appeal rights as provided in rule ~~5.585~~ 5.590.

Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 160501.1)

(a) Review hearings—adoption and guardianship

Following an order for termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, or a plan for the establishment of a guardianship under section 366.26, the court must retain jurisdiction and conduct review hearings at least every 6 months to ensure the expeditious completion of the adoption or guardianship.

(1) * * *

(2) The court or administrative review panel must consider the case plan and make the findings and determinations concerning the child in rule 5.708(e).

~~(2)~~(3) * * *

~~(3)~~(4) * * *

~~(4)~~(5) * * *

(6) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(b) Review hearings—relative care or foster care

Following the establishment of a plan other than those provided for in (a), review hearings must be conducted at least every 6 months by the court or by a local administrative review panel.

(1) At the review hearing, the court or administrative review panel must consider the report of the petitioner, the report of any CASA volunteer, the case plan submitted for this hearing, and any report submitted by the child's caregiver under section 366.21(d); inquire about the progress being made to provide a permanent home for the child; consider the safety of the child; and enter findings ~~regarding each item listed in~~ as required by section 366.3(e).

(2) The court or administrative review panel must consider the case plan submitted for this hearing and ~~must find as follows:~~ make the findings and determinations concerning the child in rule 5.708(e).

~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate; or~~

~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate. If the court or administrative review panel makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.~~

~~(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:~~

~~(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or~~

~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.~~

(3) If the child is not placed for adoption, the court or administrative review panel must find as follows:

(A) Whether the agency has made diligent efforts to locate an appropriate relative. If the court or administrative review panel finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to do so.

(B) Whether each relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource. If the court or administrative review panel finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to do so.

(4) * * *

(5) If circumstances have changed since the permanent plan was ordered, the court may order a new permanent plan under section 366.26 at any subsequent hearing, or any party may seek a new permanent plan by a motion filed under section 388 and rule 5.570.

(6) – (7) * * *

~~(8) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must consider all permanency planning options, including whether the child should be returned to a parent or guardian, placed for adoption, or appointed a legal guardian. If the court orders that the child remain in foster care, it must identify the foster care setting by name and identify a specific permanency goal for the child. The court may order that the name and address of the foster home remain confidential.~~

~~(9) At a review held 12 months after an original or subsequent order for the child to remain in foster care, the court must order a hearing under section 366.26 unless the court finds by clear and convincing evidence that there is a compelling reason for determining that a section 366.26 hearing is not in the child's best interest because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or there is no one available to assume guardianship.~~

~~(10) If the court makes the findings in (9), the court may order that the child remain in foster care.~~

(c) Hearing on petition to terminate guardianship or modify guardianship orders

A petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning ~~the~~ a guardianship must be filed in the juvenile court. The procedures described in rule 5.570 must be followed, and *Request to Change Court Order* (form JV-180) must be used.

(1) * * *

(2) Not less than 15 court days before the hearing date, the ~~petitioner must serve~~ clerk must cause notice of the hearing ~~on~~ to be given to the department of social services; the guardian; the child, if 10 years or older; parents whose parental rights have not been terminated; the court that established the guardianship, if in another county; and counsel of record for those entitled to notice.

(3) – (5) * * *

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT

(Welf. & Inst. Code, §§ 361, 361.2)

1. ☐ The child is a person described by Welf. & Inst. Code, § 300 *(check all that apply):*
   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)

   and is adjudged a dependent of the court.

Circumstances justifying removal from custodial parent

2. ☐ There is clear and convincing evidence of the circumstances stated in Welf. and Inst. Code, § 361 regarding the persons specified below *(check all that apply):*

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

3. ☐ The child ☐ is ☐ may be an Indian child, and, by clear and convincing evidence, including testimony of a qualified expert witness, continued physical custody by the following person is likely to cause that child serious emotional or physical damage.
   ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian
   ☐ other *(specify):*

4. Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for removal from the home.

5. ☐ The child ☐ is ☐ may be an Indian child, and,
   a. ☐ by clear and convincing evidence, active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family, and these efforts were unsuccessful.
   b. ☐ active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
   c. ☐ there has been consultation with the child's identified Indian tribe regarding whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** *(check all that apply):*
   ☐ Mother ☐ Biological father ☐ Legal guardian
   ☐ Presumed father ☐ Indian custodian
   ☐ Other *(specify):*

Family finding and engagement

7. a. ☐ The county agency has made diligent efforts to identify, locate, and contact the child's relatives.
   b. ☐ The county agency has not made diligent efforts to identify, locate, and contact the child's family members.
      (1) ☐ The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with family or domestic violence.
      (2) ☐ The county agency must submit a report to the court on or before (date): detailing the diligent efforts made and the results of such efforts.

Form Approved for Optional Use
Judicial Council of California
JV-421 [Rev. January 1, 2017]

Welfare and Institutions Code, §§ 361, 361.2;
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

Case plan development

8. a. ☐ The county agency solicited and integrated into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*

   b. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.

   c. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   and the agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

Custody and Placement

9. ☐ The ☐ mother ☐ presumed father ☐ biological father did not reside with the child at the time the petition was filed and ☐ does ☐ does not desire custody of the child.

   a. ☐ By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:
   ☐ Mother ☐ Presumed father ☐ Biological father

   b. The factual basis for the findings in this item is stated on the record.

10. ☐ **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**

   a. ☐ in the approved home of a relative.
   b. ☐ in the approved home of a nonrelative extended family member.
   c. ☐ in the foster home in which the child was placed before an interruption in foster care because that placement is in the child's best interest and space is available.
   d. ☐ with a foster family agency for placement in a foster family home.
   e. ☐ in a suitable licensed community care facility.
   f. ☐ in a home or facility in accordance with the federal Indian Child Welfare Act.

11. ☐ **Placement with the child's relative,** *(name):*
has been independently considered by the court and is denied for the reasons stated on the record.

12. ☐ **The statutory preference order for placement in a suitable Indian home is modified for good cause as**

   a. ☐ stated on the record.
   b. ☐ described in the social worker's report.
   c. ☐ Other *(specify):*

13. ☐ **The child's out-of-home placement is necessary.**

14. ☐ **The child's current placement is appropriate.**

15. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.

   a. ☐ The matter is continued to the date and time indicated in form JV-415, item 17 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate place.

   b. ☐ Other *(specify):*

CHILD'S NAME:	CASE NUMBER:

16. ☐ **The child is placed outside the state of California and that out-of-state placement**

a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.

b. ☐ is not the most appropriate placement for the child and is not in the best interest of the child.

The matter is continued to the date and time indicated in form JV-415, item 17 for a ☐ written ☐ oral report by the county agency on the progress made toward

(1) ☐ returning the child to California and locating an appropriate placement within California.

(2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.

(3) ☐ other *(specify):*

Reunification services

17. ☐ **Provision of reunification services to the biological father** ☐ will ☐ will not benefit the child.

18. ☐ **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.

a. ☐ Participation in the program ☐ is ☐ is not in the child's best interest.

b. ☐ The program ☐ is ☐ is not suitable to meet the needs of the mother and child.

19. ☐ **The following person is incarcerated:**

☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian

and reasonable reunification services are

a. ☐ granted.

b. ☐ denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.

20. ☐ **As provided in Welf. & Inst. Code, § 361.5(b), by clear and convincing evidence:**

a. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian

is a person described in Welf. & Inst. Code, § *(specify):*

☐ 361.5(b)(3) ☐ 361.5(b)(4) ☐ 361.5(b)(7) ☐ 361.5(b)(8)
☐ 361.5(b)(9) ☐ 361.5(b)(10) ☐ 361.5(b)(11) ☐ 361.5(b)(12)
☐ 361.5(b)(13) ☐ 361.5(b)(15) ☐ 361.5(b)(16) ☐ 361.5(b)(17)

and reunification services are

(1) ☐ granted, because, by clear and convincing evidence, reunification is in the best interest of the child.

(2) ☐ denied.

b. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian

is a person described in Welf. & Inst. Code, § 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.

c. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian

is a person described in Welf. & Inst. Code, § 361.5(b)(2), and reunification services are

(1) ☐ granted.

(2) ☐ denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.

CHILD'S NAME:	CASE NUMBER:

20. d. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(5), and reunification services are
(1) ☐ granted, because
(a) ☐ reunification services are likely to prevent reabuse or neglect.
(b) ☐ the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.
(2) ☐ denied.

e. The ☐ mother ☐ legal guardian
☐ presumed father ☐ Indian custodian
☐ other person who is a legal parent of the child *(name):*
is a person described in Welf. & Inst. Code, § 361.5(b)(6), and reunification services are
(1) ☐ granted, because, by clear and convincing evidence, reunification is in the best interest of the child.
(2) ☐ denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.
(3) ☐ The factual basis for the findings in this item is stated on the record.

f. The ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welf. & Inst. Code, § 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to services. Reunification services are denied.

21. a. ☐ **The county agency must provide reunification services,** and the following must participate in the reunification services stated in the case plan:
☐ mother ☐ biological father ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian

b. ☐ **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify):*

Efforts

22. **The county agency**

a. ☐ has
b. ☐ has not

complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

23. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

CHILD'S NAME:	CASE NUMBER:

Siblings

24. ☐ **The child does not have siblings under the court's jurisdiction.**

25. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

26. ☐ The ☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

27. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e)-(f) of the California Rules of Court. A copy of the rule 5.650(e)-(f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The rights and responsibilities of the educational rights holder are described in rule 5.650(e)–(f) of the California Rules of Court. A copy of rule 5.650(e)–(f) may be obtained from the court clerk.

28. a. The child's educational needs ☐ are ☐ are not being met.
b. The child's physical needs ☐ are ☐ are not being met.
c. The child's mental health needs ☐ are ☐ are not being met.
d. The child's developmental needs ☐ are ☐ are not being met.

29. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
a. ☐ stated in the social worker's report.
b. ☐ specified here:

30. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 29:
a. ☐ social worker.
b. ☐ parent or legal guardian *(name):*
c. ☐ surrogate parent *(name):*
d. ☐ educational rights holder *(name):*
e. ☐ other *(name):*

31. ☐ The child's education placement has changed since the date the child was physically removed from the home.
a. The child's educational records, including any evaluation regarding a disability, ☐ were ☐ were not requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
b. The child ☐ is ☐ is not enrolled in school.
c. The child ☐ is ☐ is not attending school.

CHILD'S NAME:	CASE NUMBER:

32. ☐ **Child 14 years of age or older:**

a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.

c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services.

(1) ☐ stated on the record

(2) ☐ as follows:

Advisements

33. ☐ **Child under three years of age or a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under three years of age on the date of initial removal or is a member of a sibling group in which one member was under three years of age on the date of initial removal:

a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date of the dispositional hearing, but no later than twelve months from the date the child entered foster care, as defined by section 361.49, whichever occurs earlier.

Six-month hearing date:

b. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:

- Whether the sibling group was removed from parental care as a group;
- The closeness and strength of the sibling bond;
- The ages of the siblings;
- The appropriateness of maintaining the sibling group;
- The detriment to the child if sibling ties are not maintained;
- The likelihood of finding a permanent home for the sibling group;
- Whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
- The wishes of each child whose age and physical and emotional condition permits a meaningful response; and
- The best interest of each child in the sibling group.

c. **At the six-month hearing** under Welf. & Inst. Code, § 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

CHILD'S NAME:	CASE NUMBER:

34. ☐ **Child three years of age or older who is not a member of a sibling group as described in Welf. & Inst. Code, § 361.5 (a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welf. & Inst. Code, §366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

Twelve-month permanency hearing date:

35. ☐ a. **The matter is ordered set for hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welf. & Inst. Code, § 361.5(b).

c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welf. & Inst. Code, § 361.5(g).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(h)(19) of the California Rules of Court to any party not present.

e. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the persons named below, who is a mother, a presumed father, or an alleged father and who has relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Fam. Code, § 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*
(2) *(name):*
(3) *(name):*
(4) *(name):*

f. **The likely date** by which the child may be placed for adoption, or by which another permanent plan may be selected, is *(specify date):*

Spring 16-20

Juvenile Law: Dependency Hearings (Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688; revise form JV-421)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association Todd G. Friedland President	AM	The proposed changes in SPR16-20 would eliminate confusion by referencing the statutes and deleting recitation and/or summary of the statutes in individual rules. The following items are suggested for clarity. Rule 5.695 Findings and Orders of the Court -- Disposition Recommend adding to (a)(4): (a)(4) Declare dependency and appoint a legal guardian for the child *if the requirements of section 360 are met* [instead of "as provided in section 360"] Recommend adding to (g)(1): (g)(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5, *or if the disposition is pursuant to a petition filed under section 387 or section 342 and the statutory time for reunification has expired* (See D.T. v. Superior Court (2015) 241 Cal.App.4th 1017, 1034-1035). Rule 5.706. Family Maintenance Review Hearings (c) Conduct of Hearing Recommend adding to this section a reference	No response required. The committee has adopted this suggestion. The committee views rule 5.695 as applying at the initial disposition hearing, and thus does not believe it is necessary to add the unusual fact specific holding of this case into the rule provisions that are focused on section 361.5. The committee has adopted the proposed modification.

Spring 16-20

Juvenile Law: Dependency Hearings (Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688; revise form JV-421)

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

	Commentator	Position	Comment	Committee Response
			to § 364, subdivision (c) to address the statutory finding required at a family maintenance review hearing. *The court shall determine whether continued supervision is necessary pursuant to section 364, subdivision (c).*	
2.	Los Angeles Superior Court	A	• Does the proposal appropriately address the stated purpose? *Yes* • Are there statutory provisions that were deleted that should be restored? *No Comment* • Are there additional statutory provisions that should be deleted? *No Comment* • Would the proposal provide cost savings? If so please quantify. *Yes, by reducing the frequency in which the rules would need to be amended is a cost savings for the court. If courts choose to use the optional JV-421, printing costs would apply.* • What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case	No response required. No response required. No response required. No response required. No response required.

Spring 16-20

Juvenile Law: Dependency Hearings (Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688; revise form JV-421)

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

	Commentator	Position	Comment	Committee Response
			management systems. *Agreed, that there will be minimal operational impact by the deletion of duplicative statute.* • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *Yes*	No response required.
3.	Superior Court of Riverside County Marita Ford Senior Management Analyst	A	No specific comment.	No response required.
4.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	• Does the proposal appropriately address the stated purpose? Yes. • Are there statutory provisions that were deleted that should be restored? No. • Are there additional statutory provisions that should be deleted? Yes. See below. • General comment: The first page of the proposal does not mention that revisions to form JV-421 are part of the proposal. Query: Have other Judicial Council forms been checked for necessary revisions? [This commentator then went on to list numerous modifications to be made for consistency and clarity that can be viewed in Attachment A.]	No response required. No response required. See response to attached comments below. The committee proposed and circulated for comment changes to the JV-421 because they were needed for accuracy related to the content of this proposal and needed for accuracy of the form. Other forms will be monitored for accuracy as changes to them are considered on an ongoing basis. The committee has adopted almost all of the many suggested modifications to the rules and form suggested by this commentator as they will enhance the clarity and accuracy of the underlying

Spring 16-20

Juvenile Law: Dependency Hearings (Amend Cal. Rules of Court, rules 5.534, 5.668, 5.670, 5.674, 5.682, 5.684, 5.690, 5.695, 5.706, 5.708, 5.710, 5.715, 5.720, 5.722, 5.725, 5.726, 5.727, 5.728, 5.735, 5.740; repeal rules 5.680, 5.686, and 5.688; revise form JV-421)

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

	Commentator	Position	Comment	Committee Response
				rules and the form. The committee has also modified the rules in response to the substantive suggestions of this commentator to: • revise and update case plan related provisions in rules 5.708, 5.725, and 5.740 by adding statutory references to rule 5.708(e) and cross-references to rule 5.708(e) in rules 5.725 and 5.740; and • amend rule 5.740(c)(2) to require the court, rather than the petitioner, to serve notice of a hearing concerning a petition to modify or terminated a juvenile court guardianship.

Item SPR16-20 Response Form

Title: Juvenile Law: Dependency Hearings

☐ **Agree** with proposed changes

☒ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments:

• Does the proposal appropriately address the stated purpose? Yes.
• Are there statutory provisions that were deleted that should be restored? No.
• Are there additional statutory provisions that should be deleted? Yes. See below.

• General comment: The first page of the proposal does not mention that revisions to form JV-421 are part of the proposal. Query: Have other Judicial Council forms been checked for necessary revisions?

• Additional comments:

CRC 5.534(g) p. 12	**(g) Advisement of hearing rights (§§ ~~301,~~ 311, 341, 353, 630, 633, 702.5, 827)**
CRC 5.534(g)(1)(A) p. 12	See, e.g., CRC 5.682(e)(3). ~~Any~~ The right to assert the privilege against self-incrimination;
CRC 5.534(j)(4) p. 14	(A) If filing in person, the caregiver must bring the original document and ~~8~~ eight copies to the court clerk's office for filing no later than five calendar days before the hearing. (B) If filing by mail, the caregiver must mail the original document and ~~8~~ eight copies to the court clerk's office for filing no later than seven calendar days before the hearing.
CRC 5.534(j)(5) p. 14	When form JV-290 or a caregiver letter is received by mail, the court clerk must immediately file it.
CRC 5.534(j)(6) p. 14	When form JV-290 or a caregiver letter is filed, the court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter immediately upon receipt. The clerk also must complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The clerk may use any technology designed to speed the distribution process, including drop boxes in the courthouse, e-mail, or fax, to distribute the JV-290 form or letter and proof of

	service form.
CRC 5.668(a)(4) p. 16	For consistency of style and language with WIC § 361.5(a)(1): … The time for services must not exceed 12 months for a child ~~aged~~ three years of age or ~~over~~ older at the time of the initial removal and must not exceed ~~6~~ six months for a child who was under ~~the~~ three years of age ~~of three~~ or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.
CRC 5.670 p. 17	**Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing; visitation (§§ 309, 311, 313, 315, 362.1)**
CRC 5.674(c)(1) p. 19	The preparer of a police ~~report~~, probation officer, or social worker report, or other document submitted to the court; and
CRC 5.676(b) p. 20	In making the findings required to support an order of detention, the court may rely solely on written police ~~reports~~, probation officer, or social worker reports, or other documents.
CRC 5.682(a) p. 21	Because the rights in (2), (3), (4), are already required by rule 5.534, they should be deleted, and (5) should be renumbered. After giving the advisement required by rule 5.534, the court must advise the parent or guardian of the following rights: (1) The right to a hearing by the court on the issues raised by the petition; and ~~(2) The right to assert any privilege against self-incrimination;~~ ~~(3) The right to confront and to cross-examine all witnesses called to testify;~~ ~~(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and~~ ~~(5)~~(2) The right, if the child has been removed, to have the child returned to the parent or guardian within two working days….
CRC 5.682(b) p. 22	… If the parent or guardian wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the parent or guardian understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in ~~(b)~~(a) and (e)(3).
CRC 5.682(e)(8) p. 23	The child is described ~~under~~ by one or more ~~specific~~ subdivisions of section 300.
CRC 5.684(b) p. 23	Except as provided in section 355.1 and (c), (d), and (e) of this rule, the admission and exclusion of evidence must be in accordance with the Evidence Code as it applies to civil cases.
CRC 5.684(d) pp. 23-24	Per WIC § 355(c)(1): … that evidence must not be sufficient in and of itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless:
CRC 5.684(e)	The privilege not to testify or to be called as a witness against a spouse or domestic

p. 24	partner, and the confidential marital communication privilege, do~~es~~ not apply to dependency proceedings.
CRC 5.684(f)(4) p. 24	The child is described ~~under~~ by one or more ~~specific~~ subdivisions of section 300.
CRC 5.684(g) p. 24	**(g) Disposition and ~~C~~continuance pending disposition hearing (§§ 356, 358)**
CRC 5.695(e)(1) p. 32	… The court may consider the activities listed in ~~(g)~~(f) as examples of due diligence. …
CRC 5.695(f) p. 32	When making the determination required in ~~(f)~~(e), the court may consider …
CRC 5.695(g)(1) p. 33	Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5, …
CRC 5.695(g)(6) p. 37	See CRC 5.590(b) and CRC 5.695(g)(10): A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rules 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450 and 8.452.
CRC 5.695(g)(7)(A) p. 38	An extraordinary writ was sought by the timely filing of a *Notice of Intent to File Writ Petition and Request for Record (California Rules of Court, Rules 8.450)* (form JV-820) or other notice of intent to file a writ petition and request for record and a *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ; and
CRC 5.695(g)(9) p. 38	Failure to file a notice of intent to file a writ petition and request for record and a petition for extraordinary writ review within the periods specified by rules 8.450 and 8.452, to substantively address the issues challenged, or to support the challenge by an adequate record precludes subsequent review on appeal of the findings and orders made under this rule.
CRC 5.706(a) p. 40	… and to any CASA volunteer ~~that~~ who has been appointed on the case.
CRC 5.706(e) p. 41	The court must consider the child's education, including whether it is necessary to limit the right of the parent or legal guardian to make educational or developmental-services decisions for the child, following the requirements and procedures in rules 5.649, 5.650, and 5.651 and in section 361(a).
CRC 5.708(a) p. 42	The petitioner or the clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in section 224.2 or 293 as appropriate, to all persons or entities entitled to notice under sections 224.2 and 293 and to any CASA volunteer, educational rights holder, or surrogate parent

	appointed to the case.
CRC 5.708(b)(2) pp. 42-43	At least 10 calendar days before the hearing, the social worker must file the report and provide copies to the parent, ~~or~~ legal guardian, or Indian custodian and his or her counsel, to counsel for the child, to any CASA volunteer, and, in the case of an Indian child, to the child's identified Indian tribe.
CRC 5.708(c) p. 44	If par. (2) is added, subd. **(f)** could be deleted, and the subsequent subdivisions would need to be re-lettered accordingly: **~~Reasonable services~~ Required findings (§§ 366, 366.21, 366.22, 366.25, 366.3, 16002)** (1) If the child is not returned to the custody of the parent or legal guardian, the court must consider whether reasonable services have been offered or provided. The court must find that~~:~~ ~~(A) R~~reasonable services have been offered or provided~~;~~ or ~~(B) Reasonable services~~ have not been offered or provided. (2) If the child is not returned to the custody of the parent or legal guardian, the court must consider the safety of the child and make the findings listed in sections 366(a) and 16002.
CRC 5.708(e)[1] p. 45	(1) Whether the child was actively involved, as age- and developmentally appropriate, in the development of ~~his or her own~~ the case plan and plan for permanent placement. If the court finds ~~that~~ the child ~~or youth~~ was not appropriately involved, the court must order the agency to actively involve the child in the development of ~~his or her own~~ the case plan and plan for permanent placement, unless the court finds ~~that~~ the child is unable, unavailable, or unwilling to participate.
See WIC § 16501.1(g)(12)(A)	(2) Whether each parent or legal guardian was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds ~~that~~ the parent or legal guardian is unable, unavailable, or unwilling to participate. (3) In the case of an Indian child, …
See WIC §	(4) For a child 12 years of age or older in a permanent placement…

[1] WIC §§ 16001.9 and 16501.1 are cited as authority for the case plan findings required by CRC 5.708(e), but there is nothing in those statutes requiring a court to make the findings listed in the rule. (E.g., § 16501.1(g)(12)(A) states, "**Whenever possible**, parents and legal guardians shall participate in the development of the case plan." But CRC 5.708(e)(2) provides, "If the court finds that any parent was not actively involved, the court must order the agency to actively involve that parent …, unless the court finds that the parent is unable, unavailable, or unwilling to participate." Presumably, a decision was made that a juvenile court should make those findings at review hearings notwithstanding the absence of any statutory requirement. In light of that decision, new rules are proposed for CRC 5.708(e)(5) & (6) to reflect SB 794 amendments.

16501.1(g)(13) *See WIC § 16501.1(g)(12)(A)* *See WIC § 16501.1(g)(17) & (18)*	 (5) For a nonminor dependent, whether the youth signed and was actively involved in the development of the transitional independent living case plan. If the court finds the youth was not involved in or did not sign the transitional independent living case plan, the court must order the agency to involve the youth in the development of, or obtain the youth's signature on, the transitional independent living case plan, unless the court finds the youth is unable, unavailable, or unwilling to do so. (6) For a youth 14 years of age or older or a nonminor dependent, whether the case plan was developed in consultation with the youth and the youth's case planning team and whether the case plan includes the documents described in section 16501.1(g)(18). If the court finds the youth and the youth's case planning team were not consulted, the court must order the agency to develop the case plan in consultation with the youth and the case planning team, unless the court finds the youth or the case planning team is unable, unavailable, or unwilling to do so. If the court finds the case plan does not include the required documents, the court must order the agency to add the missing documents to the case plan.
CRC 5.710(a)(3)	If the court does not return custody of the child to the parent or legal guardian, the court may set a hearing under section 366.26 within 120 days, as provided in ~~(c)~~(b).
CRC 5.715(b) p. 52	**(b) Determinations and conduct of hearing (§§ 309(e). 361.5, 366, 366.1, 366.21)**
CRC 5.715(b) p. 55	CRC 5.715(a)(3) is on pp. 53-54 ("order…foster home remain confidential"). ~~(3)~~(4) In the case of an Indian child, i~~I~~f the child is not returned to his or her parent or legal guardian, the court must~~, in the case of an Indian child,~~ determine whether:
CRC 5.715(b) p. 55	~~(4)~~(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:
CRC 5.720(a) p. 56	**(a) Determinations and conduct of hearing (§§ 309(e). 361.5, 366.22)**
CRC 5.720(a) p. 59	(3) In the case of an Indian child, i~~I~~f the child is not returned to his or her parent or legal guardian, the court must~~, in the case of an Indian child,~~ determine whether:
CRC 5.722(a) p. 60	Determinations are required by 5.722(a)(4) and (5). **(a) Determinations and C~~c~~onduct of hearing (§309(e). 366, 366.1, 366.25)**

CRC 5.722(a) pp. 61-62	CRC 5.722(a)(3) is on lines 5-6 of page 61 ("order…foster home remain confidential"), so (a)(3) and (a)(4) on pages 61 and 62 must be renumbered. ~~(3)~~(4) In the case of an Indian child, i~~f~~ the child is not returned to his or her parent or legal guardian, the court must~~, in the case of an Indian child,~~ determine whether: … [¶¶] … ~~(4)~~(5) If the child is not returned to his or her parent or legal guardian and the court terminates reunification services, the court must find as follows:
CRC 5.725 p. 62	Per suggested deletion of 5.725(e)(2), which repeats WIC § 366.24(c)(6): **Rule 5.725. Selection of permanent plan (§§ 366.24, 366.26, 727.31)**
CRC 5.725(a)(1) p. 63	Suggest using language from CRC 5.708(h)(2). (1) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated ~~under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606~~by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state; or unless the other parent has relinquished custody of the child to the welfare department.
CRC 5.725(b) p. 63	Child's caregiver is already listed in WIC § 294(a)(8). In addition to the requirements stated in section 294, notice must be given to any CASA volunteer, ~~the child's present caregiver~~ Indian custodian, and ~~any~~ de facto parent on *Notice of Hearing on Selection of a Permanent Plan* (form JV-300).
CRC 5.725(d)(3) p. 66	Per this proposal, "(2)(A)" and "(2)(B)" are to be deleted (see p. 64). If the court finds that ~~(2)(A) or (2)(B)~~ section 366.26(c)(1)(A) or section 366.26(c)(2)(A) applies, the court must appoint the present custodian or other appropriate person to become the child's legal guardian or must order the child to remain in foster care. (A) If the court orders that the child remain in foster care, it ~~The court~~ may order that the name and address of the foster home remain confidential.

CRC 5.725(d)(4)-(5) pp. 66-67	Suggested changes for consistency with CRC 5.708(e) (p. 45): (4) The court must consider the case plan submitted for this hearing and must find as follows: ~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate, including 1 being asked for a statement regarding his or her permanent placement plan, and the case plan contains the social worker's assessment of those stated wishes; or~~ ~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement, including being asked for a statement regarding his or her permanent placement plan and the case plan does not contain the social worker's assessment of those stated wishes. If the court makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, including asking the child for a statement regarding his or her permanent plan, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds that the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court; and~~ (A) Whether the child was actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement, including being asked for a statement regarding the permanent placement plan, and whether the case plan contains the social worker's assessment of those stated wishes. If the court finds ~~that~~ the child was not appropriately involved, the court must order the agency to actively involve the child in the development of the case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds ~~that~~ the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court. ~~(C) In the case of an Indian child, the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or~~ ~~(D) In the case of an Indian child, the agency did not consult with the child's tribe. If the court makes such a finding, the court must order the agency to consult with the tribe, unless the court finds that the tribe is unable, unavailable, or unwilling to participate.~~

	(B) In the case of an Indian child, whether the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful. If the court finds ~~that~~ the agency did not consult the child's tribe, the court must order the agency to do so, unless the court finds ~~that~~ the tribe is unable, unavailable, or unwilling to participate. ~~(5)~~(C) For a child 12 years of age or older and in a permanent placement, ~~the court must consider the case plan and must find as follows:~~ ~~(A) T~~whether the child was given the opportunity to review the case plan, sign it, and receive a copy.~~; or~~ ~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy.~~ If the court ~~makes such a finding~~ finds the child was not given the opportunity to review the case plan, sign it, and receive a copy, the court must order the agency to give the child ~~the~~ that opportunity ~~to review the case plan, sign it, and receive a copy~~.
CRC 5.725(d)(6) p. 67	Per SB 794 amendment to WIC § 366.26(c)(5), delete entirely (to avoid repetition of statutory language) or change as indicated: ~~(6)~~(5) If ~~no adult is available to become legal guardian and no suitable foster home is available,~~ the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, that placement with a fit and willing relative is not appropriate as of the hearing date, and that there are no suitable foster parents, the court may order the care, custody, and control of the child transferred to a licensed foster family agency, subject to further orders of the court.
CRC 5.725(e)(1) p. 68	(1) An order of the court terminating parental rights, ordering adoption under section 366.26, or, in the case of an Indian child, ordering tribal customary adoption under section 366.24 is conclusive and binding on the child, the parent, and all other persons who have been served under the provisions of section 294. The order may not be set aside or modified by the court, except as provided in section 366.26(i)(3) and in rules 5.538, 5.540, and 5.542 with regard to orders by a referee.
CRC 5.725(e)(2) p. 68	Delete entirely (to avoid repetition of language in WIC § 366.24(c)(6)). If deleted, change 5.725(e)(1) to 5.725(e). ~~In the case of an Indian child for whom tribal customary adoption has been ordered in accordance with section 366.24, the court may continue the hearing for up to 120 days to permit the tribe to complete the process for tribal customary adoption. In its discretion, the court may grant a further continuance not exceeding 60 days.~~ ~~(A) No less than 20 days before the date set for the continued hearing, the tribe must file the completed tribal customary adoption order with the court.~~ ~~(B) The social worker must file an addendum report with the court at least 7 days before the hearing.~~

	~~(C) If the tribe does not file the tribal customary adoption order within the designated time period, the court must make new findings and orders under section 366.26(b) and select a new permanent plan for the child.~~
CRC 5.726 p. 69	**Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)**
CRC 5.726(b) p. 70	Steps to facilitate the adoption process include those listed in section 366.26(n)(2) and, in ~~In~~ the case of an Indian child when tribal customary adoption has been identified as the child's permanent plan, the child's identified Indian tribe has designated the caregiver as the prospective adoptive parent.
CRC 5.726(c) p. 71 "must show on the request" – What if request is made orally per CRC 5.726(a)(2)? See 366.26(n)(3), (3)(A) – Agency	(1) The court must ~~evaluate~~ determine whether the caregiver meets the criteria in ~~(b).~~ ~~(1) The petitioner must show on the request that the caregiver meets the criteria in~~ section 366.26(n)(1). (2) If the court finds that ~~the petitioner does not show that~~ the caregiver meets the criteria in section 366.26(n)(1), the court may deny the request without a hearing. (3) If the court finds that ~~the petitioner has shown that~~ the ~~current~~ caregiver meets the criteria in section 366.26(n)(1), the court must set a hearing as set forth in (4) below. (4) If it appears to the court that the request for designation as a prospective adoptive parent will be contested, or if the court wants to receive further evidence on the request, the court must set a hearing. (A) If the request for designation is made at the same time ~~as an objection~~ a petition is filed to object to removal of the child from the caregiver's home, the court must set a hearing as follows: (i) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court. (ii) If the court for good cause ~~is unable to~~ cannot set the matter for hearing five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible. (iii) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian. (B) If the request for designation is made before ~~a request for removal is filed~~ the agency serves notice of a proposed removal or before an

services notice of proposed removal; it does not file a request for removal.	emergency removal has occurred, the court must ~~order that the~~ set a hearing ~~be set at a time~~ within 30 calendar days after the ~~filing of the~~ request for designation is made. (5) If all parties stipulate to the ~~request for~~ designation of the caregiver as a prospective adoptive parent, the court may order the designation without a hearing.
CRC 5.726(d)(2) p. 72	(2) If the request for designation ~~was~~ is made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the hearing on proposed removal, ~~hearing,~~ as stated in rule 5.727(f). (3) If the request for designation ~~was~~ is made before ~~a request for removal was filed~~ the agency services notice of a proposed removal or before an emergency removal occur~~red~~s, notice must be as follows:
CRC 5.727(a) p. 73	This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from a prospective adoptive parent ~~under rule 5.726(b)~~ or from a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1). This rule does not apply if the caregiver requests the child's removal.
CRC 5.727(b) p. 73	Before removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ or from the home of a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1), and as soon as possible after a decision is made to remove the child, the agency must notify the following participants of the proposed removal:
CRC 5.727(c) p. 74	DSS or the agency must provide notice on *Notice of Intent to Remove Child* (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and *Request for Prospective Adoptive Parent Designation* (form JV-321) must also be provided to all participants listed in (b) except the court.
CRC 5.727(d)(3) p. 74	(3) Notice to the child's identified Indian tribe and Indian custodian must ~~be given under rule 5.481~~ comply with the requirements of section 224.2.
CRC 5.727(d)(4) p. 74	For consistency with 5.726(d)(3)(E): (4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.
CRC 5.727(e)(2) p. 74 Language highlighted in green: Not sure which one is correct.	Second sentence is unclear: service of the notification of the proposed removal or service of the request for hearing on the proposed removal? (2) A request for hearing on the proposed removal must be made within five court or seven calendar days from the date of notification, whichever is longer. If service

	of the notification is by mail, time to ~~respond~~ request a hearing is extended by five calendar days. (2) A request for hearing on the proposed removal must be made within five court or seven calendar days from the date of notification, whichever is longer. If service of the request for hearing is by mail, time to ~~respond~~ make the request is extended by five calendar days.
CRC 5.727(e)(3) pp. 74-75	For consistency with CRC 5.726(c)(4)(A): (3) The court must ~~order~~ set a hearing as follows: (A) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court. (B) If the court for good cause ~~is unable to~~ cannot set the matter for hearing five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible. (C) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.
CRC 5.727(f) p. 75	**(f) Notice of hearing on proposed removal** (1) … (2) … (3) Notice must be ~~either~~ by personal service or by telephone. Notice by personal service must include a copy of the completed forms *Notice of Intent to Remove Child* (form JV-323) and *Objection to Removal* (form JV-325). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-323 and JV-325. (4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.

CRC 5.727(g) p. 75	For consistency with the rest of CRC 5.727: At a hearing on ~~an intent to remove the child~~ a proposed removal, the agency intending to remove the child must prove by a preponderance of the evidence that the proposed removal is in the best interest of the child.
CRC 5.727(h) p. 75	Not addressed: Whether the child's identified Indian tribe or Indian custodian should have access to confidential information. (See CRC 5.727(b) & (f).)
CRC 5.727(i) p. 76	For consistency with the rest of CRC 5.727: If the court order made after a hearing on ~~an intent to remove a child~~ a proposed removal is appealed, the appeal must be ~~made~~ brought as a petition for writ review under rules 8.454 and 8.456.
CRC 5.728(a) p. 76	This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a dependent child from the home of a prospective adoptive parent ~~under rule 5.726(b)~~ or ~~from~~ a caregiver who may meet the criteria for designation as a prospective adoptive parent ~~under rule 5.726(b)~~ in section 366.26(n)(1) when the DSS or the licensed adoption agency has determined a removal must occur immediately due to a risk of physical or emotional harm. This rule does not apply if the child~~'s removal~~ is ~~carried out~~ removed at the request of the caregiver.
CRC 5.728(b) p. 76	"Immediate" does not modify "risk of physical or emotional harm" in the statute. (See WIC § 366.26(n)(4).) After removing a child from the home of a prospective adoptive parent ~~under rule 5.726(b),~~ or ~~from the home of~~ a caregiver who may meet the criteria of a prospective adoptive parent ~~under rule 5.726(b),~~ in section 366.26(n)(1) because of ~~immediate~~ risk of physical or emotional harm, the agency must notify the following participants of the emergency removal: (1) The court; (2) The ~~current~~ caregiver~~, if that caregiver either~~ who is a ~~designated~~ prospective adoptive parent or who, on the date of service of the notice, ~~meets~~ may meet the criteria in section 366.26(n)(1);
CRC 5.728(c) p. 77 Isn't notice "by	The instructions on form JV-324 state, "*This notice must be served with a blank copy of form JV-321,* Request for Prospective Adoptive Parent Designation, *and a blank copy of form JV-325,* Objection to Removal." How would these blank copies be provided to the caregiver and the child (10 or older) if notice is given by telephone per CRC 5.728(c)(2)? **(c) Form and service of notice**

telephone" contrary to the rule stating that form JV-324 must be used to provide notice? There is **no proof of notice** included on form JV-324 (currently 1 page, as revised 1-1-08).	*Notice of Emergency Removal* (form JV-324) must be used to provide notice of an emergency removal, as described below. (1) … (2) Notice must be either by telephone or by personal service of the form. (3) … (4) Whenever possible, the agency, at the time of the removal, must give a blank copy of ~~the form~~ *Request for Prospective Adoptive Parent Designation* (form JV-321) and a blank copy of *Objection to Removal* (form JV-325) to the caregiver and, if the child is 10 years of age or older, to the child. (5) Notice to the court must be served by filing ~~of the~~ *Notice of Emergency Removal* (form JV-324) and *Proof of Notice* (form JV-326) with the court. ~~The proof of notice included on the form must be completed when the form is filed with the court.~~ (6) *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the proposed removal.
CRC 5.728(d)(2) p. 77	For consistency with CRC 5.726(c)(4)(A) and CRC 5.727(e)(3): (2) The court must ~~order~~ set a hearing as follows: (A) The hearing must be set as soon as possible and not later than five court days after the ~~objection~~ petition objecting to removal is filed with the court. (B) If the court for good cause ~~is unable to~~ cannot set the matter for hearing ~~within~~ five court days after the petition objecting to removal is filed, the court must set the matter for hearing as soon as possible. (C) The matter may be set for hearing more than five court days after the ~~objection~~ petition objecting to removal is filed if this delay is necessary to allow participation by the child's identified Indian tribe or the child's Indian custodian.
CRC 5.728(e) p. 78	For consistency with CRC 5.727(f): **(e) Notice of ~~emergency removal~~ hearing on emergency removal** After the court has ordered a hearing on an emergency removal, notice of the hearing must be as follows: ~~(2)~~(1) The clerk must provide notice of the hearing to the agency and the participants listed in (b) above, if the court, ~~the~~ caregiver, or ~~the~~ child requested the hearing. ~~(3)~~(2) The child's attorney must provide notice of the hearing to the agency and the

	participants listed in (b) above, if the child's attorney requested the hearing. ~~(1)~~(3) Notice must be ~~either~~ by personal service or by telephone. Notice by personal service must include a copy of the completed *Notice of Emergency Removal* (form JV-324). Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324 and JV-325. (4) ~~Proof of notice on~~ *Proof of Notice* (form JV-326) must be filed with the court before the hearing on the emergency removal.
CRC 5.728(g) p. 78	Not addressed: Whether the child's identified Indian tribe or Indian custodian should have access to confidential information. (See CRC 5.728(b) & (e).) For consistency with CRC 5.727(h): If the telephone or address of the caregiver or the child is confidential, all forms must be kept in the court file under seal. Only the court, the child's attorney, the agency, and the child's CASA volunteer ~~and program~~ may have access to this information.
CRC 5.728 p. 78	Should a provision for appeal be added (see CRC 5.727(i)? E.g.: If the court order made after a hearing on an emergency removal is appealed, the appeal must be brought as a petition for writ review under rules 8.454 and 8.456.
p. 78	**Rule 5.730. Adoption (§§ 366.24, 366.26(e); Fam. Code § 8600 et seq.)**
CRC 5.735(c) p. 81	Merely repeats what is already in WIC § 366.26(d). Delete (and re-letter subsequent subdivisions)?
CRC 5.735(d) p. 81	(1) If the court finds that legal guardianship is the appropriate permanent plan, the court must appoint the guardian and order the clerk to issue letters of guardianship, which will not be subject to the confidentiality protections ~~of juvenile court documents as~~ described in section 827. (2) The court must issue orders regarding visitation of the child by a parent or former guardian, unless the court finds that visitation would be detrimental to the physical or emotional well-being of the child.

CRC 5.735(e) p. 81	Wrong rule. The court must advise all parties of their appeal rights as provided in rule ~~5.585~~ 5.590.
CRC 5.740 p. 82	**Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3, 16501.1)**
CRC 5.740(a) p. 82	Suggested changes for consistency with CRC 5.708(e) (p. 45) and 5.725(d) (pp. 66-67) (see also WIC § 16501.1(g)(15)(A) and suggested changes below for CRC 5.740(b)(2): (2) The court or administrative review panel must consider the case plan submitted for this hearing and must find as follows: (A) Whether the child was actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement, including being asked for a statement regarding the permanent placement plan, and whether the case plan contains the social worker's assessment of those stated wishes. If the court finds the child was not appropriately involved, the court must order the agency to actively involve the child in the development of the case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate. If the court finds the case plan does not contain the social worker's assessment of the child's stated wishes, the court must order the agency to submit the assessment to the court. (B) Whether the agency has documented the steps it is taking to finalize the adoption or legal guardianship, has identified any barriers to achieving legal permanency, and has described the steps it will take to address those barriers. If the court finds the case plan does not contain this information, the court must order the agency to submit the missing information to the court. ~~(2)~~(3) When adoption is granted, the court must terminate its jurisdiction. ~~(3)~~(4) When legal guardianship is granted, the court may continue dependency jurisdiction if it is in the best interest of the child, or the court may terminate dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship. ~~(4)~~(5) Notice of the hearing must be given as provided in section 295.
CRC 5.740(b) p. 82	Suggested change to reflect amendments made by SB 794: **(b) Review hearings—relative care or foster care**

CRC 5.740(b)(1) p. 82	For consistency with 5.740(a)(1): … and enter findings ~~regarding each item listed in~~ as required by section 366.3(e).
CRC 5.740(b)(2)-(3) pp. 82-83 Note: If court finds child was not involved, **JV-446 item 14.b.(1)** orders agency to submit updated case plan within 30 days. Note: If court finds child was not given opportunity, **JV-446 item 15.b.(1)** orders agency to submit written confirmation within 30 days that child was given opportunity.	Suggested changes for consistency with CRC 5.708(e) (p. 45) and 5.725(d) (pp. 66-67):[2] (2) The court or administrative review panel must consider the case plan submitted for this hearing and must find as follows: ~~(A) The child was actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate; or~~ ~~(B) The child was not actively involved in the development of his or her own case plan and plan for permanent placement as age and developmentally appropriate. If the court or administrative review panel makes such a finding, the court must order the agency to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.~~ (A) Whether the child was actively involved, as age- and developmentally appropriate, in the development of the case plan and plan for permanent placement. If the court finds the child was not appropriately involved, the court must order the agency to actively involve the child in the development of the case plan and plan for permanent placement, unless the court finds the child is unable, unavailable, or unwilling to participate. (B) In the case of an Indian child, whether the agency consulted with the child's tribe and the tribe was actively involved in the development of the case plan and plan for permanent placement, including consideration of tribal customary adoption as an appropriate permanent plan for the child if reunification is unsuccessful. If the court finds the agency did not consult the child's tribe, the court must order the agency to do so, unless the court finds the tribe is unable, unavailable, or unwilling to participate. ~~(3) For a child 12 years of age or older and in a permanent placement, the court must consider the case plan and must find as follows:~~ ~~(A) The child was given the opportunity to review the case plan, sign it, and receive a copy; or~~ ~~(B) The child was not given the opportunity to review the case plan, sign it, and receive a copy. If the court makes such a finding, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.~~ (C) For a child 12 years of age or older and in a permanent placement, whether the child was given the opportunity to review the case plan, sign it, and receive a copy.

[2] The additions suggested in CRC 5.740(b)(2)(D)-(J) are based on the case plan requirements set forth in WIC § 16501.1(g)(15)-(19). Although § 16501.1 does not require the court to make such findings on the record, the current rule requires the court to make other findings regarding the case plan. (See CRC 5.740(b)(2)(A)-(C).)

	If the court finds the child was not given the opportunity to review the case plan, sign it, and receive a copy, the court must order the agency to give the child that opportunity. (D) For a child 16 years of age or older and in a permanent placement, whether the case plan identifies the intensive and ongoing efforts made to return the child to the home of the parent, place the child for adoption or tribal customary adoption in the case of an Indian child, establish a legal guardianship, or place the child with a fit and willing relative, as appropriate, including the use of technology and social media to find relatives of the child. If the court finds the case plan does not include this information, the court must order the agency to submit the missing information to the court. (E) For a child who is 14 or 15 years of age, whether the case plan describes the programs and services that will help the child, consistent with the child's best interests, to prepare for the transition from foster care to successful adulthood. If the court finds the case plan does not include this information, the court must order the agency to submit the missing information to the court. (F) For a youth 16 years of age or older or a nonminor dependent, whether the case plan includes the youth's transitional independent living plan. If the court finds that the case plan does not include this plan, the court must order the agency to submit the missing plan to the court. (G) For a youth 14 years of age or older, whether the case plan documents that a consumer credit report was requested annually and any results were provided to the youth, identifies any barriers to obtaining the credit reports, and details how the county ensured the youth received assistance with interpreting the credit report and resolving any inaccuracies. If the court finds the case plan does not include this information, the court must order the agency to submit the missing information to the court. (H) For a youth 14 years of age or older or a nonminor dependent, whether the case plan includes a document that describes the youth's rights with respect to education, health, visitation, and court participation, the right to be annually provided with copies of his or her credit reports at no cost while in foster care, and the right to stay safe and avoid exploitation. If the court finds that the case plan does not include this document, the court must order the agency to submit the missing document to the court. (I) For a youth 14 years of age or older or a nonminor dependent, whether the case plan includes a signed acknowledgment by the youth that he or she has received a copy of the document described in (H) and that the rights described in the document were explained to the youth in an age-appropriate manner. If the court finds that the case plan does not include this acknowledgment, the court must order the agency to submit it to the court.

Note: **JV-446 item 27.d.** does not provide for finding that the agency has not made diligent efforts to find relatives or has not evaluated relatives as caregivers and does not provide for ordering the agency to do so (or to submit proof of same to the court).	(J) For a child or nonminor dependent who is, or who is at risk of becoming, a victim of commercial sexual exploitation, whether the case plan documents the services provided to address that issue. ~~(4)~~(3) If the child is not placed for adoption, the court or administrative review panel must find as follows: (A) Whether t~~T~~he agency has made diligent efforts to locate an appropriate relative.~~; or~~ ~~(B) The agency has not made diligent efforts to locate an appropriate relative.~~ If the court or administrative review panel ~~makes such a finding~~ finds the agency has not made diligent efforts to locate an appropriate relative, the court or administrative review panel must order the agency to ~~make diligent efforts to locate an appropriate relative; and~~ do so. ~~(C)~~(B) Whether e~~E~~ach relative whose name has been submitted to the agency as a possible caregiver has been evaluated as an appropriate placement resource.~~; or~~ ~~(D) Each relative whose name has been submitted to the agency as a possible caregiver has not been evaluated as an appropriate placement resource.~~ If the court or administrative review panel ~~makes such a finding~~ finds the agency has not evaluated each relative whose name has been submitted as a possible caregiver, the court or administrative review panel must order the agency to ~~evaluate as an appropriate placement resource, each relative whose name has been submitted to the agency as a possible caregiver~~ do so. ~~(5)~~(4) … ~~(6)~~(5) … ~~(7)~~(6) … ~~(8)~~(7) …
CRC 5.740(c) p. 85	A petition to terminate a guardianship established by the juvenile court, to appoint a successor guardian, or to modify or supplement orders concerning ~~the~~ a guardianship must be filed in the juvenile court. The procedures described in rule 5.570 must be followed, and *Request to Change Court Order* (form JV-180) must be used.
CRC 5.740(c)(2) p. 85	Comment: The requirement for the petitioner to serve notice of the hearing is in conflict with **WIC § 297(c)** ["the court … shall give prior notice"] and **CRC 5.570(g)** [clerk must cause notice of hearing to be given per CRC 5.524, which references both WIC § 290.1 and WIC § 290.2]. (The second sentence in 5.740(c) states, "The procedures described in rule 5.570 must be followed…."). Also, if the petitioner is the guardian who wishes to terminate the guardianship (and who might be acting in pro per), can he or she realistically be expected to serve notice of the hearing? (2) Not less than 15 court days before the hearing date, the petitioner must serve notice of the hearing on the department of social services; the guardian; the child, if 10 years or older; parents whose parental rights have not been terminated; the

	court that established the guardianship, if in another county; and counsel of record for those entitled to notice.
JV-421, p. 1 Right footer	*Shouldn't the citations be to WIC §§ 361, 361.2 (rather than §§ 366, 366.3) and CRC 5.695 (rather than CRC 5.707)?*
JV-421: item 16b	*Delete period after* "made toward~~.~~"
JV-421: item 20	*Add a finding for § 361.5(b)**(16)**.*
JV-421: item 20c, 20d, 20e	… is a person described in Welf. & Inst. Code, § 361.5(b)(2), and ~~and~~ reunification services are …
JV-421: item 20f	… and the court accepts the waiver, the person having knowingly and intelligently waived the right to ~~serves~~ services.
JV-421: item 21b	*Per "Gray Chart" (Recommended Title IV-E Findings and Orders), rev. 2-1-16, finding D4. ("Achieved" is in D6.)* **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan ~~achieved~~ selected is *(specify):*
JV-421: item 26	*For consistency with rest of form:* ~~L~~legal guardian … Welf. & Inst. Code~~.~~ § 369
JV-421: item 27b	The ~~educational~~ rights and responsibilities of the educational ~~representative~~ rights holder are described in rule 5.650(e)-(f) …
JV-421: item 30	The following persons are ordered to ~~make~~ take the steps necessary for … a. social worker. b. parent or legal guardian *(name):* c. surrogate parent *(name):* d. educational ~~representative~~ rights holder *(name):* e. other *(name):*
JV-421: item 31	a. ~~☐~~ The child's educational records, including any evaluation regarding a disability, ☐ were ☐ were not requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request. b. ~~☐~~ The child ☐ is ☐ is not enrolled in school. c. ~~☐~~ The child ☐ is ☐ is not attending school.
JV-421: item 33	**Child under ~~the age of~~ three years of age or a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)~~9~~(1)(C)** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under ~~the age of~~ three years of age on the date of initial removal or is a member of a sibling group in which one member was under three years of age on the date of initial removal:
JV-421: item 35d	The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, …. … The clerk of the court is directed to provide written notice as stated in rule 5.695~~(g)(10)~~(h)(19) of the California Rules of Court to any party not present.
JV-421: item 35e	The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person(s) named below
JV-421: item 35f	**The likely date** by which the child may be placed for adoption, or by which another permanent plan may be selected, is *(specify date):*

Name: Mike Roddy **Title:** Executive Officer

Organization: Superior Court of California, County of San Diego

☒ Commenting on behalf of an organization

Address: County Courthouse, 220 West Broadway

City, State, Zip: San Diego, California 92101

Email: invitations@jud.ca.gov

Mail: Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102

DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, June 14, 2016.

Item number: 07

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Juvenile Law: Intercounty Transfer - adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 and JV-552; revise form JV-550

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: Item 2: AB 1712 (Beall) Nonminor Dependents
Chapter 846, Statutes of 2012 - Develop rules and forms to implement the transfer provisions for nonminor dependents and to provide further guidance to youth seeking to reenter juvenile court jurisdiction as nonminor dependents consistent with the provisions of earlier legislation regarding the extension of juvenile court jurisdiction and foster care services to dependents and wards up to 21 years of age. Circulated for comment in Winter 2014 and deferred at the request of courts in Southern California.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Juvenile Law: Intercounty Transfer

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 and JV-552; revise form JV-550

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 23, 2016

Contact
Nicole Giacinti, 415-865-7598
nicole.giacinti@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one new rule and two new mandatory Judicial Council forms to implement the transfer provisions for nonminor dependents in Assembly Bill 1712. The committee further recommends amending the current intercounty transfer rules and revising a mandatory form to include provisions that have streamlined the transfer process for counties involved in two transfer protocol pilot programs. Lastly, the committee recommends amending two of the California Rules of Court to require mandatory use of the forms.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Adopt rule 5.613of the California Rules of Court, which mandates transfer-out and transfer-in procedures for the transfer of nonminor dependent cases.

2. Adopt form JV-552, *Juvenile Court Transfer-Out Orders—Nonminor Dependent,* which serves to alert the receiving court of the new case and allows the sending court to set a transfer-in hearing in the receiving court.

3. Amend rules 5.610 and 5.612 of the California Rules of Court to require the transfer-out court to set a date certain for the transfer-in hearing and mandate use of form JV-548, *Motion for Transfer Out.*

4. Adopt form JV-548, *Motion for Transfer Out,* which provides the receiving court with a synopsis of the pertinent facts and procedural history of the case being transferred.

5. Revise form JV-550, *Juvenile Court Transfer-Out Orders*, to mandate inclusion of important case details that will insure the receiving court has the information it needs to conduct the transfer-in hearing and set appropriate future hearings.

The text of the proposed rules is attached at pages 7–12. A copy of the proposed new and revised forms is attached at pages 13–22.

Previous Council Action

The Judicial Council approved the JV-550 as a mandatory form, effective January 1, 1993. In 2006 the Judicial Council approved an amendment to rule 5.610[1] that allows counties to request to use a modified version of form JV-550 if there is a formalized collaboration that will expedite the processing of intercounty transfer cases. The amended rule delegated responsibility for reviewing requests to use a modified version of form JV-550 to the "Judicial Council, Administrative Office of the Courts." Simultaneously, the Judicial Council recognized alternative forms created by a collaboration of courts in several Northern California counties to create a joint intercounty transfer protocol called the SacJoaquin protocol.

On December 11, 2015, the Judicial Council approved use of another modified form JV-550 by a collaboration of courts in Southern California, known as the Southern California protocol.

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

Rationale for Recommendation

Intercounty transfer of nonminor cases

Legislation effective January 1, 2013[2] revised Welfare and Institutions Code sections 17.1 and 375 to provide that a nonminor dependent who has been placed in a planned permanent living arrangement and has continuously resided as a nonminor dependent in a county other than the county of jurisdiction for at least 12 months with the intent to continue to reside in that county may have his or her case transferred to that county of residence. Currently, however, the California Rules of Court and the Judicial Council forms do not establish a process for the intercounty transfer of nonminor dependent cases.

The committee originally circulated for public comment proposed rules and forms for the intercounty transfer of nonminor dependent cases in 2014 as part of a proposal to implement AB 1712 and other legislation creating extended foster care.[3] When the original proposal circulated for comment, several Southern California courts were in the process of piloting the use of a modified form JV-550. In addition to the modified form, the Southern California courts were following a specific protocol that included use of a mandatory transfer-out motion. Three of the Southern California courts involved in the pilot project—the Superior Courts of Los Angeles, Riverside, and San Diego Counties—and the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees requested, and the Family and Juvenile Law Committee agreed, to defer the proposal pending the conclusion of the Southern California pilot project. The Southern California pilot project has concluded, and, in light of the success of the Southern California and SacJoaquin protocols, the committee reviewed the elements of those two protocols and is recommending that certain provisions of those protocols be incorporated into a new rule and forms for intercounty transfer of nonminor dependent cases.

The adoption of rule 5.613 and form JV-552 will ensure conformance with the mandate stated in AB 1712. Rule 5.613 largely tracks the procedural requirements for transfer of minor cases as they apply to minors who are not detained; it, however, includes transfer-out and transfer-in requirements in one rule rather than two. Furthermore, one additional requirement not present for the transfer of a minor ward or dependent but proposed for a nonminor dependent is that the nonminor support the transfer. Prioritizing the nonminor dependent's wishes regarding the transfer not only highlights that extended foster care is a voluntary status but acknowledges that the nonminor may have formed bonds to the community and people involved in his or her case that would be severed if the case were transferred. The Family and Juvenile Law Advisory Committee believes that to allow a court to transfer the jurisdiction of a nonminor over his or her objection would be inconsistent with the goal of building and maintaining a network of supportive adults for the nonminor dependent, which is the intent of the California Fostering Connections to Success Act.

[2] AB 1712 (Beall; Stats. 2012, ch. 846)

Rule 5.613 also contains language requiring use of the proposed mandatory *Motion for Transfer Out* (form JV-548). In addition, rule 5.613 establishes that only those documents associated with the final status review hearing held before the nonminor reaches the age of majority need be transmitted. Transmitting the entire juvenile file is not prohibited, but neither is it mandated. Likewise, the file may be transmitted electronically but it is not required.

Proposed new mandatory form JV-552 is the companion to rule 5.613 and serves to alert the receiving court to the existence of the transfer. Form JV-552 also allows the sending court to set a transfer-in hearing within 10 days of the transfer-out hearing.

Revisions to rules and forms governing intercounty transfer of minor cases

When it reviewed the Southern California and SacJoaquin protocols in connection with nonminor transfers, the committee concluded that including elements of these protocols in the existing juvenile transfer procedure would also be beneficial. Specifically, the committee recommends adding a section that states whether the transfer request was granted or denied, as well as a section that documents the delinquency disposition imposed. It is further recommended that form JV-550 include additional details about the case, such as ICWA information, special education issues, educational rights holder details, visitation, parentage, and 241.1 status. Including these details in form JV-550 will provide the transfer-in court with a snapshot of all the important case details, insuring that the transfer-in court has all the information it needs to conduct the transfer-in hearing and set appropriate future hearings.

Amending rules 5.610 and 5.612, revising form JV-550, and adopting the *Motion for Transfer Out* (form JV-548) as a mandatory form will enhance efficiency for courts and parties in the intercounty transfer of juvenile and nonminor cases. Revising form JV-550 to include pertinent factual and procedural information and mandating use of form JV-548 will benefit both the sending and receiving court by providing information necessary to rule on the requested transfer, highlighting the procedural steps that still need to be taken, and enabling the court to easily identify the posture of the case. Revised rules 5.610 and 5.612 will mandate use of both forms JV-548 and JV-550. Moreover, the revised rules will mandate that the sending court schedule, and notice the parties for, the transfer-in hearing. This method of scheduling the transfer-in hearing will curtail lengthy delays typically associated with transfer cases.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2016 invitation-to-comment cycle, from April 15, 2016, to June 14, 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. Six comments were received including ca comment fromthe Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment. Out of six comments received, five commentators

agreed with the proposal if modified and one commentator agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 23–33.

The Invitation to Comment requested input on whether the entirety of forms JV-548[4] and JV-550 should be mandatory, rather than making some items optional. Two of the five commentators responded to this question, stating that all information on the forms should be mandatory. Since completing all the information included on these two forms would be beneficial for both the sending and receiving courts, the committee concluded that the benefit of mandating all the information included on these two forms would outweigh any burden associated with completing all the information. The committee is therefore recommending that all the items on the forms be mandatory.

The Invitation to Comment also sought input on whether the shortened timelines for transfer of the case file would be difficult for those counties who are not using electronic case filing. One commentator responded to this query and expressed concern about the impact shortened timelines would have on nonelectronic filing counties. The two-day timeline only applies to children who are in custody; in other words, it only applies to children who are detained in a juvenile hall, ranch, or camp. In those situations, rule 5.610 states that the file will be transferred with the child. In other words, overnight mail would not be required. Since the shortened timeline does not require the file to be mailed and because it leads to quicker processing of children who are in custody, the committee recommends that two-day timeline set forth in rule 5.610 be maintained.

Another issue the Invitation to Comment raised pertained to what portion of the underlying juvenile file should be transferred when a nonminor case is transferred. As sent out for comment, rule 5.613 required transmission of only those documents associated with the last status review hearing before the nonminor turns 18. One commentator suggested that rule 5.613 require transfer of the entire underlying juvenile file. After much discussion, the committee decided not to revise proposed rule 5.613 to require transmission of the entire underlying juvenile file. In small counties, as well as counties that do not utilize electronic filing, such a requirement would drain time and resources that are already stretched thin. Rule 5.613 does not prohibit transmission of the entire underlying file, so counties that wish to transmit the entire file may do so.

One commentator raised concerns about the proposal's deletion of the requirement that the transfer-out court notice the parties of the transfer-in hearing by first class mail. The commentator's point is a valid one; however, rules 5.610 and 5.613 now require the sending court to give notice of the date and time of the transfer-in hearing on the record during the transfer-out hearing. Consequently, notice of the hearing is effectuated in person and notice by mail is not necessary. As is the common practice currently, the transfer-out hearing would be

[4] Originally circulated as form JV-448.

continued if the parties failed to appear; thus, notice would be given in court at the continued hearing. For these reasons, the committee does not recommend including notice provisions in rules 5.610, 5.612 or 5.613.

Another commentator raised concerns about the provision in rule 5.613 that states that the court may not transfer the case unless it determines that the nonminor supports the transfer te. As the commentator correctly points out, there is no statutory section that requires that the nonminor support the transfer before the court can grant the request to transfer. However, this provision acknowledges the fact that extended foster care is a voluntary status intended to assist the nonminor in achieving independence. The committee believes that to allow a court to transfer the jurisdiction of a nonminor over his or her objection would be inconsistent with the intent of the California Fostering Connections to Success Act and does not recommend revising rule 5.613 to delete the provision requiring the nonminor to support transfer.

Finally, two commentators noted that it will be difficult for transfer-out courts that do not participate in one of the intercounty collaborations to schedule transfer-in hearings because calendaring information is not readily available. One commentator recommended that there be a central repository where calendaring information, along with contact information for the dependency court clerk, is maintained. The committee believes it would be more efficient for courts to update their websites to include contact information and calendaring dates/times related to transfer-in hearings. As such, the committee recommends revising rules 5.610 and 5.613 to include a requirement that courts maintain transfer-in calendaring information, as well as contact information for the appropriate clerk, on their court websites.

Implementation Requirements, Costs, and Operational Impacts

This proposal may result in minimal additional record keeping related to filing proposed new forms JV-548 and JV-552, as well as additional data entry and website maintenance to implement the portion of the rule that requires calendaring and contact information be made available. The proposal will also result in additional data entry for the transfer-out social worker or probation officer, who will now be tasked with completing form JV-548 and providing the additional information required on form JV-550. This additional work during the transfer-out process will result in much less work for the transfer-in court, which should result in a net savings across the state. It also means that the outlay of time for the sending county will be recouped when it receives a transfer case as the receiving county.

Attachments and Links

1. Cal. Rules of Court, rules 5.610, 5.612, and 5.613, at pages 7–12
2. Forms JV-548, JV-550, and JV-552, at pages 13–22
3. Chart of comments, at pages 23–32
4. Attachment A, at pages 33–41

Rule 5.613 of the California Rules of Court is adopted, and rules 5.610 and 5.612 are amended, effective January 1, 2017, to read:

Rule 5.610. Transfer-out hearing

(a) * * *

(b) Verification of residence

The residence of the person entitled to physical custody may be verified ~~by that person in court or~~ by declaration of a social worker or probation officer in the transferring or receiving county.

(c)–(d) * * *

(e) Conduct of hearing

(1) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all required information.

(2) After the court determines the identity and residence of the child's custodian, the court must consider whether transfer of the case would be in the child's best interest. The court may not transfer the case unless it determines that the transfer will protect or further the child's best interest.

(f) Date of transfer-in hearing

(1) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court: within 5 court days of the transfer-out order if the child is in custody, and within 10 court days of the transfer-out order if the child is out of custody. The sending court must state on the record the date, time, and location of the hearing in the receiving court.

(2) The website for every court must include up-to-date contact information for the court clerks handling dependency and delinquency matters, as well as up-to-date information on when and where transfer-in hearings are held.

~~(f)~~ (g) Order of transfer (§§ 377, 752)

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders* (form JV-550), which must include all required information and findings.

~~(g)~~ (h) * * *

~~(h)~~ (i) Transport of child and transmittal of documents (§§ 377, 752)

(1) If the child is ordered transported in custody to the receiving county, the child must be delivered to the receiving county ~~within 7 court days~~ at least two business days before the transfer-in hearing, and the clerk of the court of the

transferring county must prepare a certified copy of the complete case file so that it may be transported with the child to the court of the receiving county.

(2) If the child is not ordered transported in custody, the clerk of the transferring court must transmit to the clerk of the court of the receiving county within ~~10~~ five court days a certified copy of the complete case file.

(3) The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

~~(i)~~ (j) * * *

Rule 5.612. Transfer-in hearing

(a) Procedure on transfer (§§ 378, 753)

~~(1)~~ On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The clerk of the receiving court must ~~immediately place the transferred case on the court calendar for a transfer-in hearing~~ confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.

~~(A) Within two court days after the transfer-out order and documents are received if the child has been transported in custody and remains detained; or~~

~~(B) Within 10 court days after the transfer-out order and documents are received if the child is not detained in custody.~~

~~(2) No requests for additional time for the transfer-in hearing may be approved. The clerk must immediately cause notice to be given to the child and the parent or guardian, orally or in writing, of the time and place of the transfer-in hearing. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.~~

(b)–(f) * * *

Rule 5.613. Transfer of nonminor dependents

(a) Purpose

This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent as allowed by Welfare and Institutions Code section 375. This rule sets forth the procedures that a court is to follow when it seeks to order a transfer of a

nonminor dependent and those to be followed by the court receiving the transfer. All other intercounty transfers of juveniles are subject to rules 5.610 and 5.612.

(b) Transfer-out hearing

(1) *Determination of residence—special rule on intercounty transfers (§§ 17.1, 375)*

(A) For purposes of this rule, the residence of a nonminor dependent who is placed in a planned permanent living arrangement may be either the county in which the court that has jurisdiction over the nonminor is located or the county in which the nonminor has resided continuously for at least one year as a nonminor dependent and the nonminor dependent has expressed his or her intent to remain.

(B) If a nonminor dependent's dependency jurisdiction has been resumed, or if transition jurisdiction has been assumed or resumed by the juvenile court that retained general jurisdiction over the nonminor under section 303, the county that the nonminor dependent is residing in may be deemed the county of residence of the nonminor dependent. The court may make this determination if the nonminor has established a continuous physical presence in the county for one year as a nonminor and has expressed his or her intent to remain in that county after the court grants the petition to resume jurisdiction. The period of continuous physical presence includes any period of continuous residence immediately before filing the petition.

(2) *Verification of residence*

The residence of a nonminor may be verified by declaration of a social worker or probation officer in the transferring or receiving county.

(3) *Transfer to county of nonminor's residence (§ 375)*

If the court is resuming dependency jurisdiction or assuming or resuming transition jurisdiction of a nonminor for whom the court has retained general jurisdiction under section 303(b) as a result of a petition filed under section 388(e), after granting the petition, the court may order the transfer of the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1) and the court finds that the transfer is in the minor's best interest.

(4) *Transfer on change in nonminor's residence (§ 375)*

If a nonminor dependent under the dependency or transition jurisdiction of the court is placed in a planned permanent living arrangement in a county

other than the county with jurisdiction over the nonminor, the court may, on an application for modification under rule 5.570, transfer the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1).

(5) *Conduct of hearing*

(A) The request for transfer must be made on *Motion for Transfer Out* (form JV-548), which must include all requirement information.

(B) After the court determines whether a nonminor has established residency in another county as required in (b)(1), the court must consider whether transfer of the case would be in the nonminor's best interest. The court may not transfer the case unless it determines that the nonminor supports the transfer and that the transfer will protect or further the nonminor's best interest.

(C) If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court, which must be within 10 court days of the transfer-out order. The sending court must state on the record the date, time, and location of the hearing in the receiving court.

(6) *Order of transfer (§ 377)*

The order of transfer must be entered on *Juvenile Court Transfer-Out Orders—Nonminor Dependent* (form JV-552), which must include all required information and findings.

(7) *Modification of form JV-552*

Juvenile Court Transfer-Out Orders—Nonminor Dependent (form JV-552) may be modified as follows:

(A) Notwithstanding the mandatory use of form JV-552, the form may be modified for use by a formalized regional collaboration of courts to facilitate the efficient processing of transfer cases among those courts if the modification has been approved by the Judicial Council.

(B) The mandatory form must be used by a regional collaboration when transferring a case to a court outside the collaboration or when accepting a transfer from a court outside the collaboration.

(8) *Transmittal of documents (§ 377)*

The clerk of the transferring court must transmit to the clerk of the court of

the receiving county no later than five court days from the date of the transfer-out order a certified copy of, at a minimum, all documents associated with the last status review hearing held before the nonminor reached majority, including the court report and all findings and orders. The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.

(9) *Appeal of transfer order (§ 379)*

The order of transfer may be appealed by the transferring or receiving county, and notice of appeal must be filed in the transferring county, under rule 8.400. Notwithstanding the filing of a notice of appeal, the receiving county must assume jurisdiction of the case on receipt and filing of the order of transfer.

(c) Transfer-in hearing

(1) *Procedure on transfer (§ 378)*

On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file. The clerk of the receiving court must confirm the transfer-in hearing date scheduled by the sending court and ensure that date is on the receiving court's calendar.

(2) *Conduct of hearing*

At the transfer-in hearing, the court must:

(A) Advise the nonminor of the purpose and scope of the hearing; and

(B) Provide for the appointment of counsel, if appropriate.

(3) *Subsequent proceedings*

The proceedings in the receiving court must commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and a report to a date not to exceed 15 court days.

(4) *Setting six-month review (§ 366.31)*

When an order of transfer is received and filed relating to a nonminor dependent, the court must set a date for a six-month review within six months

of the most recent review hearing or, if the sending court transferred the case immediately after assuming or resuming jurisdiction, within six months of the date a voluntary reentry agreement was signed.

(5) *Change of circumstances or additional facts (§§ 388, 778)*

If the receiving court believes that a change of circumstances or additional facts indicate that the nonminor does not reside in the receiving county, a transfer-out hearing must be held under this rule and rule 5.570. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or section 778 and under rule 5.570.

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 Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD/NONMINOR'S NAME:	CASE NUMBER:
HEARING DATE: / TIME:	DEPARTMENT:

MOTION FOR TRANSFER OUT

☐ County ☐ Child Welfare Department, by and through counsel, or
☐ Probation Department, requests an order transferring the above-referenced case to County.

☐ , attorney for ,
requests an order transferring the above-referenced case to County.

The motion is brought under Welfare and Institutions Code Section ☐ **375** ☐ **750** ☐ Other:

1. Facts of Case

a. Type of Case

☐ Delinquency ☐ Dependency ☐ Nonminor Dependent

b. Disposition

☐ Disposition not yet imposed/deferred ☐ Disposition imposed from sending county on *(date):*

c. ☐ Confinement time/custody credit *(Delinquency cases only)*

i. As of *(date):* , the overall term of confinement time in the sending county was:

ii. Overall Custody Credits:

2. Best Interests *(State why the proposed transfer is in the best interests of the child/nonminor.)*

3. Verification of Residence

a. The ☐ parent's/legal guardian's address ☐ nonminor's address in the proposed receiving county
was confirmed by the sending county's agency as ☐ confidential address

Name:

Address:

City: State: Zip:

Phone:

CHILD'S NAME:	CASE NUMBER:

3. b. The ☐ probation officer ☐ social worker in the ☐ receiving county ☐ sending county has conducted an address check and verified the address.

c. Verification completed by: Date verified:

d. Documentation establishing residency in the proposed receiving county is attached to this motion. The following documentation is attached:

4. Education Information

a. Name of last school attended:

b. Name of school district:

c. ☐ Name of current Educational Rights Holder or Surrogate Parent:

d. ☐ Name of proposed Educational Rights Holder or Surrogate Parent:

e. ☐ There is an Individual Education Plan (IEP) for the child/nonminor.

5. Services

a. The level of services required by the child/nonminor ☐ can ☐ cannot be met in the proposed receiving county.

b. ☐ The level of services required by ☐ parent or legal guardian ☐ can ☐ cannot be met in the proposed receiving county.

c. The type and level of services or supervision required by the child/nonminor and/or parent or legal guardian *(e.g., drug treatment, residential, outpatient, NA only, etc.)* are ☐ documented in the attached case plan or ☐ described as:

d. ☐ Probation has not previously supervised the child/nonminor.

6. Other

a. ☐ The current status of the Indian Child Welfare Act (ICWA) is *(specify):*

CHILD'S NAME:	CASE NUMBER:

6. b. ☐ Parentage has been determined as indicated in minute order dated:

c. ☐ A WIC §241.1 determination has been made as indicated in the minute order dated:

d. ☐ Restitution has been determined in the amount of $:
See minute order dated:

e. ☐ The child/nonminor has exceptional medical needs *(specify):*

f. ☐ The child/nonminor qualifies for regional center services.

g. ☐ There are pending Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) issues in this case.

h. ☐ A Special Juvenile Immigrant Status (SJIS) application is pending.

i. ☐ A Social Security Income (SSI) application is pending.

j. ☐ There are active orders regarding psychotropic medications. The last order is dated:

k. ☐ If applicable, in the below box, please list all dependency and delinquency cases for the child/nonminor.

Case Number	County	Case Type

l. ☐ Other:

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

Date:

(TYPE OR PRINT NAME OF ☐ PROBATIONOFFICER ☐ SOCIAL WORKER) SIGNATURE

(TYPE OR PRINT NAME OF ☐ PARTY ☐ ATTORNEY FOR PARTY) SIGNATURE

CHILD'S NAME:	CASE NUMBER:

PROOF OF SERVICE

I served a copy of the Motion for Transfer on the following persons or entities by personally delivering a copy to the person served, OR by emailing the document to an agreed upon email address of the person served, OR by faxing the document to the fax number provided by the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the U.S. mail with postage prepaid or at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practices with which I am readily familiar:

1. ☐ Social worker ☐ Probation officer ☐ Attorney
   a. Name and address:
   b. Date of service:
   c. Method of service:

   a. Name and address:
   b. Date of service:
   c. Method of service:

2. ☐ Mother ☐ Father ☐ Legal Guardian ☐ Attorney
   a. Name and address:
   b. Date of service:
   c. Method of service:

   a. Name and address:
   b. Date of service:
   c. Method of service:

3. ☐ Mother ☐ Father ☐ Legal Guardian ☐ Attorney
   a. Name and address:
   b. Date of service:
   c. Method of service:

   a. Name and address:
   b. Date of service:
   c. Method of service:

4. ☐ Child/nonminor *(if 10 years of age or older)* ☐ Attorney
   a. Name and address:
   b. Date of service:
   c. Method of service:

   a. Name and address:
   b. Date of service:
   c. Method of service:

☐ Additional parties served. Additional Proof of Service form attached.

5. At the time of service, I was at least 18 years of age and not a party to this cause. I am a resident of, or employed in, the county where the mailing occurred. My residence or business address is 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

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 Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
JUVENILE COURT TRANSFER-OUT ORDERS ☐ § 300 ☐ § 601 ☐ § 602 ☐ For Disposition	CASE NUMBER:

1. Child's name: Date of birth:

2. a. Date of hearing: Dept.: Room:

   b. Judicial officer *(name)*:

   c. Persons present:

   ☐ Child ☐ Child's attorney ☐ Mother ☐ Mother's attorney
   ☐ Father ☐ Father's attorney ☐ Legal Guardian ☐ Social Worker
   ☐ Probation officer ☐ District Attorney ☐ County Counsel ☐ CASA Advocate
   ☐ Other:

3. The court has read and considered the motion for transfer and
   ☐ the report of the social worker.
   ☐ the report of the probation officer.
   ☐ other relevant evidence.

4. **The court orders the transfer:**

   a. ☐ GRANTED

   b. ☐ DENIED

      ☐ The child's address has not been verified, and accompanying documentation is not attached.

      ☐ Other:

5. **The court finds and orders under Welfare and Institutions Code Section** ☐ **375** ☐ **750** and ☐ **Cal. Rules of Court, rule 5.610**

   a. The legal residence of the child is with the following person who resides in the county specified in item 5e and has the legal right to physical custody of the child *(indicate name and relationship):*

      Name: ☐ Mother ☐ Father
      Address: ☐ Legal Guardian
      ☐ Other with whom the child resides with approval of the court

      City: State: Zip:

      ☐ Confidential Address

   b. **Transfer of the child's case is in the child's best interests.**

CHILD'S NAME:	CASE NUMBER:

c. The child currently resides with: ☐ Parents ☐ Mother ☐ Father ☐ Guardian ☐ Relative *(relationship):*

Name(s) *(if different from 5a above):*

☐ Foster home *(name):*
☐ Group home *(name):*
☐ Residential facility *(name):*
☐ Other *(name):*

The address of the child's parent(s) *(other than listed in 5a or 5c above):*

Name: Name:
Address: Address:
State: Zip: State: Zip:

d. The child is ☐ detained ☐ placed ☐ out-of-custody.

e. The child's case is ordered transferred to the county of *(specify)*: Zip:

f. (1) ☐ The child shall remain at the present address.

(2) ☐ The child must be transported in custody to the receiving county at least two business days before the transfer-in hearing date.

(3) ☐ Under prior orders of this court

(i) the child was detained on *(date)*:

(ii) ☐ the child was found to be described by section 300, subdivision:

☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g)
☐ (h) ☐ (i) ☐ (j) on *(date)*:

(iii) ☐ dependency was declared on *(date):*

(iv) ☐ the child was found to be described by section ☐ 601 ☐ 602 on *(date)*:

(v) ☐ Delinquency Disposition

☐ Wardship was declared on *(date):*
☐ Section 725 was imposed on *(date):*
☐ Section 790 deferred entry of judgment was deferred on *(date):*
☐ Out-of-home placement order was made on *(date):*

(vi) The last hearing was on *(date)*:

(iv) On *(date):* the court ordered the ☐ mother ☐ father ☐ child to appear at the transfer-in hearing.

g. A transfer-in hearing has been set

in receiving court for *(date):*
at *(time):* in dept.:
at the following address:

h. The following hearings have been scheduled or need to be scheduled:

☐ Disposition hearing
☐ has been scheduled for *(date):*
☐ needs to be scheduled.
☐ other *(identify):*

☐ Review hearing *(type):*
☐ has been scheduled for *(date):*
☐ needs to be scheduled.

CHILD'S NAME:	CASE NUMBER:

6. The court further finds

a. Regarding the Indian Child Welfare Act (ICWA)

☐ ICWA does apply; see minute order dated:

☐ ICWA does not apply; see minute order dated:

☐ The court has not yet determined whether ICWA is applicable.

b. Jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act

☐ has been established. ☐ is not applicable.

☐ has not been established.

c. ☐ An application for special immigrant juvenile status is pending.

d. ☐ An application for SSI is pending.

e. (1) ☐ This child has special education needs. An Individual Education Plan has been created by *(school district)*

☐ The child does not have special education needs.

☐ The child has other education issues *(specify):*

(2) ☐ The court has limited the rights of the parent or guardian to make educational or developmental-services decisions for the child *(optional).*

☐ The court has appointed an educational rights holder under JV-535 *(dated):*

☐ The local educational agency has appointed a surrogate parent under JV-536 *(dated):*

Name of the educational rights holder or surrogate parent:

(3) ☐ Name of child's last school and/or school district attended

f. ☐ The child has the following juvenile cases

Case Number	County	Case Type

g. ☐ Visitation has been determined as indicated on minute order dated:

h. ☐ Reunification services were ordered for the parent(s)/legal guardian(s) on minute order dated:

i. ☐ Parentage has been determined as indicated on minute order dated:

j. ☐ A WIC § 241.1 determination that *(check one, or both if a dual-status county)*

☐ dependency

☐ delinquency serves the best interest of the child and protection of the public is indicated in the minute order dated:

☐ If a dual status county, the lead court/agency

☐ was identified as: or ☐ was deferred.

k. ☐ The child has the following extraordinary medical needs:

l. ☐ Orders regarding psychotropic medication were made on:

m. ☐ Confinement time/custody credit *(Delinquency Cases Only)*

i. As of the overall term of confinement time in the sending county was:

ii. Overall custody credits:

n. ☐ Other:

CHILD'S NAME:	CASE NUMBER:

7. The court further orders that:

   a. The court clerk has permission to open and access the documents placed under seal in this case for the purpose of transferring the matter to the new county. Once the receiving court has taken delivery of the sealed documents, the receiving county shall re-seal the documents.

   b. Other:

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NO:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		DRAFT - Not approved by Judicial Council
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:		
NONMINOR NAME:		
JUVENILE COURT TRANFER-OUT ORDERS—NONMINOR DEPENDENT		NMD CASE NUMBER:
	Language:	UNDERLYING JUVENILE CASE NUMBER:

1. Nonminor's name:

2. a. Date of hearing: Dept.: Room:

   b. Judicial officer *(name)*:

   c. Persons present
   - ☐ Nonminor dependent
   - ☐ Nonminor Attorney *(name):*
   - ☐ Social Worker
   - ☐ Probation Officer
   - ☐ CASA
   - ☐ Other:
   - ☐ Other:

3. The court has read and considered the motion for transfer and
   - ☐ the report of the social worker.
   - ☐ the report of the probation officer.
   - ☐ other relevant evidence.

4. **Case History**

   a. ☐ Findings and orders for nonminor dependent were made on *(date):*

   b. ☐ The court resumed jurisdiction over the individual as a nonminor dependent on *(date):*

   c. The last hearing was on *(date):*

   d. On (date): , the nonminor was personally ordered to appear at the transfer-in hearing.

   e. **A transfer-in hearing has been set**

   in the receiving court for *(date):*
   at *(time):* **in dept.:**

   at the following address:

   f. The following hearings have been scheduled or need to be scheduled:

   ☐ A Nonminor Dependent Status Review Hearing
   - ☐ has been scheduled for *(date):* _____
   - ☐ needs to be scheduled.

   ☐ Other:
   - ☐ has been scheduled for *(date):* _____
   - ☐ needs to be scheduled.

Form Adopted for Mandatory Use
Judicial Council of California
JV-552 [New January 1, 2017]

Welfare and Institutions Code, §§ 17.1, 303, 375, 388(e);
Cal. Rules of Court, rule 5.613
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

5. The court finds and orders under Welfare and Institutions Code Section 375 the following:

   a. The nonminor dependent has been placed in a planned permanent living arrangement and has maintained a continuous residence in the county listed in 5.d for at least one year as a nonminor dependent and has expressed his or her intent to remain in that county.

   b. Transfer of the case is in the nonminor dependent's best interests.

   c. The nonminor dependent currently resides at:

      Address:

      City:

      State: Zip:

   d. The nonminor dependent's case is ordered transferred to the county of *(specify):*

      Zip Code:

   e. ☐ Other orders:

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

SPR16-21

Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
1.	Family Law and Juvenile Court Managers, Orange County Superior Court	AM	The judicial officer signature line should only be on the order and not on both the motion and the order to transfer. If the judicial officer's signature is going to be kept on the motion, the placement for the signature is oddly located (right after the clerk's certificate of service) and should be relocated.	The committee agrees that proposed form JV-548 (circulated as JV-448) should be revised to remove the judge's signature line.
			If the outgoing court will not be responsible for setting the hearings within the amount of days specified, there should be a requirement for a calendar grid with phone numbers, dates/times of transfer hearings and locations made available to all participating courts to provide efficiency in setting hearings for the receiving court. There should be a point of contact for each court to ensure that nothing is missing.	The committee acknowledges that access to information about transfer-in courts' calendars would be useful to the transfer-out court and has revised rules 5.610 and 5.613 to require courts to update their websites to include the court calendar and contact information for the juvenile clerk.
			Proposed rules 5.613 contemplates that courts will send only those documents related to the last court hearing held before the minor reached the age of majority. Should rule 5.613 instead require that the entire underlying juvenile file be sent to the court receiving the nonminor dependent case? **No, it should not be a requirement; however, the court receiving the nonminor case file may request for additional information if needed.**	No response required.
			Proposed rule 5.613 and amended rules 5.610 and 5.612 include shortened timelines for	

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

SPR16-21

Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
			scheduling the transfer-in hearing, transmission of documents and transportation of youth in custody. These shortened timelines have proven effective in courts that participate in electronic transfer of case files between counties. Will the shortened time frames work in counties that do not use electronic file transfer to transmit case files? **More consideration needs to be given to the counties not participating in electronic file transfer to transmit case files. There should be less strict timelines given for these counties. Otherwise, it may be costly to overnight mail in order to meet these shortened timelines. The shortened timelines does not seem feasible for those counties not participating in electronic file transfer.**	The committee appreciates the concern about the shortened timelines; however, the two day timeline only applies to children who are detained in probation custody. In those situations, the rule states that the file will be transferred with the child. In other words, overnight mail would not be required.
2.	Orange County Bar Association Todd G. Friedland, President	AM	As to proposed Rule 5.613, subdivision (b)(1) should contain a citation to Welfare and Institutions Code § 17.1 which outlines the residency requirements of minors and nonminor dependents. In addition, subdivision (b)(5) contains a requirement not present in the Welfare and Institutions Code for the case transfer of a nonminor dependent or ward, namely that the court **may not** transfer the case unless the nonminor supports the transfer. This added requirement could potentially create situations in which a nonminor does not support a transfer due to factors unrelated to case management or service provision. Under the proposed rule, the court would be prohibited	The committee agrees with the recommendation that subdivision (b)(1) in rule 5.613 be revised to include a citation to Welfare and Institutions Code § 17.1 Rule 5.610 will be similarly revised. The committee appreciates the commentator's concern with prioritizing the nonminor's support; however, in recognition of the fact that extended foster care is a voluntary status intended to assist the nonminor in achieving independence, the committee believes that to allow a court to transfer the jurisdiction of a nonminor over his or her objection would be inconsistent with the intent of the California Fostering Connections to Success Act.

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Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
			from transferring the case to the county where the nonminor dependent has established residency. Finally, as to the proposed forms, both JV-448 and JV-550 have fields that may be left blank for counties that cannot provide the information contained in the fields (educational information, services information, and information on other juvenile cases). The forms would be more user friendly if these fields appeared consecutively next to one another and the forms indicated that there was an option to leave the fields blank.	After discussion, the committee has decided to recommend that all the information on forms JV-548 (circulated as JV-448) and JV-550 be mandatory. As none of the sections on the forms will be optional, it will not be necessary to move the fields or identify them as optional.
3.	Superior Court of Los Angeles County	A	There will be some additional staff time required to complete/process the additional forms (for NMDs). However, our judges, and the judges of the neighboring counties, have found the additional information beneficial for Dependency/Delinquency and that, too, would apply to NMDs. Agree that the requirement that the minor *supports* the transfer is essential. Implementation of the proposal will require some system modifications, but those shouldn't be too extensive. The one area that might be difficult is the scheduling of date-certain transfer-in hearings. Parties to the SICTP use a regional website	No response required. The committee acknowledges that this proposal will require courts to implement procedural changes to the transfer hearing process. In light of the efficiencies experienced by courts piloting this procedure, the committee believes that the benefits will outweigh the cons. The committee acknowledges that it may initially be difficult for transfer-out courts to schedule the transfer-in hearing date; consequently, rules 5.610

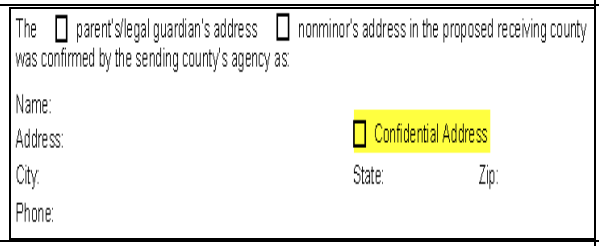
	Commentator	Position	Comment	Committee Response
			where each court makes available their basic calendars (e.g., **Delinquency**: M-F, 8am; **Dependency:** M-F 8:30am) and directions to their courthouses. Without that information, there's no real way to know when matters should be set – which could create some problems/could result in hearings being set incorrectly. That said, it's *extremely* beneficial for the courts (has dramatically reduced workload) and parties to set/use date-certain hearings. We will just need to find some mechanism by which courts can share their scheduling information with other courts above and beyond the regional websites.	and 5.613 were revised to require courts to maintain contact information and transfer-in calendaring information on their websites.
4.	Superior Court of Riverside County	AM	Riverside Superior Court would prefer that all sections of the JV-448 and JV-550 forms should be mandatory. Riverside agrees with the proposed rule 5.613 that courts should only send those documents related to the last court hearing held before the minor reached the age of majority versus the entire underlying juvenile file. By sending the entire underlying juvenile case file, depending on the court's practice, two separate cases may need to be created in the court's case management system – the original dependency case and the non-minor dependent case. Once	The committee agrees that the benefit of requiring completion of all the information included on forms JV-550 and JV-548 (circulated as JV-448) outweighs any burden associated with providing the information. Consequently, the committee is recommending that the entirety of forms JV-548 and JV-550 be mandatory. No response required.

	Commentator	Position	Comment	Committee Response
			the minor becomes a non-minor dependent, the original case is no longer active; by transferring a closed case, the receiving court will need to create a new file in the case management system. This would have an operational impact on clerk's offices. Conversely, by sending the underlying juvenile case file, if the non-minor needed access to their file, it would be more convenient if it was in the county they were residing in.	
			Under rule 5.610(i)(3), language should be added that the file may be transferred electronically, if possible. *(j)(i) Transport of child and transmittal of Documents (§§ 377, 752)* *(1)-(2)* *(3) The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.*	The committee agrees with this recommendation and will make the suggested modification.
			Judicial Council form JV-448 should be modified to add a confidential box under number 3 – Verification of Address (see example)	The committee agrees with this recommendation and will make the suggested modification to form JV-548 (CIRCULATED AS JV-448).

SPR16-21

Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
				
5.	Superior Court of San Diego County	AM	Rather than allowing courts to leave certain sections of forms JV-448 and JV-550 blank, should all the information included on these forms be mandatory? **Some, but not all, of the "optional" items should be mandatory because the information requested is very important and should not be difficult to obtain—i.e., on form JV-448, items 4.a., 4.b., 4.e., and 5.d. (last school attended, school district, whether the child has an IEP, most recent case plan, previous supervision by probation) and on form JV-550, both items 6(e) and 6(m).** Should rule 5.613 instead require that the entire underlying juvenile file be sent to the court receiving the nonminor dependent case? **Yes. To fulfill its duty to act in the best interests of the nonminor dependent, the receiving court should have all the information available on that individual.** *Need to add provisions: Who is to serve **notice of the transfer-in hearing** to parties who are not present in court? Who must be	The committee agrees that the benefit of requiring completion of all the information included on forms JV-550 and JV-548 (circulated as JV-448) outweighs any burden associated with providing the information. Consequently, the committee is recommending that the entirety of forms JV-548 and JV-550 be mandatory. The committee appreciates the desire to possess the entire underlying file; however, such a requirement would be unduly burdensome for counties not participating in efiling or one of the intercounty collaborations. Rules 5.610 and 5.613 now require the sending court to give notice of the date and time of the transfer-in hearing on the record during the

	Commentator	Position	Comment	Committee Response
			served with notice? What manner of service is required? This task has been deleted from CRC 5.613(c)(1)(B) ["The clerk must immediately cause notice to be given …"].	transfer-out hearing. Consequently, notice of the hearing is effectuated in person and notice by mail is not necessary. As is the common practice currently, the transfer-out hearing would be continued if the parties failed to appear; thus, notice would be given in court at the continued hearing.
			Currently, there is already a form numbered JV-448: "Order Granting Authority to Consent to Medical, Surgical and Dental Care." Logically speaking, the new form for a "Motion to Transfer Out" should be numbered JV-548, which would immediately precede JV-550, "Juvenile Court Transfer Orders." If this change is made, all references to JV-448 in CRC 5.610, 5.612, and 5.613 would need to be changed accordingly. Also, the JV-448 primarily uses "minor," and the JV-550 primarily uses "child." Consideration might be given to using the same term for both forms.	The committee agrees with this recommendation and will renumber the *Motion for Transfer* form as JV-548, and will convert references to "minor" to "child."
			*[This commentator then went on to list numerous modifications to be made for consistency and clarity that can be viewed in Attachment A.]	The committee has adopted many of the suggested modifications to the rules and forms suggested by this commentator as they will enhance the clarity and accuracy of the underlying rules and forms.
6.	TCPJAC/CEAC Joint Rules Subcommittee	AM	This proposal should be implemented because the provisions can lead to a reduction in the number of transfer cases that are bounced back	No response required.

SPR16-21

Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
			and forth between counties. In addition, the provisions will allow transfer cases to be heard in a more timely fashion allowing families to receive services promptly in the receiving county.	
			Regarding additional training for judges and/or court staff, and impact on local or statewide justice partners: For counties that do not currently participate in an intercounty transfer protocol, there will be judicial and staff training required on scheduling transfer-in hearings in receiving counties. Courts may want to coordinate with their surrounding counties to develop communication protocols in order for the accurate scheduling of transfer in hearing dates in receiving counties.	No response required.
			A commitment of some staff resources will be required in order to complete transfer forms and to meet the transmittal of documents time frames that are outlined in the proposed rules of court.	No response required.
			For counties that do not currently participate in an intercounty transfer protocol, there will be a change in practice for local justice partners.	No response required.

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Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
			Depending on the county's local culture, if local justice partners complete transfer orders, there will be some impact to agencies. Local justice partners will also need training and a commitment of resources in order to meet the timeframes that are outlined in the proposed rules of court. Suggested Modifications: 1. Regarding rule 5.610(i)(3), the JRS recommends that the following italicized language be added so that the file may be transferred electronically: "(3) *The file may be transferred electronically, if possible.* A certified copy of the complete case file is deemed an original." 2. Regarding form JV-448, the JRS recommends that the form be modified to add a confidential address box under number 3 "Verification of Residence." (See example below.)	The committee agrees with this recommendation and will make the suggested modification. The committee agrees with this recommendation and will make the suggested modification to form JV-548 (circulated as JV-448).

SPR16-21

Juvenile Law: Intercounty Transfers (adopt Cal. Rules of Court, rule 5.613; amend rules 5.610 and 5.612; adopt forms JV-548 (circulated as JV-448) and JV-552; revise form JV-550)

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

	Commentator	Position	Comment	Committee Response
			The ☐ parent's/legal guardian's address ☐ nonminor's address in the proposed receiving county was confirmed by the sending county's agency as: Name: Address: ☐ Confidential Address City: State: Zip: Phone:	

Item SPR16-21 Response Form

Title: Juvenile Law: Intercounty Transfers

☐ **Agree** with proposed changes

☒ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments:

• Does the proposal appropriately address the stated purpose? *Yes.*

• Rather than allowing courts to leave certain sections of forms JV-448 and JV-550 blank, should all the information included on these forms be mandatory? *Some, but not all, of the "optional" items should be mandatory because the information requested is very important and should not be difficult to obtain—i.e., on form JV-448, items 4.a., 4.b., 4.e., and 5.d. (last school attended, school district, whether the child has an IEP, most recent case plan, previous supervision by probation) and on form JV-550, both items 6(e) and 6(m). Suggested changes:*

JV-448, items 4 & 5

4. Education ~~Information~~
a. Name of last school attended: _____
b. Name of school district: _____
c. ☐ Name of current ~~E~~educational ~~R~~rights ~~H~~holder or ~~S~~surrogate ~~P~~parent, if known: _____
d. ☐ Name of proposed ~~E~~educational ~~R~~rights ~~H~~holder or ~~S~~surrogate ~~P~~parent, if known: _____
e. ☐ There is an Individual Education Plan (IEP) for the minor.
5. Services
a. (If known:) The level of services required by the minor ☐ can ☐ cannot be met in the proposed receiving county.
b. (If known:) The level of services required by the ~~☐~~ parent or legal guardian ☐ can ☐ cannot be met in the proposed receiving county.

c. (If known:) Describe the type and level of service or supervision required by the minor and/or parent or legal guardian *(e.g., drug treatment, residential, outpatient, NA only, etc.):*
d. ☐ A copy of the most recent case plan is attached.
e. ~~☐~~ Probation ☐ has ☐ has not previously supervised the minor.

JV-550, item 6(e)

e. (1) ☐ This~~e~~ child has special education needs. An Individual Education Plan has been created by *(school district):*

☐ The child does not have special education needs.
☐ It is not known whether the child has special education needs.

☐ The child has other education issues *(specify):* _____

(2) ☐ The court has limited the rights of the parent or guardian to make educational or developmental-services decisions for the child.

☐ The court has appointed an educational rights holder ~~under~~ on the form JV-535 *(dated):* _____

☐ The local educational agency has appointed a surrogate parent ~~under~~ on the form JV-536 *(dated):* _____

(3) ☐ Name of ~~minor/~~child's last school and/or school district attended: _____

JV-550, item 6(m)

m. The ~~minor~~ child has the following juvenile cases:

• Should rule 5.613 instead require that the entire underlying juvenile file be sent to the court receiving the nonminor dependent case? *Yes. To fulfill its duty to act in the best interests of the nonminor dependent, the receiving court should have all the information available on that individual.*

• Other questions asked: *Unknown.*

• Additional comments:

CRC 5.610(f) p. 7	If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court~~:~~ within 5 court days of the transfer-out order if the child is in custody ~~and~~ or within 10 court days of the transfer-out order if the child is out of custody. The sending court must state on the record the date, time, and location of the hearing in the receiving court.* *Need to add provisions: Who is to serve **notice of the transfer-in hearing** to parties who are not present in court? Who must be served with notice? What manner of service is required? This task has been deleted from CRC 5.612(a)(2) ["The clerk must immediately cause notice to be given …"].)
CRC 5.610(g) p. 7	JV-550 item 6(m) states, "The minor has the following juvenile cases:" -- information which is required on the JV-448 by CRC 5.610(f). CRC 5.610(f) allows JV-448 items 4 (education) and 5 (level of services required) to be left blank. There is nothing in JV-550 item 6 about the level of services required. The order of transfer must be entered on *Juvenile Court Transfer-Out Orders* (form JV-550), which must include all required information and findings. Counties that are unable to provide the information in item~~s~~ 6(e) ~~and (m)~~ of the form may leave those items blank. ~~The remainder of the required information and findings~~ All other items must be completed.
CRC 5.610(i)(1) p. 8	For consistency with par. (2): If the child is ordered transported in custody to the receiving county, the child must be delivered to the receiving county at least two ~~business~~ court days before the transfer-in hearing, 1 and the clerk of the court
CRC 5.612(a) p. 8	… The clerk of the receiving court must confirm the transfer-in hearing date ~~scheduled~~ set by the ~~sending~~ transferring court and ensure that date is on the

	receiving court's calendar. The receiving court must notify the transferring court ~~on~~ of the receipt and filing of the certified copies of the transfer order and complete case file.
CRC 5.612(c) (not changed by proposal)	The proceedings in the receiving court must commence at the same phase ~~as when~~ the case was in when it was transferred. The court may continue the hearing up to 10 court days if the child is in custody or 15 court days if the child is not detained in custody for an investigation and a report ~~to a date not to exceed 10 court days if the child is in custody or 15 court days if the child is not detained in custody~~.
CRC 5.613(a) p. 8	**(a) Purpose (§ 375(b))** This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent ~~as allowed by Welfare and Institutions Code section 375. This rule~~ and sets forth the procedures to be followed by ~~that~~ a court ~~is to follow when it seeks to~~ ordering a transfer of a nonminor dependent and ~~those to be followed~~ by the court receiving the transfer. All other intercounty transfers of juveniles are subject to rules 5.610 and 5.612. Alternatively (for consistency with other CRCs): This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent as allowed by ~~Welfare and Institutions Code~~ section 375. …
CRC 5.613(b)(1) p. 9	(1) Determination of residence—special rule on intercounty transfers (§§ 17.1, 375) (A) For purposes of this rule, the residence of a nonminor dependent who is placed in a planned permanent living arrangement may be either the county in which the court that has jurisdiction over the nonminor is located or the county in which the nonminor has resided continuously for at least one year as a nonminor dependent and ~~the nonminor dependent~~ has expressed his or her intent to remain. (B) If ~~a nonminor dependent's~~ dependency jurisdiction has been resumed~~,~~ or if transition jurisdiction has been assumed or resumed by ~~the~~ a juvenile court that retained general jurisdiction over ~~the~~ a nonminor under section 303, the county ~~that~~ in which the nonminor dependent is residing ~~in~~ may be deemed ~~the~~ his or her county of residence ~~of the nonminor dependent~~. The court may make this determination if the nonminor has established a continuous physical presence in the county for one year as a nonminor and has expressed his or her intent to remain in that county after the court grants the petition to resume or assume jurisdiction. The period of continuous physical presence includes any period of continuous residence immediately before the filing of the petition.
CRC 5.613(b)(2) p. 9	The residence of a nonminor may be verified by a declaration of a social worker or probation officer in the transferring or receiving county.
CRC 5.613(b)(3) p. 9	~~If~~ After the court grants a petition filed under section 388(e) ~~is resuming dependency jurisdiction or assuming or resuming transition jurisdiction of a nonminor for whom the court has retained general jurisdiction under section 303(b)~~

	~~as a result of a petition filed under section 388(e), after granting the petition~~, the court may order the transfer of the ~~case~~ nonminor dependent or transition dependent to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1) and the court finds that the transfer is in the nonminor's best interest.
CRC 5.613(b)(4) pp. 9-10	If a nonminor dependent ~~under the dependency~~ or transition dependent ~~jurisdiction of the court~~ is placed in a planned permanent living arrangement ~~in a county other than~~ outside of the county with jurisdiction over the nonminor, the court may, on an application for modification under ~~rule 5.570~~ section 388, transfer the case to the juvenile court of the county in which the nonminor is living if the nonminor establishes residency in that county as provided in (b)(1).
CRC 5.613(b)(5) pp. 10, 11	The request for transfer must be made on *Motion for Transfer Out* (form JV-448). Counties that are unable to provide the information in items 4 and 5 of the form may leave those items blank. ~~The information requested in a~~All other items must be ~~includ~~completed. … If the transfer-out motion is granted, the sending court must set a date certain for the transfer-in hearing in the receiving court~~, which must be~~ within 10 court days of the transfer-out order. The sending court must state on the record the date, time, and location of the hearing in the receiving court.* *Need to add provisions: Who is to serve **notice of the transfer-in hearing** to parties who are not present in court? Who must be served with notice? What manner of service is required? This task has been deleted from CRC 5.613(c)(1)(B) ["The clerk must immediately cause notice to be given …"].
CRC 5.613(b)(6) p. 10	Per title of form JV-552 as printed in proposal SPR16-21: The order of transfer must be entered on *Juvenile Court Transfer-Out Orders—Nonminor Dependent* ~~*Transfer Orders*~~ (form JV-552)~~, which~~ and must include all required information and findings.
CRC 5.613(b)(7)(A) p. 10	~~*Nonminor Dependent Transfer Orders* (f~~Form JV-552~~)~~ may be modified as follows: (A) Notwithstanding ~~the~~ its mandatory use~~, of~~ form JV-552~~, the form~~ may be modified for use by a formalized regional collaboration of courts ….
CRC 5.613(b)(8) p. 11	Query: If a file is transferred electronically, should this rule require any measures to be taken to ensure the confidentiality of the information being transferred? No later than five court days after the transfer-out order, t~~T~~he clerk of the transferring court must transmit to the clerk of the court of the receiving county ~~no later than five court days from date of the transfer-out order~~ a certified copy of, at a minimum, all documents associated with the last hearing held before the nonminor reached ~~majority~~ 18 years of age, including the court report and all findings and

	orders. The file may be transferred electronically, if possible. A certified copy of the complete case file is deemed an original.
CRC 5.613(c)(1) p. 11	For consistency with CRC 5.612(a): ~~(A)~~ On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case. The receiving court may not reject the case. ~~The receiving court must notify the transferring court on receipt and filing of the certified copies of the transfer order and complete case file.~~ The clerk of the receiving court must confirm the transfer-in hearing date ~~scheduled~~ set by the ~~sending~~ transferring court and ensure that date is on the receiving court's calendar. The receiving court must notify the transferring court of the receipt and filing of the certified copies of the transfer order and complete case file. ~~(B)~~ … [deleted by proposal]
CRC 5.613(c)(2) pp. 11-12	At the transfer-in hearing, the court must~~:~~ ~~(A) A~~advise the nonminor of the purpose and scope of the hearing~~;~~ and ~~(B) P~~provide for the appointment of counsel, if appropriate.
CRC 5.613(c)(3) p. 12	The proceedings in the receiving court must commence at the same phase ~~as when~~ the case was in when it was transferred. The court may continue the hearing up to 15 court days for an investigation and a report ~~to a date not to exceed 15 court days~~.
CRC 5.684(g) p. 24	When an order of transfer is received and filed relating to a nonminor or transition dependent, the court must set a date for a six-month review within six months of the most recent review hearing or, if ~~the sending court transferred~~ the case was transferred immediately after jurisdiction was assumed or resumed ~~assuming or resuming jurisdiction~~, within six months ~~of the date~~ after a voluntary reentry agreement was signed.
JV-448 – Should be JV-**5**48	*Currently, there is already a form numbered JV-448: "Order Granting Authority to Consent to Medical, Surgical and Dental Care." Logically speaking, the new form for a "Motion to Transfer Out" should be numbered JV-**5**48, which would immediately precede JV-550, "Juvenile Court Transfer Orders." If this change is made, all references to JV-448 in CRC 5.610, 5.612, and 5.613 would need to be changed accordingly. Also, the JV-448 primarily uses "minor," and the JV-550 primarily uses "child." Consideration might be given to using the same term for both forms.*
JV-448, 3d box from top	CHILD'S OR NONMINOR'S NAME:
JV-448, first two sentences and items 1.c.i., 1.c.ii., 2, 3.a., 3.c., 3.d., 4.a., 4.b., 4.c., 4.d., 5.c., 6.b., 6.c., 6.d., 6.e., 6.j.	*Replace blank spaces with blank lines, e.g.:* □ _____ County □ Child Welfare Department, by and through counsel, or □ Probation Department, requests an order transferring the above-referenced case to _____ County. □ _____, attorney for _____, requests an order transferring the above-referenced case to _____ County.

	The motion is brought under Welfare and Institutions Code Section □ 375 □ 750 □ Other: _____
JV-448: item 1	*Add check box for* "Transition Dependent."
JV-448: item 1.b., 1.c.i., 3.a., 3.b.,	*Note: CRCs use "transferring county." This form uses "sending county." OK to use either one?*
JV-448: items 4.c., 4.d.	*Use lower case, i.e.:* Name of … educational rights holder or surrogate parent: _____
JV-448: items 4.e., 5.a., 5.c., 5.d., 6.e., 6.f., 6.i., 6.k.	minor or nonminor
JV-448: item 5.a.	*Close up space between "be" and "met." (See spacing in 5.b.)*
JV-448: item 5.c.	Describe the type and level of service or supervision required by the minor and/or parent or legal guardian *(e.g., drug treatment, residential, outpatient, NA only, etc.):* □ Minor or nonminor: _____ □ Parent(s) or legal guardian: _____
JV-448: item 6.a.	*As in item 6 on the JV-550, provide choices with check boxes, e.g.:* □ The current status of the Indian Child Welfare Act (ICWA) is ~~*(specify)*~~*:* □ The court has determined that ICWA applies. □ The court has determined that ICWA does not apply. □ The court has not yet determined whether ICWA applies.
JV-448: item 6.b.	Parentage has been determined as indicated in the minute order dated: _____
JV-448: item 6.c.	A ~~WIC §241.1~~ dual jurisdiction or dual status determination (WIC § 241.1) has been made as indicated in the minute order dated: _____
JV-448: item 6.e.	*For consistency with JV-550 (see also SCTP form JUVICT-002):* The minor has ~~exceptional~~ the following extraordinary medical needs ~~*(specify)*~~*:* _____
JV-448: item 6.f.	… Regional Center …
JV-448: item 6.h.	A Special ~~Juvenile~~ Immigrant Juvenile Status (~~SJIS~~SIJS) application is pending.
JV-448: item 6.i.	A ~~Social~~ Supplemental Security Income (SSI) application is pending.
JV-448: item 6.j.	~~There are active~~ An order~~s~~ regarding psychotropic medications is in effect. The last order is dated: _____.
JV-448: item 6.k.	If applicable, ~~in the below box,~~ please list below all known dependency and delinquency cases for the minor or nonminor.
JV-448, p. 3	*Insert space between "PROBATION" and "OFFICER":* TYPE OR PRINT NAME OF PROBATION OFFICER
JV-448 Proof of Service, item 4	Child (*if 10 years of age or older*) or Nonminor

JV-448 Proof of Service, item *5*	*Per paragraph at top of page, service may be by methods other than mailing. Insert open parenthesis. Italicize "specify."* I am a resident of, or employed in, the county where the ~~mailing~~ service occurred. My residence or business address is (*specify*): _____
JV-448 Proof of Service, signature line at bottom	*Unlikely the proof of service will be signed by a judge.* ~~JUDICIAL OFFICER OF THE JUVENILE COURT~~ SIGNATURE
JV-550	*Query: Should changes be made to accommodate minors who are under the court's transition jurisdiction? (E.g., adding "§ 450" to the 4th box from the top on page 1, adding to item 5.f.(3)(iv) a check box with "450," etc.)*
JV-550, p. 1, right footer	Welfare and Institutions Code, §§ 300, 375, 377, 601, 602, 750;
JV-550, items 1, 2.a., 2.b., *5.a., 5.c., 5.e., 5.f.(3), 5.g., 5.h., 6.e.-6.l.*	*Replace blank spaces with blank lines, e.g.:* Child's name: _____ Date of birth: _____
JV-550, item 2.c.	Legal guardian Social worker
JV-550, item 3	The court has read and considered the motion for transfer out and …
JV-550, item *5.a.*	Legal guardian Other ~~with whom the child resides with approval of the court~~ Redundant due to the language "the following person who … has the legal right to physical custody of the child."
JV-550, item *5.c.*	Legal g~~G~~uardian Relative *(relationship):* _____ *Insert spaces for "City:"* Name: _____ Address: _____ City: _____ State: _____ Zip: _____
JV-550, item *5.c.*	The child must be transported in custody to the receiving county at least two ~~business~~ court days before the transfer-in hearing date.
JV-550, item *5.f.(3)(v)*	Section 725 probation was imposed on *(date):* _____ Section 790 deferred entry of judgment was ~~deferred~~ granted on *(date):* _____
JV-550, item *5.g.*	in the receiving court for *(date):* _____ at *(time):* _____ in dept.: _____
JV-550, item 6.c.	An application for Special Immigrant Juvenile status is pending.
JV-550, item 6.d.	An application for ~~SSI~~ Supplemental Security Income is pending.
JV-550, item 6.e.(1)	*For consistency with the rest of the form:* Th~~is~~e child has special education needs. …

JV-550, item 6.e.(2)	The court has appointed an educational rights holder ~~under~~ on the form JV-535 *(dated):* _____ The local educational agency has appointed a surrogate parent ~~under~~ on the form JV-536 *(dated):* _____
JV-550, item 6.e.(3)	*For consistency with the rest of the form:* Name of ~~minor/~~child's last school and/or school district attended: _____
JV-550, item 6.f.-h.	f. Visitation has been determined as indicated on the minute order dated: _____ g. Reunification services were ordered for the parent(s)/legal guardian(s) on the minute order dated: _____ h. Parentage has been determined as indicated on the minute order dated: _____
JV-550, item 6.i.	i. A WIC § 241.1 determination that *(check one, or both if a dual-status county)* ☐ dependency ☐ delinquency serves the best interest of the child and protection of the public is indicated ~~in~~ on the minute order dated: _____ ☐ If a dual-status county, the lead court/agency ☐ was identified as: _____ ~~or~~ ☐ ~~was deferred~~ has not been identified.
JV-550, item 6.k.	Orders regarding psychotropic medication were made on *(date)*: _____
JV-550, item 6.*l.*	As of *(date)*: _____, the overall term of confinement time in the sending county was: _____
JV-550, item 6.m.	*For consistency with the rest of the form:* The ~~minor~~ child has the following juvenile cases:

JV-550, item 7.a.	The court clerk has permission to open and access ~~the~~ any documents placed under seal in this case for the purpose of transferring the matter to the ~~new county~~ receiving court. Once the receiving court has taken delivery of the sealed documents, ~~the receiving county~~ it shall re-seal the documents.
JV-552, p. 1, right footer	Welfare and Institutions Code, §§ 17.1, 303, 375, 377, 388(e);
JV-552, items 1, 2.a., 2.b., 4.a., 4.b., 4.c., 4.d., 4.e., 4.f., 5.c., 5.d.	*Replace blank spaces with blank lines, e.g.:* a. Date of hearing: _____ Dept.: _____ Room: _____ b. Judicial officer *(name)*: _____
JV-552, 3d box from top	NONMINOR'S NAME:
JV-552, item 1	*Is item 1 necessary? The nonminor's name will be in the 3d box from the top of the form. (If deleted, the subsequent items will need to be renumbered.)*
JV-552, item 2.c.	Nonminor's attorney *(name):* _____ *For consistency with JV-550:* Social worker Probation officer CASA Advocate
JV-552, item 4.a.	Findings and orders for the nonminor dependent were made on *(date):* _____
JV-552, item 4.d.	*For consistency with other forms, italicize "(date)."*
JV-552: item 4.f.	A nonminor dependent status review hearing

Name: Mike Roddy **Title:** Executive Officer

Organization: Superior Court of California, County of San Diego

☒ Commenting on behalf of an organization

Address: County Courthouse, 220 West Broadway

City, State, Zip: San Diego, California 92101

Email: invitations@jud.ca.gov

Mail: Judicial Council of California
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102

DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, June 14, 2016.

Item number: 09

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

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

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10. 2015
Project description from annual agenda: Court Coordination and Efficiencies
Review promising practices that enhance coordination and increase efficient use of resources across case types involving families and children including review of unified court implementation possibilities, court coordination protocols, and methods for addressing legal mandates for domestic violence coordination so as to provide recommendations for education content and related policy efforts.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Juvenile Law: Court Orders

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.504

Effective Date
January 1, 2017

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

Date of Report
August 17, 2016

Contact
Audrey Fancy, 415-865-7706
audrey.fancy@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that rule 5.504 of the California Rules of Court be amended to grant courts an extra two years to produce modified versions of mandatory juvenile forms for court orders. This change will help reduce the financial burden associated with changes to mandatory forms and ensure that courts continue to have the flexibility in the production of forms to meet local needs.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017, amend subdivision (c)(2) of rule 5.504 of the California Rules of Court to extend to January 1, 2019 the date by which courts are required to implement mandatory Judicial Council juvenile forms.

Text of the amended rule is attached at page 3.

Previous Council Action

In 2006, after several courts expressed concern about how to incorporate mandatory juvenile forms for court orders into their case management systems and paper processes (e.g. use of legal

size NCR paper), given varying local form practices and the pending implementation of the California Case Management System (CCMS), the Judicial Council approved amending California Rule of Court, rule 5.504(c)(2), effective January 1, 2007, to permit juvenile courts to generate modified versions of mandatory Judicial Council forms. This portion of the rule was set to sunset on January 1, 2012, with the expectation that the CCMS would have been implemented by this date.

Effective January 1, 2012, the Judicial Council amended rule 5.504 of the California Rules of Court to grant courts an extra five years to produce modified versions of mandatory juvenile court order forms. The Judicial Council also acted to change most mandatory delinquency court order forms to optional court order forms.

Rationale for Recommendation

This amendment would extend the life of rule 5.504(c)(2) for an additional two years to ensure that local courts can continue to have the flexibility to use their preferred formatting for juvenile court orders. During this two-year period the committee anticipates further activity on the Rules Modernization Project, a branchwide effort led by the Information Technology Advisory Committee, to comprehensively review and modernize the California Rules of Court so that the rules will be consistent with, and foster, modern e-business practices.

The extension of the sunset date is unlikely to generate controversy. When the original version of rule 5.504 was circulated for comment in 2006, the committee did not recommend a sunset date. No commentators are on record as having requested a sunset. The committee inserted the sunset date after comment, however, in anticipation that CCMS would be completed and online by January 1, 2012. The initial extension to January 1, 2017 was enacted as a technical change without circulation for comment to allow for implementation of CCMS.

Comments, Alternatives Considered, and Policy Implications

This proposal has not been circulated for public comment. While this is a substantive change, as noted above, it is a minor change unlikely to create controversy and is therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).) As noted above, when the rule initially circulated it did not include a sunset date nor were any comments received.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in costs to the courts and it is likely to create savings for courts that otherwise would need to incorporate mandatory court forms into processes in the traditional format or into local case management systems.

Attachments and Links

1. Cal. Rules of Court, rule 5.504, at page 3

Rule 5.504 of the California Rules of Court is amended, effective January 1, 2017, to read:

Rule 5.504. Judicial Council forms

(a)–(b) * * *

(c) Implementation of new and revised mandatory forms

To help implement mandatory Judicial Council juvenile forms:

(1) New and revised mandatory forms produced by computer, word-processor printer, or similar process must be implemented within one year of the effective date of the form. During that one-year period the court may authorize the use of a legally accurate alternative form, including any existing local form or the immediate prior version of the Judicial Council form.

(2) Until January 1, 201~~7~~9, a court may produce court orders in any form or format as long as:

(A) The document is substantively identical to the mandatory Judicial Council form it is modifying;

(B) Any electronically generated form is identical in both language and legally mandated elements, including all notices and advisements, to the mandatory Judicial Council form it is modifying;

(C) The order is an otherwise legally sufficient court order, as provided in rule 1.31(g), concerning orders not on Judicial Council mandatory forms; and

(D) The court sends written notice of its election to change the form or format of the mandatory form to the Family and Juvenile Law Advisory Committee and submits additional informational reports as requested by the committee.

Item number: 10

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Protective Orders: Requests for the Possession and Protection of Animals

Revise forms CH-100, CH-110, CH-120, CH-130, EA-100, EA-120, EA-110, EA-130, JV-245, JV 250, and JV-255

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

Staff contact (name, phone and e-mail):
For Civil and Small Claims, Bruce Greenlee, 415 865-7698, bruce.greenlee@jud.ca.gov
For Family and Juvenile Law, 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: Family and Juvenile Law Advisory Committee- This project falls under Item 1 of the approved agenda.

Civil and Small Claims Advisory Committee: This project is Item 12 of the annual agenda.

Project description from annual agenda: Family and Juvenile Law Advisory Committee- Review AB 494 and propose rules and forms as may be appropriate for the council's consideration

Civil and Small Cliams Advisory Committee; Possession and control of pets.
Assembly Bill 494 amends the current civil harassment and elder abuse prevention statutes to permit the court to issue orders regarding pets. Various CH and EA forms will need to be revised to reflect those new provisions.
.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Protective Orders: Requests for the Possession and Protection of Animals

Rules, Forms, Standards, or Statutes Affected
Revise forms CH-100, CH-110, CH-120, CH-130, EA-100, EA-110, EA-120, EA-130, JV-245, JV-250, and JV-255

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
January 1, 2017

Date of Report
August 29, 2016

Contact
For Civil and Small Claims:
Bruce Greenlee, 415-865-7698
bruce.greenlee@jud.ca.gov
For Family and Juvenile Law:
Frances Ho, 415-865-7662
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Executive Summary

To implement the recent statutory changes made by Assembly Bill 494 (Stats. 2015, ch. 401) to Code of Civil Procedure section 527.6 and Welfare and Institutions Code sections 213.5 and 15657.03, the Civil and Small Claims Advisory Committee recommends revisions to the Judicial Council forms for civil harassment and elder and dependent adult abuse protective orders to include orders regarding the possession and protection of animals; and the Family and Juvenile Law Advisory Committee recommends revisions to the Judicial Council juvenile protective order forms to include such orders.

Recommendation

To add a new item (see number in parentheses) to provide for orders for the possession and protection of animals, effective January 1, 2017, the Judicial Council is asked by:

1. The Civil and Small Claims Advisory Committee to revise:

   - CH-100, *Request for Civil Harassment Restraining Orders* (item 15);
   - CH-110, *Temporary Restraining Order* (civil harassment) (item 8);
   - CH-120, *Response to Request for Civil Harassment Restraining Orders* (item 7);
   - CH-130, *Civil Harassment Order After Hearing* (item 10);
   - EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders* (item 19);
   - EA-110, *Temporary Restraining Order* (elder and dependent adult abuse) (item 10);
   - EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (item 8);
   - EA-130, *Elder or Dependent Adult Abuse Restraining Order After Hearing* (item 11); and

2. The Family and Juvenile Law Advisory Committee to revise:

   - JV-245, *Request for Restraining Order—Juvenile* (item 8h);
   - JV-250, *Notice of Hearing and Temporary Restraining Order—Juvenile* (item 10); and
   - JV-255, *Restraining Order—Juvenile* (item 9); and

3. The Family and Juvenile Law Advisory Committee, because of differences in form structure and the law, further to revise order forms JV-250 and JV-255:

   - To require the court to indicate the name of the protected person who is granted an order for possession; and
   - To include language that the order for possession could be made for an animal that is in the residence or household of a person protected by the order.

The text of the revised forms is attached at pages 7–62.

Previous Council Action

Under the Code of Civil Procedure and the Welfare and Institutions Code, the Judicial Council must provide forms and instructions for use in matters of civil harassment, elder and dependent adult abuse, and juvenile protective orders. The forms have previously been revised when changes to the law required revisions and to respond to suggestions made by the public, judicial officers, and court professionals. The civil harassment and elder and dependent adult protective order forms in this proposal were last revised effective July 1, 2014. The juvenile restraining order request form (JV-245) was last revised effective March 1, 2012, and the other juvenile restraining order forms (JV-250 and JV-255) were last revised effective July 1, 2014.

Rationale for Recommendation

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), juvenile law (JV), civil harassment (CH), and elder and dependent adult abuse (EA). 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 when 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. When appropriate, Judicial Council advisory committees have worked with each other to ensure consistency in implementing these forms.

In 2008, orders regarding the possession and protection of animals became specifically available in domestic violence protective order matters under Senate Bill 353 (Stats. 2007, ch. 205). This remedy has not been specifically provided for in other types of restraining orders until now. Effective January 1, 2016, in civil harassment, elder and dependent adult abuse, and juvenile protective order matters, the court may—on a showing of good cause in connection with an animal owned, possessed, leased, kept, or held by the petitioner or other protected person,[1] or residing in the residence or household of the petitioner or other protected person, either or both of the following:[2]

- Grant the person protected by the order exclusive care, possession, or control of the animal—referred to as "order for possession."

- Order the restrained person to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal—referred to as "order for protection."

Revisions to the CH, EA, and JV forms are proposed to add a new item to provide for orders for possession and protection of animals. This proposal will benefit the judicial branch, attorneys, and self-represented litigants by providing a simple way for a party to request, and for the court to grant, animal possession and protection orders. By creating a separate item, litigants and the court will be better informed as to what orders may be granted and the predicate conditions.

In addition, because of differences in form structure and the law, the Family and Juvenile Law Advisory Committee proposes further revisions to the juvenile forms beyond those proposed to the civil harassment and elder abuse protective order forms.

[1] Under Welfare and Institutions Code section 213.5, the order can apply to any animal owned, possessed, leased, kept, or held by a person protected or by a person residing in the residence or household of a protected person.

[2] Code Civ. Proc., § 527.6(b)(6)(A); Welf. & Inst. Code, §§ 213.5(a) & (b), 15657.03(b)(3)(A).

- Order forms JV-250 and JV-255 would require the court to indicate the name of the protected person who is granted an order for possession. This name is needed because the remedy may be granted to the applicant of the protective order but the order forms include all protected people in a single item; hence, without specifying a name or reorganizing the form, it is unclear who has been granted an order of possession.

- Order forms JV-250 and JV-255 would include language that the order for possession could be made for an animal that is in the residence or household of a person protected by the order.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment from April 15 to June 14, 2016, to the standard mailing list for civil, 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 civil and juvenile law professionals. Four organizations, including the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees, and one individual provided comment: four agreed with the proposal, one agreed with the proposal if modified. No commentators opposed the proposal.

Three modifications were proposed by the Joint Rules Subcommittee:

1. Delay implementation by 90–120 days for the benefit of courts.

2. Under the new item, add space in responsive pleadings for explanation regarding disagreement with the requested order.

3. Specify that an animal can also be identified by certificate/registration number, license number, chip number, or other ownership number.

This proposal would take effect on January 1, 2017 unless another date is specified. The committees could recommend that implementation of the proposal be delayed until July 1, 2017. However, the committees do not recommend delaying implementation because any delay will delay the benefit of the revisions to litigants, courts, law enforcement agencies, and other agencies involved with protective orders.

The suggestion to add space in the response forms to state the respondent's reasons for disagreeing with the requested order would require a global change to these forms and other responsive pleading forms for other restraining order types, to preserve consistent formatting. Currently, the answer forms do not provide space under each item for the explanation regarding disagreement with the order. For the domestic violence answer form (form DV-120, *Response to*

Request for Domestic Violence Restraining Order), space is available on the last page of the document to allow the responding party the opportunity to state the facts that support his or her position. The committees may consider whether to make this change globally for all plain language restraining order forms for a future forms revision cycle.

In response to the suggestion to add other examples of ways animals can be identified or described, the committees recommend adding the animal's color and sex to the list of identifiers. This additional information will help law enforcement better identify protected animals. The committees do not recommend adding other forms of identification, like chip number, because it is information that applicants are unlikely to have readily available at the time of submitting an application and unlikely to be useful for enforcement purposes.

Alternatives considered

The committees considered not revising the forms to include a specific item to provide for orders for possession and protection of animals. All 11 forms currently contain an item for "Other Orders." Orders for possession and protection of animals could be entered currently as Other Orders. As stated above, the committees prefer a separate item because it better informs litigants and the court as to what orders may be granted.

Another alternative was to revise the forms in the same manner as the DV forms. As noted above, this remedy has been available in domestic violence protective order matters since 2008. The DV request (DV-100) and order forms (DV-110 and DV-130) assume that the applicant is requesting both possession and protection of an animal or animals. The Family and Juvenile Law Advisory Committee recommended combining these orders in domestic violence protective order matters because doing so would result in a clearer order for law enforcement. Even in cases where the petitioner does not think that ownership is disputed, the other party might disagree. The committee believed that in most cases, having both orders would be beneficial, and in rare instances where both orders would be inappropriate, the court could strike part of the order.

Because of differences in the statute between DV protective orders and the laws applicable to this proposal, the Protective Orders Working Group (POWG), a subcommittee whose function is to ensure consistency across protective order forms when practical, recommended that the orders for possession and protection be separated to allow the applicant to request one or both. The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee agree with POWG's recommendation.

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, train court staff on revised forms, make changes to document assembly programs, and update case management systems. The committee also anticipates that the revised

forms will save resources for the courts in the long term by providing courts, litigants, and third-party service providers with accurate information and orders.

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. Forms CH-100, CH-110, CH-120, CH-130, EA-100, EA-110, EA-120, EA-130, JV-245, JV-250, and JV-255, at pages 7–62
2. Chart of comments, at pages 63–65
3. Link A: Assembly Bill 494, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB494*

CH-100 Request for Civil Harassment Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Read *Can a Civil Harassment Restraining Order Help Me? (Form CH-100-INFO)* before completing this form. Also fill out *Confidential CLETS Information (Form CLETS-001)* with as much information as you know.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Person Seeking Protection

a. Your Full Name: _____ Age: _____

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 Person From Whom Protection Is Sought

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

3 Additional Protected Persons

a. Are you asking for protection for any other family or household members? ☐ Yes ☐ No *If yes, list them:*

Full Name	Sex	Age	Lives with you?	How are they related to you?
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are more persons. Attach a sheet of paper and write "Attachment 3a—Additional Protected Persons" for a title. You may use Form MC-025, Attachment.*

b. Why do these people need protection? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 3b—Why Others Need Protection" for a title.*

_____
_____
_____
_____

This is not a Court Order.

Case Number:

4 Relationship of Parties

How do you know the person in (2)? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 4—Relationship of Parties" for a title.*

5 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The person in (2) lives in this county.

b. ☐ I was harassed by the person in (2) in this county.

c. ☐ Other *(specify):* _____

6 Other Court Cases

a. Have you or any of the persons named in (3) been involved in another court case with the person in (2)?

☐ Yes ☐ No *If yes, check each kind of case and indicate where and when each was filed:*

Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1) ☐ Civil Harassment			
(2) ☐ Domestic Violence			
(3) ☐ Divorce, Nullity, Legal Separation			
(4) ☐ Paternity, Parentage, Child Custody			
(5) ☐ Elder or Dependent Adult Abuse			
(6) ☐ Eviction			
(7) ☐ Guardianship			
(8) ☐ Workplace Violence			
(9) ☐ Small Claims			
(10) ☐ Criminal			
(11) ☐ Other *(specify):* _____			

b. Are there now any protective or restraining orders in effect relating to you or any of the persons in (3) and the person in (2)? ☐ No ☐ Yes *If yes, attach a copy if you have one.*

7 Description of Harassment

Harassment means violence or threats of violence against you, or a course of conduct that seriously alarmed, annoyed, or harassed you and caused you substantial emotional distress. A course of conduct is more than one act.

a. Tell the court about the last time the person in (2) harassed you.

(1) When did it happen? *(provide date or estimated date):* _____

(2) Who else was there?

_____

_____

_____

This is not a Court Order.

(3) How did the person in (2) harass you? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7a(3)—Describe Harassment" for a title.*

(4) Did the person in (2) use or threaten to use a gun or any other weapon?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7a(4)—Use of Weapons" for a title.*

(5) Were you harmed or injured because of the harassment?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7a(5)—Harm or Injury" for a title.*

(6) Did the police come? ☐ Yes ☐ No

If yes, did they give you or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No

If yes, the order protects *(check all that apply):*

a. ☐ Me b. ☐ The person in (2) c. ☐ The persons in (3)

Attach a copy of the order if you have one.

b. Has the person in (2) harassed you at other times?

☐ Yes ☐ No *(If yes, describe prior incidents and provide dates of harassment below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7b—Previous Harassment" for a title.*

This is not a Court Order.

Check the orders you want. ☑

8 ☐ Personal Conduct Orders

I ask the court to order the person in (2) **not** to do any of the following things to me or to any person to be protected listed in (3):

a. ☐ Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.

b. ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

c. ☐ Other *specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 8c—Other Personal Conduct Orders," for a title.*

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.

9 ☐ Stay-Away Orders

a. I ask the court to order the person in (2) to stay at least _____ yards away from *(check all that apply):*

(1) ☐ Me
(2) ☐ The other persons listed in (3)
(3) ☐ My home
(4) ☐ My job or workplace
(5) ☐ My school
(6) ☐ My children's school
(7) ☐ My children's place of child care
(8) ☐ My vehicle
(9) ☐ Other *(specify):*

b. If the court orders the person in (2) to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☐ Yes ☐ No *(If no, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 9b—Stay-Away Orders," for a title.*

10 Guns or Other Firearms and Ammunition

Does the person in (2) own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

If the judge grants a protective order, the person in (2) will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in (2) will also be ordered to turn in to law enforcement, or sell to or store with a licensed gun dealer, any guns or firearms within his or her immediate possession or control.

This is not a Court Order.

Case Number:

11 Immediate Orders

Do you want the court to make any of these orders now that will last until the hearing without notice to the person in (2)? ☐ Yes ☐ No *(If you answered yes, explain why below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 11—Immediate Orders" for a title.*

12 ☐ Request to Give Less Than Five Days' Notice

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Form CH-200-INFO explains What Is "Proof of Personal Service"? *Form CH-200,* Proof of Personal Service, *may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 12—Request to Give Less Than Five Days' Notice" for a title.*

13 ☐ No Fee for Filing or Service

a. ☐ There should be no filing fee because the person in (2) has used or threatened to use violence against me, has stalked me, or has acted or spoken in some other way that makes me reasonably fear violence.

b. ☐ The sheriff or marshal should serve (notify) the person in (2) about the orders for free because my request for orders is based on unlawful violence, a credible threat of violence, or stalking.

c. ☐ There should be no filing fee and the sheriff or marshal should serve the person in (2) for free because I am entitled to a fee waiver. *(You must complete and file Form FW-001,* Application for Waiver of Court Fees and Costs .*)*

14 ☐ Lawyer's Fees and Costs

I ask the court to order payment of my: a. ☐ Lawyer's fees b. ☐ Court costs

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or Form MC-025 and write "Attachment 14—Lawyer's Fees and Costs" for a title.*

This is not a Court Order.

Case Number:

15 ☐ Possession and Protection of Animals

I ask the court to order the following:

a. ☐ That I be given the sole possession, care, and control of the animals listed below, which I own, possess, lease, keep, or hold, or which reside in my household.
(Identify animals by, e.g., type, breed, name, color, sex.)

I request sole possession of the animals because *(specify good cause for granting order)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 15a—Possession of Animals" for a title.*

b. ☐ That the person in 2 must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

16 ☐ Additional Orders Requested

I ask the court to make the following additional orders *(specify)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 16—Additional Orders Requested," for a title.*

17 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

This is not a Court Order.

CH-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete items (1), (2), and (3) only.

(1) Protected Person

a. Your Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the person named in (1), the following family or household members of that person are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.*

The court will complete the rest of this form.

(4) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

To the Person in (2):

The court has granted the temporary orders checked as granted 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.

(5) Personal Conduct Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must **not** do the following things to the person named in (1)
☐ and to the other protected persons listed in (3):

(1) ☐ Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in (1).

(6) Stay-Away Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must stay at least _____ yards away from *(check all that apply):*

(1) ☐ The person in (1)
(2) ☐ Each person in (3)
(3) ☐ The home of the person in (1)
(4) ☐ The job or workplace of the person in (1)
(5) ☐ The school of the person in (1)
(6) ☐ The school of the children of the person in (1)
(7) ☐ The place of child care of the children of the person in (1)
(8) ☐ The vehicle of the person in (1)
(9) ☐ Other *(specify):*

b. This stay-away order does not prevent you from going to or from your home or place of employment.

(7) No Guns or Other Firearms and Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. You must:

(1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

This is a Court Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form CH-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

8 Possession and Protection of Animals

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

_____

_____

b. ☐ The person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

9 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

_____

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 9.

To the Person in (1):

10 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the person in (1) or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 10.

This is a Court Order.

11 **No Fee to Serve (Notify) Restrained Person** ☐ **Ordered** ☐ **Not Ordered**

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in (1) is entitled to a fee waiver.

12 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warnings and Notices to the Restrained Person in (2)

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item (7) above. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and Form CH-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (2).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read Form CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out Form CH-120, *Response to Request for Civil Harassment Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response if the Request claims that you inflicted or threatened violence against or stalked the person in (1).
- You must have Form CH-120 served by mail on the person in (1) or that person's attorney. You cannot do this yourself. The person who does the mailing should complete and sign Form CH-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.

This is a Court Order.

- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item (4) on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities (see Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

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.

CH-120 Response to Request for Civil Harassment Restraining Orders

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:

Use this form to respond to the *Request* (form CH-100)

- Read *How Can I Respond to a Request for Civil Harassment Restraining Orders? (form CH-120-INFO),* to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person in (1) or his or her lawyer by mail with a copy of this form and any attached pages. *(Use form CH-250,* Proof of Service of Response by Mail.*)*

(1) Person Seeking Protection

Name of person seeking protection *(see form CH-100, item (1))*:

(2) Person From Whom Protection Is Sought

a. Your Name: _____

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

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

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

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form CH-109 item (3) here:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

(3) ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
c. ☐ I agree to the following orders *(specify):*

_____
_____
_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
c. ☐ I agree to the following orders *(specify):* _____

_____
_____

(5) ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item (3) of form CH-100 may be protected by the order requested.
b. ☐ I do not agree that the persons listed in item (3) of form CH-100 may be protected by the order requested.

6 Guns or Other Firearms and Ammunition

If you were served with form CH-110, *Temporary Restraining Order,* you cannot own or possess any guns, other firearms, or ammunition. (See item 7 of form CH-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form CH-110. You must file a receipt with the court. You may use form CH-800, *Proof of Firearms Turned In, Sold or Stored,* for the receipt.

a. ☐ I do not own or control any guns or firearms.

b. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.

A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

7 ☐ Possession and Protection of Animals

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

c. ☐ I agree to the following orders *(specify):* _____

_____

_____

_____

8 ☐ Other Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

c. ☐ I agree to the following orders *(specify):* _____

_____

_____

_____

9 ☐ Denial

I did not do anything described in item 7 of form CH-100. *(Skip to 10.)*

10 ☐ Justification or Excuse

If I did some or all of the things that the person in 1 has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

_____

_____

_____

_____

_____

Case Number:

11 ☐ No Fee for Filing

a. ☐ I request that I not be required to pay the filing fee because the person in (1) claims in form CH-100 item (13) to be entitled to free filing.

b. ☐ I request that I not be required to pay the filing fee because I am eligible for a fee waiver. *(Form FW-001,* Request to Waive Court Fees, *must be filed separately.)*

12 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ Lawyer's fees ☐ Court costs
The amounts requested are:

Item	Amount	Item	Amount
_____	$_____	_____	$_____
_____	$_____	_____	$_____
_____	$_____	_____	$_____

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or form MC-025 and write "Attachment 12—Lawyer's Fees and Costs" for a title.*

b. ☐ I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

13 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

CH-130 Civil Harassment Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete items (1), (2), and (3) only.

(1) Protected Person

a. Your Full Name: _____

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

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

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____
Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____
Hair Color: _____ Eye Color: _____ Age: _____ Race: _____
Home Address *(if known)*: _____
City: _____ State: _____ Zip: _____
Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the person named in (1), the following family or household members of that person are protected by the orders indicated below:

Full Name	Sex	Age	Lives with you?	How are they related to you?
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ *Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.*

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at:

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on (date): _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

5 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____ *(Name of judicial officer):* _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The person in 1 (3) ☐ The lawyer for the person in 1 *(name):* _____

(2) ☐ The person in 2 (4) ☐ The lawyer for the person in 2 *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in 2:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the person named in 1

☐ and to the other protected persons listed in 3:

(1) ☐ Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

_____

b. Peaceful written contact through a lawyer or process server or other person for service of legal papers related to a court case is allowed and does not violate this Order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The person in 1

(2) ☐ Each person in 3

(3) ☐ The home of the person in 1

(4) ☐ The job or workplace of the person in 1

(5) ☐ The school of the person in 1

(6) ☐ The school of the children of the person in 1

(7) ☐ The place of child care of the children of the person in 1

(8) ☐ The vehicle of the person in 1

(9) ☐ Other *(specify):*

_____

_____

_____

_____

This is a Court Order.

b. This stay-away order does not prevent you from going to or from your home or place of employment.

8 No Guns or Other Firearms and Ammunition

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

- Within 24 hours of being served with this Order, sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control.
- File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form CH-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

9 ☐ Lawyer's Fees and Costs

The person in ___ must pay to the person in ___ the following amounts for:

a. ☐ Lawyer's fees b. ☐ Costs

Item	Amount	Item	Amount
	$		$
	$		$

☐ Additional items and amounts are attached at the end of this Order on Attachment 9.

10 ☐ Possession and Protection of Animals

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

b. ☐ The person in (2) must stay at least ____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

11 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.

To the Person in (1):

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the person in (1) or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency | Address *(City, State, Zip)*

_____ | _____

_____ | _____

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 Service of Order on Restrained Person

a. ☐ The person in (2) personally attended the hearing. No other proof of service is needed.

b. ☐ The person in (2) did not attend the hearing.

(1) ☐ Proof of service of Form CH-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form CH-110 except for the expiration date. The person in (2) must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in Form CH-110. Someone—but not anyone in (1) or (3)—must personally serve a copy of this Order on the person in (2).

14 ☐ No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in (1) is entitled to a fee waiver.

15 Number of pages attached to this Order, if any: _____

Date: _____

_____

Judicial Officer

This is a Court Order.

Warning and Notice to the Restrained Person in (2):

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item (8) above. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item (4) on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders—Priorities of Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Civil Harassment Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

EA-100 Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Read *Can an Elder or Dependent Adult Abuse Restraining Order Help Me?* (Form EA-100-INFO) before completing this form. Also fill out *Confidential CLETS Information* (Form CLETS-001), with as much information as you know.

1 Elder or Dependent Adult in Need of Protection

a. Full Name: _____

Sex: ☐ M ☐ F Age: _____

2 Person From Whom Protection Is Sought

Full Name: _____

Address *(if known):* _____

City: _____ State: ____ Zip: _____

Fill in court name and street address:

Superior Court of California, County of

3 Person Requesting Order

Who is asking the court for protection? *(Check a, b, or c):*

a. ☐ The elder or dependent adult named in 1.

b. ☐ Name: _____

conservator of the ☐ person ☐ estate ☐ person and estate of the person named in 1, appointed by *(name of court):* _____
Case No.:

c. ☐ Other *(name)* _____

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use Form MC-025, Attachment.*)*

Court fills in case number when form is filed.

Case Number:

4 Contact Information

Contact information for the person asking the court for protection*:*

a. 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. The person in 1 does not have to give telephone, fax, or e-mail.):*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

This is not a Court Order.

Case Number:

5 Description of Protected Person

Describe the person named in 1. *(Check a or b)*:

a. ☐ Is age 65 or older and a resident of California.

b. ☐ Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. *(Briefly describe limitations on the attached sheet of paper or Form MC-025. Write "Attachment 5—Description of Protected Person" for a title.)*

6 Additional Protected Persons

a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in 1? ☐ Yes ☐ No *(If yes, list them):*

Full Name	Sex	Age	Lives with you?	How are they related to you?
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are more persons. Attach a sheet of paper and write "Attachment 6a—Additional Protected Persons" for a title. You may use Form MC-025, Attachment.*

b. Why do these people need protection? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.*

7 Relationship of Parties

How does the person in 1 know the person in 2? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7—Relationship of Parties" for a title.*

8 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The person in 2 lives in this county.

b. ☐ The person in 1 was abused by the person in 2 in this county.

c. ☐ Other *(specify):*

This is not a Court Order.

Case Number:

9 Other Court Cases

a. Has the person in (1) or any of the persons named in (6) been involved in another court case with the person in (2)? ☐ No ☐ Yes *(If yes, specify the kind of each case and indicate where and when each was filed):*

	Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1)	☐ Elder or Dependent Adult Abuse			
(2)	☐ Civil Harassment			
(3)	☐ Domestic Violence			
(4)	☐ Divorce, Nullity, Legal Separation			
(5)	☐ Paternity, Parentage, Child Custody			
(6)	☐ Eviction			
(7)	☐ Guardianship			
(8)	☐ Workplace Violence			
(9)	☐ Small Claims			
(10)	☐ Criminal			
(11)	☐ Other *(specify):*			

b. Are there now any protective or restraining orders in effect relating to the person in (1) or any of the persons named in (6) and the person in (2)? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

10 Description of Abuse

a. Abuse means either:
   (1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
   (2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

b. Tell the court about the last time the person in (2) abused the person in (1).
   (1) When did it happen? *(Provide date or estimated date):*
   (2) Who else was there?
   (3) Describe what happened below.
   ☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(3)—Describe Abuse" for a title.*
   (4) Was the abuse **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?
   ☐ Yes, only financial abuse. ☐ No, the abuse included other forms of abuse described above.

This is not a Court Order.

(5) Did the person in (2) use or threaten to use a gun or any other weapon?
☐ Yes ☐ No *(If yes, explain below):*
☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(5)—Use of Weapons" for a title.*

(6) Was the person in (1) harmed or injured as a result of the acts of abuse described above?
☐ Yes ☐ No *(If yes, explain below):*
☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(6)—Harm or Injury" for a title.*

(7) Did the police come? ☐ Yes ☐ No
If yes, did they give the person in (1) or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No
If yes, the order protects *(check all that apply):*
a. ☐ The person in (1) b. ☐ The person in (2) c. ☐ The persons in (6)
(Attach a copy of the order if you have one.)

c. Is the person in (2) a care custodian who deprived the person in (1) of (kept from him or her, did not allow him or her to have or receive, or did not provide him or her with) goods or services that the person needed to avoid physical harm or mental suffering?
☐ Yes ☐ No *(If yes, describe below what the person was deprived of and how that affected him or her):*
☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10c—Deprivation by Care Custodian" for a title.*

d. Has the person in (2) abused the person in (1) at other times?
☐ Yes ☐ No *(If yes, describe prior incidents and provide dates below):*
☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10d—Previous Abuse" for a title.*

This is not a Court Order.

Check the orders you want. ☑

(11) ☐ Personal Conduct Orders

I ask the court to order the person in (2) **not** to do any of the following things to the person in (1) or to any person to be protected listed in (6):

a. ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.

b. ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

c. ☐ Other (*specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 11c—Other Personal Conduct Orders," for a title.*

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.

(12) ☐ Stay-Away Orders

a. I ask the court to order the person in (2) to stay at least _____ yards away from *(check all that apply):*

(1) ☐ The elder or dependent adult in (1)
(2) ☐ The persons in (6)
(3) ☐ The home of the elder or dependent adult
(4) ☐ The job or workplace of the elder or dependent adult
(5) ☐ The vehicle of the elder or dependent adult
(6) ☐ Other *(specify):* _____

b. If the court orders the person in (2) to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☐ Yes ☐ No *(If no, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 12b—Stay-Away Orders," for a title.*

This is not a Court Order.

13 ☐ Move-Out Order

I ask the court to order the person in (2) to move out from and not return to the residence at *(address):*

The person in (1) will suffer physical or emotional harm if the person in (2) does not leave the residence. The person in (2) is not named in the title or lease of the residence, either alone or with others beside the person in (1).

☐ I ask for this move-out order right away to last until the hearing, because:

a. The person in (2) assaulted or threatened the person in (1); and

b. The person in (1) has the right to live at the above residence. *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 13—My Right to Residence," for a title.*

14 Guns or Other Firearms and Ammunition

Does the person in (2) own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

Unless the abuse is only financial, if the judge grants a protective order, the person in (2) will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in (2) will also be ordered to turn in to law enforcement, or sell to or store with a gun dealer, any guns or firearms within his or her immediate possession or control.

15 Immediate Orders

Do you want the court to make any of these orders now that will last until the hearing without notice to the person in (2)? ☐ Yes ☐ No *(If you answered yes, explain why below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 15—Immediate Orders" for a title.*

16 ☐ Request to Give Less Than Five-Days' Notice

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Form EA-200-INFO explains What Is "Proof of Personal Service"? *Form EA-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 16—Request to Give Less Than Five-Days' Notice" for a title.*

This is not a Court Order.

Case Number:

17 **No Fee to Serve Orders** *If you want the sheriff or marshal to serve (notify) the person in* **2** *about the orders for free, ask the court clerk what you need to do.*

18 ☐ **Lawyer's Fees and Costs**

I ask the court to order payment of my: a. ☐ Lawyer's fees b. ☐ Court costs

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or Form MC-025 and write "Attachment 18—Lawyer's Fees and Costs" for a title.*

19 ☐ **Possession and Protection of Animals**

I ask the court to order the following:

a. ☐ That the person in **1** be given the sole possession, care, and control of the animals listed below, which he/she owns, possesses, leases, keeps, or holds, or which reside in his/her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

I request sole possession of the animals because *(specify good cause for granting order)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 19a—Possession of Animals" for a title.*

b. ☐ That the person in **2** must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

This is not a Court Order.

Case Number:

20 ☐ Additional Orders Requested

I ask the court to make the following additional orders *(specify)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 20—Additional Orders Requested," for a title.*

21 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Signature of person filling out this request*

This is not a Court Order.

EA-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete items (1), (2) and (3) only.

(1) Protected Elder or Dependent Adult

a. Full Name: _____

☐ Person requesting protection for the elder or dependent adult, if different *(person named in item (3) of Form EA-100)*:

Full Name: _____

Lawyer for person named above *(if any, for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of that person are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025,* Attachment.

(4) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

To the Person in (2):

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail for up to one year, pay a fine of up to $1,000, or both.

(5) Personal Conduct Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must **not** do the following things to the elder or dependent adult named in (1)

☐ and to the other protected persons listed in (3):

(1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text messages, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in (1).

(6) Stay-Away Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The elder or dependent adult in (1)

(2) ☐ Each person in (3)

(3) ☐ The home of the elder or dependent adult

(4) ☐ The job or workplace of the elder or dependent adult

(5) ☐ The vehicle of the person in (1)

(6) ☐ Other *(specify):*

b. This stay-away order does not prevent you from going to or from your home or place of employment.

(7) Move-Out Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

You must immediately move out from and not return to *(address):*

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

☐ **Not Issued (financial abuse only)** ☐ **Granted as Follows:**

This order must be granted unless only financial abuse is alleged.

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:

(1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form EA-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

9 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

10 Possession and Protection of Animals

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

_____

_____

_____

_____

b. ☐ The person in (2) must stay at least ____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

11 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

_____

_____

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.

To the Person in 1 :

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 No Fee to Serve (Notify) Restrained Person

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

14 Number of pages attached to this Order, if any: _____

Date: _____ _____
Judicial Officer

This is a Court Order.

Warnings and Notices to the Restrained Person in (2)

Possession of Guns or Firearms

If the court grants the orders in item (8), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item (8). The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and Form EA-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (2).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read Form EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Retraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have Form EA-120 served on the person in (1) (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign Form EA-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

This is a Court Order.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities of Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (Form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk 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.

EA-120

Response to Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to respond to the *Request* (Form EA-100)

- Read *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders? (Form EA-120-INFO),* to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person requesting protection in (1) by mail with a copy of this form and any attached pages. *(Use Form EA-250,* Proof of Service of Response by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Elder or Dependent Adult Seeking Protection

Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (Form EA-100).):*

_____

(2) Person From Whom Protection Is Sought

a. Your Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from Form EA-109 item (3) here:

Hearing Date ➔ Date: _____ Time: _____

Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

(3) ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

c. ☐ I agree to the following orders *(specify):* _____

_____

_____

_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

c. ☐ I agree to the following orders *(specify):* _____

_____

_____

Case Number:

5 ☐ Move-Out Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
c. ☐ I agree to the following orders *(specify):* _____

6 ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item 6 of Form EA-100 may be protected by the order requested.
b. ☐ I do not agree that the persons listed in item 6 of Form EA-100 may be protected by the order requested.

7 Guns or Other Firearms and Ammunition

If you were served with Form EA-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. (See item 8 of Form EA-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with Form EA-110. You must file a receipt with the court. You may use Form EA-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

a. ☐ I do not own or control any guns or firearms.
b. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.

A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

8 ☐ Possession and Protection of Animals

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
c. ☐ I agree to the following orders *(specify):* _____

9 ☐ Other Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
c. ☐ I agree to the following orders *(specify):* _____

10 ☐ Denial

I did not do anything described in item 10 of Form EA-100. *(Skip to 12.)*

Case Number:

11 ☐ Justification or Excuse

If I did some or all of the things that the person in (1) has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 11–Justification or Excuse" as a title. You may use Form MC-025,* Attachment.

12 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ Lawyer's fees ☐ Court costs
The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or Form MC-025 and write "Attachment 12—Lawyer's Fees and Costs" for a title.*

b. ☐ I ask the court to deny the request of the person asking for protection named in (1) that I pay his or her lawyer's fees and costs.

13 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

EA-130 Elder or Dependent Adult Abuse Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete items (1), (2), and (3) only.

(1) Elder or Dependent Adult Seeking Protection

a. Full Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (Form EA-100).):*

Full Name: _____

Lawyer for person named above *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of the elder or dependent adult named in (1) are protected by the orders indicated below:

Full Name	Sex	Age	Lives with you?	Relation to Protected Person
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.*

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at:

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on (date): _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

Case Number:

5 Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:
(1) ☐ The elder or dependent adult in need of protection
(2) ☐ The lawyer for the elder or dependent adult *(name):* _____
(3) ☐ The person in (1) asking for protection (if not the elder or dependent adult)
(4) ☐ The lawyer for the person in (1) asking for protection *(name):* _____
(5) ☐ The person in (2)
(6) ☐ The lawyer for the person in (2) *(name):* _____
☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in (2):

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the elder or dependent adult named in (1)
☐ and to the other protected persons listed in (3):
(1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
(4) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*
(1) ☐ The elder or dependent adult in (1)
(2) ☐ Each person in (3)
(3) ☐ The home of the elder or dependent adult
(4) ☐ The job or workplace of the elder or dependent adult
(5) ☐ The vehicle of the elder or dependent adult
(6) ☐ Other *(specify):*
_____
_____
_____
_____

This is a Court Order.

7 b. This stay-away order does not prevent you from going to or from your home or place of employment.

8 ☐ **Move-Out Order**

You must immediately move out from and not return to *(address):*

_____

_____

and must take only the personal clothing and belongings you need.

9 ☐ **No Guns or Other Firearms and Ammunition**

This Order must be granted unless the abuse is financial only.

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

- Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use Form EA-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

10 **Financial Abuse**

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

11 ☐ **Possession and Protection of Animals**

a. ☐ The person in 1 is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

_____

_____

_____

_____

_____

b. ☐ The person in 2 must stay at least ____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

This is a Court Order.

12 ☐ Lawyer's Fees and Costs

You must pay to the person in 1 the following amounts for: a. ☐ Lawyer's fees b. ☐ Costs

Item	Amount	Item	Amount
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 12.

13 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 13.

To the Person in 1 :

14 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, you or your lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 14.

This is a Court Order.

15 Service of Order on Restrained Person

a. ☐ The person in 2 personally attended the hearing. No other proof of service is needed.

b. ☐ The person in 1 was at the hearing. The person in 2 was not.

(1) ☐ Proof of service of Form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form EA-110 except for the end date. The person in 2 must be served with this Order. Service may be by mail.

(2) ☐ Proof of service of Form EA-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are different from the orders in Form EA-110. Someone—but not anyone in 1 or 3—must personally serve a copy of this Order on the person in 2.

16 No Fee to Serve (Notify) Restrained Person

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

17 Number of pages attached to this Order, if any: _____

Date: _____

▶ _____

Judicial Officer

Warning and Notice to the Restrained Person in 2 :

You Cannot Have Guns or Firearms

If the court grants the orders in item 9 on page 3, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item 9. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 5. The order *ends* on the expiration date in item 4 on page 1.

This is a Court Order.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities of Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

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:	
CHILD'S NAME:	CASE NUMBER: JUVENILE: FAMILY:
REQUEST FOR RESTRAINING ORDER—JUVENILE	RELATED CASES *(if any):*

1. **Person or persons needing protection**

Full Name	Age	Relationship to child

2. **Person to be restrained**

Full Name:
Sex: ☐ M ☐ F Height: Weight: Hair Color: Eye Color:
Race: Age: Date of Birth:

3. The child is *(check all that apply)*

a. ☐ a dependent of the court under Welfare and Institutions Code section 300.
b. ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 300.
c. ☐ a ward of the court under Welfare and Institutions Code section 601.
d. ☐ a ward of the court under Welfare and Institutions Code section 602.
e. ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 601.
f. ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 602.

4. Petitioner is the

a. ☐ mother.
b. ☐ father.
c. ☐ child.
d. ☐ guardian.
e. ☐ social worker.
f. ☐ probation officer.
g. ☐ present caregiver of child.
h. ☐ court-appointed special advocate.
i. ☐ representative of Indian child's tribe.
j. ☐ other (state interest or relationship to child):

Form Adopted for Mandatory Use
Judicial Council of California
JV-245 [Rev. January 1, 2017]

Family Code, §§ 6218, 6320, 6321, 6322;
Penal Code, § 136.2; Welfare and Institutions Code, §§ 213.5, 213.7, 304, 345, 362.4, 726.5;
Cal. Rules of Court, rules 5.620, 5.625, 5.630
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. The person to be restrained has *(check at least one box)*
   a. ☐ assaulted or attempted to assault one or more of the persons to be protected.
   b. ☐ caused, threatened, or attempted bodily injury on one or more of the persons to be protected.
   c. ☐ caused one or more of the persons to be protected to fear physical or emotional harm.
   d. ☐ sexually assaulted or attempted to sexually assault one or more of the persons to be protected.
   e. ☐ stalked one or more of the persons to be protected.
   f. ☐ other *(specify):*

6. **Description of conduct** *(describe in detail the most recent incidents supporting this application, or attach copies of reports of law enforcement officers):*

☐ Check here if there is not enough space for your answer. Put your complete description on an attached piece of paper and write "Attachment 6" as a title. Number of pages attached: _____

7. ☐ A criminal protective order on form CR-160 is in effect against the person sought to be restrained:
   a. ☐ Case number: expiration date:
   b. ☐ County *(if known):*
   c. ☐ Person protected by order:
   d. ☐ Person restrained by order:

CHILD'S NAME:	CASE NUMBER:

8. **Requested orders**

a. ☐ Restrained person must not harass, molest, attack, strike, stalk, threaten, sexually assault, batter, destroy the personal property of, or disturb the peace of any person or persons named in item 1.

b. ☐ Restrained person must not contact (either directly or indirectly), by mail or otherwise, any person named in item 1.

(1) ☐ except for brief and peaceful contact as required for court-ordered visitation of children, unless a criminal protective order says otherwise

(2) ☐ except for peaceful written contact through a process server or another person to serve legal papers related to a court case

c. ☐ Restrained person must move immediately from *(address):*

and take only personal clothing and effects.

d. ☐ Restrained person must stay at least *(specify):* yards away from the following persons and places *(the addresses of these places are optional and may be kept confidential):*

(1) ☐ Protected persons named in item 1.

(2) ☐ The residence of the person or people listed in item 1 *(address optional):*

(3) ☐ The workplace of the person or people listed in item 1 *(address optional):*

(4) ☐ Child's school or place of child care *(address optional):*

(5) ☐ The vehicle of the person or people listed in item 1 *(description optional):*

(6) ☐ Other *(specify):*
(address optional):

e. ☐ Restrained person must not take any action to get the address or location of any person named in item 1 or the addresses or locations of the family members, caregivers, or guardians of any persons named in item 1. *(If this box is not checked, the court has found good cause not to make this order.)* Peaceful written contact through a lawyer or through a process server or another person in order to serve legal papers is allowed and does not violate this order.

f. Restrained person must sell or give up any firearms that he or she has or controls for a period not to exceed the duration of the restraining order. Describe in item 6 any use of or threat regarding use of firearms. Petitioner believes the restrained person has the following firearms *(specify):*

g. ☐ The child is a ward or the subject of a petition under Welfare and Institutions Code section 601 or 602 and must not contact, threaten, stalk, or disturb the peace of *(list names):*

h. ☐ Possession and protection of animals

(1) ☐ Protected person *(name):* is given sole possession, care, and control of the following animals *(identify animals by, e.g., type, breed, name, color, sex):*

I ask for the animals to be with the person listed above because *(specify):*

(2) ☐ Restrained person must stay at least yards away from—and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of—the animals listed above.

CHILD'S NAME:	CASE NUMBER:

8. i. ☐ Other requested orders:

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)

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*):	**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:	
NOTICE OF HEARING ☐ AND TEMPORARY RESTRAINING ORDER—JUVENILE	CASE NUMBER: JUVENILE: FAMILY:

1. **Protected person or persons**
   Full Name: Sex: Age: Relationship to Child:

2. **Restrained person**

   Full Name:
   Sex: ☐ M ☐ F Height: Weight: Hair Color: Eye Color:
   Race: Age: Date of Birth:
   Address *(if known):*
   City: State: Zip:

3. **Expiration date/Notice of court hearing**
   A court hearing is scheduled on the request for restraining orders against the person in item 2. Any temporary orders granted will expire at the end of the hearing scheduled for the date and time shown in the box below unless otherwise ordered. At the hearing, the judge may make restraining orders that could last up to three years.

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

Form Adopted for Mandatory Use
Judicial Council of California
JV-250 [Rev. January 1, 2017]

Welfare and Institutions Code, §§ 213.5, 213.7, 304,362, 362.4, 726, 726.5;
Family Code, §§ 6218, 6380, 6389;
Penal Code, §§ 136.2, 29825;
Cal. Rules of Court, rules 5.488, 5.630
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. ☐ Hearing on this temporary restraining order
   a. Date hearing held: Time: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons and attorneys present *(names):*

5. ☐ Temporary orders *(select one)*
   a. ☐ Granted. The court has granted the temporary orders that are checked below.
   b. ☐ Not granted. No temporary orders are granted pending the scheduled hearing in item 3.

THE COURT FINDS AND ORDERS

6. ☐ Restrained person (child in delinquency proceedings) *(Complete either 6 or 7, not both.)*
   a. is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
   b. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No.:
      issued on *(date):* , as an exception to the "no-contact" provision in item 6a of this order.
   c. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 6a of this order.

7. ☐ Restrained person (other than child in delinquency proceeding) *(Complete either 6 or 7, not both.)*
   a. **must not do the following things to anyone in item 1:**
      (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
      (2) ☐ Contact, either directly or indirectly in **any** way, including but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means
         ☐ except for visitation as indicated in c below.
   b. ☐ **must stay away** at least *(specify):* yards from *(check all that apply):*
      (1) ☐ anyone in item 1, except for visitation as indicated in item c below.
      (2) ☐ home of anyone in item 1.
      (3) ☐ job or workplace of anyone in item 1.
      (4) ☐ vehicle of anyone in item 1.
      (5) ☐ school of anyone in item 1.
      (6) ☐ the child(ren)'s school or child care.
      (7) ☐ Other *(specify):*
         ☐ except for visitation as indicated in item c below.
   c. ☐ has the right to visit the child(ren) named in item 1 as follows:
      (1) ☐ None
      (2) ☐ Visitation according to the attached schedule *(Form JV-205 must be attached if any visitation is ordered.)*
   d. ☐ **must move** immediately from *(address):*

      and take only personal clothing and belongings.
   e. ☐ must NOT take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of any one named in item 1. If this box is not checked, the court has found good cause not to make this order.

CASE NAME:	CASE NUMBER:

8. **No guns or other firearms or ammunition** *(applies only if box 5a is checked on this form)*
   a. The restrained person 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. The restrained person must
      - within 24 hours of receiving this order 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.
      - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. (*Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) may be used for the receipt.)
      - bring a copy of the receipt or *Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) to the hearing listed in item 3.
   c. ☐ The court has received information that the restrained person owns or possesses a firearm.
9. ☐ The protected person(s) have the right to record communications made by the restrained person that violate the court's orders.
10. ☐ **Possession and protection of animals**
   a. ☐ Protected person *(name):* is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by a person protected by this order or residing in the residence or household of a person protected by this order. *(Identify animals by, e.g., type, breed, name, color, sex.)*
   b. ☐ The restrained person must stay at least yards away from—and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of—the animals listed above.
11. ☐ **Other orders** *(specify):*
12. ☐ A criminal protective order on form CR-160 is in effect as follows:
    Case number: Expiration date: County *(if known):*
13. **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:
14. ☐ **Service of temporary order**
   a. ☐ The restrained person was present at the time the order was made. No further service is needed.
   b. ☐ The restrained person was not present at the time the order was made. This order must be served.
15. ☐ Service of this notice of hearing must be at least ☐ five or ☐ *(specify):* days before the hearing.

Date:

JUDICIAL OFFICER

CASE NAME:	CASE NUMBER:

Warnings to the Restrained Person

If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail or prison, pay a fine of up to $1,000, or both. Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

You cannot have guns, firearms, or ammunition. If the box in item 5a is checked, the court issued a temporary restraining order, which means you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, 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 that 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 item 2. If this address is not correct, or to find out if the orders were made permanent, contact the court.

Instruction for Law Enforcement

Applicable only if the box in item 5a is checked.

Enforcing the restraining order. This order is effective when made. It is enforceable in all 50 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 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 proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

Conflicting orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Certificate of Compliance With VAWA for Temporary Orders

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 all jurisdictions throughout the 50 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'S CERTIFICATE

[SEAL]

I certify that the foregoing *Temporary Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: Clerk, by _____, Deputy

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*):	**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:	
RESTRAINING ORDER—JUVENILE **Order After Hearing**	CASE NUMBER: JUVENILE: FAMILY:

1. **Protected person or persons**

Full Name	Sex	Age	Relationship to Child

2. **Restrained person**

Full Name:
Sex: ☐ M ☐ F Height: Weight: Hair Color: Eye Color:
Race: Age: Date of Birth:
Address *(if known):*
City: State: Zip:

3. **Order after hearing**

a. This order after hearing expires on *(date and time):*
- If no expiration date is written, the restraining order ends three years after the date of the hearing, as indicated below.
- If no time is written, the restraining order ends at midnight on the expiration date.

b. Date hearing held: Time: Dept.: Room:

c. Judicial officer *(name):*

d. Persons and attorneys present *(names):*

e. ☐ The restrained person was present. No further service is needed.

f. ☐ The restrained person was not present. This order must be served.

(1) ☐ The orders on this form are the same as in the prior temporary restraining order except for the expiration date, and the temporary order and notice of hearing was personally served on the restrained person. The restrained person can be served by mail.

(2) ☐ The orders on this form are different from those in the prior temporary restraining order. An adult 18 years or older—not the person or persons to be protected—must personally serve a copy of this order on the restrained person.

Form Adopted for Mandatory Use
Judicial Council of California
JV-255 [Rev. January 1, 2017]

Welfare and Institutions Code, §§ 213.5, 213.7, 304, 362.4, 726.5;
Family Code, §§ 6218, 6380, 6389;
Penal Code, §§ 136.2, 29825;
Cal. Rules of Court, rules 5.488, 5.630
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

THE COURT FINDS AND ORDERS

4. ☐ Restrained person (child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
   a. is a ward of the court or the subject of a petition under Welfare and Institutions Code section 601 or 602 and **must not** contact, threaten, stalk, or disturb the peace of anyone in item 1.
   b. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for court-ordered visitation as stated in the attached family, juvenile, or probate court order in Case No. issued on *(date):* , as an exception to the "no-contact" provision in item 4a of this order.
   c. ☐ may have peaceful contact with the protected person(s) in item 1 only for the safe exchange of children for visitation as stated in a family, juvenile, or probate court order issued after the date this order is signed, as an exception to the "no-contact" provision in item 4a of this order.

5. ☐ Restrained person (other than child in delinquency proceedings) *(Complete either 4 or 5, not both.)*
   a. **must not do the following things to anyone in item 1:**
      (1) Molest, attack, strike, stalk, threaten, sexually assault, batter, harass, destroy the personal property of, or disturb the peace.
      (2) ☐ Contact, either directly or indirectly in **any** way, including but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means
         ☐ except for visitation as indicated in c below.
   b. ☐ **must stay away** at least *(specify):* yards from *(check all that apply)*
      (1) ☐ anyone in item 1, except for visitation as indicated in item c below.
      (2) ☐ home of anyone in item 1.
      (3) ☐ job or workplace of anyone in item 1.
      (4) ☐ vehicle of anyone in item 1.
      (5) ☐ school of anyone in item 1.
      (6) ☐ the children's school or child care.
      (7) ☐ Other *(specify):*
         ☐ except for visitation as indicated in c below
   c. ☐ has the right to visit the child(ren) named in item 1 as follows:
      (1) ☐ None
      (2) ☐ Visitation according to the attached schedule *(Form JV-205 must be attached if any visitation is ordered.)*
   d. ☐ must move immediately from *(address):*

      and take only personal clothing and belongings.
   e. ☐ must NOT take any action to get the address or location of anyone named in item 1 or the addresses or locations of the family members, caregivers, or guardians of anyone named in item 1. If this box is not checked, the court has found good cause not to make this order.

6. **No guns or other firearms or ammunition**
   a. The restrained person 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. The restrained person must
      - within 24 hours of receiving this order 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.
      - within 48 hours of receiving this order file with the court a receipt that proves guns have been turned in, sold, or stored. (*Proof of Firearms Turned In, Sold, or Stored* (form DV-800/JV-252) may be used for the receipt.)
   c. ☐ The court has received information that the restrained person owns or possesses a firearm.

7. ☐ A criminal protective order on form CR-160 is in effect as follows:
   Case number: Expiration date: County *(if known):*

8. ☐ The protected persons have the right to record communications made by the restrained person that violate the judge's orders.

CASE NAME:	CASE NUMBER:

9. ☐ **Possession and protection of animals**

   a. ☐ Protected person *(name):* is given sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by a person protected by this order or residing in the residence or household of a person protected by this order. *(Identify animals by, e.g., type, breed, name, color, sex.)*

   b. ☐ The restrained person must stay at least yards away from—and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of—the animals listed above.

10. ☐ **Other orders** *(specify):*

11. **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:

Date:

JUDICIAL OFFICER

Warnings to the Restrained Person

If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail or prison, pay a fine of up to $1,000, or both.Taking or hiding a child in violation of this order is subject to state and federal criminal penalties.

You cannot have guns, firearms, or ammunition. You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, 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.

CASE NAME:	CASE NUMBER:

Instruction for Law Enforcement

Enforcing the restraining order. This order is effective when made. It is enforceable in all 50 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 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 proof of service on the restrained person has not been received and the restrained person was not present at the court hearing, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

Conflicting orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Certificate of Compliance With VAWA for Orders After Hearing

This 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 afforded reasonable notice and an opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in all jurisdictions throughout the 50 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'S CERTIFICATE

[SEAL]

I certify that the foregoing *Restraining Order—Juvenile* is a true and correct copy of the original on file in the court.

Date: Clerk, by _____, Deputy

ITC SPR16-22
Protective Orders: Requests for the Possession and Protection of Animals
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Nicole LaGrange	A	I agree with this change* Protecting animals is crucial in domestic violence situations as many seek revenge to further hurt the person leaving the violence. I would also suggest emergency animal shelters in the packet of information used to start the process. Many people would not know that this is possible and that their pets can remain safe as well*Victims will be more apt to leave and less cruelty to animals will result.	The National Domestic Violence Hotline has information and resources on how to keep pets of domestic violence victims safe, including safety planning for pets. Links to this information will be included on the Self-Help section of the Judicial Council's website at http://www.courts.ca.gov/selfhelp-domesticviolence.htm.
2.	Judicial Council Advisory Committees Trial Court Presiding Judges and Court Executive Advisory Committee Joint Rules Subcommittee	AM	1. The proposal should be implemented because it will provide clarification to courts, law enforcement agencies, attorneys, parties and other agencies involved with protective orders. While it is not necessarily required, the proposal would provide consistency with Judicial Council forms throughout the state similar to the Domestic Violence Prevention Act in other areas of need for protective orders. 2. Regarding additional training: The proposal would require minimal training for staff given the forms are already in use without the modifications. 3. The proposed date for implementation is not feasible or is problematic: The JRS recommends the implementation	1. No response required. 2. No response required. 3. The committees do not recommend extending the implementation period. Generally, Judicial Council forms take

	Commentator	Position	Comment	Committee Response
			period be extended to 90-120 days, rather than the proposed two months for implementation. Given the number of forms being affected, more time would benefit the courts.	effect January 1 or July 1, therefore a delay in implementation would result in an effective date of July 1, 2017. The committees agree with commentator's comment that implementation of this proposal will provide clarity "to courts, law enforcement agencies, attorneys, parties and other agencies involved with protective orders." Any delay in implementation will impact the public, other entities and the courts.
			Suggested Modifications: 4. CH-120 7.b.: Consider adding space for explanation regarding disagreement with the order. EA-120 8.b.: Consider adding space for explanation regarding disagreement with the order.	4. This change would require a global change to these forms and to other responsive pleading forms for other restraining order types, to preserve consistent formatting. Currently, answer forms do not provide space under each item for the explanation regarding disagreement with the order. For domestic violence (form DV-120, *Response to Request for Domestic Violence Restraining Order*), space is available on the last page of the document to allow the responding party the opportunity to set forth the facts that support his or her position. The committees may consider whether to make this change globally for all restraining order forms for a future forms revision cycle.

ITC SPR16-22
Protective Orders: Requests for the Possession and Protection of Animals
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			5. Consider adding the following to all forms wherein an animal is identified or described: certificate/registration document #, license #, chip # or other ownership document #	5. The committees recommend adding other identifiers (color and sex) help law enforcement better identify protected animals. The committees do not recommend adding other forms of identification, like chip number, because applicants are unlikely to have this information readily available and unlikely to be useful for enforcement purposes.
3.	Superior Court of Los Angeles	A	This proposal appropriately addresses the stated purpose and no modifications are necessary.	No response required.
4.	Superior Court of Riverside County	A	The California Courts Protective Order Registry (CCPOR) should be modified to add fields regarding the possession and protection* of animals. Currently, courts are using the miscellaneous order section to add this information.	The CCPOR Support Team agrees that this modification should be made and will work on adding this field to the program.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment	

Item number: 11

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Revise Judicial Council Forms SV-110, SV-130, WV-110, and WV-130 to correct error in Instructions to Law Enforcement; Revise Judicial Council Form GV-116 to make it a court order that can be entered into the California Law Enforcement Communications System (CLETS).

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

Staff contact (name, phone and e-mail): Bruce Greenlee; 415 865-7698; bruce.greenlee@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Project description from annual agenda:

If requesting July 1 or out of cycle, explain:
Needed as soon as possible to correct errors in forms.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2016

Title
Corrections to Judicial Council Forms Without Circulation for Public Comment

Rules, Forms, Standards, or Statutes Affected
Forms GV-116, SV-110, SV-130, WV-110, WV-130

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 24, 2016

Contact
Bruce Greenlee, 415 865-7698
bruce.greenlee@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends corrections to five Judicial Council forms (GV-116, SV-110, SV-130, WV-110, WV-130) without circulation for public comment. Form GV-116, *Notice of New Hearing Date* (Gun Violence Prevention) should be structured as a court order so that it can be entered into the California Law Enforcement Telecommunications System (CLETS). Orders for Private Postsecondary School Violence and Workplace Violence proceedings contain legally incorrect information for law enforcement.

Recommendation

The Civil and Small Claims Advisory Committee recommends the following revisions of Judicial Council Forms:

1. Revise Form GV-116, *Notice of New Hearing Date* (Gun Violence Protection) to convert it into a court order that can be entered into CLETS;

2. Revise forms SV-110, *Temporary Restraining Order* (Private Postsecondary School Violence) WV-110, *Temporary Restraining Order* (Workplace Violence), SV-130, *Private*

Postsecondary School Violence Restraining Order After Hearing, and WV-130, *Workplace Violence Restraining Order After Hearing*, to remove from the Instructions to Law Enforcement the paragraphs entitled Arrest Required If Order Is Violated and Notice/Proof of Service.

The committee further recommends that these revisions be made without circulation for public comments.

The forms as proposed to be revised are attached at pages 5–xx.

Rationale for Recommendation

Convert GV-116 into a court order for entry into the California Law Enforcement Telecommunications System (CLETS)

A user of the California Protective Order Registry (CCPOR) pointed out a serious problem with Form GV-116, currently titled "*Notice of New Hearing Date*." The court will set a new hearing date if it has granted a continuance. In Item 5b of the form, the court extends a previously issued *Temporary Restraining Order* (TRO) on form GV-110 until the new hearing date.

This extension of the TRO means that the form needs to be a court order that will be available to law enforcement through CLETS.

The form is not currently structured as a court order. If a continuance is granted and the GV-116 is not in CLETS, a law enforcement officer asked to enforce the order will see the expiration date as the date of the original hearing on the GV-110. The officer will not know that the order has been extended to the new hearing date.

The committee believes that this error must be corrected as soon as possible. It therefore recommends that form GV-116 be revised as shown in the attached draft effective January 1, 2017.

The committee further recommends that the form be revised without circulation for public comment under Rule of Court 10.22(d)(2) as a minor substantive change that is unlikely to create controversy. Because this revision is essential to law enforcement agencies' enforcement requirements, which rely on CLETS for information on when a TRO expires, no comment that might be received could affect the need for the revision.

Incorrect instructions to law enforcement – SV and WV

The committee recommends proposed revisions to Judicial Council forms SV-110 and WV-110 (Temporary Restraining Orders) and SV-130 and WV-130 (Orders After Hearing) to correct a legal error in the current forms. The Instructions to Law Enforcement section of the forms include the following two paragraphs:

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service
The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

• The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; or

• The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

An attorney sent an extensive letter advising that these paragraphs did not apply to SV and WV proceedings.

Research indicated that the attorney was correct. Penal Code section 836(c)(1) provides for the arrest of a person violating specified orders. The statute covers Domestic Violence, Civil Harassment, and Elder and Dependent Adult Abuse, but it does not cover SV and WV. Penal Code section 13701(b) addresses only protective orders under the Family Code. Subsequently the San Francisco Public Defender sent a letter in support of making this change.

Therefore, the current instructions on the form are not correct. The above two paragraphs would be deleted except for the sentence "Agencies are encouraged to enter violation messages into CARPOS," which would be moved to the section on Enforcing the Order.

An additional minor addition is proposed to both Temporary Restraining Orders (SV-110, WV-110). Under the heading "After You Have Been Served With a Restraining Order," to the instruction to "Obey all orders" the following sentence regarding the consequences of not doing so would be added: "Any intentional violation of this Order is a misdemeanor punishable by a fine or by imprisonment in a county jail, or by both fine and imprisonment. (Pen. Code, § 273.6.)"

The committee believes that this error must be corrected as soon as possible. It therefore recommends that forms SV-110, WV-110, SV-130, and WV-130 be revised as shown in the attached drafts effective January 1, 2017.

The committee further recommends that the form be revised without circulation for public comment under Rule of Court 10.22(d)(2) as a minor substantive change that is unlikely to create controversy. Because these revisions are essential to correct legal error, no comment that might be received could affect the need for the revision.

Comments, Alternatives Considered, and Policy Implications

Because of the need to correct these errors as soon as possible, no alternatives were considered. There were no different views expressed within either the Protective Orders subcommittee or the full advisory committee.

Implementation Requirements, Costs, and Operational Impacts

Because courts no longer incur printing costs when forms are revised, there are no associated costs associated with this proposal. The revisions to the SV and WV forms are to instructions only; therefore, no staff training time will be needed. There may be some minimal amount of staff training required to ensure that the GV-116 is entered into CLETS.

Attachments and Links

3. Judicial Council forms GV-116, SV-110, WV-110, SV-130, WV-130 at pages 5–xx

GV-116 Order for Continuance and Notice of New Hearing Date

Clerk stamps date here when form is filed.

Party seeking continuance complete items (1), (2), and (3)a.

(1) Party Seeking Continuance

a. Full Name:

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

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

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

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

Full Name: _____

(3) New Hearing Date

a. A hearing in this case is currently set for *(date):* _____ at *(time):* _____

b. The court grants and continuance and orders a new hearing date:

(1) ☐ at the request of the Petitioner (2) ☐ at the request of the Respondent (3) ☐ in its discretion

c. Because:

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

(2) ☐ the parties have agreed to postpone the hearing and ask for a new hearing date.

(3) ☐ for the reasons stated ☐ below ☐ on Attachment 3c

_____
_____
_____

(4) Order for Continuance and Notice of Hearing

The court hearing on the *Petition for Firearms Restraining Order* (form GV-100) is continued and rescheduled:

Name and address of court if different from above:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

_____
_____
_____
_____

This is a Court Order.

Case Number:

5 Extension of Temporary Restraining Order

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

b. ☐ The *Temporary Restraining Order* (TRO; form GV-110) issued on *(date):* _____ is extended until the new hearing date.

Warning and Notice to the Respondent:

If a *Temporary Firearms Restraining Order* (form GV-110) was issued, it remains in full force and effect until the new hearing date. You must continue to obey it until the end of the hearing.

6 Service of Order

A copy of this Order must be served by the requesting party on the other party at least ____ days before the hearing unless both parties were in court at the time the continuance was granted.

A copy of form GV-100, *Petition for Firearms Restraining Order*, and form GV-110, *Temporary Firearms Restraining Order*, must also be served on the Respondent if he or she was not previously served. A proof of service should be filed with the court before the original hearing date.

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of New Hearing Date* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

SV-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

1 Petitioner (Educational Institution Officer or Employee)

a. Name: _____

Lawyer for Petitioner *(if any, for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

2 Student (Protected Person)

Full Name: _____

Court fills in case number when form is filed.

Case Number:

3 Respondent (Restrained Person)

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Student: _____

4 ☐ Additional Protected Persons

In addition to the student, the following family or household members or other students are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Student
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

To the Person in 2 :

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go 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 are ordered **not** do the following things to the student
   ☐ and to the other protected persons listed in 4 :

   (1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
   (2) ☐ Commit acts of violence or make threats of violence against the person.
   (3) ☐ Follow or stalk the person during school hours or to or from the school.
   (4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by e-mail, by fax, or by other electronic means.
   (5) ☐ Enter the person's school.
   (6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.
   (7) ☐ Other *(specify):*
      ☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(7).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the petitioner.

7 Stay-Away Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must stay at least _____ yards away from *(check all that apply):*

   (1) ☐ The student
   (2) ☐ Each other protected person listed in 4
   (3) ☐ The school
   (4) ☐ The student's home
   (5) ☐ The student's job or workplace
   (6) ☐ The student's children's school
   (7) ☐ The student's children's place of child care
   (8) ☐ The student's vehicle
   (9) ☐ Other *(specify):*

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. You must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form SV-800,* Proof of Firearms Turned In, Sold, or Stored *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

9 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 9.

To the Person in 1:

10 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 10.

11 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on a credible threat of violence or stalking.

b. ☐ The petitioner is entitled to a fee waiver.

This is a Court Order.

(12) Number of pages attached to this Order, if any: _____

Date: _____ _____
Judicial Officer

Warnings and Notices to the Restrained Person in (2)

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (8) above. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form SV-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (3).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders. Any intentional violation of this Order is a misdemeanor punishable by a fine or by imprisonment in a county jail, or by both fine and imprisonment. (Pen. Code, § 273.6.)
- Read form SV-120-INFO, *How Can I Respond to a Petition for Orders to Stop Private Postsecondary School Violence?*, to learn how to respond to this Order.
- If you want to respond, fill out form SV-120, *Response to Petition for Orders to Stop Private Postsecondary School Violence*, and file it with the court clerk. You do not have to pay any fee to file your response if the petition claims that you threatened violence against or stalked the student, or placed the student in reasonable fear of violence.
- You must have form SV-120 served on the petitioner or the petitioner's attorney by mail. You cannot do this yourself. The person who does the service should complete and sign form SV-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to three years. Tell the judge why you disagree with the orders requested.

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item 5 on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order 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, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk 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.

SV-130

Private Postsecondary School Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

1 Petitioner (Educational Institution Officer or Employee)

a. Name: _____

Lawyer for Petitioner *(if any, for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

2 Student (Protected Person)

Full Name: _____

Court fills in case number when form is filed.

Case Number:

3 Respondent (Restrained Person)

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

4 ☐ Additional Protected Persons

In addition to the student, the following family or household members or other students are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to student
_____	____	____	☐ Yes ☐ No	_____
_____	____	____	☐ Yes ☐ No	_____
_____	____	____	☐ Yes ☐ No	_____

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order, except for any award of lawyer's fees, expires at:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The petitioner/school representative *(name):* _____

(2) ☐ The lawyer for the petitioner/school *(name):* _____

(3) ☐ The student (4) ☐ The lawyer for the student *(name):* _____

(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 6b.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Respondent:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

7 Personal Conduct Orders

a. You are ordered **not** do the following things to the student

☐ and to the other protected persons listed in 4 :

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Commit acts of violence or make threats of violence against the person.

(3) ☐ Follow or stalk the person during school hours or to or from the school.

(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(5) ☐ Enter the person's school.

(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.

(7) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

_____

_____

_____

_____

_____

_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

8 Stay-Away Order

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The student
(2) ☐ Each other protected person listed in 4
(3) ☐ The school
(4) ☐ The student's home
(5) ☐ The student's job or workplace
(6) ☐ The student's children's school
(7) ☐ The student's children's place of child care
(8) ☐ The student's vehicle
(9) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

9 No Guns or Other Firearms and Ammunition

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns have been turned in, sold, or stored. *(You may use form SV-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.*)

c. ☐ The court has received information that you own or possess a firearm.

10 ☐ Costs

You must pay the following amounts for costs to the petitioner:

Item	Amount	Item	Amount
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____

☐ Additional amounts are attached at the end of this Order on Attachment 10.

11 ☐ Other Orders *(specify):*

_____
_____
_____
_____
_____
_____
_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.

To the Person in 1:

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 Service of Order on Respondent

a. ☐ The respondent personally attended the hearing. No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of form SV-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in form SV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in form SV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

14 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal will serve this Order without charge because the Order is based on a credible threat of violence or stalking.

15 Number of pages attached to this Order, if any: _____

The Order is based on actual violence, a credible threat of violence, or stalking.
The petitioner is entitled to a fee waiver.

Date: _____

▶ _____
Judicial Officer

This is a Court Order.

Warning and Notice to the Respondent:

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (9). The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item (5) on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

This is a Court Order.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Private Postsecondary School Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

WV-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

1 Petitioner (Employer)

a. Name: _____

Lawyer for Petitioner *(if any, for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

2 Employee (Protected Person)

Full Name: _____

Court fills in case number when form is filed.

Case Number:

3 Respondent (Restrained Person)

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Employee: _____

4 ☐ Additional Protected Persons

In addition to the employee, the following family or household members or other employees are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Employee
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

Case Number:

To the Respondent:

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go 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 are ordered **not** do the following things to the employee
☐ and to the other protected persons listed in 4:

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
(2) ☐ Commit acts of violence or make threats of violence against the person.
(3) ☐ Follow or stalk the person during work hours or to or from the place of work.
(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by e-mail, by fax, or by other electronic means.
(5) ☐ Enter the workplace of the person.
(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.
(7) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(7).

_____
_____
_____
_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the petitioner.

7 Stay-Away Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The employee
(2) ☐ Each other protected person listed in 4
(3) ☐ The employee's workplace
(4) ☐ The employee's home
(5) ☐ The employee's school
(6) ☐ The employee's children's school
(7) ☐ The employee's children's place of child care
(8) ☐ The employee's vehicle
(9) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. You must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form WV-800,* Proof of Firearms Turned In, Sold, or Stored *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

9 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 9.

To the Petitioner:

10 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the employer or the employer's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 10.

11 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on a credible threat of violence or stalking.

b. ☐ The petitioner is entitled to a fee waiver.

This is a Court Order.

(12) Number of pages attached to this Order, if any: _____

Date: _____ _____
Judicial Officer

Warnings and Notices to the Restrained Person in (2)

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (8) above. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form WV-109, *Notice of Court Hearing,* but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (3).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders. Any intentional violation of this Order is a misdemeanor punishable by a fine or by imprisonment in a county jail, or by both fine and imprisonment. (Pen. Code, § 273.6.)
- Read form WV-120-INFO, *How Can I Respond to a Petition for Orders to Stop Workplace Violence?,* to learn how to respond to this Order.
- If you want to respond, fill out form WV-120, *Response to Petition for Workplace Violence Restraining Orders,* and file it with the court clerk. You do not have to pay any fee to file your response if the petition claims that you threatened violence against or stalked the employee, or placed the employee in reasonable fear of violence.
- You must have form WV-120 served on the petitioner or the petitioner's attorney by mail. You cannot do this yourself. The person who does the service should complete and sign form WV-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use form MC-030, *Declaration,* for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to three years. Tell the judge why you disagree with the orders requested.

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item 5 on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order 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, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk 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.

WV-130 Workplace Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner (Employer)

a. Name: _____

Lawyer for Petitioner *(if any, for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Employee (Protected Person)

Full Name: _____

3 Respondent (Restrained Person)

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*:

City: _____ State: _____ Zip: _____

Relationship to Employee: _____

4 ☐ Additional Protected Persons

In addition to the employee, the following family or household members or other students are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Employee
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order, except for any award of lawyer's fees, expires at:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The petitioner/employer representative *(name):* _____

(2) ☐ The lawyer for the petitioner/employer *(name):* _____

(3) ☐ The employee (4) ☐ The lawyer for the employee *(name):* _____

(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Respondent:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

7 Personal Conduct Orders

a. You are ordered **not** do the following things to the employee

☐ and to the other protected persons listed in 4:

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Commit acts of violence or make threats of violence against the person.

(3) ☐ Follow or stalk the person during work hours or while going to or from the place of work.

(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(5) ☐ Enter the person's workplace.

(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.

(7) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

_____

_____

_____

_____

_____

_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

8 Stay-Away Order

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The employee
(2) ☐ Each other protected person listed in 4
(3) ☐ The employee's workplace
(4) ☐ The employee's home
(5) ☐ The employee's school
(6) ☐ The employee's children's school
(7) ☐ The employee's children's place of child care
(8) ☐ The employee's vehicle
(9) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

9 No Guns or Other Firearms and Ammunition

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns have been turned in, sold, or stored. *(You may use form WV-800,* Proof of Firearms Turned In, Sold, or Stored *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

10 ☐ Costs

You must pay the following amounts for costs to the petitioner:

Item	Amount	Item	Amount
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____

☐ Additional amounts are attached at the end of this Order on Attachment 10.

11 ☐ Other Orders *(specify):*

_____
_____
_____
_____
_____
_____
_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.

To the Person in 1 :

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 Service of Order on Respondent

a. ☐ The respondent personally attended the hearing. No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of form WV-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form WV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in form WV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

14 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this Order without charge because the Order is based on unlawful violence, a credible threat of violence, or stalking.

15 Number of pages attached to this Order, if any: _____

Date: _____

▶ _____

Judicial Officer

This is a Court Order.

Warning and Notice to the Respondent:

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (9). The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item (5) on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

This is a Court Order.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Workplace Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)

Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392

Committee or other entity submitting the proposal:
Information Technology Advisory Committee (ITAC)
Civil and Small Claims Advisory Committee (CSCAC)
Family & Juvenile Law Advisory Committee (FJLAC)

Staff contact (name, phone and e-mail): Tara Lundstrom, 415-865-7995

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Judicial Council Technology Committee approved ITAC's Annual Agenda on January 11, 2016
RUPRO approved CSCAC's and FJLAC's Agenda approved on December 10, 2015

Project description from annual agenda:
ITAC'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).

CSCAC's Annual Agenda Item 21:
Rules Modernization Project – Phase 2. Assist Information Technology Advisory Committee (ITAC) it its Rules Modernization Project, a collaborative multi-year effort to comprehensively review and modernize statutes and rules so that they will be consistent with and foster modern e-business practices. Examples of potential areas identified last year as possible Phase 2 topics for action in 2016 include rules and statutes regarding the return of lodged materials, formatting of motion papers and tabbing of exhibits, timing of notice when provided by electronic service.

FJLAC's Annual Agenda Item 18:
Rules Modernization Project Each advisory committee has been asked to include in their annual agenda for 2015 and 2016 an item providing for the drafting of proposed amendments to the California Rules of Court related to their subject matter areas. This effort would be undertaken in coordination with ITAC, which is responsible for developing and completing the overall rules modernization project.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
As discussed in the council report, when CSCAC and ITAC met separately to consider the comments on the rules modernization proposal, they differed as to whether paper courtesy copies should be required not only upon the request of a judge, but also by local rule. Whereas CSCAC recommended that rule 2.252(i) provide only (as circulated) that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred also adding "or paper courtesy copies may be required by local rule."

Chairs and interested committee members from both CSCAC and ITAC convened on August 22 to try to resolve the split differences, but were unsuccessful. The majority of CSCAC participants on the call (three out of four) continued to

prefer the option of requiring paper courtesy copies only upon request by a judge. The majority of ITAC participants on the call (three out of four) continued to prefer the option of requiring paper courtesy copies not only by judicial request, but also by local rule. The participants in the August 22 meeting also discussed a third option of removing the proposed amendment to rule 2.252 on courtesy copies from the rules proposal entirely. Six out of the eight participants (three CSCAC members and three ITAC members) agreed with pursuing this option in the absence of resolution by the committees on specific rule language.

Subsequently, in its role of overseeing ITAC, the Judicial Council Technology Committee (JCTC) reviewed the proposal and weighed in favor of removing rule 2.252(i) from the proposal during its August 25 meeting. JCTC thought that adding the courtesy copy provision to the rules seemed to be premature and that the courtesy copy issue could be addressed in a future rules cycle after courts have had more experience with e-filing. This resolution of the issue was shared with the Chair and members of ITAC and the Chair of CSCAC, and appears to be an acceptable solution to the courtesy copy question. The report submitted to RUPRO has removed the courtesy copy provision from the proposal and provides an explanation of the reasons for this decision.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)

Rules, Forms, Standards, or Statutes Affected
Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392

Recommended by
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair
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
January 1, 2017

Date of Report
August 31, 2016

Contact
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Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, and 5 of the California Rules of Court as part of phase II of the Rules Modernization Project. These amendments are substantive changes to the rules that are intended to promote electronic filing, electronic service, and modern e-business practices. The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee also recommend the amendments to the rules in their respective subject-matter areas.

Recommendation

The Information Technology Advisory Committee (ITAC) recommends that the Judicial Council, effective January 1, 2017, amend Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.

The rule amendments in titles 2 and 3 have been reviewed and recommended by ITAC and the Civil and Small Claims Advisory Committee; and those in title 5 have been reviewed and recommended by ITAC and the Family and Juvenile Law Advisory Committee.

The text of the amended rules is attached at pages 11–25.

Previous Council Action

The Information Technology Advisory Committee is leading the Rules Modernization Project, a multiyear effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with other advisory committees with relevant subject-matter expertise, including the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee (FJLAC).

The Rules Modernization Project is being carried out in two phases. Phase I culminated in the Judicial Council's adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. This rules proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

This proposal includes new formatting provisions in the rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

Formatting of electronically filed documents

Rule 2.256(b) states the formatting requirements for documents that are electronically filed in the trial courts. This proposal would add references to rule 2.256(b) in rules 2.100, 2.114, and 2.140 to clarify that the formatting requirements in rule 2.256(b) apply to electronically filed "papers," exhibits, and forms. Minor technical changes would also be made to formatting rules 2.103 and 2.105.

Text-searchable electronic documents. This proposal would amend rule 2.256(b) to provide that an electronically filed document must be text searchable when technologically feasible without

impairing the document's image. This requirement would apply broadly to all electronically filed documents, including "papers," exhibits, and forms.[1]

Although both ITAC and CSCAC agreed that electronically filed "papers" should be text searchable, the committees initially split regarding whether to extend this requirement to electronically filed exhibits and forms. Whereas CSCAC recommended that an advisory committee comment to rule 2.256(b) state a preference for text searchable exhibits and forms for the convenience of the court and the parties, ITAC preferred requiring that electronically filed exhibits and forms be text searchable "when feasible."

After further discussion, the two committees were able to resolve their differences by providing guidance on the intended meaning of the term "feasible." They recommended requiring that all electronically filed documents be text searchable "when technologically feasible without impairment of the document's image." They also decided to provide further guidance in an advisory committee comment, which would specify that "[t]he term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

The requirement that "papers" be text searchable is intended to discourage litigants from printing and scanning "papers" before electronically filing them, which creates documents that are not text searchable. Because converting from a document created with word processing software to portable document format (PDF) may result in a slight reduction or enlargement of font size in the document, this proposal would amend rule 2.118 by adding a new subparagraph (a)(3) to provide that a clerk may not reject papers for filing solely because "[t]he font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF."

Electronic bookmarks for exhibits. This proposal would amend rule 3.1110(f) to require that electronic exhibits contain electronic bookmarks, unless they are submitted by a self-represented litigant. The electronic bookmarks must have (1) links to the first page of each exhibit and (2) titles that identify the exhibit number or letter and briefly describe the exhibit. This proposal would also add an Advisory Committee Comment that would state that, "[u]nder current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free." In addition, the proposal would amend rule 3.1113(i) to require electronic bookmarking where authorities or cases are lodged in electronic form.

[1] As defined in rule 2.3(2), the term "papers" includes "all documents, except exhibits and copies of exhibits that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions."

Page numbering

This proposal would amend the rules governing pagination for "papers," motion documents, and motion memoranda—rules 2.109, 3.1110(c), and 3.1113(h)—to provide that page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3) and that the page number may be suppressed and need not appear on the first page. These amendments recognize that judicial officers find it easier to navigate electronic documents when the page number in the footer matches the page number of the electronic document. To provide for consistency, this method of page numbering would apply to both electronic and paper documents, and, as a result, the pages of tables of contents in memoranda will no longer be paginated using lowercase Roman numerals.[2]

To ensure that the amendment to rule 3.1113(h) would not alter the number of pages allowed for memoranda, this proposal would also amend rule 3.1113(d) by providing that the caption page and the notice of motion and motion are not counted in determining whether a memorandum exceeds the page limit. Subdivision (d) already provides that exhibits, declarations, attachments, the table of contents, the table of authorities, and the proof of service are not counted.

Proof of electronic service

This proposal would amend rule 2.251(i) to conform the requirements for proof of electronic service to the statutes and rules governing electronic service. It would also eliminate the requirement that the person completing the proof of electronic service state the time of electronic service.

Electronic service by a party. In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of service by mail in Code of Civil Procedure section 1013a, subject to several exceptions. Section 1013a requires that proof of service by mail be made by affidavit or certificate showing that the "the person making the service" is "not a party to the cause," and subdivision (i) of rule 2.251 does not currently provide an exception to this requirement. However, subdivision (e) of rule 2.251 and the statute governing electronic service expressly allow for electronic service by a party. (See Code Civ. Proc., § 1010.6(a)(1)(A).) To eliminate this internal inconsistency, this proposal would add another exception to rule 2.251(i) to recognize that parties may electronically serve documents.

Time of electronic service. This proposal would amend rule 2.251(i)(1) to remove the requirement that the proof of electronic service state the time of electronic service. In practice, this requirement has proved unworkable: the person completing the proof of electronic service will not know the precise time of electronic service until after the document is served. Because this requirement also appears in the proof of service for fax filing, this proposal would make the same change to rule 2.306(h)(1).

[2] The Information Technology Advisory Committee and the Appellate Advisory Committee have recommended similar amendments to the pagination requirements in rules 8.204(b) and 8.74(b) for appellate briefs and documents that are electronically filed in the appellate courts.

Paper courtesy copies

At present, the rules are silent as to whether paper courtesy copies may be required when documents are filed electronically. The proposal that was circulated for public comment would have added add a new subdivision (i) to rule 2.252 to address paper courtesy copies. That subdivision would have provided that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document." However, after reviewing the comments, CSCAC and ITAC were unable to agree whether paper courtesy copies should be required not only upon the request of a judge but also by local rule. Whereas CSCAC recommended the circulated version that provided only that a judge may request that electronic filers submit paper courtesy copies, ITAC recommended adding that "paper courtesy copies may be required by local rule."

The committees' differences on the courtesy copy question were forwarded on to an ad hoc joint group comprised of members from both committees. The working group members discussed the courtesy copy issues in detail but were unable to resolve their differences. In the end, most of them supported not going forward with the new rule provision at this time. The courtesy copy issue was then forwarded on to Judicial Council Technology Committee (JCTC) and the Rules and Projects Committee (RUPRO) for their consideration. When the JCTC members considered the courtesy copy issue, they concluded that adding subdivision (i) on courtesy copies was premature, that the provision should not be included in the current rules proposal, and that the courtesy copy issue could be addressed in a future rules cycle after the judicial branch has had more experience with e-filing practices. [TO BE ADDED: discussion of any additional action by RUPRO.]

"Return" of lodged records

During phase I of the Rules Modernization Project, the Judicial Council amended rules 2.551, 2.577, and 3.1302 to provide for the return of materials lodged in electronic form. The advisory committees and commentators raised concerns that the rule language regarding the return of electronic materials did not necessarily mean that the court would be required to delete the electronic record maintained in its document management system. Accordingly, the committees decided to revisit these rules this year and provide for a new process that addresses these concerns.

The purpose of amending rules 2.551(b)(6) and 2.577(d)(4) is to modernize the process for returning the lodged record to accommodate electronic records. The intent is not to change the basic underlying procedure: when a motion to seal is denied, rules 2.551(b)(6) and 2.577(d)(4) provide for the return of the lodged record to the moving party or, in the alternative, allow the moving party to notify the court within 10 days of the order denying the motion that the record is to be filed unsealed.

To better reflect this purpose, the committees decided to revise the amendments to rules 2.551(b)(6) and 2.577(d)(4) to provide that the moving party has 10 days following an order

denying a motion or application to seal—unless ordered otherwise by the court—to notify the court that the lodged record is to be filed unsealed. The clerk must unseal and file the record upon receiving the notification. If the clerk does not receive notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete the lodged records if in electronic form. Based on comments received in response to the invitation to comment, the committees decided not to require that courts send a separate notice of destruction before destroying electronic lodged records. The court order denying the sealing motion was thought to provide sufficient notice to the moving party.

The committees also revised rule 3.1302(b) to provide that courts may continue to maintain other lodged materials; however, if the court elects not to maintain them, they must be returned by mail if in paper form or permanently deleted after notifying the party lodging the material if in electronic form. The committees decided to require that a notice be sent before destruction of any electronic lodged records under rule 3.1302 because the submitting party would not otherwise have notice of the destruction.

Additional technical amendments to the rules

Lastly, this proposal would make additional technical amendments to the rules that were not identified during phase I of the Rules Modernization Project. These technical changes include the following:

- Amending rule 2.104 to clarify that the font size must be not smaller than 12 points on papers if they are filed electronically or on paper;
- Amending rule 2.110 to refer to "font" instead of "type";
- Amending rule 2.111(1) to delete the language "if available" in reference to fax and e-mail addresses on the first page of papers;
- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rules 2.551(f) and 2.577(g) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them;
- Amending rule 3.250(b) to describe the process for retaining the originals of papers that are not filed where the originals are in electronic form;
- Amending rule 3.751 to recognize that a party may agree to electronic service, or a court may require electronic service by local rule or court order, under rule 2.251 in complex civil cases;
- Amending rule 3.823(d) to cross-reference Code of Civil Procedure sections 1013 and 1010.6;
- Amending rule 3.1306 to provide that a party who requests judicial notice of material in electronic form must make arrangements to have it electronically accessible to the court at the time of the hearing;

- Amending rule 3.1362 to recognize that an attorney requesting to be relieved as counsel may serve notice of the motion, the declaration, and the proposed order by electronic means, subject to certain safeguards;
- Amending rule 5.66 to recognize that the proof of service of a response to a petition or complaint may be on *Proof of Electronic Service* (form POS-050/EFS-050);
- Amending rules 5.380(c), 5.390(e), 5.392(b), (d), and (f) to replace the term "mail" and "mailing" with "serve" and "serving"; and
- Amending rule 5.390(e) to recognize that a clerk may file a certificate of electronic service.

Comments, Alternatives Considered, and Policy Implications

This rules proposal circulated for public comment during the spring 2016 cycle. Seven comments were submitted in response to the invitation to comment; two agreed with the proposal, three agreed with the proposal if modified, and two did not indicate their position. None of the comments addressed the amendments in title 5. The specific responses from ITAC and CSCAC to each comment are available in the attached comment chart at pages 27–58.

ITAC and CSCAC considered various alternatives in proposing rule amendments to titles 2 and 3, including whether electronically filed exhibits and forms should be text searchable, whether the rules should allow for paper courtesy copies, and whether self-represented litigants should be exempt from all or some of the new electronic requirements. The invitation to comment requested specific comment on several of these alternatives.

Text searchability of electronically filed documents

Several commentators expressed concerns if the rules were amended to require that electronically filed exhibits must be text searchable. These concerns included the difficulties in applying OCR software to voluminous and poorly reproduced exhibits and the possible expense of obtaining OCR software of sufficient quality.

After reviewing the comments, ITAC and CSCAC initially split as to whether electronically filed exhibits and forms should be text searchable. Whereas CSCAC recommended that rule 2.256(b) require that only electronically filed "papers" be text searchable, ITAC preferred extending this requirement to electronically filed exhibits and forms "when feasible." CSCAC would have added an advisory committee comment to state a preference for text-searchable exhibits and forms for the convenience of the court and the parties, but would not have made text searchability a requirement for these types of documents.

In light of public comments and further committee discussion, the committees ultimately agreed to recommend that electronically filed documents, including exhibits and forms, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance, the committees also recommended adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than

the application of standard, commercially available optical character recognition (OCR) software."

Paper courtesy copies of electronically filed documents

Commentators also responded to the request for comment on the proposed new rule on courtesy copies. As circulated, the proposed amendment to rule 2.252(i) would have required paper courtesy copies upon request of the judge.

Several commentators appreciated the flexibility built into the circulated rule and thought it would ultimately promote the transition to paperless case environments. One commentator questioned allowing for courtesy copies because they eliminate the primary benefit of electronic filing for litigants: the time and expense saved by not delivering paper copies to the courthouse.

Another commentator preferred omitting reference to courtesy copies from the rules or, in the alternative, also allowing for courtesy copies by local rule. This commentator reflected that the subject of local courtesy copies has been left to judicial discretion or local rule thus far and emphasized the importance of continuing to allow for both individual and local options to provide for flexibility in the early stages of implementing electronic filing in local courts.

As discussed earlier in this report, ITAC and CSCAC were unable to reach an agreement in their recommendations for a new rule on paper courtesy copies. Whereas CSCAC recommended that rule 2.252(i) provide only that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred adding "or paper courtesy copies may be required by local rule."

In support of its recommendation, CSCAC reasoned that requiring paper courtesy copies only upon request by a judge would provide for flexibility while also promoting the transition to a paperless case environment. If local rules on paper courtesy copies were allowed, judges would receive paper courtesy copies under a local rule even if they did not want them, resulting in unnecessary expense for litigants and the waste of natural resources. Alternatively, disallowing local rules on paper courtesy copies would permit those judges who are ready to transition to a paperless case environment to do so without being hampered by a local rule. Each judge would control how the request is communicated to the parties, including, for example, making the request in case management orders.

In support of its recommendation, ITAC reasoned that requiring paper courtesy copies, not only upon request of the judge but also by local rule, would give autonomy to local courts to decide how best to transition to electronic filing. Local courts could determine whether paper courtesy copies should always be provided for certain types of cases, such as summary judgment motions. Uniformity might be especially helpful in master calendar courts where judges would need to find some means other than a case management order to convey their request for courtesy copies to the parties. Uniformity would also assist courts, especially larger courts, as they transition to

new electronic filing systems by providing for clarity in their communications with the bar and the public.

In the end, after further consideration by a joint working group from both advisory committees and review by JCTC [and RUPRO], agreement was reached that it would be premature to add new subdivision (i) on courtesy copies to rule 2.252 at this time, that the provision should not be included in the current rules proposal, and that the courtesy copy issue may be addressed in a future rules cycle after the judicial branch has had more experience with e-filing practices.

Self-represented litigants

Lastly, several commentators questioned the balance struck by the committees with respect to self-represented litigants. One requested that self-represented, disabled, and low-to-moderate-income litigants be exempted from the requirement that electronically filed documents be text searchable and that disabled and low-to-moderate-income litigants be exempted from the electronic bookmarking requirement.

In declining to pursue these recommendations, ITAC and CSCAC took the following points under consideration: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.

Another commentator questioned why self-represented litigants were exempt from the electronic bookmarking requirement. However, with a view to promoting both electronic filing and access to the courts, the committees concluded that the electronic bookmarking requirement would be too burdensome for self-represented litigants; it requires downloading additional software and possessing certain technical know-how. Because self-represented litigants may opt out of electronic filing entirely, the committees preferred to lower potential barriers to electronic filing.

Implementation Requirements, Costs, and Operational Impacts

The committees expect that the amendments would ultimately result in efficiency gains and cost savings for the courts at minimal expense, if any, to litigants.

Requiring that electronically filed documents be text searchable would assist judicial officers and research attorneys. Although courts may incur additional expense for clerk review of filings to ensure text searchability, the requirement will likely result in overall savings from avoiding the significant cost and delay of applying OCR software to electronically filed documents. Litigants may readily convert “papers” created by word processing software free of additional charge to

text-searchable PDFs. Generating text-searchable exhibits may require the application of OCR software, a common feature included in many scanners. The committees decided that the added benefits of text searchability to the courts outweighed the costs to the litigants.

Electronic bookmarks will facilitate and expedite the review of electronic exhibits by judicial officers and research attorneys. Adding electronic bookmarks to electronic exhibits would result in no additional costs to litigants because open-source software is available. Electronic bookmarks are also cheaper and less time intensive to apply than tabbing or separating paper exhibits. Because self-represented parties are exempt from the bookmarking requirement, it would not negatively affect them.

The notice requirement in rule 3.1302(b) for lodged electronic materials may result in costs for courts, but courts can avoid those costs by retaining and not deleting the lodged materials. Notice is required only if courts elect to delete electronic lodged materials.

Attachments and Links

1. Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392, at pages 11–25
2. Chart of comments, at pages 26–57

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court are amended, effective January 1, 2017, to read:

Rule 2.100. Form and format of papers presented for filing in the trial courts

(a)–(b) * * *

(c) Electronic format of papers

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

Rule 2.103. Size, quality, and color of papers

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.

Rule 2.104. ~~Printing;~~ Font size; printing

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing ~~in a font not smaller than 12 points~~.

Rule 2.105. Font style

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.109. Page numbering

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

Rule 2.110. Footer

(a)–(b) * * *

(c) ~~Type~~ Font size

The title of the paper in the footer must be in at least 10-point ~~type~~ font.

Rule 2.111. Format of first page

The first page of each paper must be in the following form:

(1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address ~~(if available)~~, and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2)–(11) * * *

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image. Exhibits submitted with papers filed electronically must meet the requirements in rule 2.256(b).

Rule 2.118. Acceptance of papers for filing

(a) Papers not in compliance

The clerk of the court must not accept for filing or file any papers that do not comply with the rules in this chapter, except the clerk must not reject a paper for filing solely on the ground that:

(1) It is handwritten or hand-printed; ~~or~~

(2) The handwriting or hand printing on the paper is in a color other than black or blue-black~~.~~; or

(3) The font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF.

(b)–(c) * * *

Rule 2.140. Judicial Council forms

Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1. Electronic Judicial Council forms must meet the requirements in rule 2.256.

Rule 2.251. Electronic service

(a)–(h) * * *

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

(A) The proof of electronic service does not need to state that the person making the service is not a party to the case.

(B) The proof of electronic service must state:

~~(A)~~ (i) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~ (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~ (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) * * *

(3) Under rule 3.1300(c), proof of electronic service of the moving papers must be filed at least five court days before the hearing.

(4) * * *

**(j) * * *

Rule 2.256. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:

(1)–(2) * * *

(3) The document must be text searchable when technologically feasible without impairment of the document's image.

If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.

Advisory Committee Comment

Subdivision (b)(3). The term "technologically feasible" does not require more than the application of standard, commercially available optical character recognition (OCR) software.

Rule 2.306. Service of papers by fax transmission

(a)–(g) * * *

(h) Proof of service by fax

Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013(a), except that:

(1) The ~~time,~~ date~~,~~ and sending fax machine telephone number must be used instead of the date and place of deposit in the mail;

(2)–(5) * * *

Rule 2.551. Procedures for filing records under seal

**(a) * * *

(b) Motion or application to seal a record

(1)–(2) * * *

(3) *Procedure for party not intending to file motion or application*

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly ~~remove~~ transfer all the documents in (A)(i) from the envelope, container, or secure electronic file ~~where they are located and place them in~~ to the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4)–(5) * * *

(6) *Return of lodged record*

If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the

moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(c)–(d) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE),*" and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in ~~an~~ electronic form~~at~~, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2)–(4) * * *

(f) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(g)–(h) * * *

Rule 2.577. Procedures for filing confidential name change records under seal

(a) * * *

(b) Application to file records in confidential name change proceedings under seal

An application by a confidential name change petitioner to file records under seal must be filed at the time the petition for name change is submitted to the court. The application must be made on the *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410) and be accompanied by a *Declaration in Support of Application to*

File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home) (form NC-420), containing facts sufficient to justify the sealing.

(c) * * *

(d) Procedure for lodging of petition for name change

(1)–(3) * * *

(4) If the court denies the application to seal, ~~the clerk must return the lodged record to the petitioner and must not place it in the case file unless the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(e) * * *

(f) Order

(1)–(2) * * *

(3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY UNDER SEAL," add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(g) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(h) * * *

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(c) * * *

Rule 3.751. Electronic service

Parties may consent to electronic service, or the court may require electronic service by local rule or court order, under rule 2.251. The court may provide in a case management order that documents filed electronically in a central electronic depository available to all parties are deemed served on all parties.

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased as provided by Code of Civil Procedure section 1010.6. ~~by two days.~~ If service is in the manner provided by ~~mail~~ Code of Civil Procedure section 1013, the times prescribed in this rule are increased as provided by ~~five days~~ that section.

Rule 3.1110. General format

(a)–(b) * * *

(c) Pagination of documents

Documents ~~bound together~~ must be consecutively paginated. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

(d)–(e) * * *

(f) Format of exhibits

(1) An index of exhibits must be provided. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.

(2) Pages from a single deposition must be designated as a single exhibit.

(3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. ~~An index to exhibits must be provided. Pages from a single deposition and associated exhibits must be designated as a single exhibit.~~

(4) Electronic exhibits must meet the requirements in rule 2.256(b). Unless they are submitted by a self-represented party, electronic exhibits must include

electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(g) * * *

Advisory Committee Comment

Subdivision (f)(4). Under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free.

Rule 3.1113. Memorandum

(a)–(c) * * *

(d) Length of memorandum

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

(e)–(g) * * *

(h) Pagination of memorandum

The pages of a memorandum must be numbered consecutively beginning with the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

~~Notwithstanding any other rule, a memorandum that includes a table of contents and a table of authorities must be paginated as follows:~~

~~(1) The caption page or pages must not be numbered;~~

~~(2) The pages of the tables must be numbered consecutively using lower-case roman numerals starting on the first page of the tables; and~~

~~(3) The pages of the text must be numbered consecutively using Arabic numerals starting on the first page of the text.~~

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. ~~and~~ If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged. ~~and~~ If in paper form, the copy must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) * * *

**(j)–(m) * * *

Rule 3.1302. Place and manner of filing

(a) * * *

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which ~~the materials may be returned~~ a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

Rule 3.1306. Evidence at hearing

(a)–(b) * * *

(c) Judicial notice

A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

(1) Specify in writing the part of the court file sought to be judicially noticed; and

(2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Rule 3.1362. Motion to be relieved as counsel

(a)–(c) * * *

(d) Service

The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail.

(1) If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(~~1~~A) The service address is the current residence or business address of the client; or

(~~2~~B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

(e) * * *

Rule 5.66. Proof of service

(a) Requirements to file proof of service

Parties must file with the court a completed form to prove that the other party received the petition or complaint or response to petition or complaint.

(b) Methods of proof of service

(1) The proof of service of summons may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service of Summons* (form FL-115).

(2) The proof of service of response to petition or complaint may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service by Mail* (form FL-335) ~~or,~~ *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service* (form POS-050/EFS-050).

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a)–(b) * * *

(c) Notice of Entry of Judgment

When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

Rule 5.390. Bifurcation of issues

(a)–(d) * * *

(e) Notice by clerk

Within 10 days after the order deciding the bifurcated issue and any statement of decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the parties and file a certificate of mailing or a certificate of electronic service.

Rule 5.392. Interlocutory appeals

(a) * * *

(b) Certificate of probable cause for appeal

(1) * * *

(2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the order. The motion must be heard within 30 days after the order deciding the bifurcated issue is ~~mailed~~ served.

(3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to the parties. If the motion is not determined within 40 days after ~~mailing of~~ serving the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(c) * * *

(d) Motion to appeal

(1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~ court serves the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.

(2)–(6) * * *

(e) * * *

(f) Proceedings if motion to appeal is granted

(1) * * *

(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of the record that are needed for the full consideration of the appeal.

(3)–(4) * * *

(g)–(h) * * *

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committees' Response
1.	David Chapman Judge Superior Court of Riverside County	AM	In courts that have electronic access to all of its own files, there is no need for a party requesting judicial notice of the court's own records to "provide the court . . . with a copy of the material." (c)(2) as written makes no sense – how does someone "make arrangements to have a file electronically accessible" It is suggested beginning that sentence with "If the file is not electronically accessible to the court" so it would read: "If the file is not electronically accessible to the court , make arrangements with the clerk to have the file in the courtroom at the time of the hearing." An alternative would be "or confirm with the clerk that the file is electronically accessible to the court" so it would say "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."	ITAC and CSCAC appreciate Judge Chapman's input. The committees agree. The proposed amendment to rule 3.1306(c)(2) has been revised to provide: "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."
2.	Orange County Bar Association by Todd G. Friedland President	A	The proposal asks for specific comments. The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents. We are hesitant to advocate requiring all exhibits be text searchable at this	The committees appreciate the Orange County Bar Association's comments. The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more

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	Commentator	Position	Comment	Committees' Response
			early juncture, but agreeable assuming "where feasible" language is used. The language "where feasible" gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable but not mandatory. Costs to litigants to obtain the necessary software programing to ensure that its documents are text searchable should be assessed.	experience with implementing e-filing. On searchability, the committees decided to recommend at this time requiring that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."
3.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	NI	***Does the proposal appropriately address the stated purpose?*** Generally, yes. The stated purpose of the proposed amendments is "to promote electronic filing, electronic service, and modern e-business practices." Widespread consensus exists in the legal community that text-searchable and electronically bookmarked documents are easier to read and interact with on electronic media (including both computers and e-readers). Yet absent an accompanying mandate that litigants electronically file documents in all state courts, these particular amendments (text searchability and bookmarking) tend to *reflect* existing e-business practices more than they *promote* wider	The committees appreciate the input of the State Bar Committee on Administration of Justice. No response required.

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	Commentator	Position	Comment	Committees' Response
			adoption of these practices. PDF writers are built into most word processors, and they are simpler and more cost effective than printing documents and scanning them (which creates much larger file sizes). The efficiencies built into the technology itself therefore already promote electronic filing and service. What the rules will do, however, is render electronic media more accessible to judicial officers, who in turn may be more inclined to mandate electronic filing or service than they would have previously. To this extent, the rules appear to promote the stated purpose. Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as	

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	Commentator	Position	Comment	Committees' Response
			noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction. There is another way in which bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service. ***Should the rules require that electronic exhibits be text searchable to the extent feasible?***	

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	Commentator	Position	Comment	Committees' Response
			No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings originate as paper documents, which are often poorly reproduced. Scanning and applying Optical Character Recognition ("OCR") software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet. Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character	The committees appreciate the difficulties that litigants may encounter in applying OCR software to scanned documents. Accordingly, the committees opted to recommend requiring that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

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	Commentator	Position	Comment	Committees' Response
			recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule. ***Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF?*** **Yes.** ***Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software?*** **They should not.** ***Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?*** **Mitigation likely is not necessary.** There should be no concerns about document metadata being carried into electronic documents that are saved as PDFs. When a document is saved as a PDF, the PDF writer (e.g., Acrobat) strips the document's metadata (including tracked changes) from the document and does not transfer any underlying document properties to the PDF. (CAJ uses Acrobat as a continuing example, but different PDF writers	No response required. No response required. No response required.

	Commentator	Position	Comment	Committees' Response
			should work the same way.) Acrobat *will* create new creation-date and author metadata for the PDF itself, and Acrobat takes that data from the computer on which the document is saved as a PDF. But this data should not reveal sensitive underlying document information, and it is possible to use a data scrubber to remove that data in the rare event that it does contain sensitive information. The one scenario litigants should be careful about is document redaction. Most PDF writers do not automatically burn in redactions (i.e., remove the underlying text). But in recent years, Adobe has modified its software to prompt users to burn in redactions, rendering the process user-friendly. Of note, federal courts nationwide mandate e-filing, and many federal courts specifically require that documents be submitted in PDF format. *E.g.*, N.D. Cal. L. R. 5-1(e) (2) ("Documents filed electronically must be submitted in PDF format. Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to PDF format."); C.D. Cal. L. R. 5-4.3.1	

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	Commentator	Position	Comment	Committees' Response
			("Documents filed electronically must be submitted in PDF. . . . PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED."). Anecdotal evidence suggests that unintentionally retained metadata has not been an issue in federal court filings, although some courts have online FAQs that guide litigants through these issues. *E.g.*, https://www.cacd.uscourts.gov/e-filing/faq/pdf-related%20questions (Central District of California); http://www.cand.uscourts.gov/pages/946 (Northern District of California). ***Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?*** If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 ("A judge may request that electronic filers submit paper courtesy copies of an	The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more experience with implementing e-filing.

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

	Commentator	Position	Comment	Committees' Response
			electronically filed document.") would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).	
4.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	AM	• Does the proposal appropriately address the stated purpose? Yes. • Should the rules require that electronic exhibits be text searchable to the extent feasible? Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable. • Does the proposal to require that "papers" be	The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services. The committees recommend that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software." As recommended by the committees, the rule would not carve out an exception for self-represented litigants.

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	Commentator	Position	Comment	Committees' Response
			text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? Yes to first question. SCDLS has no comments about the remaining questions. • Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved. **Additional Comments** The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants	No response required. No response required. The committees appreciate this suggestion, but decline to pursue it. They weighed the following considerations: (1) word processing software readily converts documents to PDF with no extra

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			to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all (which would be contrary to the proposal's general intent to promote e-filing). The rule (see Rule 3.1110(f)) should also not require that all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.	expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.
5.	Superior Court of Orange County Judicial Assistance Group Sheri A. Bull Program Coordinator	NI	**GENERAL COMMENTS** **REJECTION OF DOCUMENTS OFFERED FOR FILING FOR NON-COMPLIANCE WITH FORM AND FORMAT RULES – PAGE NUMBERING, SEARCHABLE**	The committees appreciate the input from the Superior Court of Orange County's Judicial Assistance Group.

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			TEXT, AND BOOKMARKING EXHIBITS *COMMENT*: The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed. In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (**proposed Rules 2.109**, **3.1110(c)**, and **3.1113(h)**), whether the documents submitted is text searchable (**proposed Rule 2.256(b)(3)**), or whether the exhibit format requirements are followed (**proposed Rule 3.1110(f)**) . As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court.	The committees carefully considered the additional burden on clerks resulting from the proposed amendments to rule 2.100 (requiring that "papers" filed electronically be text searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that exhibits submitted with electronically filed "papers" be text searchable). These three amendments would be subject to the general requirement in rule 2.118 that clerks "must not accept for filing or file any papers that do not comply with the rules in this chapter." The proposed amendment to rule 3.1110(f) (requiring that electronic exhibits contain electronic bookmarks) is not subject to rule 2.118 because it does not fall within chapter 1 of title 2 of the California Rules of Court. The committees note that rule 2.118 currently requires rejecting filings for failure to comply with the prescribed font size. Even though courts may not have the resources for clerks to check every document for font size, the committee determined that it would be beneficial to provide an exception in the rules for minimal font variation attributable to converting documents from word processing format to PDF. Anecdotal evidence from practitioners suggests that some have had documents rejected due to minor

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				variations in font size caused by conversion. At the very least, the concern that a document might be rejected due to such variations has caused some practitioners to create PDFs by scanning.
			PERMANENTLY DELETING RECORDS IN ELECTRONIC ENVIRONMENT *PROPOSAL*: **Rule 2.551(b)(6)**, **Rule 2.577(d)(4)**, and **Rule 3.1302(b)** contemplate that the clerk "permanently delete" a document that has been filed, or offered for filing in certain situations, and send notice of the deletion.	The purpose of amending rule 2.551(b)(6) is to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records. It is not intended to change the basic underlying procedure in subdivision (b)(6) of the rule. In the event that a motion is denied, subdivision (b)(6) provides for the return of the record to the moving party or, in the alternative, allows the moving party to notify the court that the record is to be filed (unsealed). To better reflect this purpose, the committees decided to revise subdivision (b)(6) as follows: If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the

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				moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record from the court record if it is in electronic form.
			COMMENT on DESTRUCTION: In a typical electronic record environment it may not be possible to 'delete' a document, if 'delete' means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases maybe stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at	While there may be technical issues with the ability to completely "delete" all electronic documents, the crucial legal point is that the lodged materials record should be deleted or removed *from the record*. The proposed new language—"permanently delete the lodged record"—achieves this purpose. Merely removing public access controls would not. The committees view deletion as necessary here, where lodged materials are accompanied with a request that they be filed under seal. The sensitive nature of these documents requires that they be permanently deleted if the motion is denied, unless otherwise requested by the party. Because existing statutes require the destruction of

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			least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee. Focusing on the intended outcome of 'destruction', is the issue one of access to the document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively 'destroyed'. This can be accomplished with changes to document access codes, often referred to as security levels. Instead of stating "the clerk must . . . permanently delete", the rules should say "the clerk must . . . eliminate public access to the document", or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g). Finally, the 'deletion' of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge's decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court. More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example,	similarly sensitive court records (e.g., the destruction of juvenile records under Welfare and Institutions Code section 826(a)), the committees are confident that case management systems have the capability of deleting lodged materials or can be repurposed to do so. Rule 2.551 currently does not contemplate the retention of lodged materials that are submitted with a motion to seal for purposes of any appeals, regardless of whether these materials are submitted in paper or electronic form. Because this suggestion is beyond the scope of the current rules proposal, it will be deferred for further review by the committees next year. Rules 2.551 would apply to lodged materials in probate cases only if they are submitted in connection with a motion to seal. Any lodged

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			in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of "if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records indefinitely".	materials in probate cases that are submitted with a motion to seal must be deleted if the motion is denied, unless otherwise specified by the moving party.
			COMMENT on NOTICE OF DESTRUCTION: Sending a notice of document deletion seems unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record.	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged material be filed unsealed within 10 days of the order, or the court will permanently delete the lodged material. Accordingly, the committees have revised the proposed amendment to eliminate the notice requirement.

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			ELECTRONIC PROOF OF SERVICE – REMOVING TIME OF SERVICE *PROPOSAL: Rule 2.251(i)* . . . . *(B) The proof of electronic service must state:* . . . . *(B) (2) The date and time of the electronic service, instead of the date and place of deposit in the mail;* . . . . *COMMENT:* For most documents, the time of service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states that "a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance . . . ." Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the	The committees understand this concern. ITAC is concurrently pursuing a legislative proposal that would amend the cut-off time for the effective date of electronic service to 11:59:59 p.m. With this legislation, it is expected that the exact time of electronic service will be an issue in far fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information. That said, there will still be instances when the exact time of electronic service will be an issue. On balance, the committees determined that the benefits of eliminating the time requirement from proofs of electronic service outweighed the costs. Only after electronic service has been effected will the exact time of electronic service be known.

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			language "and time", and adding ", if relevant to validity of service" or something like that.	Requiring that the proof of electronic service specify the time of electronic service has led many to leave the time blank for fear of committing perjury. The committees also reasoned that there are other means for ascertaining the time of electronic service when needed.
			EXEMPTION FOR SELF-REPRESENTED PARTY *PROPOSAL*: Proposed **Rule 3.1110(f)(4)** exempts self-represented parties from book marking exhibits.	
			COMMENT: This is yet another example of the Judicial Council's unnecessary deference to self-represented litigants. Self-represented litigants are not necessarily incapable of complying with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally.	The committees decline to pursue this recommendation at this time. The proposed amendments are tailored to promote electronic filing and service in the trial courts. Adding electronic bookmarks to exhibits requires downloading additional software and possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees decided to lower potential barriers to electronic filing.

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			INVITATION TO COMMENT SPR16-25 **SPECIFIC COMMENTS** Does the proposal appropriately address the stated purpose? ☐ Should the rules require that electronic exhibits be text searchable to the extent feasible? *YES* ☐ Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? *While PDF is, on one sense, a proprietary format, it is now so ubiquitous that it is reasonable to require its use. There are also so many programs, many free, for producing PDFs and addressing metadata issues that it is not burdensome to require its use.* ☐ Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?	The committees have opted to revise the rules proposal to require that electronic documents, including electronically filed exhibits, be text searchable "when feasible." No response required.

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			In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement. *Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this.* 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. *The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to*	The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more experience with implementing e-filing. The committees understand the concern about creating additional burden for courts. The amendments to rule 2.100 (requiring that "papers" filed electronically be text searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that all exhibits submitted with electronically filed "papers" be text searchable) are consistent with the other formatting rules in chapter 1 of title 2. They will also result in substantial cost efficiencies for the

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			perform a text search on all electronic documents individually to ensure compliance. *Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.* ☐ What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes	courts, not only in terms of judicial time, but also in the time and expense of applying OCR software to electronically filed documents. It is also possible that some aspects of clerk review might be processed automatically, depending on the policy files of each court's electronic filing management systems. As acknowledged by the Judicial Assistance Group, courts already lack sufficient resources to provide for clerk review of all filings for compliance with the rules. In lieu of delaying the implementation date of these new formatting requirements, each court will continue to allocate resources to clerk review as it sees fit. Moreover, the concern about resources points to the larger issue of whether the council should reconsider the utility of rule 2.118, which requires that clerks reject filings if they do not comply with the formatting rules in chapter 1 of title 2. The larger question of whether rule 2.118 should be modified is outside the scope of the present rules proposal, as circulated, but it will be referred for further consideration to the Civil and Small Claims Advisory Committee.

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			and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. *Courts would need time to work with eFiling applications to ensure they support new guidelines. Courts will also need time to communicate with justice partners, the public, as well as training for staff and judges.* *We would like clarification whether the implementation of amendments to the CRC would apply to Family Law and Juvenile case types or if there are any limitations or discretion by our court that can be specified.* *We need about 6 months to implement training and procedure updates to get staff familiar with PDF capabilities, text searchable guidelines, and what staff should be looking for when accepting or rejecting documents due to formatting errors.* ☐ Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	No response required. Yes, the proposed amendments to titles 2 and 3 would apply to family and juvenile proceedings. The trial court rules in title 2 of the California Rules of Court "apply to all cases in the superior courts unless otherwise specified by a rule or statute." (Cal. Rules of Court, rule 2.2.) The civil rules in title 3 "apply to all civil cases in the superior courts, including general civil, *family*, *juvenile*, and probate cases, unless otherwise provided by a statute or rule in the California Rules of Court." (*Id.*, rule 3.10, italics added; see also *id.*, rule 5.2(d) ["Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail"].)

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			Not if it is expected that attorneys would fully comply and clerks would be able to check for compliance after only two months' notice. While we support text searchable documents, the public still needs education regarding how to create one. Orange County still receives a high volume of non-text searchable electronic documents even though it is a less efficient process for the parties involved. A phased in approach seems more pragmatic, where in the first year the filings would not be rejected. During that time, courts could notify parties that future filings that are not text searchable would be rejected.	Please see the committees' response above to these concerns.
			If exhibits must be e-filed, bookmarked and text searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.	Because rule 2.118 does not apply to rule 3.1110, clerks would not be required to reject for filing any electronic exhibits that do not comply with the new requirement that electronic exhibits contain electronic bookmarks. It would be left to each individual court to decide whether and how to enforce it. Because rule 2.118 does apply to rule 2.114, clerks would be required to reject for filing all exhibits submitted with electronically filed papers if they are not text searchable.
			This concern would be more easily mitigated if Electronic Filing Service Providers and/or	No response required.

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			courts apply data scrubbing software.	
6.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committees appreciate the support of the Superior Court of San Diego County.
7.	TCPJAC/CEAC Joint Rules Subcommittee	AM	Suggested Modifications: **Rule 2.109. Page numbering** Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation. **Rule 2.111. Format of first page** We suggest adding language to (7), as this information would be useful to the court: "(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is ~~assigned.~~ **assigned, including the type of event, date and time.**" **Rule 2.252(i) Paper Courtesy Copies** The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed	The committees appreciate the input of the TCPJAC/CEAC Joint Rules Subcommittee. The committees considered the subcommittee's concerns that the proposed amendment to rule 2.109 would result in an increase in workload for clerks. After weighing the costs and benefits, the committee decided to pursue the proposed amendment because of its significant benefit to judicial officers in referencing page numbers from the bench. The committees decided against pursuing this suggestion because it is outside of the rules proposal, as circulated. It will be referred to the Civil and Small Claims Advisory Committee for future consideration. The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committees' Response
			documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of "courtesy copies" has been left to judicial discretion or to direction provided by local rule. For example, many judges will require counsel to create a binder of motions in limine and related papers and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(l) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of "all filings generated by their motions in limine" and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule 2E (requiring courtesy copies of all motion papers except for motions in cases designated as "complex"); Alameda County Superior Court Rule 3.30 (for civil cases "[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard").)	branch has more experience with implementing e-filing.

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

	Commentator	Position	Comment	Committees' Response
			Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule 1012(b)(4) ("The court may by order require the delivery of paper courtesy copies of e-filed documents."); Monterey County Superior Court Rule 1.06E ("A judge may order a paper courtesy copy at any time, either printed or through electronic delivery").) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit "one courtesy paper copy of all filed documents requiring Court review, action, or signature directly to the assigned Judge's department); Alameda County Superior Court Rule 1.85(i) (when a document is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard).) It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that	

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	Commentator	Position	Comment	Committees' Response
			the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of motions and their accompanying evidence. It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions. (1) Delete proposed subsection (i) of Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in	

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	Commentator	Position	Comment	Committees' Response
			other contexts (i.e., it the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed). (2) Redraft the proposal to expressly allow the alternative of a local rule to require courtesy copies. We suggest the following language: "A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule."	
			Rule 2.551(b)(6) Return of lodged record It seems unnecessary and would create additional workload to, "**send notice of deletion to the submitting party.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this.	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged records be filed unsealed within 10 days of the order, or the court will permanently delete the lodged records, if in electronic form. Accordingly, the committee has revised the proposed amendment to eliminate the notice requirement.
			We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest	The intent behind the amendments is not to change the current process for paper lodged records, but to provide a parallel process for electronic lodged records. The committees revised the proposed amendment to make this clear. In addition, resubmission of the lodged records

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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			the wording be changed to, "**If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file." **Rule 2.551(e)(1)** In the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting	would be burdensome for both the moving party and the court, and could potentially lead to errors. Instead, if the moving party notifies the court that the lodged records should be filed, the rule would provide that the court must unseal and file it. This is consistent with current practices and procedures. The committees revised the amendments to eliminate reference to the term "case file." This requirement is currently in the rules and is outside the scope of the rules proposal, as circulated. The committees may take this into consideration in developing future modernization proposals.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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	Commentator	Position	Comment	Committees' Response
			the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified. **Rule 2.577(d)(4)** As above, it seems unnecessary and would create additional workload to, "**send notice of deletion to the petitioner.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this. We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository	The committees have revised the proposed amendment to rule 2.577(d)(4) to remove the notice requirement. Please see the committees' response above.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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

	Commentator	Position	Comment	Committees' Response
			of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file."	
			Rule 2.577(f)(3) As above, in the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.	Please see the committees' response above.
			Rule 3.1110(f) Format of Exhibits (4) The language in this section is too restrictive. We suggest a change in the second sentence from, **"…electronic exhibits must include electronic bookmarks…"** to **"…electronic documents must include electronic**	The committees decided to retain the language that was circulated for public comment, which requires more generally that exhibits include electronic bookmarks with links to the first page of each exhibit. Depending on the experience applying this rule, the committees may revisit it to

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committees' Response
			bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein…" **Rule 3.1302(b)** As above, it seems unnecessary and would create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "**The clerk must send notice of deletion to the submitting party,**" or at least changing the word, **"must"** to **"may"**.	determine whether more precision is desirable. Distinct from rules 2.551 and 2.557, which govern the lodged records in the context of sealing motions, rule 3.1302 does not address lodged materials of a sensitive nature. The committees determined that these lodged materials may be maintained by the court. But if the court elects to destroy them, notice would need to be sent to the moving party. Unlike rules 2.551 and 2.557, where the court issues an order denying the motion to seal or the motion for a confidential name change, the court would not otherwise put the moving party on notice of the destruction. To better clarify that rule 3.1302(b) requires notice only if the court opts to delete the lodged materials, the committees have revised the amendment by combining the last two sentences as follows: "If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material."

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 09/07/2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (amend Cal. Rules of court, rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP 009E and APP-109E; and revise forms APP-002, APP-003, APP-004, APP 005, APP-006, APP-007, APP-008, APP-009, APP 009 INFO, APP-010, APP-011, APP 012, APP-101-INFO, APP-102, APP 103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP 150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275)

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Katherine Sher, katherine.sher@jud.ca.gov, 415-865-8031

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/2015
Project description from annual agenda: Item 9 on AAC annual agenda - Modernize Appellate Court Rules for E-Filing and E-Business: a. Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents ebusiness. b. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for efiling/e-service)

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project)

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028; approve forms APP-009E and APP-109E; revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275

Recommended by
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 30, 2016

Contact
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Executive Summary

The Information Technology Advisory Committee (ITAC) and Appellate Advisory Committee (AAC) recommend adoption of changes to the appellate rules and forms to facilitate modern e-business practices, e-filing, and e-service. Last year, technical changes to the appellate rules were approved to eliminate rule language inconsistent with current e-filing, e-service, and other e-business practices of the appellate courts. This year, ITAC and the AAC recommend more substantive changes to the rules to facilitate and encourage use of modern e-business practices by the appellate courts, as well as further necessary technical changes to rules and forms.

Recommendation

The AAC and ITAC recommend that the Judicial Council, effective January 1, 2017:

- Add language to rule 8.104 providing that an order signed electronically has the same effect as an order signed on paper;
- Correct the reference in rule 8.124, subdivision (d), to the format requirements of rule 8.144(b)–(d) to refer instead to rule 8.144(a)–(c);
- Add language in rule 8.144, subdivision (a), setting the format standard for computer-readable copies of reporters' transcripts as any text-searchable format approved by the reviewing court, and make corresponding changes to rules 8.130, 8.336, 8.409, 8.416, 8.450, 8.613, 8.619, 8.625, 8.834, 8.866, and 8.919 where those rules refer to the existing format standard;
- Add language to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007 stating that "[u]nder rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form"[1];
- Replace the word "mail" with "send" and "mailed" with "sent" in rules 8.450 and 8.454, and add e-mail to the list of ways the superior court clerk can send out notice as required under those rules;
- In rules 8.452, 8.456, and 8.489, allow notice from the clerk of the reviewing court to the clerk of the respondent court in specified urgent situations to be by telephone or e-mail, where only telephonic notice is allowed under the existing rule;
- In rule 10.1028, allow the clerk of a Court of Appeal to keep a true and correct electronic copy of the reporter's transcript in a criminal case in which the court affirms a judgment of conviction, changing the existing requirement that the original, paper transcript be kept;
- Revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-010, APP-011, APP-012, APP-102, APP-103, APP-104, APP-106, APP-107, APP-110, APP-151, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-142, CR-143,

[1] The reference to rule 8.71(c) is to the rule as proposed to be amended by proposal SPR16-06, *Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices*, also on the agenda to be considered for adoption at the October 27, 2016 Judicial Council meeting.

CR-145, JV-810, JV-816, JV-817, and JV-822 to remove the words "optional" or "if available" where the forms ask for an e-mail address or fax number;
- Remove the integrated proof of service from forms APP-002, APP-005, and APP-007;
- Add to form APP-004, *Civil Case Information Statement*, an integrated proof of service that would allow proof of service by mail, personal delivery, or electronic service;
- Add to form APP-009 a note that it should not be used for proof of electronic service and that new form APP-009E should be used instead;
- Add information to form APP-009-INFO, *Information Sheet for Proof of Service (Court of Appeal)*, regarding electronic service and the new form APP-009E, *Proof of Electronic Service (Court of Appeal);*
- Create new form APP-009E, *Proof of Electronic Service (Court of Appeal)*, and add references to this new form throughout the forms whenever the existing APP-009, *Proof of Service (Court of Appeal)*, is referenced;
- Change information on proof of service in form APP-101-INFO, *Information on Appeal Procedures for Limited Civil Cases*, to reflect the possibility of electronic service and to provide information on APP-109E, *Proof of Electronic Service (Appellate Division)*, the new form for proof of electronic service;
- Add language to form APP-109 noting that proposed new form APP-109E should be used for proof of electronic service;
- Add information to form APP-109-INFO, *"What Is Proof of Service?"* regarding electronic service and the new form APP-109E, *Proof of Electronic Service (Appellate Division);*
- Create new form APP-109E, *Proof of Electronic Service*;
- Change information on proof of service in form APP-150-INFO, *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases*, to reflect the possibility of electronic service;
- Add space for an attorney e-mail address on form CR-120, *Notice of Appeal—Felony*;
- Change information on proof of service in form CR-141, *Information on Appeal Procedures for Infractions*, to reflect the possibility of electronic service;
- Add space for a petitioner's e-mail address on form JV-825, *Petition for Extraordinary Writ (Juvenile Dependency)*; and
- Add language to form MC-275, *Petition for Writ of Habeas Corpus*, to reflect that different requirements as to the number of copies to be filed apply if the petition is filed electronically.

The text of the rules amendments are attached at pages 8-22. The revised forms are attached at pages 23-174.

Previous Council Action

Last year, as part of Phase I of the Rules Modernization Project, technical changes were made throughout the appellate rules to clarify the application of those rules to electronically filed documents, change language (such as the use of the words "mail" and "file-stamped") that might inhibit use of e-filing or e-service, and otherwise ensure that the rules are consistent with modern

e-filing, e-service, and e-business practices. These changes were made as part of the overall Rules Modernization proposal and became effective January 1, 2016.

Rationale for Recommendation

Recognizing that the appellate courts are swiftly proceeding to a paperless world, ITAC is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. Last year, a first round of modernizing changes was made to the appellate rules. This set of recommended changes continues that work, making technical modernizing changes throughout those rules, adding advisory committee comment language to encourage trial courts to send the record to the reviewing court electronically where possible, and creating an updated standard for the format of a computer-readable copy of a reporter's transcript. In addition, the recommended changes include similar updating changes throughout the appellate forms and create new forms for proof of electronic service in the Courts of Appeal and the appellate divisions of the superior courts. These changes are recommended to ensure that the rules and forms facilitate use of e-filing and e-service in the appellate courts as those courts move to mandatory e-filing systems.

The change to rule 8.124(d) was added to this proposal after it was circulated for comment. This change is made to correct an error inadvertently made when rule 8.124(d) was amended as part of last year's Rules Modernization changes, changing the reference to the format requirements of rule 8.144(a)–(c) to instead refer to 8.144(b)–(d). The subdivisions of rule 8.144 were not relettered, and the change now added to this proposal corrects the reference accordingly.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated from April 15, 2016, to June 14, 2016, in the regular spring 2016 comment cycle. Comments from five commentators were received. Two commentators agreed with the proposal, none disagreed, and two agreed if modified. The full comment chart, showing the full text of the comments received and the committees' responses, is attached at pages 174–189.

Formatting of an electronic copy of a reporter's transcript.
Several commentators raised issues regarding the newly created formatting standard for an electronic copy of a reporter's transcript in rule 8.144(a)(4). The Orange County Bar Association suggested that because there is a statutory requirement that the original of a reporter's transcript be on paper, the new language of rule 8.144(a)(4), and the added advisory committee comment language added for numerous rules, stating that the record may be sent to the reviewing court in electronic form, may exceed what is statutorily authorized. Conversely, the Superior Court of San Diego County suggested that a change be incorporated to say that a court can request an electronic original of a reporter's transcript.

Although the requirement for the original transcript to be on paper is statutory and cannot be changed by rule of court, the committees note that the recommended changes are within what is allowed under statute. Code of Civil Procedure section 271(a) requires that the original of a reporter's transcript be "on paper." However, section 271(b) expressly allows the Judicial Council to set the standard for a computer-readable copy of a transcript—a standard that needs to be set, as the statutory fallback standard is for the copy to be "on disks in standard ASCII code." The committees considered requiring text-searchable PDF format, but decided on the more open-ended language as new programs are beginning to be used by reporters that offer similar or enhanced capabilities.

Nor do the committees believe that the new advisory committee comments noting that the trial court record may be sent to the reviewing court electronically conflicts with the requirement that the original of a reporter's transcript be on paper. The record as sent to the reviewing court includes many components, of which the reporter's transcript is only one, and any or all of those may be transmitted in electronic form. As both trial courts and appellate courts move towards keeping records electronically, the practice of transmitting the record electronically will become more and more common; the proposed language recognizes and encourages this.

With regard to the new formatting standard under rule 8.144(a), the staff of the Superior Court of Orange County commented that they believe it will, at least initially, take staff training and acquisition of software to allow superior courts to send the record in the required format. The committees note, first, that the standard applies only to reporter's transcripts: no formatting standard is set for any other document sent by a trial court to the reviewing court. The intent is for the reporter to create the electronic copy in the appropriate format, not to impose a new standard for electronic formatting on the superior courts. The committees further note that superior courts continue to have the option to send a record in paper form.

New forms for proof of electronic service.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS) questions whether creation of a separate proof of service form for proof of electronic service—new forms APP-009E for the Courts of Appeal, and APP-109E for the appellate divisions—might be more confusing to litigants than adding electronic service as an option on the existing proof of service forms. The committees specifically considered this question in developing the new forms, and determined that creation of separate forms and information sheets would make it easier for litigants to understand the different requirements that apply when service is performed electronically. In addition, it is anticipated that attorneys and parties will opt for one form or the other and use the chosen form consistently. Separate forms will be easier and less cluttered for repeat users.

The Superior Court of San Diego County raised the related question of whether the new proof of electronic service forms should be revised to make it possible to use these forms when multiple parties are served using different forms of service; for example, when one party is served electronically and another by mail. The committees recommend adoption of the forms as

proposed but note that this issue may be addressed in the future, when litigants and courts have had experience with the new forms and can know how best to revise them.

Additional time for implementation.
Staff from the Superior Court of Orange County suggested both that implementation of the changes might take longer than two months, and that the changes become effective six months from approval. Similarly, the JRS suggested that the changes become effective 120 days from approval to allow time for case management system changes, changes to court processes, staff training, revision of local rules, and informing the public and justice partners about the changes.

As the Orange County court staff also noted, however, if the superior court still has the option to send paper transcripts to a reviewing court, this would allow time for implementation without a delay in the changes becoming effective. Courts could simply choose how to proceed even under the changed rules.

The changes to the rules do not require superior courts to transmit documents to a reviewing court electronically; they only add a comment that this is allowed. The new format requirements apply only to reporter's transcripts and are intended to accommodate any type of electronic formatting likely to be in current use by court reporters when they create electronic copies of transcripts.

The committees recognize that there will be some staff training required on the use of the new electronic proof of service forms, and members of the public will also need to be educated as to the existence and use of these new forms. However, the committees expect that two months from approval should provide sufficient time for implementation.

Alternatives considered
In addition to the alternatives considered as a result of the public comments discussed above, the committees considered the following issues.

With regard to the new language added in multiple advisory committee comments stating that the record can be sent from the trial court to the reviewing court in electronic form, the committees considered whether substantive changes are needed in those rules addressing preparation of the record on appeal to put in place express protections for indigent, incarcerated, or other litigants who may be unable to access a record in electronic form, such that those litigants would be able to receive the record in paper form. Because the proposed changes are nonsubstantive and simply restate what is already permitted under the existing language of the rules, the committees decided that the proposed changes should be made to encourage the use of records in electronic form.

With regard to the change to rule 10.1028, the committees considered whether to delay the rule change until legislative action can be pursued to provide that the original of a reporter's transcript would no longer be required to be in paper form. Such a legislative change would

address the storage problem faced by the Courts of Appeal. Because legislative change is uncertain, the committees determined that the change in the rule should be made.

With regard to removing the language from forms stating that e-mail addresses or fax numbers are "optional" or only to be provided "if available," the committees considered several options. First, leaving those forms stating that these fields are "optional" was determined to be undesirable because the courts want to have the e-mail addresses of parties and counsel whenever possible. Second, the committees considered whether the spaces provided for e-mail and fax should state that they are to be provided "if available." The committees determined that this language is unnecessary; parties know to leave the spaces blank if they do not have fax or e-mail. Third, the committees considered whether to leave these changes until other changes are proposed to the forms. However, the committees determined that it was more efficient to address the issue on all forms through this proposal.

Implementation Requirements, Costs, and Operational Impacts

Because the recommended rule changes are largely technical, they are not expected to generate new costs. To the extent that the changes encourage courts to begin transmitting records to reviewing courts electronically, there will be cost savings as to copying costs, shipping costs, and the staff time necessary to copy paper records

Attachments and Links

1. Cal. Rules of Court, rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028, at pages 8–22.
2. Forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009E, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109E, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275 at pages 23–174.
3. Chart of comments, at pages 175–187.

Rules 8.104, 8.124, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.613, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028 of the California Rules of Court are amended, effective January 1, 2017, to read:

Rule 8.104. Time to appeal

(a)–(b) * * *

(c) What constitutes entry

For purposes of this rule:

(1) The entry date of a judgment is the date the judgment is filed under Code of Civil Procedure section 668.5, or the date it is entered in the judgment book.

(2) The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed; a written order prepared under rule 3.1312 or similar local rule is not such an order prepared by direction of a minute order.

(3) The entry date of an appealable order that is not entered in the minutes is the date the signed order is filed.

(4) The entry date of a decree of distribution in a probate proceeding is the date it is entered at length in the judgment book or other permanent court record.

(5) An order signed electronically has the same effect as an order signed on paper.

**(d)–(e) * * *

Rule 8.124. Appendixes

**(a)–(c) * * *

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144~~(b)–(d)~~ (a)–(c) for a clerk's transcript.

(2)–(3) * * *

**(e)–(g) * * *

Rule 8.130. Reporter's transcript

(a)–(e) * * *

(f) Filing the transcript; copies; payment

(1)–(3) * * *

(4) On request, and unless the superior court orders otherwise, the reporter must provide the Court of Appeal or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(g)–(h) * * *

Rule 8.144. Form of the record

(a) Paper and format

(1)–(3) * * *

(4) A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

~~(4)~~(5) The clerk's and reporter's transcripts must comply with rules 8.45–8.47 relating to sealed and confidential records.

(b)–(f) * * *

Advisory Committee Comment

Subdivisions (a) and (b). Subdivision (a)(4) is adopted under Code of Civil Procedure section 271(b), which allows the Judicial Council to adopt format requirements for computer-readable copies of a reporter's transcript. Subdivisions (a)~~(4)~~ (5) and (b) refer to special requirements concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special requirements regarding references to sealed and confidential records in the alphabetical and chronological indexes to clerk's and reporter's transcripts.

Rule 8.150. Filing the record

(a) Superior court clerk's duties

When the record is complete, the superior court clerk must promptly send the original to the reviewing court and the copy to the appellant.

(b) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) * * *

(d) Reporter's transcript

(1) * * *

(2) The reporter must prepare an original and the same number of copies of the reporter's transcript as (c) requires of the clerk's transcript, and must certify each as correct. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(3)–(5) * * *

(Subd (d) amended effective January 1, 2016; previously amended effective January 1, 2007, and January 1, 2014.)

(e)–(h) * * *

Advisory Committee Comment

Subdivision (a). Subdivision (a) implements Code of Civil Procedure section 269(b).

Subdivision (d). This subdivision is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter's transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced using computer-aided transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced using computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporter's transcripts in computer-readable format.

Subdivision (f). Examples of confidential records include Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential

informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

Subdivision (g). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.409. Preparing and sending the record

(a)–(b) * * *

(c) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(2) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(d)–(e) * * *

Advisory Committee Comment

Subdivisions (a)–(b) * * *

Subdivision (c)(2). This subdivision is intended to implement Code of Civil Procedure section 271, which allows any court, party, or other person entitled to a reporter's transcript to request that it be delivered in computer-readable format (except that an original transcript must be on paper) and requires the reporter to provide the transcript in that format upon request if the proceedings were produced using computer-aided transcription equipment. This subdivision establishes procedures relating to such requests and procedures for court reporters to apply to the superior court for relief from this requirement if the proceedings were not produced using computer-aided transcription equipment. Government Code section 69954 establishes the fees for reporters' transcripts in computer-readable format.

Subdivision (e). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form. Subsection (1)(B) clarifies that when a child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912(a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

(a)–(b) * * *

(c) Preparing, certifying, and sending the record

(1) Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the ~~format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ requirements of rule 8.144(a)(4).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the district appellate project and to the appellate counsel for the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(d)–(h) * * *

Advisory Committee Comment

Subdivision (c). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Subdivision (g). Effective January 1, 2007, revised rule 8.416 incorporates a new subdivision (g) to address a failure to timely file a brief in all termination of parental rights cases and in dependency appeals in Orange, Imperial, and San Diego Counties. Under the new subdivision, appellants would not have the full 30-day grace period given in rule 8.412(d) in which to file a late brief, but instead would have the standard 15-day grace period that is given in civil cases. The intent of this revision is to balance the need to determine the appeal within 250 days with the need to protect appellants' rights in this most serious of appeals.

Subdivision (h). Subdivision (h)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (Subdivision (e).)

Rule 8.450. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(f) * * *

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately ~~mail~~ send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney.

(D) The mother, the father, and any presumed and alleged parents;

(E) The child's legal guardian, if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) Any Court Appointed Special Advocate (CASA) volunteer;

(I) The grandparents of the child, if their address is known and if the parents' whereabouts are unknown; and

(J) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk ~~mailed~~ sent the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(h)–(j) * * *

Advisory Committee Comment

Subdivision (d). The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716

[recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].) It may constitute exceptional good cause for an extension of the time to file a notice of intent if a premature notice of intent is returned to a party shortly before the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (e)(4). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (f)(1). A party who prematurely attempts to file a notice of intent to file a writ petition under Welfare and Institutions Code section 366.26 is not precluded from later filing such a notice after the issuance of an order setting a hearing under Welfare and Institutions Code section 366.26.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a)–(g) * * *

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued will be dissolved.

(i) * * *

Rule 8.454. Notice of intent to file writ petition under Welfare and Institutions Code section 366.28 to review order designating specific placement of a dependent child after termination of parental rights

(a)–(f) * * *

(g) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately ~~mail~~ send a copy of the notice to:

(A) The attorney of record for each party;

(B) Each party, including the child if the child is 10 years of age or older;

(C) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court as follows:

(i) If the sibling is under 10 years of age, on the sibling's attorney;

(ii) If the sibling is 10 years of age or over, on the sibling and the sibling's attorney;

(D) Any prospective adoptive parent;

(E) The child's legal guardian if any;

(F) Any person currently awarded by the juvenile court the status of the child's de facto parent;

(G) The probation officer or social worker;

(H) The child's Court Appointed Special Advocate (CASA) volunteer, if any; and

(I) If the court knows or has reason to know that an Indian child is involved, the Indian custodian, if any, and tribe of the child or the Bureau of Indian Affairs as required under Welfare and Institutions Code section 224.2.

(2) The clerk must promptly send by first-class mail, e-mail, or fax a copy of the notice of intent and a list of those to whom the notice of intent was sent to:

(A) The reviewing court; and

(B) The petitioner if the clerk ~~mailed~~ sent a copy of the notice of intent to the Indian custodian, tribe of the child, or the Bureau of Indian Affairs.

(3) If the party was notified of the postplacement order only by mail, the clerk must include the date that the notification was mailed.

(h)–(j) * * *

Advisory Committee Comment

Subdivision (f)(2). See rule 8.25(b)(5) for provisions concerning the timeliness of documents mailed by inmates or patients from custodial institutions.

Subdivision (i). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review order designating or denying specific placement of a dependent child after termination of parental rights

(a)–(g) * * *

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must review the petition and decide it on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic or e-mail notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

(5) Rule 8.490 governs the filing, modification, finality of decisions, and remittitur in writ proceedings under this rule.

(i) * * *

Rule 8.480. Appeal from order establishing conservatorship

(a)–(e) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a)–(i) * * *

Advisory Committee Comment

Subdivision (a). Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 8.489. Notice to trial court

(a) * * *

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within 7 days or requires action within 7 days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone or e-mail. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(2) The clerk need not give telephonic or e-mail notice of the summary denial of a writ, whether or not a stay previously issued.

Rule 8.613. Preparing and certifying the record of preliminary proceedings

(a)–(h) * * *

(i) Computer-readable copies

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant against whom the death penalty is sought.

(2) Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(j)–(*l*) * * *

Rule 8.619. Certifying the trial record for completeness

(a)–(d) * * *

(e) Computer-readable copies

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(f)–(h) * * *

Rule 8.625. Certifying the record in pre-1997 trials

(a) * * *

(b) Sending the transcripts to counsel for review

(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each

defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.

(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with ~~the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ the requirements of rule 8.144(a)(4) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

(c)–(e) * * *

Rule 8.834. Reporter's transcript

(a)–(c) * * *

(d) Filing the reporter's transcript; copies; payment

(1)–(3) * * *

(4) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must ~~comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b)~~ comply with the requirements of rule 8.144(a)(4).

(e)–(f) * * *

Rule 8.866. Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the

appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).

(2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

(e)–(f) * * *

Rule 8.919. Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1) The reporter must deliver the original and all copies to the trial court clerk as soon as they are certified but no later than 20 days after the reporter is required to begin preparing the transcript under (a). Only the presiding judge of the appellate division or his or her designee may extend the time to prepare the reporter's transcript (see rule 8.810).

(2) On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the requirements of rule 8.144(a)(4).

Rule 8.1007. Transmitting record to Court of Appeal

(a)–(b) * * *

Advisory Committee Comment

Under rule 8.71(c), the superior court clerk may send the record to the reviewing court in electronic form.

Rule 10.1028. Preservation and destruction of Court of Appeal records

(a)–(c) * * *

(d) Time to keep other records

(1) Except as provided in (2), the clerk may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.

(2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript or a true and correct electronic copy of the transcript for 20 years after the decision becomes final.

Advisory Committee Comment

Subdivision (d). Subdivision (d) permits the Court of Appeal to keep an electronic copy of the reporter's transcript in lieu of keeping the original. Although subdivision (a) allows the Court of Appeal to maintain its records in any format that satisfies the otherwise applicable standards for maintenance of court records, including electronic formats, the original of a reporter's transcript is required to be on paper under Code of Civil Procedure section 271(a). Subdivision (d) therefore specifies that an electronic copy may be kept, to clarify that the paper original need not be kept by the court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
☐ **NOTICE OF APPEAL** ☐ **CROSS-APPEAL** **(UNLIMITED CIVIL CASE)**	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name):
   appeals from the following judgment or order in this case, which was entered on *(date)*:
   - ☐ Judgment after jury trial
   - ☐ Judgment after court trial
   - ☐ Default judgment
   - ☐ Judgment after an order granting a summary judgment motion
   - ☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
   - ☐ Judgment of dismissal after an order sustaining a demurrer
   - ☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
   - ☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
   - ☐ Other *(describe and specify code section that authorizes this appeal):*

2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2017]

NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)
(Appellate)

Cal. Rules of Court, rule 8.100
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*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	**SUPERIOR COURT CASE NUMBER:**
RE: Appeal filed on *(date):*	**COURT OF APPEAL CASE NUMBER *(if known)*:**

Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court *(check a, b, c, d, or e and fill in any required information):*

a. ☐ A clerk's transcript under rule 8.122. *(You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)*

(1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.

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

(a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

(b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

b. ☐ An appendix under rule 8.124.

c. ☐ The original superior court file under rule 8.128. (NOTE: *Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)

d. ☐ An agreed statement under rule 8.134. *(You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)*

e. ☐ A settled statement under rule 8.137. *(You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

Form Approved for Optional Use
Judicial Council of California
APP-003 [Rev. January 1, 2017]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ WITH the following record of the oral proceedings in the superior court:

(1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply):*

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

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

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ all of the designated proceedings.

(ii) ☐ part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

(2) ☐ An agreed statement. *(Check and complete either (a) or (b) below.)*

(a) ☐ I have attached an agreed statement to this notice.

(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

(3) ☐ A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. **RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding):*

Title of Administrative Proceeding	Date or Dates

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal *(this document)*	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment *(if any)*	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket *(if any)*	

CASE NAME:	SUPERIOR COURT CASE NUMBER:

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

☐ See additional pages.

c. **Exhibits to be included in clerk's transcript**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

☐ See additional pages.

5. **NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide *(check one):*

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

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:

5. b. **Proceedings**

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

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No
(5)						☐ Yes ☐ No
(6)						☐ Yes ☐ No
(7)						☐ Yes ☐ No

c. The proceedings designated in 5b ☐ include ☐ do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise)*.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	COURT OF APPEAL CASE NUMBER *(if known):*
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***
APPELLANT: RESPONDENT:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
JUDGES *(all who participated in case):*	SUPERIOR COURT CASE NUMBER:

CIVIL CASE INFORMATION STATEMENT

NOTE TO APPELLANT: You must file this form with the clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1). You must attach to this form a copy of the judgment or order being appealed that shows the date it was entered (see Cal. Rules of Court, rule 8.104 for definition of "entered"). A copy of this form must also be served on the other party or parties to this appeal. (CAUTION: An appeal in a limited civil case (Code Civ. Proc., § 85) may be taken ONLY to the appellate division of the superior court (Code Civ. Proc., § 904.2) or to the superior court (Code Civ. Proc., § 116.710 [small claims cases]).

PART I – APPEAL INFORMATION

A. APPEALABILITY

1. Appeal is from:
   - ☐ Judgment after jury trial
   - ☐ Judgment after court trial
   - ☐ Default judgment
   - ☐ Judgment after an order granting a summary judgment motion
   - ☐ Judgment of dismissal under Code Civ. Proc., § 581d, 583.250, 583.360, or 583.430
   - ☐ Judgment of dismissal after an order sustaining a demurrer
   - ☐ An order after judgment under Code Civ. Proc., § 904.1(a)(2)
   - ☐ An order or judgment under Code Civ. Proc., § 904.1(a)(3)–(13)
   - ☐ Other *(describe and specify code section that authorizes this appeal):*
2. Does the judgment appealed from dispose of all causes of action, including all cross-actions between the parties?
   ☐ Yes ☐ No (If no, please explain why the judgment is appealable):

B. TIMELINESS OF APPEAL *(Provide all applicable dates.)*

1. Date of entry of judgment or order appealed from:
2. Date that notice of entry of judgment or a copy of the judgment was served by the clerk or by a party under California Rules of Court, rule 8.104:
3. Was a motion for new trial, for judgment notwithstanding the verdict, for reconsideration, or to vacate the judgment made and denied?
   ☐ Yes ☐ No (If yes, please specify the type of motion):
   Date notice of intention to move for new trial (if any) filed:
   Date motion filed: Date motion denied: Date denial served:
4. Date notice of ☐ appeal or ☐ cross-appeal filed:

C. BANKRUPTCY OR OTHER STAY

Is there a related bankruptcy case or a court-ordered stay that affects this appeal? ☐ Yes ☐ No
(If yes, please attach a copy of the bankruptcy petition [without attachments] and any stay order.)

Form Adopted for Mandatory Use
Judicial Council of California
APP-004 [Rev. January 1, 2017]

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:

D. APPELLATE CASE HISTORY *(Provide additional information, if necessary, on attachment I.D.)* Is there now, or has there previously been, any appeal, writ, or other proceeding related to this case pending in any California appellate court?
☐ Yes ☐ No (If yes, insert name of appellate court):

Appellate court case no.: Title of case:

Name of trial court: Trial court case no.:

E. SERVICE REQUIREMENTS

Is service of documents in this matter, including a notice of appeal, petition, or brief, required on the Attorney General or other nonparty public officer or agency under California Rules of Court, rule 8.29 or a statute?
☐ Yes ☐ No *(If yes, please indicate the rule or statute that applies)*

- ☐ Rule 8.29 (e.g., constitutional challenge; state or county party)
- ☐ Bus. & Prof. Code, §16750.2 (Antitrust)
- ☐ Bus. & Prof. Code, § 17209 (Unfair Competition Act)
- ☐ Bus. & Prof. Code, § 17536.5 (False advertising)
- ☐ Civ. Code, § 51.1 (Unruh, Ralph, or Bane Civil Rights Acts; antiboycott cause of action; sexual harassment in business or professional relations; civil rights action by district attorney)
- ☐ Civ. Code, § 55.2 (Disabled access to public conveyances, accommodations, and housing)
- ☐ Code Civ. Proc., § 1355 (Escheat)
- ☐ Gov. Code, § 946.6(d) (Actions against public entities)
- ☐ Gov. Code, § 4461 (Disabled access to public buildings)
- ☐ Gov. Code, § 12656(a) (False Claims Act)
- ☐ Health & Saf. Code, § 19954.5 (Accessible seating and accommodations)
- ☐ Health & Saf. Code, § 19959.5 (Disabled access to privately funded public accommodations)
- ☐ Pub. Resources Code, § 21167.7 (CEQA)
- ☐ Other (specify statute):

NOTE: The rule and statutory provisions listed above require service of a copy of a party's notice of appeal, petition, or brief on the Attorney General or other public officer or agency. Other statutes requiring service on the Attorney General or other public officers or agencies may also apply.

PART II – NATURE OF ACTION

A. Nature of action *(check all that apply):*

1. ☐ Conservatorship
2. ☐ Contract
3. ☐ Eminent domain
4. ☐ Equitable action a. ☐ Declaratory relief b. ☐ Other *(describe):*
5. ☐ Family law
6. ☐ Guardianship
7. ☐ Probate
8. ☐ Real property rights a. ☐ Title of real property b. ☐ Other *(describe):*
9. ☐ Tort
   - a. ☐ Medical malpractice
   - b. ☐ Product liability
   - c. ☐ Other personal injury
   - d. ☐ Personal property
   - e. ☐ Other tort *(describe):*
10. ☐ Trust proceedings
11. ☐ Writ proceedings in superior court
    - a. ☐ Mandate (Code Civ. Proc., § 1085)
    - b. ☐ Administrative mandate (Code Civ. Proc., § 1094.5)
    - c. ☐ Prohibition (Code Civ. Proc., § 1102)
    - d. ☐ Other *(describe):*
12. ☐ Other action (describe):

B. ☐ This appeal is entitled to calendar preference/priority on appeal *(cite authority):*

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:

PART III – PARTY AND ATTORNEY INFORMATION

In the spaces below or on a separate page or pages, list all the parties and all their attorneys of record who will participate in the appeal. For each party, provide all of the information requested on the left side of the page. On the right side of the page, if a party is self-represented please check the appropriate box and provide the party's mailing address, telephone number, fax number, and e-mail address. If a party is represented by an attorney, on the right side of the page, check the appropriate box and provide all of the requested information about that party's attorney.

☐ Responses to Part III are attached instead of below

Name of Party: Appellate court designation: ☐ Appellant ☐ Respondent Trial court designation: ☐ Plaintiff ☐ Defendant ☐ Other *(specify)*:	☐ Represented by attorney ☐ Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: ☐ Appellant ☐ Respondent Trial court designation: ☐ Plaintiff ☐ Defendant ☐ Other *(specify)*:	☐ Represented by attorney ☐ Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: ☐ Appellant ☐ Respondent Trial court designation: ☐ Plaintiff ☐ Defendant ☐ Other *(specify)*:	☐ Represented by attorney ☐ Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:
Name of Party: Appellate court designation: ☐ Appellant ☐ Respondent Trial court designation: ☐ Plaintiff ☐ Defendant ☐ Other *(specify)*:	☐ Represented by attorney ☐ Self-represented Name of attorney: State Bar no: Firm name: Mailing address: Telephone no.: Fax no: E-Mail address:

☐ Additional pages attached

Date:

This statement is prepared and submitted by: ▶ ______________________________

(SIGNATURE OF ATTORNEY OR SELF-REPRESENTED PARTY)

APPELLATE CASE TITLE:	APPELLATE COURT CASE NUMBER:

NOTICE TO PARTIES: A copy of this form must be served on the other party or parties to this appeal. If served by mail or personal delivery, A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. Electronic service is authorized only if ordered by the court or if the party served has agreed to accept electronic service. A person who is at least 18 years old must complete the information below and serve all pages of this document. When all pages of this document have been completed and a copy served, the original may then be filed with the court.

PROOF OF SERVICE

☐ **Mail** ☐ **Personal Service** ☐ **Electronic Service**

1. At the time of service I was at least 18 years of age.
2. My residence or business address is *(specify):*

3. I mailed, personally delivered, or electronically served a copy of the *Civil Case Information Statement (Appellate)* as follows *(complete a, b, or c):*
   a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred and am not a party to this legal action.
      (1) I enclosed a copy in an envelope **and**
         (a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
         (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
      (2) The envelope was addressed and mailed as follows:
         (a) Name of person served:
         (b) Address on envelope:
         (c) Date of mailing:
         (d) Place of mailing *(city and state):*
   b. ☐ **Personal delivery.** I am not a party to this legal action. I personally delivered a copy as follows:
      (1) Name of person served:
      (2) Address where delivered:
      (3) Date delivered:
      (4) Time delivered:
   c. ☐ **Electronic service.** My electronic service address is *(specify):*
      I electronically served a copy as follows:
      (1) Name of person served:
      (2) Electronic service address of person served:
      (3) On *(date):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

TO BE FILED IN THE SUPERIOR COURT **APP-005**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	COURT OF APPEAL CASE NUMBER:
ABANDONMENT OF APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:

The undersigned appellant hereby abandons the appeal filed on *(date):* in the above-entitled action.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the superior court if the record has not yet been filed in the Court of Appeal. If the record has already been filed in the Court of Appeal, you cannot use this form; you must file a request for dismissal in the Court of Appeal. You can use form APP-007 to file a request for dismissal in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

TO BE FILED IN THE COURT OF APPEAL **APP-006**

COURT OF APPEAL **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)

Notice: Please read Judicial Council form APP-001 before completing this form.

1. I *(name):* request that the time to file *(check one):*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date):* be extended to *(date):*
2. I ☐ have ☐ have not received a rule 8.220 notice.
3. I have received:
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     (number of extensions): extensions by stipulation totaling *(total number of days):*

     (number of extensions): extensions from the court totaling *(total number of days):*

     Did the court mark any previous extension "no further?" ☐ Yes ☐ No
4. I am unable to file a stipulation to an extension because
   - ☐ the other party is unwilling to stipulate to an extension.
   - ☐ other reason *(please specify):*
5. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date):*
6. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

7. ☐ The trial court has ordered the proceedings in this case stayed until this appeal is decided.

Form Approved for Optional Use
Judicial Council of California
APP-006 [Rev. January 1, 2017]

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE) (Appellate)

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.212, 8.220
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

8. The reasons that I need an extension to file this brief are stated
   ☐ below
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   (Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

9. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: _____

☐ Denied

Date: _____

▶ _____
(SIGNATURE OF PRESIDING JUSTICE)

TO BE FILED IN THE COURT OF APPEAL **APP-007**

COURT OF APPEAL **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	
REQUEST FOR DISMISSAL OF APPEAL (CIVIL CASE)	

The undersigned appellant hereby requests that the appeal filed on *(date):* in the above entitled action be dismissed.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

NOTE: File this form in the Court of Appeal if the record on appeal has already been filed in the Court of Appeal. If the record has not yet been filed in the Court of Appeal, you cannot use this form; you must file an *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court. A copy of this form must also be served on the other party or parties to this appeal, and proof of service filed with this form. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT/ PETITIONER: RESPONDENT/ REAL PARTY IN INTEREST:	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☐ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*):

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

PROOF OF SERVICE (Court of Appeal)

☐ **Mail** ☐ **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name:

Court of Appeal Case Number:

Superior Court Case Number:

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☐ residence ☐ business address is *(specify)*:
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):*

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed:

      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name:
            (ii) Address:

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state):

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Judicial Council of California
APP-009 [Rev. January 1, 2017]

Case Name:	Court of Appeal Case Number:
	Superior Court Case Number:

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

(2) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

(3) Person served:
(a) Name:
(b) Address where delivered:

(c) Date delivered:
(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page)*.

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

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

PROOF OF ELECTRONIC SERVICE (Court of Appeal)	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
Case Name: Court of Appeal Case Number: Superior Court Case Number:	

1. At the time of service I was at least 18 years of age.
2. a. My ☐ residence ☐ business address is *(specify)*:

   b. My electronic service address is *(specify):*
3. I electronically served the following documents *(exact titles):*
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served:
   On behalf of *(name or names of parties represented, if person served is an attorney)*:

   b. Electronic service address of person served:
   c. On *(date):*

   ☐ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

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

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

Form Approved for Optional Use
Judicial Council of California
APP-009E [New January 1, 2017]

INFORMATION SHEET FOR PROOF OF SERVICE
(COURT OF APPEAL)

GENERAL INFORMATION ABOUT SERVICE AND PROOF OF SERVICE

This information sheet provides instructions for completing *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

Rule 8.25 of the California Rules of Court provides that before filing any document in court in a case in the Court of Appeal, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule. Other rules specifically require that certain documents be served, including the notice of appeal and notice designating the record on appeal in civil appeals and briefs in both civil and criminal appeals.

To "serve" a document on a person means to have that document delivered to the person. The general requirements concerning service are set out in Code of Civil Procedure sections 1010.6–1013a. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service. Regardless of what method of service is used, the Code of Civil Procedure provides that a document in a court case can only be served by a person who is over 18 years of age. Service by mail or personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party. Electronic service may be by electronic transmission, transmitting a document to the electronic service address of a person, or by electronic notification, sending a message to the electronic service address specifying the exact name of the document served and providing a hyperlink at which the served document may be viewed and downloaded.

If you are a party to the case and wish to serve documents by mail or personal delivery, you must therefore have someone else who is over 18 and who is not a party to the case serve any documents in your case. You will need to give the person doing the serving (the server) the names and addresses of all those who must be served. You will also need to give the server one copy of each document that needs to be served for each person or entity that is being served.

If you are serving documents electronically, you can do this yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of all those who must be served, and the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

Rule 8.25 also requires the party filing a document in the court to attach to the document presented for filing a proof of service showing the required service. *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) may be used to provide this required proof of service in any proceeding in the Court of Appeal. The server should follow the instructions below for completing the *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E). If another person is serving the documents for you—as is required if the document will be served by mail or personal delivery—tell the server to give you the original form when it is completed. You will need to attach this original proof of service to the document you are filing.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING BY MAIL OR PERSONAL DELIVERY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. You can use *Proof of Service (Court of Appeal)* (form APP-009) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. If you have Internet access, a fillable version of form APP-009 is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Service (Court of Appeal)* (form APP-009) as follows:

1. *First box, left side*: Check whether the document is being served by mail or by personal delivery.
2. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
3. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–3 as follows:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Check one of the boxes and provide your home or business address.

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Judicial Council of California
APP-009-INFO [Rev. January 1, 2017]

3. Fill in the name of the document that you are serving.

   a. If you are serving the document by mail, check box a. and BEFORE YOU SEAL AND MAIL THE ENVELOPE, fill in the following information:

      (1) Check box (1)(a) if you will personally deposit the document with the U.S. Postal Service such as at a U.S. Postal Service Office or U.S. Postal Service mailbox; Check box (1)(b) if you will put the document in the mail at your place of business.

      (2) Provide the date the documents are being mailed.

      (3) Provide the name and address of each person to whom you are mailing the document. If you need more space to list additional names and addresses, check the box after item (3)(c) and attach a page listing them. At the top of the page, write "APP-009, Item 3a."

      (4) You are stating that you live or work in the county in which the document is being mailed. Provide the city and state from which the document is being mailed.

      Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Court of Appeal)* (form APP-009) with this information filled in for each person you are serving by mail and put this copy in the envelope with the document you are serving. Seal the envelope and mail the document as you have indicated on the proof of service.

   b. If you personally delivered the document, check box 3b. For a party represented by an attorney, delivery needs to be made by giving the document directly to the party's attorney or by leaving the document in an envelope or package clearly labeled to identify the attorney being served with a receptionist at the attorney's office or an individual in charge of the office. For a party who is not represented by an attorney, delivery needs to be made by giving the document directly to the party or by leaving the document at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening. Under b, for each person to whom you delivered the document, you need to provide:

      (1) The name of the person;

      (2) The address at which you delivered the document;

      (3) The date on which you delivered the document; and

      (4) The time at which you delivered the document.

      If you need more space to list additional names, addresses, and delivery dates and times, check the box under item 3b and attach a page listing this information. At the top of the page, write "APP-009, Item 3b."

At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Service (Court of Appeal)* is true and correct.**

Give the original completed *Proof of Service* to the party for whom you served the document.

INSTRUCTIONS FOR THE SERVER (THE PERSON WHO IS SERVING THE DOCUMENTS) IF SERVING ELECTRONICALLY

If you are serving a document for a party in a court case, it is your responsibility to prepare the proof of service. If you are serving a document electronically, you can use *Proof of Electronic Service (Court of Appeal)* (form APP-009E) to prepare this proof of service in any case in the Court of Appeal. The proof of service should be printed or typed. A fillable version of form APP-009E is available at *www.courts.ca.gov/forms*. You can fill out most of the form before you serve the document, but you should sign and date the form only after you have finished serving the document.

Complete the top section of *Proof of Electronic Service (Court of Appeal)* (form APP-009E) as follows:

1. *Third box, left side*: Print the name of the case in which the document is being filed, the Court of Appeal case number, and the superior court case number. Use the same case name and numbers as are on the top of the document that you are serving.
2. *Box, top of form, right side*: Leave this box blank for the court's use.

Complete items 1–4 as follows:

1. You are stating that you are over the age of 18.
2. a. Check one of the boxes and provide your home or business address.

   b. Provide your electronic service address. This is the address at which you have agreed to accept electronic service.

Continued on the reverse

3. Fill in the names of the documents that you are serving.

4. Fill in the information for the person to whom you are sending the document. If you are serving more than one person, check the box after item (4)(c) and attach a page listing the persons served, with the electronic service address and date and time of service for each person served. At the top of the page, write "APP-009E, Item 4."

   a. Provide the name of the person being served. If the person being served is an attorney, also fill in the name or names of the parties represented.

   b. Provide the electronic service address of the person to whom you are sending the document.

   c. Provide the date on which you transmitted the document.

   After you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service (Court of Appeal)* (form APP-009E). Transmit the filled-in form with the document you are serving to each person served.

   At the bottom of the form, print your name, sign the form, and fill in the date on which you signed the form. **By signing, you are stating under penalty of perjury that all the information you have provided on *Proof of Electronic Service (Court of Appeal)* is true and correct.**

   If you are not the party for whom the documents are served, give the original completed Proof of Service to the party for whom you served the document.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*	COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has elected to use a clerk's transcript under rule 8.122.

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

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

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		

☐ See additional pages.

b. ☐ **Additional exhibits.** *(If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)*

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)*

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

☐ See additional pages.

Form Approved for Optional Use
Judicial Council of California
APP-010 [Rev. January 1, 2017]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

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

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

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

   (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

   (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

2. **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

   The appellant has elected to use a reporter's transcript under rule 8.130.

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

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

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

☐ See additional pages.

CASE NAME:	SUPERIOR COURT CASE NUMBER:

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

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

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(b)(3)(B).

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ All of the designated proceedings.

(ii) ☐ Part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

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

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

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

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

(b) ☐ My copy of the reporter's transcript in computer-readable format.

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

(*Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).*)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)	**SUPERIOR COURT CASE NUMBER:**
RE: Appeal filed on *(date)*:	**COURT OF APPEAL CASE NUMBER *(if known)*:**

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

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

Date: _____

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF RESPONDENT OR ATTORNEY)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	

STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)

Notice: Please read Judicial Council form APP-001 before completing this form. Before a brief is due, parties may extend the time to file the brief *up to a maximum of 60 days* by filing one or more stipulations. However, parties may not stipulate to extend the time to file a brief if the court has previously granted an application to extend the time to file the brief. See California Rules of Court, rule 8.212(b).

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a), to file the following brief *(check one):*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)
2. This brief is now due on *(date):*
3. The parties agree to extend the due date by *(number):* days, so that the new date is *(date):*
4. The time to file this brief *(check one):*
   - ☐ has not been extended by stipulations previously.
   - ☐ has been extended previously by one or more stipulations totaling *(number)* days.

   The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)
5. For attorneys filing on behalf of a client, I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)
6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Form Approved for Optional Use
Judicial Council of California
APP-012 [Rev. January 1, 2017]

STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE) (Appellate)

Cal. Rules of Court,
rules 8.50, 8.60, 8.63, 8.412
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

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

GENERAL INFORMATION

1 What does this information sheet cover?

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

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

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

2 What is an appeal?

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

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

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

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

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

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

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

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

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

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

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

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

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

You have to hire your own attorney if you want one. You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp* in the Getting Started section.

INFORMATION FOR THE APPELLANT

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

5 Who can appeal?

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

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

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

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

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

7 How do I start my appeal?

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

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

"Serve and file" means that you must:

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

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

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

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

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

10 Do I have to pay to file an appeal?

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

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

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

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

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

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

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

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

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

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

There are three parts of the official record:

a. A record of the documents filed in the trial court (other than exhibits)

b. A record of what was said in the trial court (this is called the "oral proceedings")

c. Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

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

a. Record of the documents filed in the trial court

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

(1) A *clerk's transcript*
(2) The original *trial court file* or
(3) An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court.

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

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

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

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

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

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

(2) Trial court file

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

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

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

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

(3) Agreed statement

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

When available: If you and the respondent agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript. If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a "stipulation"), stating that you are trying to agree on a statement. Within the next 30 days, you must then file the agreed statement or tell the court that you were unable to agree on a statement and file a new notice designating the record.

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

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

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

In a limited civil case, you can use *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

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

(1) If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a *"reporter's transcript."*

(2) If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.

(3) You can use an *agreed statement.*

(4) You can use a *statement on appeal.*

Read below for more information about these options.

(1) Reporter's transcript

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

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

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want to be included in the reporter's transcript. You can use

the same form you used to tell the court you wanted to use a reporter's transcript—*Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

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

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

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

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

(2) Official electronic recording or transcript

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

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

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

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties.

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you

do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

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

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

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

(4) Statement on appeal

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

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

Contents: A statement on appeal must include:

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

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

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

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

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

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

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

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

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

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

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

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

14 What happens after the official record has been prepared?

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

15 What is a brief?

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

lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

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

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. "Serve and file" means that you must:

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

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

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

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

16 What happens after I file my brief?

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

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

17 What happens after all the briefs have been filed?

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

18 What is "oral argument?"

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

one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

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

19 What happens after oral argument?

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

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

INFORMATION FOR THE RESPONDENT

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

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

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm*.

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

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

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

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

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

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate

division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

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

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

(a) Clerk's transcript

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

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

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent. If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

(b) Reporter's transcript

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

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

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

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

(c) Agreed statement

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

(d) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant

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

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

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

25 What happens after the official record has been prepared?

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

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

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

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

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

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

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

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

26 What happens after all the briefs have been filed?

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

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

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

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

APP-102 Notice of Appeal/Cross-Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **limited civil case.** You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

2 This is *(check a or b):*

a. ☐ The first appeal in this case.

b. ☐ A cross-appeal (an appeal filed after the first appeal in this case *(complete (1), (2), and (3))*.

(1) The notice of appeal in the first appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case):* _____

(2) The trial court clerk served notice of the first appeal on *(fill in the date that the clerk served the notice of the other party's appeal in this case):* _____

(3) The appellate division case number for the first appeal is *(fill in the appellate division case number of the other party's appeal, if you know it):* _____

3 Judgment or Order You Are Appealing

I am/My client is appealing *(check a or b):*

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was *(fill in the date):* _____

b. ☐ Other:

(1) ☐ An order made after final judgment in the case.
The date the trial court entered this order was *(fill in the date):* _____

(2) ☐ An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was *(fill in the date):* _____

(3) ☐ An order granting a motion to quash service of summons.
The date the trial court entered this order was *(fill in the date):* _____

(4) ☐ An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was *(fill in the date):* _____

(5) ☐ An order granting a new trial.
The date the trial court entered this order was *(fill in the date):* _____

(6) ☐ An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was *(fill in the date):* _____

(7) ☐ An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was *(fill in the date):* _____

3 *(continued)*

(8) ☐ An order appointing a receiver.
The date the trial court entered this order was *(fill in the date):* _____

(9) ☐ Other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____
_____
_____
_____
_____

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

a. ☐ I have/My client has completed *Appellant's Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) and attached it to this notice of appeal.*

b. ☐ I/My client will complete *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____
Type or print your name *Signature of appellant/cross-appellant or attorney*

APP-103 Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

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

Record of the Documents Filed in the Trial Court

(3) I elect (choose)/My client elects to use the following record of the documents filed in the trial court *(check a or b and fill in any required information):*

a. ☐ **Clerk's Transcript.** *(Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk's transcript.*

(1) **Required documents.** *The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.*

Document Title and Description	Date of Filing
(a) Notice of appeal	
(b) Notice designating record on appeal (this document)	
(c) Judgment or order appealed from	
(d) Notice of entry of judgment (if any)	
(e) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(f) Ruling on any item included under (e)	
(g) Register of actions or docket	

(2) **Additional documents.** *If you want any documents in addition to the required documents listed in (1) above to be included in the clerk's transcript, you must identify those documents here.*

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

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

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."*

3 a. (continued)

(3) **Exhibits.**

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

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

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."*

(4) **Payment for clerk's transcript.** *(Check a or b.)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

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

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

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

OR

b. ☐ **Agreed statement.** *(You must complete item 5 d, below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.)*

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item 5; sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

4 (continued)

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item 5 below)*. I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case *(check and complete **only one** of the following below—a, b, c, d, or e):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2).):*

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

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

☐ *Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 5a."*

(2) The proceedings designated in (1) ☐ include ☐ do not include all of the testimony in the trial court. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. *(Rule 8.834(a)(2) provides that your appeal will be limited to these points unless, on motion, the appellate division permits otherwise.)*

_____

_____

_____

_____

☐ *Check here if you need more space to list other points and attach a separate page or pages listing those points. At the top of each page, write "APP-103, item 5a(2)."*

5 a. (continued)

(3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.
(Write initials here): _____

☐ I request that the reporters provide *(check one):*
- (i) ☐ My copy of the reporter's transcript in paper format.
- (ii) ☐ My copy of the reporter's transcript in computer-readable format.
- (iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.

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

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

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

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.

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

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

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

5 (continued)

OR

d. ☐ **Agreed Statement.** *An agreed statement is a summary of the trial court proceedings agreed to by the parties. See form APP-101-INFO for information about preparing an agreed statement. (Check (1) or (2).):*

(1) ☐ I have attached an agreed statement to this notice.

(2) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement *(you must attach a copy of this agreement (stipulation) to this notice)*. I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

OR

e. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form APP-101-INFO for information about preparing a proposed statement. (Check (1) or (2).):*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Limited Civil Case) *(form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at* www.courts.ca.gov/forms.htm.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

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

APP-104 Proposed Statement on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant *(the party who is filing this appeal):*

Name: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

(2) On *(fill in the date):* _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

(3) On *(fill in the date):* _____, I/my client filed a notice designating the record on appeal, electing to use a statement on appeal.

Proposed Statement

(4) Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made (read form APP-101-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing.*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence.*
- *Cannot consider whether witnesses were telling the truth or lying.*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.*

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):* _____

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error.)*

(1) *Describe the error:* _____

Describe how you were/your client was harmed by the error: _____

(2) *Describe the error:* _____

Describe how you were/your client was harmed by the error: _____

(3) *Describe the error:* _____

Describe how you were/your client was harmed by the error: _____

☐ *Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "APP-104, item 4."*

5 The Dispute

a. In the trial court, I/my client was the *(check one):*

☐ plaintiff (the party who filed the complaint in the case).

☐ defendant (the party against whom the complaint was filed).

b. The plaintiff's complaint in this case was about *(briefly describe what was claimed in the complaint filed with the trial court):* _____

c. The defendant's response to this complaint was *(briefly describe how the defendant responded to the complaint filed with the trial court):* _____

☐ *Check here if you need more space to describe the dispute and attach a separate page or pages describing it. At the top of each page, write "APP-104, Item 5."*

6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

☐ Yes *(fill out b)* ☐ No *(skip to 7)*

b. *In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions.*

(1) *Describe the first motion:* _____

The motion was filed by the ☐ plaintiff. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, Item 6b(1)."*

(2) *Describe the second motion:* _____

The motion was filed by the ☐ plaintiff. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

_____

_____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "APP-104, item 6b(2)."*

(3) ☐ Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal and attach a separate page describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write "APP-104, item 6b(3)."

(7) Summary of Testimony and Other Evidence

a. Was there a trial in your case?

☐ No *(skip items b, c, d, and e and go to item (8))*

☐ Yes *(check (1) or (2) and complete items b, c, d, and e)*

(1) ☐ Jury trial

(2) ☐ Trial by judge only

b. Did you/your client testify at the trial?

☐ No

☐ Yes *(Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment or give your opinion about what was said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.):* _____

_____

_____

_____

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7b."*

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in (4) for this appeal?

☐ No

☐ Yes *(complete items (1), (2), and (3)):*

(1) The witness's name is *(fill in the witness's name):* _____

(2) The witness testified on behalf of the *(check one):* ☐ plaintiff. ☐ defendant.

(3) This witness testified that *(Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in (4) for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning this witness's testimony or any exhibits this witness asked to present and whether these objections were sustained.):* _____

☐ *Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "APP-104, Item 7c."*

d. ☐ Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in (4) for this appeal. Attach a separate page or pages identifying each witness and who the witness testified for, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in (4) for this appeal, and indicating whether any objections were made concerning this witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "APP-104, Item 7d."

e. Summarize the evidence, other than testimony, that was given during the trial that is relevant to the reasons you gave in (4) for this appeal. *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence given; do not comment on or give your opinion about this evidence.):*

☐ *Check here if you need more space to describe the evidence and attach a separate page or pages describing the evidence. At the top of each page, write "APP-104, Item 7e."*

(8) The Trial Court's Findings

Did the trial court make findings in the case?

☐ No

☐ Yes *(describe the findings made by the trial court):* _____

☐ *Check here if you need more space to describe the trial court's findings and attach a separate page or pages describing these findings. At the top of each page, write "APP-104, Item 8."*

9 The Trial Court's Final Judgment

The trial court issued the following final judgment in this case *(check all that apply and fill in any required information):*

a. I/My client was required to:

☐ pay the other party damages of *(fill in the amount of the damages):* $ _____

☐ do the following *(describe what you were ordered to do):* _____

b. The other party was required to:

☐ pay me/my client damages of *(fill in the amount of the damages):* $ _____

☐ do the following *(describe what the other party was ordered to do):* _____

c. ☐ Other *(describe):* _____

☐ *Check here if you need more space to describe the trial court's judgment or order and attach a separate page or pages describing this judgment or order. At the top of each page, write "APP-104, Item 9."*

Date: _____

_____ ▶ _____

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

APP-106 Application for Extension of Time to File Brief (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting an extension of time to file a brief in an appeal in **a limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.*
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed::

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting extension of time to file brief: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

2 I am requesting an extension on the time to file:

- ☐ Appellant's opening brief, which is now due on *(date):* _____
- ☐ Respondent's brief, which is now due on *(date):* _____
- ☐ Appellant's reply brief, which is now due on *(date):* _____

3 I am requesting that the time to file the brief identified in **2** be extended to *(date):* _____

4 I ☐ have ☐ have not received a notice under rule 8.882(c) from the clerk that this brief must be filed in 1 days.

5 The time to file the brief: *(check all that apply):*

- ☐ Has not been extended before
- ☐ Has been extended before by the stipulation of the parties. The parties stipulated to *(number of extensions)* _____ totaling *(number of days)* _____
- ☐ Has been extended before by the court. The court granted *(number of extensions)* ____ totaling *(number of days)* _____

6 I am not able to stipulate to an extension to file this brief because *(check one):*

- ☐ The other party is not willing to stipulate to an extension.
- ☐ Other reason *(please describe the reason):*

_____

_____

7 The reason I need an extension to file this brief is *(describe the reason you need an extension; see rule 8.811(b), for the factors the court will consider in deciding whether there is good cause to grant an extension):*

_____

_____

_____

8 The last brief filed by any party in this case was:

- ☐ The appellant's opening brief, filed on *(date):* _____
- ☐ The respondent's brief, filed on *(date):* _____

9 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.

- ☐ I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

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

APP-107 Abandonment of Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in **a limited civil case.**
- *Limited Civil Cases* Before you fill out this form, read *Information on Appeal Procedures for* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courtinfo.ca.gov/forms* .
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service.You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courtinfo.ca.gov/selfhelp-serving/lowcost/getready.htm.*
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

_____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

2 On *(fill in the date)* _____ , I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

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

APP-109 Proof of Service (Appellate Division)

Clerk stamps date here when form is filed.

Instructions

- This form is only for providing proof that a document has been served (delivered) in a proceeding in the superior court appellate division. If you are serving a document electronically, please use *Proof of Electronic Service (Appellate Division)* (form APP-109E).
- The person who serves (delivers) a document in this case and who fills out this form:
  - Must be at least 18 years old
  - Must NOT be a party in this case
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

(1) At the time I served the documents listed in (4), I was at least 18 years old.

(2) I am not a party in the case identified in the box on the right side of this page.

(3) My ☐ home ☐ business address is:

Street *City* *State* *Zip*

(4) I mailed or personally delivered the following document, as indicated below *(check or fill in the name of the document you are serving and check and complete either a or b).*

☐ *Notice of Appeal/Cross Appeal (Limited Civil Case)*

☐ *Notice Designating Record on Appeal (Limited Civil Case)*

☐ *Proposed Statement on Appeal (* ☐ *Limited Civil Case* ☐ *Misdemeanor* ☐ *Infraction)*

☐ Appellant's Opening Brief

☐ Respondent's Brief

☐ Appellant's Reply Brief

☐ *Abandonment of Appeal (Limited Civil Case)*

☐ *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*

☐ Other *(write in the name of the document):*

a. ☐ Service by Mail

(1) I put one copy of the document identified (4) in an envelope addressed to each person listed in (2), sealed the envelope, and put first-class postage on the envelope.

(2) The envelope or envelopes were addressed as follows:

(a) Name of person served:

Address on envelope: _____ _____ _____
Street *City* *State* *Zip*

(b) (Name of person served:

Address on envelope: _____ _____ _____
Street *City* *State* *Zip*

☐ Check here if you mailed copies of the document identified in (4) to more people. Attach a separate page listing the names and addresses on each additional envelope you mailed. Write "APP-109, Item 4a" on the top of the page.

(3) I mailed the envelope or envelopes on *(date):* from *(city):* *(state):* by depositing the envelope or envelopes *(check one):*

(a) ☐ With the U.S. Postal Service or

(b) ☐ At an office or business mail drop where I know the mail is picked up every day and deposited with the U.S. Postal Service.

b. ☐ Service by Personal Delivery

I personally gave one copy of the document identified in (4) to each of the following people:

(1) (a) Name of person served:

(b) (Address where you gave the documents to this person:

_____ _____ _____
Street *City* *State* *Zip*

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

(2) (a) Name of person served:

(b) (Address where you gave the documents to this person:

_____ _____ _____
Street *City* *State* *Zip*

(c) Date when you gave the documents to this person:

(d) Time when you gave the documents to this person:

☐ Check here if you gave copies of the document identified in (4) to more people. Attach a separate page listing the names of each of these people, the address where you gave each of them the document, and the date and time you gave them the document. Write "APP-109, Item 4b" on the top of the page.

(5) I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

_____ ▶ _____
Type or print server's name *Server signs here after serving*

APP-109E Proof of Electronic Service (Appellate Division)

Clerk stamps date here when form is filed.

Instructions

- This form is only for providing proof that a document has been electronically served (delivered) in a proceeding in the superior court appellate division.
- The person who serves (delivers) a document in this case and who fills out this form must be at least 18 years old.
- Before you fill out this form, read *What Is Proof of Service?* (form APP-109-INFO) to understand your responsibilities.

You fill in the name and street address of the court that issued the decision that is being challenged in this case:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the decision being challenged was issued:

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 At the time I served the documents listed in **3**, I was at least 18 years old.

2 a. My ☐ home ☐ business address is:

Street *City* *State* *Zip*

b. My electronic service address is:

3 I electronically served the following document, as indicated below *(check or fill in the name of the document you are serving).*

- ☐ *Notice of Appeal/Cross Appeal (Limited Civil Case)*
- ☐ *Notice Designating Record on Appeal (Limited Civil Case)*
- ☐ *Proposed Statement on Appeal (* ☐ *Limited Civil Case* ☐ *Misdemeanor* ☐ *Infraction)*
- ☐ Appellant's Opening Brief
- ☐ Respondent's Brief
- ☐ Appellant's Reply Brief
- ☐ *Abandonment of Appeal (Limited Civil Case)*
- ☐ *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)*
- ☐ Other *(write in the name of the document):*

4 I electronically served the document checked in **3** as follows

a. (1) Name of person served: _____
On behalf of (name or names of parties represented, if person served is an attorney):
_____
_____

(2) Electronic service address of person served: _____

(3) On *(date):* _____

b. (1) Name of person served:
On behalf of (name or names of parties represented, if person served is an attorney):
_____
_____

(2) Electronic service address of person served: _____

(3) On *(date):* _____

☐ *Check here if you gave copies of the document listed in* **3** *to more people. Attach a separate page listing the names of these people, the names of parties represented if the person served is an attorney, the electronic service address used for each person served, and the date you electronically served the document. Write "APP-109E, Item 4" on top of the page.*

5 I declare under penalty of perjury under California state law that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server signs here after serving*

APP-109-INFO What Is Proof of Service?

GENERAL INFORMATION

What does this information sheet cover?

This information sheet tells you how to fill out *Proof of Service (Appellate Division*) (form APP-109*)* or *Proof of Electronic Service (Appellate Division)* (form APP-109E). This information sheet is not part of the proof of service and does not need to be copied, served, or filed.

1 What is "serving" a document?

"Serving" a document on a person means having the document delivered to that person. The general requirements for serving documents are set out in California Code of Civil Procedure sections 1010.6–1013a (you can get a copy of these laws at any county law library or online at *www.leginfo.ca.gov.calaw.html)*. There are three main ways to serve documents: (1) by mail, (2) by personal delivery, or (3) by electronic service.

When a document is served by mail, it must be put in a sealed envelope or package that is addressed to the person who is being served and that has the postage fully prepaid. The envelope then has to be deposited with the U.S. Postal Service by leaving it at a U.S. Postal Service office or mail drop or at an office or business mail drop where the person serving the document knows the mail is picked up every day and deposited with the U.S. Postal Service.

When a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the attorney representing that party or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney's office or with a person who is in charge of the attorney's office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party's residence between the hours of eight in the morning and six in the evening.

You may be able to serve a document electronically if the person being served has agreed to accept electronic service or if the court has ordered the person to accept electronic service. The requirements for electronic service are set out in California Code of Civil Procedure section 1010.6.

When a document is electronically served, it must be served either by electronic transmission or by electronic notification. "Electronic transmission" means sending the document to the person's electronic service address, an e-mail address the person has given the court and the other parties to the case for this purpose. "Electronic notification" means sending a notice to the person with the exact name of the document and a hyperlink—a link to a web address—at which the document may be viewed and downloaded.

2 What documents have to be served?

Rule 8.817 of the California Rules of Court requires that before you file any document with the court in a case in the appellate division of the superior court, you must serve one copy of the document on each of the other parties in the case and on anyone else when required by law (statute or rule of court). Other rules require that certain documents in cases in the appellate division be served, including the notice of appeal and the notice designating the record on appeal in appeals in limited civil cases and briefs in all appeals. (For more information about appeals in general and about these documents, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO), *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO), and *Information on Appeal Procedures for Infractions* (form CR-141-INFO).)

3 Who can serve a document?

State law (the Code of Civil Procedure) says that a document in a court case can only be served by a person who is over 18 years old. Service by mail or by personal delivery must be by someone who is not a party in the case; electronic service may be performed directly by a party.

If you are a party in a case and wish to serve documents by mail or by personal delivery, **you must have someone else who is over 18 and who is not a party in your case serve any documents in your case for you.** You will need to give the person who is serving the document for you (the server) the names and addresses of all the people who need to be served with that document. You will also need to give the server one copy of each document that needs to be served for each person who is being served.

If you are serving documents electronically, you can do so yourself or have another person over 18 do it for you. The person doing the serving (the server) will need the names and electronic service addresses of everyone who must be served, as well as the document to be served in a form that allows it to be electronically transmitted or made available by hyperlink.

4 What is proof of service?

A "proof of service" shows the court that a document was served as required by the law. Rule 8.817 also requires a party who is filing a document with the court in a case in the appellate division to attach a proof of service to the document he or she wants to file. You can use *Proof of Service (Appellate Division*) (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) to give the court this proof of service in any case in the appellate division of the superior court. The server should follow the instructions below for completing the *Proof of Service (Appellate Division*) (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E). If another person is serving the documents for you–as is required if the document will be served by mail or personal delivery–tell the server to give you the original form when it is filled out and signed. You will need to attach the original proof of service to the document you want to file.

If you are electronically filing the document, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing the document and produced upon request.

INFORMATION FOR THE SERVER

5 Who fills out the *Proof of Service* or *Proof of Electronic Service*?

If you are the server (the person who serves a document for a party in a court case), you must prepare and sign the proof of service. If you served the document by mail or personal delivery, you can use *Proof of Service (Appellate Division*) (form APP-109) to prepare this proof of service in any case in the appellate division. If you served the document electronically, you can use *Proof of Electronic Service (Appellate Division)* (form APP-109E) to prepare the proof of service.

6 How do I fill out the *Proof of Service*?

These instructions are for *Proof of Service (Appellate Division)* (form APP-109), if you are serving the document by mail or personal delivery. If you are serving the document electronically, please see 7 below, for instructions on how to fill out *Proof of Electronic Service (Appellate Division)* (form APP-109E).

You can fill out most of the information on *Proof of Service (Appellate Division)* (form APP-109) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109, you are swearing, under penalty of perjury, that the information that you put in the form is true and correct.**

When you fill out the *Proof of Service (Appellate Division*) (form APP-109), you should print neatly or use a typewriter. If you have Internet access, you can fill out the form online at *www.courts.ca.gov/forms* (use the "fillable" version of the form).

Filling in the top section of form APP-109:

First box, right side of form: Leave this box blank for the court's use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of the form.

Third box, right side of form: Fill in the trial court case name and number. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of the form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is

another Judicial Council form, this number will be in the fourth box on the right-hand side of the form.

Filling in items 1–5:

Items (1) and (2): You are stating, under penalty of perjury, that you are over the age of 18 and that you are not a party in this court case.

Item (3): Check one of the boxes and provide your home or business address. This information is important because, if you serve the document by mail, you must live or work in the county from which the document was mailed.

Item (4): Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

a. Check box 4a. if you are serving the document by mail. BEFORE YOU SEAL AND MAIL THE ENVELOPE WITH THE DOCUMENT YOU ARE SERVING, fill in the following parts of the form.

   (1) You are stating, under penalty of perjury, that you are putting one copy of the document you identified in item 4 in an envelope addressed to each person listed in 4a.(2), sealing the envelope, and putting first-class postage on the envelope.

   (2) Fill in the name and address of each person to whom you are mailing the document. You can copy this information from the list of people to be served or the envelopes provided by the party for whom you are serving the document. If you need more space to list names and addresses, check the box under item 4a.(2) and attach a page listing them. At the top of the page, write "APP-109, Item 4a."

   (3) Fill in the date you are mailing the document and the city and state from which you are mailing it. REMEMBER: You must live or work in the county from which the document is mailed.

   (a) Check box 4a.(3)(a) if you are personally depositing the document with the U.S. Postal Service, such as at a U.S. Post Office or U.S. Postal Service mailbox.

   (b) Check box 4a.(3)(b) if you are putting the document in the mail at your place of business.

   Once you have finished filling out these parts of the form, make one copy of *Proof of Service (Appellate Division)* (form APP-109) with this information filled in for each person you are serving by mail. Put this copy of *Proof of Service (Appellate Division)* (form APP-109) in the envelope with the document you are serving. Seal the envelope and mail it as you have indicated on the *Proof of Service*.

b. Check box 4b. If you personally delivered the documents. Remember, when a document is personally delivered to a party who is represented by an attorney, the document must either be given directly to the party's attorney or the document can be placed in an envelope or package addressed to the attorney and left with the receptionist at the attorney's office or with a person who is in charge of the attorney's office. When a document is personally served on a party who is not represented by an attorney, the document must either be given directly to the party or the document can be given to someone who is at least 18 years old at the party's residence between the hours of eight in the morning and six in the evening.

   For each person to whom you personally delivered the document, fill in:

   (a) The person's name.

   (b) The address at which you delivered the document to this person.

   (c) The date on which you delivered the document to this person.

   (d) The time at which you delivered the document.

   If you need space to list more names, addresses, and delivery dates and times, check the box

under 4b. and attach a page listing this information. At the top of the page, write "APP-109, Item 4b."

Item 5: At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on *Proof of Service (Appellate Division)* (form APP-109) is true and correct.**

After you have finished serving the document and filled in, signed, and dated *Proof of Service (Appellate Division*) (form APP-109), give the original completed form to the party for whom you served the document.

7 How do I fill out the *Proof of Electronic Service*?

You can fill out most of the information on *Proof of Electronic Service* (*Appellate Division*) (form APP-109E) by copying the information from the document you are serving before you serve that document. However, you should not sign and date the form until after you have finished serving the document. **By signing form APP-109E you are swearing under penalty of perjury that the information you have put in the form is true and correct.**

You can fill out the *Proof of Electronic Service* (*Appellate Division*) (form APP-109E) online at *www.courts.ca.gov/forms* (use the "fillable" version of the form), or you can print it out and fill it in, printing neatly or using a typewriter.

Filling in the top section of form APP-109E:

First box, right side of form: Leave this box blank for the court's use.

Second box, right side of form: Fill in the name of the county in which the case is filed and the street address of the court. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the second box on the right-hand side of that form.

Third box, right side of form: Fill in the trial court case number and name. You can copy this information from the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the third box on the right-hand side of that form.

Fourth box, right side of form: Fill in the appellate division case number, if you know it. If this number is available, it will be on the first page of the document that you are serving. If the document you are serving is another Judicial Council form, this information will be in the fourth box on the right-hand side of that form.

Filling in items 1–5:

Item 1: You are stating, under penalty of perjury, that you are over the age of 18.

Item 2:
a. Check one of the boxes and provide your home or business address.

b. Fill in your electronic service address. This is the address at which you have agreed to accept electronic service, usually an e-mail address.

Item 3: Check or fill in the name of the document that you are serving. If the document you are serving is another Judicial Council form, the name of the document is located on both the top and the bottom of the first page of the form. If the document you are serving is not a Judicial Council form, the name of the document should be on the top of the first page of the document.

Item 4: Fill in the name of each person served, and the name or names of the parties represented, if the person served is an attorney. For each person served, fill in that person's electronic service address and the date you served the person. If you need more space to list additional persons served, check the box under item 4 b. and attach a page listing them, with their electronic service addresses and the date each person was served. At the top of the page, write "APP-109E, Item 4."

When you have filled in the information in items 1–4, create an electronic copy of the *Proof of Electronic Service* (*Appellate Division*) (form APP-109E) with this

information filled in. Transmit the filled-in form with the document you are serving to each person served.

Item (5): At the bottom of the form, type or print your name, sign the form, and fill in the date that you signed the form. **By signing this form, you are stating under penalty of perjury that all the information you filled in on the *Proof of Electronic Service* (*Appellate Division*) (form APP-109E) is true and correct.** If you are not the party for whom the documents are served, give the original completed *Proof of Electronic Service* (*Appellate Division*) (form APP-109E) to the party for whom you served the document.

If you are electronically filing the document that is served, the proof of service may also be filed electronically. However, the original signed proof of service must be kept by the party filing it and produced upon request.

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

Clerk stamps date here when form is filed.

Instructions

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

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

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

Name: _____

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

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

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

Phone: _____ E-mail: _____

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

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About the Appeal

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

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

Record of the Documents Filed in the Trial Court

4 The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

a. ☐ **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those documents here.*

(1) **Documents**

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

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

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 4a(1)."*

(2) **Exhibits**

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

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

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 4a(2)."*

4 (continued)

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

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

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

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

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

Record of Oral Proceedings in the Trial Court

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

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

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

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

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

5 a. (continued)

(2) **Copy of reporter's transcript.**

(a) ☐ I request a copy of the reporter's transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.

(b) ☐ I request that the court reporter provide *(check one):*

(i) ☐ My copy of the reporter's transcript in paper format.
(ii) ☐ My copy of the reporter's transcript in computer-readable format.
(iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. *(Check and complete (1) or (2).):*

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

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

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

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

OR

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

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

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

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

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

Date: _____

_____ ▶ _____

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

APP-150-INFO Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court. This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

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

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

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

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

In this information sheet, we call the lower court the "trial court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called "certiorari"), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

4 Is a writ proceeding the same as an appeal?

No. In an **appeal,** the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding,** the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a trial court?

No.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy. The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))
- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)
- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml*. You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called "common law" writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml*. The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 10.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated

and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the trial court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court's ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the trial court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do

  - Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.
- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed. There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)
- Granting a motion to quash service of summons
- Granting a motion to stay or dismiss the action on the ground of inconvenient forum
- Granting a new trial
- Denying a motion for judgment notwithstanding the verdict
- Granting or dissolving an injunction or refusing to grant or dissolve an injunction
- Appointing a receiver
- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml*. You should also check to see if there are published court decisions that indicate whether you can or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of

the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

What needs to be in the supporting documents. The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings. There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this recording to be used as the record of the oral proceedings, and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.
- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or

- Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court. Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court's error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court's error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

(15) How do I "serve" my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the petition to the real party in interest and the respondent court in the way required by law. If the petition is mailed or

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

- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail, in person, or electronically), and the date the petition was served.

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

(16) How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

a. Issue a stay

b. Summarily deny the petition

c. Issue an alternative writ or order to show cause

d. Notify the parties that it is considering issuing a preemptory writ in the first instance

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

(19) What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov /selfhelp-lowcosthelp.htm.*

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(20) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide one). You can get information about finding an attorney on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

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

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California

Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

(21) I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order, called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ.

Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

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

You can get more information about how to serve court documents and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California

Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*

(22) I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18), a "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

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

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

(23) What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

APP-151 Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

Clerk stamps date here when form is filed.

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

Real Party in Interest
(fill in the name of any other parties in the trial court case)

Clerk will fill in the number below:

Appellate Division Case Number:

☐ **Stay requested**
(see item (12) c. on page 6)

Instructions

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below*).
- Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
- Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm*.
- Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.

* **Small Claims cases.** If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Petitioner's lawyer *(skip this if the petitioner does not have a lawyer for this petition):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name *(fill in the trial court case name):* _____

b. Case number *(fill in the trial court case number):* _____

3 The trial court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the trial court):* _____

4 The trial court took this action or made this ruling on the following date *(fill in the date):* _____

5 *If you are filing this petition more than 30 days after the date that you listed in 4, explain the extraordinary circumstances that caused the delay in filing this petition:* _____

The Parties in the Trial Court Case

6 I/My client *(check and fill in a or b):*

a. ☐ was a party in the case identified in **2**.

b. ☐ was not a party in the case identified in **2** but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court *(describe how you/your client will be directly and negatively affected by the trial court's action or ruling):*

_____

_____

_____

_____

7 The other party or parties in the case identified in **2** was/were *(fill in the names of the parties):*

_____

_____

Appeals or Other Petitions for Writs in This Case

8 Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(fill in the appellate division case number of the appeal):* _____

9 Have you filed a previous petition for a writ challenging this trial court action or ruling? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition).*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9.")

Reasons for This Petition

10 The trial court made the following legal error or errors when it took the action or made the ruling described in **3** *(check and fill in at least one):*

a. ☐ The trial court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the trial court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this:* _____

_____

_____

_____

10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

_____
_____
_____
_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b. ☐ The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

_____
_____
_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

_____
_____
_____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

_____
_____
_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c. ☐ The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

_____
_____
_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*

_____
_____
_____
_____

10 (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

_____
_____
_____
_____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."*

☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

_____
_____
_____
_____

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____
_____
_____
_____
_____
_____

Order You Are Asking the Appellate Division to Make

12 I request that this court *(check and fill in all that apply):*

a. ☐ order the trial court to do the following *(describe what, if anything, you want the trial court to be ordered to do):* _____
_____
_____
_____
_____

b. ☐ order the trial court not to do the following *(describe what, if anything, you want the trial court to be ordered NOT to do)*: _____
_____
_____
_____
_____

12 (continued)

c. ☐ issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form):*

_____
_____
_____
_____

I/My client:

(1) ☐ asked the trial court to stay these proceedings, but the trial court denied this request *(include in your supporting documents a copy of the trial court's order denying your request for a stay).*

(2) ☐ did not ask the trial court to stay these proceedings for the following reasons *(describe below why you did not ask the trial court to stay these proceedings):*

_____
_____
_____
_____

d. ☐ take other action *(describe):* _____
_____
_____
_____
_____
_____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

a. ☐ Yes, a transcript or an official electronic recording of what was said in the trial court is attached.

b. ☐ No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) *(Check (1) or (2):*

(1) ☐ stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

(2) ☐ explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.

14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged? *(Check a or b):*

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Verification

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

Date: _____

_____
Type or print your name

▶ _____
Signature of petitioner or attorney

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	
PEOPLE OF THE STATE OF CALIFORNIA VS. Defendant: Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
NOTICE OF APPEAL—FELONY (DEFENDANT) **(Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)**	CASE NUMBER:

NOTICE

- **You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.
   NAME of defendant:
   DATE of the order or judgment:

2. **Complete either item a. or item b. Do not complete both.**
   a. *If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:*
      (1) ☐ This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
      (2) ☐ This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
      (3) ☐ This appeal challenges the validity of the plea or admission. *(You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)*
      (4) ☐ Other basis for this appeal *(you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):*

   b. *For all other appeals, check one:*
      (1) ☐ This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
      (2) ☐ This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
      (3) ☐ Other *(specify)*:

3. ☐ Defendant requests that the court appoint an attorney for this appeal. Defendant ☐ was ☐ was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is: ☐ same as in attorney box above.
   ☐ as follows:

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
CR-120 [Rev. January 1, 2017]

NOTICE OF APPEAL—FELONY (DEFENDANT)
(Criminal)

Penal Code, §§ 1237, 1538.5(m);
Cal. Rules of Court, rule 8.304
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA VS. Defendant:	CASE NUMBER:

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are *(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 OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is *(check one):* ☐ granted ☐ denied.

Date:

JUDGE

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)

1. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date):* be extended to *(date):*

2. I ☐ have ☐ have not received a rule 8.360(c)(5) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*
   Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date):*

5. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. Defendant was convicted of *(specify):*

7. The conviction is based on a *(check one):*
   - ☐ jury verdict
   - ☐ plea of guilty or no contest

Form Approved for Optional Use
Judicial Council of California
CR-126 [Rev. January 1, 2017]

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE) (Appellate)

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.360
www.courts.ca.gov

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following punishment:

9. The defendant ☐ is ☐ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated
    ☐ below.
    ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

    (Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: _____
☐ Denied

Date: _____

_____
(SIGNATURE OF PRESIDING JUSTICE)

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case.** You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form is *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____ **Trial Court Case Number:**

2 Judgment or Order You Are Appealing

I am/My client is appealing *(check one):*

a. ☐ The final judgment of conviction in this case (Penal Code section 1466(b)(1)).
   ☐ I am/My client is contesting only the conditions of the probation.

b. ☐ The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(b)(1)).
   ☐ An order modifying the conditions of probation.
   ☐ Other*(describe the action you are appealing and give the date the trial court took the action):*
   _____

c. ☐ The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).

d. ☐ Other action *(describe the action you are appealing and give the date the trial court took the action):*
   _____
   _____
   _____

3 Record on Appeal

See form CR-131-INFO for information about the record on appeal.)

a. ☐ I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

b. ☐ I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in he trial court proceedings.

4 Court-Appointed Lawyer

a. I/My client ☐ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court.

b. I am/My client is *(check (1) or (2)):*

   (1) ☐ asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.

   (2) ☐ **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

_____ ▶ _____

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

CR-133 Request for Court-Appointed Lawyer in Misdemeanor Appeal

Clerk stamps date here when form is filed.

Instructions

- This form is only for requesting that the court appoint a lawyer to represent a person appealing in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- The court is required to appoint a lawyer to represent you on appeal only if you cannot afford to hire a lawyer and
  (1) your punishment includes going to jail or paying a fine of more than $500 (including penalty and other assessments), or
  (2) you are likely to suffer other significant harm as a result of being convicted.
- This form can be filed at the same time as your notice of appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____ Trial Court Case Number:

Information About Your Case

2 Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? *(Check a or b.)*

a. ☐ Yes

b. ☐ No *(Complete and attach* Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense *(form MC-210) showing that you/your client cannot afford to hire a lawyer. You can get form MC-210 at any courthouse or county law library or online a*t www.courts.ca.gov/forms.*)*

3 Describe the punishment the trial court gave you/your client in this case *(check all that apply and fill in any required information):*

a. ☐ Jail time

b. ☐ A fine (including penalty and other assessments) *(fill in the amount of the fine)*: $ _____

c. ☐ Restitution *(fill in the amount of the restitution)*: $ _____

d. ☐ Probation *(fill in the amount of time on probation):* _____

e. ☐ Other punishment *(describe any other punishment that the trial court gave you/your client in this case):*

_____

_____

_____

4 *Describe any significant harm that you are/your client is likely to suffer because of this conviction:*

_____

_____

_____

_____

_____

Notice to Appellant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: _____

_____ ▶ _____

Type or print name *Signature of appellant or attorney*

CR-134 Notice Regarding Record on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for giving the court notice about the record on appeal in a **misdemeanor case.**
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
  (1) 20 days after you file your notice of appeal, or, if it is later
  (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court-appointed lawyer within 20 days after you file your notice of appeal).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

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

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form is *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

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

Your Choices About the Record on Appeal

Stipulation for Limited Record

(3) ☐ The respondent and I/my client have agreed ("stipulated") under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

(4) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item (5) ; sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item (5) below).* I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trail court proceedings in my case *(check and complete only one–a, b, c, or d):*

a. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be prepared at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

OR

5 *(continued)*

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.

(a) ☐ I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.

(b) ☐ I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

OR

d. ☐ **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. *(Check and complete (1) or (2).):*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Misdemeanor) *(form CR-135) to prepare and file this proposed statement. You can get a copy of form CR-135 at any courthouse or county law library or online at* www.courts.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

_____ ▶ _____

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

CR-135 Proposed Statement on Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in an **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/form*s.
- This form can be attached to your *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). If it is not attached to that notice, this form must be filed **no later than 20 days after you file that notice. If you have chosen to prepare a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

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

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

2 On *(fill in the date):* _____, I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____, I/my client filed a *Notice Regarding Record on Appeal,* choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

4 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-131-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing.*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence.*
- *Cannot consider whether witnesses were telling the truth or lying.*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.*

(Check all that apply and describe in detail the legal error or errors you believe were made that are the reason for this appeal.)

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal that is being appealed in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence.):* _____

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error.)*

(1) *Describe the error:* _____

Describe how this error harmed you/your client: _____

4 b. (continued)

(2) *Describe the error:* _____

Describe how this error harmed you/your client: _____

(3) *Describe the error:* _____

Describe how this error harmed you/your client: _____

☐ *Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-135, item 4."*

5 The Charges Against Me/My Client

a. The charges against me/my client were *(list all of the charges indicated on the citation or complaint filed with the court by the prosecutor):* _____

b. I/My client *(check (1), (2), or (3))*

(1) ☐ pleaded not guilty to all of the charges.

(2) ☐ pleaded guilty to only the following charges: _____

(3) ☐ pleaded guilty to all of these charges.

6 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 4 for this appeal?

☐ Yes *(fill out b)* ☐ No *(skip to item 7)*

b. *In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 4 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:*

(1) *Describe the first motion:* _____

The motion was filed by the ☐ prosecutor. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-135, Item 6b(1)."*

(2) *Describe the second motion:* _____

The motion was filed by the ☐ prosecutor. ☐ defendant.

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court ☐ granted this motion. ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took concerning this motion):* _____

☐ *Check here if you need more space to describe this motion and attach a separate page or pages describing this motion. At the top of each page, write "CR-135, item 6b(2)."*

(3) ☐ *Check here if any other motions were filed that are relevant to the reasons you gave in (4) for this appeal, and attach a separate page or pages describing each motion, identifying who made the motion and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-135, item 6b(3)."*

(7) Summary of Testimony and Other Evidence

a. Was there a trial in your case?

☐ No *(skip items b, c, d, e, and f, and go to item (8))*

☐ Yes *(complete items b, c, d, e, and f)*

(1) ☐ Jury trial

(2) ☐ Trial by judge only

b. Did you/your client testify at the trial?

☐ No

☐ Yes *(Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in (4) for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.):* _____

_____

_____

_____

_____

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, Item 7b."*

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? *(Check one):*

☐ No

☐ Yes *(complete (1) and (2)):*

(1) The name of the officer who testified is *(fill in the officer's name):* _____

(2) This officer testified that *(Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in (4) for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.):* _____

_____

_____

_____

☐ *Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, Item 7c."*

7 (continued)

d. ☐ Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in **4** for this appeal?

☐ No

☐ Yes *(fill out (1)–(4)):*

(1) The witness's name is *(fill in the witness's name):* _____

(2) The witness ☐ was ☐ was not an officer from the police department, sheriff's office, or other government agency that charged me/my client.

(3) The witness testified on behalf of ☐ me/my client. ☐ the prosecution.

(4) This witness testified that *(Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in* **4** *for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained.):* _____

☐ *Check here if you need more space to summarize this witness's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-135, Item 7d."*

e. ☐ Check here if any other witnesses gave testimony at the trial that is relevant to the reasons you gave in **4** for this appeal. Attach a separate page or pages identifying each witness, whether the witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in **4** for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "CR-135, item 7e."

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in **3** for this appeal *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):*

☐ *Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-135, Item 7f."*

8 The Trial Court's Findings

a. ☐ I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):* _____

b. ☐ I/My client was found not guilty of the following offenses *(list all of the offenses for which you were/your client was found not guilty):* _____

9 The Sentence

The trial court imposed the following fine or other punishment on me/my client *(check all that apply and fill in any required information):*

a. ☐ Jail time *(fill in the amount of time you are/your client is required to spend in jail):*

b. ☐ A fine (including penalty and other assessments) *(fill in the amount of the fine)*: $ _____

c. ☐ Restitution *(fill in the amount of the restitution)*: $ _____

d. ☐ Probation *(fill in the amount of time you are/your client is required to be on probation):*

e. ☐ Other punishment *(describe any other punishment that the trial court imposed in this case):*

REMINDER: You must serve and file this form no later than 20 days after you file your notice regarding the oral proceedings. If you do not file this form on time, the court may dismiss your appeal.

Date: _____

_____ ▶ _____

Type or print name *Signature of appellant or attorney*

CR-137 Abandonment of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in a **misdemeanor** case.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California v.

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

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal): _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

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

(3) By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

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

CR-141-INFO Information on Appeal Procedures for Infractions

1 What does this information sheet cover?

This information sheet tells you about appeals in infraction cases. It is only meant to give you a general idea of the appeal process, so it does not cover everything you may need to know about appeals in infraction cases. To learn more, you should read rules 8.900–8.929 of the California Rules of Court, which set out the procedures for infraction appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

2 What is an infraction?

Infractions are crimes that can be punished by a fine, traffic school, or some form of community service but not by time in jail or prison. (See Penal Code sections 17, 19.6, and 19.8. You can get a copy of these laws at *http://leginfo.legislature.ca.gov/faces/codes.xhtml.*) Examples of infractions are many traffic violations for which you can get a ticket or violations of some city or county ordinances for which you can get a citation. If you were also charged with or convicted of a misdemeanor, then your case is a misdemeanor case, not an infraction case.

3 What is an appeal?

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

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

- ***Prejudicial error:*** The party that appeals (called the "appellant") may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error"). Prejudicial error can include things like errors made by the judge about the law or errors or misconduct by the lawyers that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

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

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

For information about appeal procedures in other cases, see:

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

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

4 Do I need a lawyer to appeal?

You do not *have* to have a lawyer; you are allowed to represent yourself in an appeal in an infraction case. But appeals can be complicated, and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer. You will need to hire a lawyer yourself if you want one. You can get information about finding a lawyer on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-lowcosthelp.htm.*

If you are representing yourself, you must put your address, telephone number, fax number (if available), and e-mail address (if available) on the cover of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative.

The party that is appealing is called the APPELLANT; in an infraction case, this is usually the party convicted of committing the infraction. The other party is called the RESPONDENT; in an infraction case, this is usually the government agency that filed the criminal charges (on court papers, this party is called the People of the State of California).

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

No. Generally, you may appeal only a final judgment of the trial court—the decision at the end that decides the whole case. The final judgment includes the punishment that the court imposed. Other rulings made by the trial court before final judgment cannot be separately appealed, but can be reviewed only later as part of an appeal of the final judgment. In an infraction case, the party that was convicted of committing an infraction usually appeals that conviction or the sentence (the fine or other punishment) ordered by the trial court. In an infraction case, a party can also appeal from an order made by the trial court after judgment that affects a substantial right of the appellant (Penal Code section 1466(2)(B). You can get a copy of this law at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.)

7 How do I start my appeal?

First, you must file a notice of appeal. The notice of appeal tells the other party in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) to prepare and file a notice of appeal in an infraction case. You can get form CR-142 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.*

8 Is there a deadline for filing my notice of appeal?

Yes. In an infraction case, you must file your notice of appeal within **30 days** after the trial court makes ("renders") its judgment in your case or issues the order you are appealing. The date the trial court makes its judgment is normally the date the trial court orders you to pay a fine or orders other punishment in your case (sentences you). **This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.**

9 How do I file my notice of appeal?

To file the notice of appeal in an infraction case, you must bring or mail the original notice of appeal to the clerk of the trial court in which you were convicted of the infraction. It is a good idea to bring or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

There is no fee for filing the notice of appeal in an infraction case. You can ask the clerk of that court if there are any other requirements for filing your notice of appeal.

After you file your notice of appeal, the clerk will send a copy of your notice to the office of the prosecuting attorney (for example, the district attorney, county counsel, city attorney, or state Attorney General).

10 If I file a notice of appeal, do I still have to pay my fine or complete other parts of my punishment?

Filing the notice of appeal does NOT automatically postpone the deadline for paying your fine or completing any other part of your sentence. To postpone your sentence, you must ask the trial court for a "stay" of the judgment. If you want a stay, you must first ask the trial court for a stay. You can also apply to the appellate division for a stay, but you must show in your application to the appellate division that you first asked the trial court for a stay and that the trial court

unjustifiably denied your request. Your fine or other parts of your punishment will not be postponed unless the trial court or appellate division grants a stay. If you do not get a stay and you do not pay your fine or satisfy another part of your sentence by the date ordered by the court, a warrant may be issued for your arrest or a civil collections process may be started against you, which could result in a civil penalty being added to your fine.

11 Is there anything else I need to do when I file my notice of appeal?

Yes. When you file your notice of appeal, you must tell the trial court (1) whether you have agreed with the respondent ("stipulated") that you do not need parts of the normal record on appeal, and (2) whether you want a record of what was said in the trial court (this is called a record of the "oral proceedings") sent to the appellate division and, if so, what form of that record you want to use. *Notice of Appeal and Record on Appeal (Infraction)* (form CR-142) includes boxes you can check to tell the court whether and how you want to provide this record.

12 In what cases does the appellate division need a record of the oral proceedings?

You do not *have* to send the appellate division a record of what was said in the trial court. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of these oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings. Since the appellate division judges were not there for the proceedings in the trial court, an official record of these proceedings must be prepared and sent to the appellate court for its review.

Depending on what form of the record you choose to use, you will be responsible for paying to have the official record of the oral proceedings prepared (unless you are indigent) or for preparing an initial draft of the record yourself. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. If the appellate division does not receive the record, it will not be able to consider what was said in the trial court in deciding whether a legal error was made and it may dismiss your appeal.

13 What are the different forms of the record?

There are three ways a record of the oral proceedings in a trial court can be prepared and provided to the appellate division in an infraction case:

a. You can use a *statement on appeal*.

b. If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from the recording or, if the court has a local rule permitting this and all the parties agree ("stipulate"), you can use the official electronic recording itself as the record, instead of a transcript.

c. If a court reporter was there during the trial court proceedings, the reporter can prepare a record called a *"reporter's transcript."*

Read below for more information about these options.

a. Statement on appeal

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

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

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and

- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.916 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.*)

Preparing a proposed statement: If you choose to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use Proposed *Statement on Appeal (Infraction)* (form CR-143) to prepare your proposed statement. You can get form CR-143 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file your proposed statement within 20 days after you file your notice of appeal. "Serve and file" means that you must:

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

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

Review and modifications: The prosecuting attorney and any other party have 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial judge then reviews both your proposed statement and any proposed amendments filed by the prosecuting attorney and any other party. The judge will then make or order you to make any corrections or modifications to the proposed statement that are needed to make sure that the statement provides a complete and accurate summary of the relevant testimony and other evidence.

Completion and certification: If the judge makes or orders you to make any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you, the prosecuting attorney, and any other party for your review. If you disagree with anything in the judge's statement, you will have 10 days from the date the statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes any additional corrections to the statement, and certifies the statement as a complete and accurate summary of the relevant testimony and other evidence.

Sending the statement to the appellate division: Once the trial judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with the clerk's transcript.

b. Official electronic recording or transcript from official recording

When available: In some infraction cases, the trial court proceedings are officially recorded on approved electronic recording equipment. If your case was officially recorded, you can ask to have a transcript prepared for the appellate division from the official electronic recording of the proceedings. You should check with the trial court to see if your case was officially electronically recorded before you choose this option. Some courts also have local

rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

If the court has a local rule for the appellate division permitting this and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of these oral proceedings instead of preparing a transcript. You should check with the trial court to see if your case was officially electronically recorded and check to make sure that there is a local rule permitting the use of the recording itself before choosing this option. If you choose this option, you must attach a copy of your agreement with the other parties (called a "stipulation") to your notice regarding the oral proceedings.

Cost: Ordinarily, the appellant must pay for preparing the transcript or making a copy of the official electronic recording. The court will send you an estimate of the cost for this transcript or the copy of the electronic recording. If you still want this transcript or recording, you must deposit this amount with the court. However, you can also choose to use a statement on appeal instead, or take one of the other actions listed in rule 8.917.

If, however, you are indigent (you cannot afford to pay the cost of the transcript or electronic recording), you may be able to get a free transcript or official electronic recording. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If you are indigent, an official electronic recording of your case was made, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to use a statement on appeal instead or take one of the other actions listed in rule 8.917.

Completion and delivery: Once you deposit the estimated cost of the transcript or official electronic recording with the clerk or show the court you are indigent and need a transcript, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared, the clerk will send the transcript or recording to the appellate division along with the clerk's transcript.

c. Reporter's transcript

When available: In some infraction cases, a court reporter is there in the trial court and makes a record of the oral proceedings. If a court reporter made a record of your case, you can ask to have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript." You should check with the trial court to see if a court reporter made a record of your case before you choose this option. Some courts also have local rules that establish procedures for deciding whether a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising on appeal. You should check whether the court has such a local rule.

Cost: Ordinarily, the appellant must pay for preparing a reporter's transcript. The court reporter will provide the clerk of the trial court with an estimate of the cost of preparing the transcript, and the clerk will notify you of this estimate. If you want the reporter to prepare a transcript, you must deposit this estimated amount or one of the substitutes allowed under rule 8.919 with the clerk within 10 days after the clerk sends you the estimate. However, under rule 8.919 you can decide to use a different form of the record or take other action instead of proceeding with a reporter's transcript.

If, however, you are indigent (you cannot afford to pay the cost of the reporter's transcript), you may be able to get a free transcript. You can complete and file *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show that you are indigent. You can get form MC-210 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this form to decide whether you are indigent.

If the court finds that you are indigent, a court reporter made a record of your case, and you show that you need a transcript, the court must provide you with a free transcript. Whether you need a transcript depends on the issues you are raising on appeal. If the issues you are raising on appeal include that there was not substantial evidence supporting the judgment, order, or other decision you are appealing or that there was misconduct in your case that harmed you, that is generally enough to show that you need a transcript. If you ask for a reporter's transcript, the court may ask you what issues you are raising on appeal and may decide that a statement on appeal or a transcript of only some of the oral proceedings will be a good enough record to consider the issues you are raising.

If the court finds that you are not indigent, it will send you a notice and you will have a chance to pick another form of the record or take other actions listed in rule 8.919.

Completion and delivery: Once you deposit the estimated cost of the transcript or one of the substitutes allowed under rule 8.919 or show the court you are indigent and need a transcript, the clerk will notify the reporter to prepare the transcript. When the reporter completes the transcript, the clerk will send both the reporter's transcript and clerk's transcript to the appellate division.

14 Is there any other part of the record that needs to be sent to the appellate division?

Yes. There are two other parts of the official record that need to be sent to the appellate division:

- ***Documents filed in the trial court:*** The trial court clerk is responsible for preparing a record of the written documents filed in your case, called a "clerk's transcript," and sending this to the appellate division. (The documents the clerk must include in this transcript are listed in rule 8.912 of the California Rules of Court. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.*)
- ***Exhibits submitted during trial:*** Exhibits, such as photographs or maps, that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court are considered part of the record on appeal. If you want the appellate division to consider an exhibit, however, you must ask the trial court clerk to send the original exhibit to the appellate division within 10 days after the last respondent's brief is filed in the appellate division. (See rule 8.921 of the California Rules of Court for more information about this procedure. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules.*)

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

15 What happens after the record is prepared?

As soon as the record of the oral proceeding is ready, the clerk of the trial court will send it to the appellate division along with the clerk's transcript. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

16 What is a brief?

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

should read rules 8.927–8.928 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in infraction appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

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

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division. **If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.**

"Serve and file" means that you must:

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

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

17 What happens after I file my brief?

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

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

18 What happens after all the briefs have been filed?

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

19 What is oral argument?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person.

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

If you do choose to participate in oral argument, you will have up to five minutes for your argument, unless the court orders otherwise. Remember that the judges will already have read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal

or ask the judges if they have any questions you could answer.

20 What happens after oral argument?

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

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

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Infraction)* (form CR-145) to file this notice in an infraction case. You can get form CR-145 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

If you decide not to continue your appeal and it is dismissed, you will (with only very rare exceptions) permanently give up the chance to raise any objections to your conviction, sentence, or other matter that you could have raised in the appeal. If your punishment was stayed during the appeal, you may be required to start complying with your punishment immediately after your appeal is dismissed.

CR-142 Notice of Appeal and Record on Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below:

Appellate Division Case Number:

1 Your Information

a. Name of Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form is *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

(2) Judgment or Order You Are Appealing

I am/My client is appealing *(check a, b, or c):*

a. ☐ the final judgment of conviction in the case (Pen. Code § 1466(2)(A)).
The trial court issued (rendered) this judgment on *(fill in the date):*

b. ☐ an order made by the trail court after judgment that affects an important (substantial) right of mine/my client (Pen. Code § 1466(20(B)).
The trial court issued (rendered) this order on *(fill in the date):*

c. ☐ Other (Describe the action you are appealing and indicate the date the trial court took the action.):

_____
_____
_____
_____

Your Choices About the Record on Appeal

Stipulation for Limited Record

(3) ☐ The respondent and I/my client have agreed ("stipulated") under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. *At the top of each page write "CR-142, item 3."*

Record of Oral Proceedings

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.

(4) I elect (choose)/My client elects to proceed *(check a or b):*

a. ☐ WITHOUT a record of the oral proceedings in the trial court (*skip item (5); sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item (5) below)*. I understand that if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

(5) I want to use the following record of what was said in the trial court proceedings in my case *(check and complete only one–a, b, c, or d):*

a. ☐ **Statement on Appeal.** *A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).):*

5 *(continued)*

(1) ☐ I have attached my proposed statement on appeal to this notice. (*If you are not represented by a lawyer in this appeal, you must use* Proposed Statement on Appeal (Infraction) *(form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at* www.courts.ca.gov/forms.)

(2) ☐ I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

OR

b. ☐ **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and (1) or (2).):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free transcript.)*

OR

c. ☐ **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.

(2) ☐ I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*

5 *(continued)*

OR

d. ☐ **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check (1) or (2)):*

(1) ☐ I will pay the trial court clerk's office for this transcript myself when I receive the court reporter's estimate of the cost of the transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(2) ☐ I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at* www.courts.ca.gov/forms. *The court will review this form to decide if you are eligible for a free reporter's transcript.)*

Date: _____

_____ ▶ _____

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

CR-143 Proposed Statement on Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a statement on appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/form*s.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California
v. _____

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

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

Information About Your Appeal

2 On *(fill in the date):* _____, I/my client filed a *Notice of Appeal and Record on Appeal (Infraction),* choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

3 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- *There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing.*
- *A "prejudicial error" was made during the trial court proceedings.*

The appellate division:

- *Cannot retry your case or take new evidence.*
- *Cannot consider whether witnesses were telling the truth or lying.*
- *Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision.*

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a. ☐ There was not substantial evidence that supported the judgment, order, or other decision that I/my client indicated in the notice of appeal is being appealed in this case. *(Explain why you think the judgment, order, or other decision was not supported by substantial evidence):* _____

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. *(Describe each error and how you were/your client was harmed by that error.)*

(1) *Describe the error:* _____

Describe how this error harmed you/your client: _____

(2) *Describe the error:* _____

Describe how this error harmed you/your client: _____

3 (continued)

(3) *Describe the error:* _____

_____

_____

_____

Describe how this error harmed you/your client: _____

_____

_____

_____

☐ *Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 3."*

4 The Charges Against Me/My Client

a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number *(fill in the citation number from your ticket):* _____

b. The charges against me/my client were *(list all of the charges indicated on the citation or complaint filed by the prosecutor with the court):* _____

_____

_____

c. I/My client *(check (1), (2), or (3))*

(1) ☐ pleaded not guilty to all of the charges.

(2) ☐ pleaded guilty to only the following charges: _____

_____

(3) ☐ pleaded guilty to all of the charges.

5 Summary of Any Motions and the Court's Order on the Motion

a. Were any motions (requests for the trial court to issue an order) made in this case that are relevant to the reasons you gave in 3 for this appeal?

☐ Yes *(fill out b)* ☐ No *(skip to item 6)*

b. *In the spaces below, describe any motions (requests for orders) that were made in the trial court that are relevant to the reasons you gave in 3 for this appeal. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:*

(1) ☐ I/My client made the following requests (motions) in the trial court *(check all that apply)*:

(a) ☐ To submit a photograph or photographs as evidence *(describe the photographs):*

_____

_____

There ☐ was ☐ was not a hearing on this motion.

5 b.(1)(a) (continued)

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court ☐ did ☐ did not accept the photographs.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(a)."*

(b) ☐ To submit a map or maps as evidence (*describe the maps*): _____

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court ☐ did ☐ did not accept the maps.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(b)."*

(c) ☐ To submit other material as evidence *(describe what you asked to submit as evidence):*

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court ☐ did ☐ did not accept this material.

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(c)."*

(d) ☐ Other *(describe any other request you made in the trial court and whether the court granted or denied this request):* _____

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(1)(d)."*

5 b. (continued)

(2) ☐ The prosecutor made the following request (motion) in the trial court *(describe any request the prosecutor made in the trial court and whether the court granted or denied this request):*

There ☐ was ☐ was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing:

The court ☐ did ☐ did not grant this motion.

☐ Other *(describe any other action the trial court took on this motion)*:

☐ *Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 5b(2)."*

(3) ☐ Check here if other motions were filed that are relevant to the reasons you gave in **3** for this appeal, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 5b(3).

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

No ☐ *(skip items b, c, d, e, and f, and go to item **7**)*

Yes ☐ *(complete items b, c, d, e, and f)*

b. Did you/your client testify at the trial?

☐ No

☐ Yes *(Write a complete and accurate summary of the testimony you/your client gave that is relevant to the reasons you gave in **3** for this appeal. Include only what you actually said; do not comment on or give your opinion about what you said. Please indicate whether any objections were made concerning your/your client's testimony or any exhibits you/your client asked to present and whether these objections were sustained.):*

☐ *Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6b."*

6 (continued)

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? *(Check one):*

☐ No

☐ Yes *(complete (1) and (2)):*

(1) The name of the officer who testified is *(fill in the officer's name):* _____

(2) This officer testified that *(Write a complete and accurate summary of the officer's testimony that is relevant to the reasons you gave in* **3** *for this appeal. Include only what the officer actually said; do not comment on or give your opinion about what the officer said. Please indicate whether any objections were made concerning the officer's testimony or any exhibits the officer asked to present and whether these objections were sustained.):* _____

☐ *Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 6c."*

d. ☐ Were there any other witnesses at the trial?

☐ No

☐ Yes *(fill out (1)–(4)):*

(1) The witness's name is *(fill in the witness's name):*

_____

(2) The witness ☐ was ☐ was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of ☐ me/my client. ☐ the prosecution.

(4) This witness testified that *(Write a complete and accurate summary of the witness's testimony that is relevant to the reasons you gave in* **3** *for this appeal. Include only what the witness actually said; do not comment on or give your opinion about what the witness said. Please indicate whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained.):* _____

e. ☐ Check here if other witnesses gave testimony at the trial that is relevant to the reasons you gave in **3** for this appeal. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, summarizing what that witness said in his or her testimony that is relevant to the reasons you gave in **3** for this appeal, and indicating whether any objections were made concerning the witness's testimony or any exhibits the witness asked to present and whether these objections were sustained. At the top of each page, write "CR-143, item 6e."

6 (continued)

f. Summarize the evidence, other than the testimony, that was given during the trial that is relevant to the reasons you gave in 3 for this appeal *(Write a complete and accurate summary of the evidence given by both you and the respondent. Include only the evidence; do not comment or give your opinion about this evidence.):*

☐ *Check here if you need more space to summarize the evidence and attach a separate page or pages summarizing this evidence. At the top of each page, write "CR-143, Item 6f."*

7 The Trial Court's Findings

a. I/My client was found guilty of the following offenses *(list all of the offenses for which you were/your client was found guilty):*

b. I/My client was found not guilty of the following offenses *(list all of the offenses for which you were/your client was found not guilty):*

c. The following charges were dismissed after proof of correction was shown to the judge *(list all of the charges that were dismissed):*

8 The Sentence

The trial court imposed the following fine or other punishment on me/my client *(check all that apply and fill in any required information):*

a. ☐ A fine of *(fill in the amount of the fine)*: $

b. ☐ Traffic school

c. ☐ Community service *(fill in the number of hours)*:

d. ☐ Other punishment *(describe any other punishment that the court imposed in this case):*

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date:

Type or print name

Signature of appellant or attorney

CR-145 Abandonment of Appeal (Infraction)

Clerk stamps date here when form is filed.

Instructions

- This form is only for abandoning (giving up) an appeal in an **infraction** case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

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

Superior Court of California, County of

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

Trial Court Case Number:

Trial Court Case Name:
The People of the State of California v.

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

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal): _____

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

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

Phone: _____ E-mail: _____

b. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail: _____

Fax: _____

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

3 By signing and filing this form, I abandon/my client abandons that appeal.

Date: _____

_____ ▶ _____

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

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER: ***FOR COURT USE ONLY***
APPELLANT: RESPONDENT:	
RECOMMENDATION FOR APPOINTMENT OF APPELLATE ATTORNEY FOR CHILD (California Rules of Court, Rule 5.661)	

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- A copy must be served on the local district appellate project.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

Form Approved for Optional Use
Judicial Council of California
JV-810 [Rev. January 1, 2017]

Welfare and Institutions Code, § 395(b)(1)
Cal. Rules of Court, rule 5.661
www.courts.ca.gov

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:

1. Trial counsel, court-appointed guardian ad litem for the child under rule 5.662, or the child in the above-captioned case:
   a. Name:
   b. I am the ☐ trial counsel ☐ guardian ad litem ☐ child
   c. Address:
   d. Telephone number:
2. I recommend that an appellate attorney be appointed for the child in this case.
3. The child's best interests cannot be protected without the appointment of counsel on appeal for the following reasons *(check all that apply):*
   a. ☐ An actual or potential conflict exists between the interests of the child and the interests of any respondent.
   b. ☐ The child did not have an attorney serving as his or her guardian ad litem in the trial court.
   c. ☐ The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
      (1) ☐ The child expresses a desire to participate in the appeal; or
      (2) ☐ The child's wishes differ from his or her trial counsel's position.
   d. ☐ The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions.
   e. ☐ The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership.
   f. ☐ Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment.
   g. ☐ The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child.
   h. ☐ The existence of any other factors relevant to the child's best interests *(specify):*
4. State the facts that support your recommendation:

☐ Additional pages attached

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPLICANT)

APPELLATE CASE TITLE:	COURT OF APPEAL CASE NUMBER:

PROOF OF SERVICE

I served a copy of the foregoing *Recommendation for Appointment of Appellate Attorney for Child* on the following by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar:

1. District appellate project
   a. Name and address:

   b. Date of service:
   c. Method of service:

2. Other
   a. Name and address:

   b. Date of service:
   c. Method of service:

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)

1. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date):* be extended to *(date):*

2. I ☐ have ☐ have not received a rule 8.412(d)(1) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB filed on *(date):*

5. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed *(check one):*
   - ☐ a contested hearing
   - ☐ an admission

Form Approved for Optional Use
Judicial Council of California
JV-816 [Rev. January 1, 2017]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.
   (Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: _____
☐ Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)

1. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date):* be extended to *(date):*

2. I ☐ have ☐ have not received a rule 8.412(d)(1) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB filed on *(date):*

5. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   - a. ☐ section 360 (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders ☐ with review of section 300 jurisdictional findings
   - b. ☐ section 366.26
     - ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement

Form Approved for Optional Use
Judicial Council of California
JV-817 [Rev. January 1, 2017]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412, 8.416
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

6. c. ☐ Section 366.28
   d. ☐ Other appealable orders relating to dependency *(specify):*

7. The reasons that I need an extension to file this brief are stated:
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   (Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: _____
☐ Denied

Date: _____

_____
(SIGNATURE OF PRESIDING JUSTICE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS **(California Rules of Court, Rule 8.454)**	CASE NUMBER:

NOTICE

The juvenile court has ordered or denied a specific placement for this child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's placement decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name:
2. Petitioner's address:
3. Petitioner's phone number:
4. Petitioner is
   a. ☐ child's caretaker *(specify dates in your care):*
   b. ☐ child
   c. ☐ county welfare department
   d. ☐ legal guardian
   e. ☐ other *(state relationship to child or interest in the case):*
5. Child's name: Child's date of birth:
6. a. On *(date):* the juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.
   b. On *(date):* the court made a specific placement order or denied a specific placement request that the dependent child is to reside in, be retained in, or be removed from a specific placement. Petitioner intends to file a writ petition to challenge the specific placement order or the denial of a specific placement request made by the court on that date and requests that the clerk assemble the record.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF ☐ PETITIONER ☐ CHILD'S ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person intending to file the writ petition, or, if it is to be filed on behalf of the child, by the child's attorney of record. See the back of this form for more information.

PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES

Form Adopted for Optional Use
Judicial Council of California
JV-822 [Rev. January 1, 2017]

NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD TO REVIEW ORDER DESIGNATING OR DENYING SPECIFIC PLACEMENT OF A DEPENDENT CHILD AFTER TERMINATION OF PARENTAL RIGHTS
(California Rules of Court, Rule 8.454)

Welfare and Institutions Code, § 366.28 Cal. Rules of Court, rule 8.454;
www.courts.ca.gov

HOW DO I CHALLENGE THE COURT'S PLACEMENT DECISION AFTER TERMINATION OF PARENTAL RIGHTS?

- File this *Notice of Intent to File Writ Petition and Request for Record* in the juvenile court within the time listed below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get a copy of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal you must send a copy of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings.

SEE CAL. RULES OF COURT, RULES 8.454–8.456

WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court granted or denied the specified placement, you must file the *Notice of Intent* within 7 days from the date the court granted or denied the specified placement.
- If you were not present in court but were given notice by mail of the court's decision to grant or deny the specified placement, you must file the *Notice of Intent* within 12 days from the date the clerk mailed the notification.
- If the order granting or denying the specific placement was made by a referee not acting as a temporary judge, you must file the *Notice of Intent* within 17 days from the date the court set the hearing.

SIGNATURE ON *NOTICE OF INTENT*

- Must be signed by the person who intends to file the writ petition, *or*
- If petition will be filed on behalf of a child, by the child's attorney, *or*
- The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice. (Cal. Rules of Court, rule 8.450(e)(3).)

COURT OF APPEAL	APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER *(Court will provide)*:

In re the Matter of:

(Name and date of birth of subject child or children)

Petitioners

v.

Superior Court of California, County of

Respondent

Real Party in Interest

FILE STAMP

Superior Court No.

Superior Court No.

☐ Related Appeal Pending

Appellate Court No.

PETITION FOR EXTRAORDINARY WRIT
(California Rules of Court, Rules 8.452, 8.456)

☐ STAY REQUESTED *(see item 11).*

INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

CASE NAME:	CASE NUMBER:

1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
   a. Name:
   b. Address:

   c. Phone number:
   d. E-mail:
2. Petitioner is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ other *(state relationship to child or interest in the case):*

3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children *(specify number of children):* _____
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:

   ☐ Continued in Attachment 3.
4. This petition seeks extraordinary relief from the order of *(name):*

   a. ☐ setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.

      OR

   b. ☐ designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.

      OR

   c. ☐ other *(specify):*

5. The challenged order was made on *(date of hearing):*
6. The order was erroneous on the following grounds *(specify):*

7. a. ☐ Supporting documents are attached.
   b. ☐ Because of exigent circumstances, supporting documents are not attached *(explain):*

8. Summary of factual basis for petition *(Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record):*

☐ Additional pages attached.

CASE NAME:	CASE NUMBER:

9. Points and authorities in support of the petition are attached *(number of pages attached):*

10. Petitioner requests that this court direct the trial court to *(check all that apply):*

a. ☐ Vacate the order for hearing under section 366.26.

b. ☐ Vacate the order designating a specific placement after termination of parental rights under section 366.28.

c. ☐ Remand for hearing.

d. ☐ Order that reunification services be
   ☐ provided ☐ continued.

e. ☐ Order visitation between the child and petitioner.

f. ☐ Return or grant custody of the child to petitioner.

g. ☐ Terminate dependency.

h. ☐ Other *(specify):*

11. ☐ Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

a. Hearing date *(must specify):*

b. Reasons for stay *(specify):*

Additional pages attached.

12. Total number of pages attached:

13 I am the ☐ petitioner ☐ attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ PETITIONER ☐ ATTORNEY)

Address:

Name:

Address:

CDC or ID Number:

(Court)

Petitioner

vs.

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

☐ A conviction ☐ Parole

☐ A sentence ☐ Credits

☐ Jail or prison conditions ☐ Prison discipline

☐ Other *(specify):*

1. Your name:

2. Where are you incarcerated?

3. Why are you in custody? ☐ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections:

c. Name and location of sentencing or committing court:

d. Case number:

e. Date convicted or committed:

f. Date sentenced:

g. Length of sentence:

h. When do you expect to be released?

i. Were you represented by counsel in the trial court? ☐ Yes ☐ No *If yes, state the attorney's name and address:*

4. What was the LAST plea you entered? *(Check one):*

☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other:

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

b. Supporting cases, rules, or other authority *(optional)*:

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. **Ground 2 or Ground** _____ *(if applicable):*

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
   a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
   b. Result: c. Date of decision:
   d. Case number or citation of opinion, if known:
   e. Issues raised: (1)
      (2)
      (3)
   f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
   a. Result: b. Date of decision:
   c. Case number or citation of opinion, if known:
   d. Issues raised: (1)
      (2)
      (3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative review:
   a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

   b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No
   Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

13 a. (1) Name of court:

(2) Nature of proceeding (for example, "habeas corpus petition"):

(3) Issues raised: (a)

(b)

(4) Result (attach order or explain why unavailable):

(5) Date of decision:

b. (1) Name of court:

(2) Nature of proceeding:

(3) Issues raised: (a)

(b)

(4) Result *(attach order or explain why unavailable):*

(5) Date of decision:

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☐ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

▶ _____

(SIGNATURE OF PETITIONER)

SPR16-26

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project)

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 OCBA believes that the proposal appropriately addresses the stated purposes except that no adequate discussion is made of the statutory requirements of such statutes as C.C.P.§269 (which requires all official court reporters to take down the required testimony in shorthand and write out all transcripts in longhand or typewriter or printing machine) and C.C.P.§271 (which requires all "original" transcripts to be on paper). Each of the provisions adding Advisory Committee Comments merely authorize electronic copies to be submitted in an effort to avoid legislative issues over the changes which do not appear statutorily authorized in most instances. The OCBA recommends legislative changes before full implementation.	The committees were mindful, in developing the proposed changes, of the statutory requirements regarding court reporting and reporter's transcripts. With the statutory framework remaining, for now, unchanged, the committees have chosen to take the action allowed under those statutes by proposing changes the standards set in the Rules of Court for the formatting of electronic copies of reporter's transcripts. Code of Civil Procedure section 271, in addition to allowing Judicial Council to set standards for the formatting of electronic copies of reporters' transcripts, also provides that a court entitled to a transcript may request to receive it in computer-readable form. Under proposed rule 8.71(c) (as proposed in SPR16-06, a trial court will be allowed to file any document electronically in a reviewing court – including a copy of a reporter's transcript included as part of the trial court record. The intent of the addition to the Advisory Committee Comments is to encourage trial courts to send all or part of the record electronically by reminding them that this is permitted.
2.	Members of the Orange County Superior Court staff, as relayed by Sheri Bull, Lead Staff, Rules and Forms Committee, Judicial Assistance Group	AM	• Whether the proposal appropriately addresses the stated purpose; *The changes to the forms the Criminal Appellate unit uses (CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145 and MC-275), are minimal with no particular impact. They*	The committees appreciate the careful attention to the proposal of the Orange County Court staff members. The committees note that the proposed amended forms CR-120 and CR-126 were inadvertently omitted from the Invitation to Comment packet as originally posted, but were posted shortly thereafter. Notice was given to the commentator

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

	Commentator	Position	Comment	Committee Response
			all add a line for the appellant to add an Email Address to their contact information or reference the new POS for Electronic Service (APP-109E) created. *We did notice that there are also supposed to be changes made to the felony form CR-120 and the application to extend the filing time form CR-126, however those forms were not provided in the samples attached. However, if the changes are just related to entering an e-mail address, there is no impact.* • Specific comments on newly created subdivision 8.144(a)(4); *Though the proposal to amend these CRC's [stating that under rule 8.72(a), the superior court clerk may send the record....] appears to allow for discretion by our court, if adopted and the responsibility is placed on the courts to ensure that the documents being transmitted to the COA are in proper electronic format as well as text searchable, we believe this will have a substantial impact*	that these forms had been added, and no further comments were received. The changes to those forms were relatively minor: addition of a space for attorney e-mail on CR-120, and on CR-126, removing the words "if available" after "e-mail" and adding a reference to the newly created proof of electronic service. The committees appreciate the concern raised regarding the impact on trial courts of the new formatting requirement for electronic copies of reporters' transcripts. The committees' expectation is that the reporters themselves will be primarily responsible for ensuring that electronic copies of transcripts are in the proper format, just as reporters now are responsible for ensuring that their transcripts meet the otherwise applicable format requirements. The committees further note that if sending the record electronically would be

	Commentator	Position	Comment	Committee Response
			on the trial courts. We believe courts will incur significant costs to convert non-searchable documents by requiring the purchase software and dedicating staff to convert older records. • Specific comments on the change to the advisory committee comments to rules 8.150, 8.336, 8.409, 8.416, 8.450, 8.454, 8.480, 8.482, and 8.1007; and *8.150 – agree with advisory committee comment* *8.336 – agree with the proposed rule changes and advisory committee comments* *8.409 – agree with the proposed rule changes and advisory committee comments* *8.416 – agree with the proposed rule changes and advisory committee comments under subdivision (c)* *8.454 – agree with the proposed rule changes and advisory committee comments*	a significant burden on the trial court – such as when older records would need to be converted – the trial court is not required to send it electronically, and may send it on paper. The committee notes the support of the commentator for these provisions. No response is necessary.

	Commentator	Position	Comment	Committee Response
			under subdivision (i) *8.480 – agree with advisory committee comment* *8.482 – agree with advisory committee comment* *8.613 – agree with most of the proposed rule changes; in subdivision (i) (2), line 1 delete "comply with the" to avoid repetition. See 8.619 subdivision (e) (2). Suggest changing subdivision (i) (3) to read "A computer-readable copy of a sealed transcript must be placed on a separate disk document or electronic file and clearly be labeled as confidential."* *8.619 – agree with advisory committee comment. Suggest changing subdivision (e) (3) to read "A computer-readable copy of a sealed transcript must be placed on a separate disk document or electronic file and*	The committees appreciate the commentator's careful review and recommend that the suggested correction be made to 8.613(i)(2). With regard to the proposed changes to rules 8.613(i)(3) and 8.619(e)(3) regarding computer-readable copies of sealed transcripts, and the general comment regarding the need for the rules to address the handling of confidential documents when they are transmitted electronically, the committees considered taking action on this topic. The committees decided that more time, and more appellate court experience with e-filing, were needed to allow the development of workable, appropriate statewide rules in this area.

	Commentator	Position	Comment	Committee Response
			clearly be labeled as confidential." *8.625 – agree with the proposed rule changes* *8.834 – agree with the proposed rule changes* *8.866 – agree with the proposed rule changes* *8.919 – agree with the proposed rule changes* *8.1007 – agree with advisory committee comment* *10.1028 – agree with the proposed rule changes and advisory committee comments under subdivision (d)* *These changes may be burdensome for Superior Courts as there needs to be consideration of the impact on staff, software to convert documents, procedures and training. In the long run, this will help the Court of Appeals navigate more quickly through documents, the costs associated with obtaining this ability should be considered.* *There is no mention as to the*	The committees appreciate the commentator calling attention to the needs of the Superior Courts as the appellate courts shift to mandatory e-filing. The committees again note that for now, electronic transmission of the record is optional for the Superior Court. The committees hope that this flexibility allows Superior Courts to move at their own pace towards electronically transmitting

	Commentator	Position	Comment	Committee Response
			security level of confidential documents (i.e. psychotropic medication reports, applications, etc...); if implemented, we would need the CRC's to address the handling of confidential documents. • Specific comments on creation of separate proof of service forms for proof of electronic service. *This requires public education on which correct form to use - minimal impact.* The advisory committees also seek comments from *courts* on the following cost and implementation matters: • Would the proposal provide cost savings? *Long term there will be a cost savings as courts will no longer be required to print/copy court records. However, there will be some short term costs associated to implement the changes.* *While cost savings are expected with eService, the overall impact with appellate may be limited as notices are*	the record, without the change presenting a burden. As noted above in response to the comment on rules 8.613 and 8.619, the committees considered action on the topic of how confidential or sealed documents should be handled when they are transmitted electronically. The committees decided that more time, and more appellate court experience with e-filing, were needed to allow the development of workable, appropriate statewide rules in this area. The committees appreciate the commentator's analysis of the potential long term savings and potential short term costs to the Superior Courts.

	Commentator	Position	Comment	Committee Response
			fairly infrequent day to day. To increase usage, it might be helpful to think of solutions to increase acceptance of eService among self-represented litigants. *With regard to electronic records on appeal, our reviewing court – Fourth District Court of Appeal, Division Three – does not yet accept electronic records on appeal. When that time comes, this Court foresees noticeable savings.* • What would the implementation requirements be for courts? *Would require communication to the court reporters of rule changes and its respective effective date. Changes to the court reporters processes would be needed to comply with the proposed changes.* *The court would be required to build an infrastructure to allow for submission of electronic reporter transcripts. Possible changes to case management systems will be needed.* *Some one-time costs to*	The committees' intent is to allow flexibility to the Superior Courts as they move to a system of electronic transmission of the record, and thus to minimize the costs of making this change. As noted above, the committees anticipate that compliance with the new formatting requirements for electronic copies of reporter's transcript will be up to the reporters – and the language was intended to accommodate the current electronic formatting practices of court reporters. The intent

	Commentator	Position	Comment	Committee Response
			purchase OCR software, update procedures and get staff familiar with PDF functionalities. Courts will need to train staff to ensure appeals sent to the COA are in proper format (i.e. clerk or reporter's transcripts). *Minimal regarding posting of new forms and updating of procedures with the new language regarding electronic signature and changing mailed to sent* *This Court is already capable of performing the e-business practices on which the proposed rule changes are based.* • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? *We recommend providing the courts 6 months to implement. This will allow time to purchase OCR software, create procedures, train staff and implement.* *If the Court still has the option to send paper clerk and*	was not to impose new burdens on the Superior Courts or have them convert transcripts to the required format. Electronic transmission of the record, or any part of the record, remains entirely optional for the Superior Courts. The committees hope that this flexibility allows the Superior Courts to implement the changes at their own pace. The committees do not recommend any delay in the effective date of the proposed changes.

	Commentator	Position	Comment	Committee Response
			reporter transcripts, it would provide us with time to implement the necessary changes.	
3.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Request for specific comments on changes to rules: Proposed rule 8.866 (d)(2) states in part: "On request, and unless the trial court orders otherwise, the reporter must provide the reviewing court or any party with a copy of the reporter's transcript in computer-readable format." Code of Civil Procedure section 271 requires a hard-copy original (see proposed addition of Advisory Committee Comment to rule 10.1028), so reporter would not be providing electronic format in lieu of original hard copy. Our court would like to recommend that, upon the request of the court, an electronic original can be provided in lieu of a hard-copy original. This would greatly assist those courts that are moving toward a paperless system. Request for specific comments on creation of separate proof of service forms for proof of electronic service. If a separate proof of service form is to be created, suggest that it have multi-select options for service (e.g., one party served via electronic service and another served via	The committees note the commentator's support for the proposal. The committees note that the statutory requirement in Code of Civil Procedure Section 271 that the original of a reporter's transcript be on paper can only be changed by legislation. The committees appreciate these comments and this suggestion. Under rule 10.22, a proposal for new or modified rules or forms must be circulated for public comment before it is recommended for adoption by the Judicial Council, unless it presents a "nonsubstantive technical change or

	Commentator	Position	Comment	Committee Response
			mail, etc.) to avoid having to create multiple proofs of service. Would the proposal provide cost savings? No – increased costs - additional cost of electronic copy since original must still be in hard-copy (see above).	correction or a minor substantive change that is unlikely to create controversy." Since these suggested changes would be substantive and have not been circulate for public comment, the committee cannot recommend them for adoption at this time. The committees recommend adoption of the new proof of electronic service forms as proposed. When the courts and litigants have had experience with the use of those forms, further changes, such as those suggested, may be considered. The committees believe there may be some cost savings to the Superior Courts and Appellate Courts as Superior Courts may transmit the record to the reviewing court electronically, saving copying and shipping costs and staff time, and allowing more efficient review of the record at the reviewing court.
4.	State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	A	Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) - SPR16-26: The Committee on Appellate Courts supports this proposal. Thank you for your consideration of our comments. **Disclaimer** **This position is only that of the State Bar**	The committees note the commentator's support for the proposal. No response is necessary.

	Commentator	Position	Comment	Committee Response
			of California's Committee on Appellate Courts. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	
5.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) by Claudia Ortega, Senior Analyst Judicial Council and Trial Court Leadership	A	General comment: The proposed changes should be implemented because it is likely that they will provide cost savings and efficiencies. The proposal will assist courts and court users utilizing electronic means of filing. It will also probably speed up processing times, reduce paper and labor costs in producing numerous copies, decrease mailing/shipping costs, and simply the overall processes for transferring information. While the JRS supports this proposal, it cautions against any modifications to the rules and forms that would eliminate the ability to submit paper records to the reviewing court when it is necessary to do so. Regarding the requirement to develop local rules and/or forms: The proposed changes may require some courts to revise their local rules. However, this impact will likely be minimal and courts generally review local rules twice a year at minimum.	The committees note the commentator's support for the proposal. The committees note that the proposal does not mandate that a Superior Court transmit records electronically. Superior Courts can continue to send records in paper form when necessary. The committees do not anticipate that courts will need to revise their local rules in response to the proposed changes.

	Commentator	Position	Comment	Committee Response
			Regarding additional training: Staff training is a necessity with any change, new forms, and new formats. However, some of this training is already taking place given implementation of new case management systems.	The committees agree that necessary staff training with regard to the proposed changes should be minimal.
			Regarding impact on local or statewide justice partners: Stakeholders and the public would need notification of rule changes (e.g., notice via court websites and other distribution methods). However, while there is an impact on justice partners, it is not significant.	The committees agree that the impact on justice partners should be minimal.
			Request for Specific Comments: • Whether the proposal appropriately addresses the stated purpose. Comment: Yes, it appears the proposal addresses the purpose. • Specific comments on newly created subdivision 8.144(a)(4): Comment: As long as the language does not limit the reviewing court's needs for paper copies or documents, this subdivision is a necessary change.	
			• Specific comments on creation of separate proof of service forms for proof of electronic service. Comment: It would seem like a more streamlined process to simply include electronic service as an option on a proof of service form rather than have a totally separate form. It seems more confusing to have a specific form simply because the method of service was different.	The committees considered revising the existing proofs of service for the appellate courts to include proof of electronic service as an option. Because some of the legal requirements regarding service and proof of service are different when a document is served electronically, the committees decided that creation of a separate proof of electronic service would likely be less confusing to parties.
			The advisory committees also seek comments	With regard to implementation requirements and

	Commentator	Position	Comment	Committee Response
			from courts on the following cost and implementation matters: • Would the proposal provide cost savings? Comment: It is likely that cost savings would be achieved by less paper, labor, and mailing costs related to the preparation of documents. • What would the implementation requirements be for courts? Comment: Courts may need to revise local rules, modify training for staff, and make updates to processes and/or case management systems depending upon record of actions that may need to be changed or updated. The public and other stakeholders or justice partners would need to be notified of the changes. • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Comment. No. The JRS requests an implementation period of at least 120 days from council approval to provide the courts with sufficient time to make the necessary case management system changes, changes to court processes, train staff, revise local rules, and inform the public and justice system partners.	time for implementation, most of the proposed changes are minor, and in many cases simply add comments recognizing options open to the courts for electronic transmission of the record. As to the changes to the format of an electronic copy of the reporter's transcript, the intent of the committees was to draft language that would accommodate the current practices of court reporters. The committees believe that the proposed changes allow the Superior Courts flexibility to move at their own pace to electronic transmission of the record to the reviewing court. The committees do not recommend any delay in the effective date of the proposed changes.

Item number: 14

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC-100A)

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

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@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: 16. Information sheets for Small Claims plaintiffs and defendants (forms SC-100 and SC-100-INFO). Revise items in information sheets regarding court interpreters, which are currently incorrect under new law. Consider several other minor changes that have been proposed regarding these two forms over past several years.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Small Claims: Plaintiff's Claim and Information Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms SC-100, SC-100-INFO, and SC-100A

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 31, 2016

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising two small claims forms to conform to the recent change in the law regarding court interpreters in civil cases and further revising these forms and one other small claims form to improve their clarity, consistency with the law, and readability.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise *Plaintiff's Claim and ORDER to Go to Small Claims Court (Small Claims)* (form SC-100) and *Information for the Plaintiff (Small Claims)* (form SC-100-INFO) to conform to recent changes in the law regarding court interpreters in civil cases;

2. Further revise form SC-100 to:

- Add a check box to item 1 on page 2 to specify whether the plaintiff is a payday lender under the California Deferred Deposit Transaction Law, Financial Code section 23000 et seq.;

- Include space for the name and address of the person designated as an agent for service, where the defendant is a business or public entity;

- Add a demand for the return of property, with demand language that conforms to Code of Civil Procedure section 116.320, subdivision (b);

- Conform the declaration that the plaintiff has not filed more than two small claims cases demanding more than $2,500 in the calendar year to section 116.231, subdivision (b);

- Clarify the description of small claims court and to specify the types of plaintiffs that may claim up to $10,000 and those that are limited to $5,000;

- More accurately state the time for filing a notice of appeal;

- clarify that, in the event of settlement, the plaintiff and only the plaintiff must file a request for dismissal with the clerk; and

- More accurately state the law regarding a defendant's claim, including jurisdictional limits and transferability;

3. Further revise form SC-100-INFO to:

    - Add an item advising that, with very limited exceptions, the defendant must be served within the state of California (see Code Civ. Proc., § 116.340);

    - Advise small claims plaintiffs to read *What is "Proof of Service"? (Small Claims)* (form SC-104B) and to add a heading to distinguish information regarding timing and proof of service from the prior section on substituted service; and

    - More accurately describe when a defendant can file a motion to transfer the plaintiff's claim out of small claims court; and

4. Revise *Other Plaintiffs or Defendants (Attachment to Plaintiff's Claim and ORDER to Go to Small Claims Court) (form SC-100A)*, the attachment form to be used for listing additional plaintiffs or defendants, to include space for the name and address of the person designated as an agent for service, where the defendant is a business or public entity.

The revised forms are attached at pages 9–16.

Previous Council Action

The Judicial Council adopted form SC-100 and the predecessor to form SC-100-INFO in 1977 and has subsequently revised both forms numerous times to reflect statutory changes, add and revise pertinent information, and make them easier for small claims litigants to understand and use.[1] The interpreter instructions on both of these forms were most recently revised effective January 1, 2008, to clarify that the court is not required to provide an interpreter for free unless the small claims party qualifies for a fee waiver, citing *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412.

The Judicial Council adopted form SC-100A in 2005 and most recently revised it to make technical changes, effective January 1, 2007.

Rationale for Recommendation

Court interpreter instructions

Both *Plaintiff's Claim and ORDER to Go to Small Claims Court* (form SC-100) and *Information for the Plaintiff* (form SC-100-INFO) include instructions regarding court interpreters for parties who need language assistance. Currently both forms indicate that a fee will be charged for the interpreter if no fee waiver has been granted in the action. (See "What if I don't speak English well" on page 4 of form SC-100 and "Interpreters" on page 2 of form SC-100-INFO.) These provisions were added to the small claims forms to reflect statutes that previously required courts to charge for court interpreters in civil matters and case law stating that courts could provide a free court interpreter for an indigent small claims party who needed one, and should do so if an interpreter was available. (See Government Code sections 26806 and 68092 and *Gardiana, supra*, 59 Cal.App.3d at p. 412.)

Evidence Code section 756, which was enacted effective January 1, 2015, now prohibits courts from charging parties for court interpreters in civil cases. Section 756 also identifies the civil case types to be given preference for receiving court interpretation services in the event that funding is insufficient for courts to provide interpreters in all civil cases. (Evid. Code, § 756, subds. (b), (d).) Small claims cases are not among the case types receiving top priority for court interpreter services. The Small Claims Act, however, specifically contemplates interpreters and language assistance. Code of Civil Procedure section 116.550 provides that (1) if an interpreter is unavailable at the first scheduled hearing, the court is to continue the hearing so the litigant may bring someone (not an attorney) with him or her for language assistance; and that (2) the court is to make a reasonable effort to maintain and make available to parties a list of interpreters. The Information for the Defendant on form SC-100 reflects section 116.550, informing the defendant

[1] The small claims information sheet was adopted as form SC-150. The Judicial Council revoked form SC-150 and adopted form SC-100-INFO, which contained nearly identical text and formatting, effective July 1, 2010.

that he or she may have one postponement of the trial date if he or she needs more time to get an interpreter.

To comply with the new legislation, the committee recommends removing references to fees for interpreters and fee waivers because courts can no longer charge for interpreter services. In addition, the committee recommends changing the order of information provided in this section to first advise small claims litigants to ask about the availability of a court-provided interpreter, while also cautioning that an interpreter might be unavailable. Litigants are then advised that, alternatively, they may bring an adult who is not a witness or an attorney to interpret for them and that they may ask the court for a list of interpreters for hire.

Other recommended revisions to forms SC-100[2] and SC-100-INFO

Because the forms must be amended to conform them to the recent changes in the law, the committee is also taking this opportunity to recommend the following additional revisions to forms SC-100 and SC-100-INFO to improve their clarity, consistency with the law, and readability. The recommended revisions to SC-100 are:

- **Payday Lender**
  Adding a check box to item 1 on page 2 to specify whether the plaintiff is a payday lender under the California Deferred Deposit Transaction Law, Financial Code section 23000 et seq. Identification of a payday lender claimant will make it easier for courts to enforce Financial Code section 23036(d), which prohibits treble damages under Civil Code section 1719 based on a deferred deposit transaction.

- **Name and Address of the Agent for Service of Process**
  Revising the defendant's information, item 2 on page 2, to include space for the name and address of the person designated as an agent for service, where the defendant is a business or public entity. The attachment form to be used for listing additional defendants, *Other Plaintiffs or Defendants* (form SC-100A), is similarly revised.

- **Demand Requirement**
  Adding to item 4 on page 3 a sentence referring to a demand for the return of property to make the demand language consistent with Code of Civil Procedure section 116.320, subdivision (b), which provides that the small claims form must state that "the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property. . . ." This proposed revision also makes form SC-100 consistent with form SC-100-INFO.

[2] Both forms SC-100 and SC-100-INFO also contain other minor, nonsubstantive revisions to improve clarity and readability or to correct grammar and syntax.

- **Number of Small Claims Filed in a Calendar Year**
  Revising the declaration that the plaintiff has not filed more than two small claims cases demanding more than $2,500 in the calendar year (item 11 on page 3) to conform to section 116.231, subdivision (b), which requires the plaintiff to make this declaration only if the *current* claim demands more than $2,500.

- **Description of Small Claims Court**
  Revising the description of small claims court, which is the first item on the Information for the Defendant section of the form, beginning at page 4, for clarity, for accuracy, and to eliminate a misplaced modifier.[3] The proposed revision specifies the types of plaintiffs that may claim up to $10,000 and those that are limited to $5,000.

- **Time to File Notice of Appeal**
  Revising the first bullet point under the heading **What if I lose the case?** to more accurately state the time for filing a notice of appeal. Under section 116.750(b), a notice of appeal must be filed not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment to the parties.

- **Instructions Regarding Settlement and Dismissal**
  Revising the item entitled **Settle your case before the trial** to clarify that, in the event of settlement, the plaintiff must be the one to file a request for dismissal with the clerk. There is no small claims form for dismissals, so the proposed revision also specifies that the plaintiff should file the general civil form, *Request for Dismissal* (form CIV-110).

- **Defendant's Claim**
  Revising the item entitled **Sue the person who is suing you** to more accurately state the law regarding a defendant's claim. The proposed revision advises defendants regarding (1) the options to file a claim that exceeds the small claims jurisdictional limit in small claims court and waive the excess or file it in the appropriate court for the full value of the claim, (2) the option to move to transfer the plaintiff's claim under appropriate circumstances, and (3) where on the form to find information regarding small claims jurisdictional limits. The revised language is consistent with that provided to plaintiffs on form SC-100-INFO at page 2 under the heading **What if the defendant also has a claim?**

The other recommended revisions to form SC-100-INFO, *Information for the Plaintiff* are:

- **Some Rules About the Defendant (including government agencies)**
  Adding item 3 to this section to advise that, with very limited exceptions, the defendant must be served within the state of California. (See Code Civ. Proc., § 116.340.)

[3] Note that the *Information for the Defendant* section of the form is also provided in Spanish on the same form; revisions to the English section of the form will also be made to the Spanish section.

- **How Does the Defendant Find Out About the Claim?**
  Adding a sentence to advise small claims plaintiffs to read *What is "Proof of Service"?* (form SC-104B), and adding heading number 5 to distinguish information regarding timing and proof of service from the prior section on substituted service.

- **What If the Defendant Also Has a Claim?**
  Revising this section to more accurately describe when a defendant may file a motion to transfer the plaintiff's claim out of small claims court. The revision is consistent with the revised language on form SC-100 at page 4, in the section titled **Sue the person who is suing you**.

Comments, Alternatives Considered, and Policy Implications

The proposed revisions to forms SC-100, SC-100-INFO, and SC-100A were circulated for public comment between April 15 and June 14, 2016, as part of the regular spring 2016 comment cycle. Seven individuals or organizations submitted comments on the proposal. One commentator agreed with the proposal, five agreed if the proposal is modified, and one did not state a position but submitted specific comments. Commentators included the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, three superior courts, one judicial officer, one State Bar committee, and one county bar association.

A chart with the full text of all comments received and the committee's responses is attached at pages 17–26. The main substantive comments are discussed below.

Comments on court interpreter provisions

Both the Superior Court of Los Angeles County and the Joint Rules Subcommittee objected to the proposed language of the revised interpreter provision on page 4 of form SC-100 and requested that individual courts be allowed to insert their own local court procedure into that section. The committee concluded that a consistent statement regarding court interpreters was preferable to allowing the insertion of differing local court procedures, particularly given that the law and rules pertaining to court reporters are being examined by the Language Access Plan Implementation Task Force and may change in the near future.

Alternatively, the commentators requested that the text of the item be changed to read: "Ask the ~~civil or small claims~~ court clerk ~~for an interpreter as far in advance of your court date as possible~~ if your court has a court-provided interpreter and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for your or ask the court for a list of interpreters for hire."

The committee recommended accepting the proposed changes to the text, but with modifications to read: "Ask the court clerk <u>as soon as possible</u> if your court has a court-provided interpreter <u>available</u> and how to request one. A court-provided interpreter may not be available.

Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire."

The committee concluded that it was important to advise small claims litigants to request an interpreter in advance. There is no rule or statute that specifies a time frame, but to avoid small claims litigants requesting an interpreter for the first time when the come to court for trial, the committee recommended adding the phrase "as soon as possible." Similarly, the committee recommended adding the word "available," since what is at issue is the availability of an interpreter. Removing the word "available," along with underlining the word "if" for emphasis could suggest that the court does not have interpreters at all.

Finally, another commentator suggested specifying that an adult brought by the small claims litigant to serve as an interpreter should not be an attorney. The committee discussed this suggestion, considered different phrasing options, and recommends this change.

Other comments

Clarify which business-entity defendants have agents for service of process. The commissioner and the county bar association raised the point that form SC-100 is unclear regarding which business entities are required to have an agent for service. The committee agreed with clarifying this item on both form SC-100 and form SC-100A and recommends revising the forms to indicate that an agent must be specified for defendants that are corporations or limited liability companies.

Consider whether form SC-100 and/or form SC-100A should provide space for two defendants. Form SC-100 and form SC-100A, as revised by the committee, provide space to list two plaintiffs and one defendant. The current forms provide space for two defendants, but with the revisions proposed by the committee, one of those spaces would be used for the defendant's agent for service of process. The invitation to comment asked specifically whether form SC-100 and/or form SC-100A should be made a page longer to allow space for an additional defendant's name and address.

Comments on this question were mixed. Several commentators said not to add a page: the Superior Court of Los Angeles County, Joint Rules Subcommittee, commissioner, and county bar association. Several indicated that multiple defendants are more common than multiple plaintiffs: the Superior Courts of Riverside and San Diego Counties and the county bar association (which also suggested gathering more data on this point). The Superior Courts of Riverside and San Diego Counties suggested adding a page to the forms to list more defendants. The State Bar committee expressed no opinion.

The committee decided both forms should be kept at their current length, i.e., not made a page longer to allow space for another defendant.

Alternatives Considered

In addition to the alternatives considered in response to the public comments, the committee considered the alternative of not changing the forms. This alternative was not pursued because the court interpreter instructions no longer comply with the law.

Implementation Requirements, Costs, and Operational Impacts

This proposal will impose a need for training of court clerks, staff, and judicial officers regarding the new information to be found on the forms. It will also impose a cost in producing or procuring new forms. As a result of these revisions, the advisory committee expects that courts will save staff time in explaining formerly confusing provisions and clarifying small claims procedures and in determining the identity of appropriate agents for service. At the same time, litigants will benefit from forms that are more accurate, informative, and readable.

Attachments

1. Judicial Council forms SC-100, SC-100-INFO, and SC-100A, at pages 9–16
2. Chart of comments, at pages 17–26

SC-100 Plaintiff's Claim and ORDER to Go to Small Claims Court

Clerk stamps date here when form is filed.

DRAFT

8/17/16

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Case Name:

Notice to the person being sued:

- You are the defendant if your name is listed in (2) on page 2 of this form. The person suing you is the plaintiff, listed in (1) on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en (2) de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en (1) de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in (1) and (2) must go to court: *(Clerk fills out section below.)*

Trial Date →

	Date	Time	Department	Name and address of court, if different from above
1.				
2.				
3.				

Date: _____ Clerk, by _____, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- *Before* you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to *www.courts.ca.gov/smallclaims/forms.*
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.

Plaintiff *(list names):*

Case Number:

1 The plaintiff (the person, business, or public entity that is suing) is:

Name: _____ Phone: _____

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

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

If more than one plaintiff, list next plaintiff here:

Name: _____ Phone: _____

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

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

☐ *Check here if more than two plaintiffs, and attach form SC-100A.*

☐ *Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103.*

☐ *Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code section 23000 et seq.*

2 The defendant (the person, business, or public entity being sued) is:

Name: _____ Phone: _____

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

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

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: _____ Job title, if known: _____

Address: _____ _____ _____ _____
Street *City* *State* *Zip*

☐ *Check here if your case is against more than one defendant, and attach form SC-100A.*

☐ *Check here if any defendant is on active military duty, and write his or her name here:* _____

3 The plaintiff claims the defendant owes $ _____ *. (Explain below):*

a. Why does the defendant owe the plaintiff money?

_____

_____

When did this happen? *(Date):* _____

b. If no specific date, give the time period: *Date started:* _____ *Through:* _____

c. How did you calculate the money owed to you? *(Do not include court costs or fees for service.)*

_____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.*

Plaintiff *(list names):*

Case Number:

4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?

☐ Yes ☐ No If no, explain why not:

5 Why are you filing your claim at this courthouse?

This courthouse covers the area *(check the one that applies):*

a. ☐ (1) Where the defendant lives or does business.
(2) Where the plaintiff's property was damaged.
(3) Where the plaintiff was injured.
(4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant *or* where the defendant lived or did business when the defendant made the contract.

b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. *(Code Civ. Proc., § 395(b).)*

c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). *(Civ Code, § 1812.10.)*

d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. *(Civ Code, § 2984.4.)*

e. ☐ Other *(specify)*:

6 List the zip code of the place checked in 5 above *(if you know):*

7 Is your claim about an attorney-client fee dispute? ☐ Yes ☐ No
If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here: ☐

8 Are you suing a public entity? ☐ Yes ☐ No
If yes, you must file a written claim with the entity first. ☐ A claim was filed on *(date):*
If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?
☐ Yes ☐ No *If yes, the filing fee for this case will be higher.*

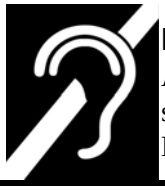
10 Is your claim for more than $2,500? ☐ Yes ☐ No
If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than $2,500 in California during this calendar year.

11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: _____ _____ ▶ _____
Plaintiff types or prints name here *Plaintiff signs here*

Date: _____ _____ ▶ _____
Second plaintiff types or prints name here *Second plaintiff signs here*



Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, *Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)*

SC-100 Information for the defendant (the person being sued)

"Small claims court" is a special court where claims for $10,000 or less are decided. Individuals, including "natural persons" and sole proprietors, may claim up to $10,000. Corporations, partnerships, public entities, and other businesses are limited to claims of $5,000. (See below for exceptions.*) The process is quick and cheap. The rules are simple and informal. You are the *defendant*—the person being sued. The person who is suing you is the *plaintiff*.

Do I need a lawyer? You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court? You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at *www.courts.ca.gov/smallclaims/prepare.*

What if I need an accommodation? If you have a disability or are hearing impaired, fill out form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/ Access Coordinator.

What if I don't speak English well? Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.

Where can I get the court forms I need? Go to any courthouse or your county law library, or print forms at *www.courts.ca.gov/smallclaims/forms.*

What happens at the trial? The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case? If you lose, you may appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file form SC-140, *Notice of Appeal*. You must file within 30 days after the clerk hands or mails you the judge's decision (judgment) on form SC-200 or form SC-130, *Notice of Entry of Judgment*.
- If you were *not* at the trial, fill out and file form SC-135, *Notice of Motion to Vacate Judgment and Declaration,* to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File form SC-140.

For more information on appeals, see *www.courts.ca.gov /smallclaims/appeals.*

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the plaintiff agree on how to settle the case, the plaintiff must file form CIV-110, *Request for Dismissal*, with the clerk. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done so.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To have the court order a witness to go to the trial, fill out form SC-107 (*Small Claims Subpoena*) and have it served on the witness.
- **Sue the person who is suing you.** If you have a claim against the plaintiff, and the claim is appropriate for small claims court as described on this form, you may file *Defendant's Claim* (form SC-120) and bring the claim in this action. If your claim is for *more* than allowed in small claims court, you may still file it in small claims court if you give up the amount over the small claims value amount, or you may file a claim for the full value of the claim in the appropriate court. If your claim is for more than allowed in small claims court *and* relates to the same contract, transaction, matter, or event that is the subject of the plaintiff's claim, you may file your claim in the appropriate court and file a motion to transfer the plaintiff's claim to that court to resolve both matters together. You can see a description of the amounts allowed in the paragraph above titled **"Small claims court."**
- **Agree with the plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the plaintiff what he or she is asking for plus court costs. If this happens, the plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial), *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county), *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

Need help?

Your county's Small Claims Advisor can help for free.

Or go to *www.courts.ca.gov/smallclaims/advisor.*

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

This page intentionally left blank.

Page 4 provides the *Information for the Defendant* section of the form in Spanish. Any changes to the English version will also be made to the Spanish version.

SC-100A Other Plaintiffs or Defendants

Case Number:

☐ This form is attached to form SC-100, item 1 or 2.

1 If more than two plaintiffs (person, business, or entity suing), list their information below:

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address *(if different)*: _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? ☐ Yes ☐ No *If yes, attach form SC-103.*

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address *(if different)*: _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? ☐ Yes ☐ No *If yes, attach form SC-103.*

☐ *Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.*

2 If more than one defendant (person, business, or entity being sued), list their information below:

Other defendant's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address *(if different)*: _____

City: _____ State: _____ Zip: _____

If this defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process:

Name: _____ Job title, if known: _____

Address: _____

City: _____ State: _____ Zip: _____

☐ *Check here if your case is against more than two defendants, and fill out and attach another form SC-100A.*

3 Is your claim for more than $2,500? ☐ Yes ☐ No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than $2,500 in California during this calendar year.

4 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

Date:

_____ ▶ _____

Type or print your name *Sign your name*

INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

SC-100-INFO

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of, and some general information about, the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff.** The person who is sued is the **defendant.** In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than $5,000 if you are a business or public entity or for more than $10,000 if you are a natural person (including a sole proprietor). *(See below for reference to exceptions.*)* If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over the limit. You cannot, however, file more than two cases in small claims court for more than $2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem.** This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
2. A person who sues in small claims court must first make a **demand**, if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court. **You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
4. If a corporation files a claim, an employee, an officer, or a director must act on its behalf. If the claim is filed on behalf of an association or another entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or another entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear,* form SC-109.)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue.** Check the court's local rules if there is more than one court location in the county handling small claims cases. If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard. The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken; or
5. For a retail installment account or sales contract or a motor vehicle finance sale:
   a. Where the buyer lives;
   b. Where the buyer lived when the contract was entered into;
   c. Where the buyer signed the contract; or
   d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name.* If the defendant is a business or a corporation and you do not know the exact legal name, check with the state or local licensing agency, the county clerk's office, or the Office of the Secretary of State, Corporate Status Unit, at *www.ss.ca.gov/business*. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.
3. With very limited exceptions, the defendant must be served within the state of California.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process.** This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF.** You should read form SC-104B, *What is "Proof of Service"?* Here are four ways to serve the defendant:

1. **Service by a law officer**—You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server**—You may ask anyone who is *not a party* in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will serve papers for a fee. You may also ask a friend or relative to do it.
3. **Certified mail**—You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service**—This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

* Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc., § 116.220(c).)

Form Adopted for Mandatory Use
Judicial Council of California
SC-100-INFO [Revised January 1, 2017]

INFORMATION FOR THE PLAINTIFF
(Small Claims)

Code of Civil Procedure,
§§ 116.110 et seq.,116.220(c), 116.340(g)
www.courts.ca.gov

4. **Substituted service** *(continued)* A copy of your claim must be left at the defendant's business with the person in charge, **OR** at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.

5. **Timing and proof of service**—No matter which method of service you choose, the defendant must be served by a certain date, or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.

   The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant)** will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim.* The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than $5,000, or $10,000 if the defendant is a natural person *(see exceptions on page 1*).* If the value of the claim is more than this amount, the defendant may either give up the amount over $5,000 or $10,000 and sue in the small claims court or sue in the appropriate court for the full value of the claim. If the defendant's claim relates to the same contract, transaction, matter, or event that is the subject of your claim and exceeds the value amount for small claims court, the defendant may file the claim in the appropriate court and file a motion to transfer your claim to that court to resolve both claims together.

The defendant's claim must be served on the plaintiff at least *five days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *one day* before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily, or you may ask the clerk to issue a **subpoena.** A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order before the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130 or SC-200).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and is owed the money is called the **judgment creditor.** The party who loses the case and owes the money is called the **judgment debtor.** Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment*. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

1. **Lawyers**—Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by lawyers.
2. **Interpreters**—If you do not speak English well, ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.
3. **Waiver of fees**—The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court**—If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays.**
5. **Parties who are in jail**—If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations**—If you have a disability and need assistance, immediately ask the court to help accommodate your needs. If you are hearing impaired and need assistance, notify the court immediately.
7. **Forms**—You can get small claims forms and more information at the California Courts Self-Help Center website *(www.courts.ca.gov/smallclaims),* your county law library, or the courthouse nearest you.
8. **Small claims advisors**—The law requires each county to provide assistance in small claims cases free of charge. *(Small claims advisor information):*

SPR16-08
Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC- 100A)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
1.	Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	AM	The proposal does adequately address the problems discussed; as to adding a page to allow for additional Defendants, I think the form could just prompt someone to add an additional page to add an additional Defendant(s). Prompting small claims litigants to ask a clerk for an interpreter will be futile in our court, and I suspect is the same for other courts. Plus, we are already operating with a bare bones staff in small claims due to budgetary constraints, while at the same time implementing Tyler/Odyssey, so instructing litigants to ask clerks about interpreters will add unnecessary time challenges to our overworked clerks. Now as for specific comments as to form revisions: 1. SC-100 item 1, 2nd check box down: Plaintiffs need MORE direct prompting b/c they always skip over this and cause me or my clerk to devote a lot of our time trying to figure out Plaintiff's actual name and status: it could be made more clear that if Plaintiff is a "DBA" corporation or LLC, it MUST attach SC-103. Currently, no one attaches the SC-103. 2. SC-100 item 2 re: who should be served for a Defendant business: a Plaintiff may not know "job title" and shouldn't be required to know. If it's a corp or LLC, then we should ask Plaintiff	The committee thanks the commentator for her responses and notes her general agreement with the proposal if modified. A number of the suggested modifications have been made. The committee appreciates this feedback and is aware of concerns around instructing litigants to ask about the availability of an interpreter. The committee has modified the proposed language regarding requesting an interpreter. The committee appreciates this input. A number of issues pertaining to parties that are business entities have been raised and will be considered together by the committee at a future time. The committee appreciates this feedback, and has modified the item to request a job title, "if known" and to specify that an agent should be identified for defendants that are corporations and limited

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

	Commentator	Position	Comment	DRAFT Committee Response
			to list name and address for agent for service.	liability companies.
			3. SC-100 item 4- small claims court lacks injunctive relief unless there is a specific statute authorizing such, so I wouldn't put the "ask for your property back first" blurb proposed.	The committee notes the suggestion and has decided to keep the proposed language. (See §§ 116.220(a)(5), 116.320(b).)
			4. SC-100 item 7- I know this will turn the form into an additional page, but if it becomes such anyway based on other comments, then attorneys filing should be prompted here to ATTACH PROOF that their former client/Defendant was served with the State Bar mandated notice of arbitration at least 30 days prior to the small claims action being filed. It is shocking how many attorneys file in small claims for uncollected fees and don't know about the arbitration notice requirement.	The committee notes this suggestion and will retain it to consider at a future time.
			5. SC-100 page 4 "What if I don't speak English well" - based on a lot of prior experience, we should instruct that the interpreter should not be an attorney and it should be someone neutral. I have A LOT of personal injury/auto collision cases where Plaintiff brings an attorney or paralegal from the PI law firm to interpret for them.	The committee agrees with advising that the interpreter should not be an attorney and has made the change. (See § 116.550.)
			SC-100 INFO - At the bottom left of the page under item 2 "process server"- SRLs don't understand what "personally give" means. They think leaving papers on the porch or under the window wipers on the car is "personal giving."	Revising the section regarding service would be a substantive change that is beyond the scope of the proposal. The suggestion will be retained for future consideration.

	Commentator	Position	Comment	DRAFT Committee Response
			So it would be good to be clear: "put papers in Defendant's hands", or "hand papers to Defendant" or "it doesn't count as service if you just have papers left at Defendant's door or on their windshield."	
2.	Orange County Bar Association by Todd G. Friedland, President	AM	The OCBA believes that generally the proposal appropriately addresses its stated purposes provided the following changes are made: (1) statistics from the Court (or advice) should be provided as to whether it is more common to have either more than one Plaintiff or more than one Defendant so the form contains the most applicable option; some members of the OCBA believe that the form should be modified to delete one extra Plaintiff and include more than one Defendant because such is more prevalent; (2) paragraph 3 of Form SC-100 only allows for recovery of money and should be modified to allow for the non-monetary options of C.C.P. §116.220; and (3) the language of Form SC-100 at paragraph 2 and Form SC-100–INFO concerning "Rules about the Defendant" are confusing and misleading since only LLC's, corporations, LLP's, and certain other "entities" are required to have agents for service; a business sole proprietorship or partnership for instance does not require an agent.	The committee thanks for the commentator for these responses and notes the commentator's general agreement with the proposal if modified. The committee appreciates this feedback on its question. The committee has decided not to modify the proposed revisions at this time, but will reconsider this issue in the future if indicated. The committee notes this suggestion and will retain it for consideration in the near future. It is outside the scope of the current proposal. The committee appreciates this feedback, and has modified the item to specify that an agent should be identified for defendants that are corporations, limited liability companies, and public entities.

SPR16-08
Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC- 100A)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			The forms should not be increased by another page and use of form SC-100A limited to one page appears prudent.	The committee appreciates the response to this question.
3.	State Bar of California's Standing Committee on the Delivery of Legal Services by Phong S. Wong, chair	A	Does the proposal appropriately address the stated purpose? Yes. The previous form was not consistent with current law and was potentially misleading as to whether the litigant had to file a request for an interpreter at least five days in advance. The changes in this form are an incremental, but necessary step, in the right direction. Should either or both form SC-100 or form SC-100A be made a page longer in order to allow space for an additional defendant name and address to be included on the forms? See discussion at footnotes 2 and 3. SCDLS has no strong feelings, so the forms as currently proposed seem appropriate.	The committee appreciates this feedback and notes the commentator's agreement with the proposal.
	Superior Court of Los Angeles County	AM	Suggested modifications: Form SC-100 We suggest that form SC-100 remain at its current length of 5 pages. Otherwise, plaintiffs who currently name only one defendant would have to file a 6-page form unnecessarily. Under "What if I don't speak English well?" The current language creates an expectation that the court will provide an interpreter and this is problematic for the court and misleading to our	The committee thanks for commentator for its suggestions and notes its agreement with the proposal if modified. The committee agrees with the suggestion to keep the form at five pages. The committee acknowledges the commentator's concerns with the revised language of this section and has considered a number of options. With modifications, the committee has accepted the

	Commentator	Position	Comment	DRAFT Committee Response
			customers. Unfortunately, not all courts have interpreters available in Small Claims at this time, and those that do, cannot provide one in every case. In addition, some courts have an automated request system in place, and this would be a good place to inform customers of its availability. We request that individual courts be allowed to insert their own local court procedure into this section. If this is not possible, at least change the section to read: "Ask the court clerk if your court has a court-provided interpreter and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for you or ask the court for a list of interpreters for hire."	commentator's alternative proposed language. ("Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.")
			SC-100 INFO, under "How Does the Defendant Find Out About the Claim?" Number 3 currently states: "Certified Mail – You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned by the court. Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out of state defendants."	The committee thanks the commentator for this suggestion and will retain it for future consideration.

SPR16-08
Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC- 100A)
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			CCP 116.340 (1) states that, "The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt." (Emphasis added.) The use of "must" in the last sentence implies incorrectly that the clerk must provide this service. We suggest changing this to: "Certified Mail - You cannot serve by certified mail except in motor vehicle accidents involving out of state defendants. In some jurisdictions, the court may perform this mailing for a fee. If you do ask the clerk to serve by certified mail, you should check back with the court before the hearing to see if the receipt for certified mail was returned to the court."	
	Superior Court of Riverside County by Marita Ford, Senior Management Analyst	N/I	Form SC-100 should be made a page longer to provide more room for additional named defendants. Another suggestion would be include on all Judicial Council forms an area that the litigant must identify if they need an interpreter with a 'yes' or 'no' box under their name and address. This would provide advance notice to the court of the possible need for an interpreter.	The committee thanks the commentator for this feedback. The committee has decided not to make the form a page longer at this time, but will reconsider this issue in the future if indicated. In light of action by the Language Access Plan Implementation Task Force, the committee has deferred action on this issue and will consider it in the future if appropriate.
	Superior Court of San Diego County by Michael M. Roddy	AM	Q: Should either or both form SC-100 or form SC-100A be made a page longer in order to allow space for an additional defendant name and address to be included on the forms? Yes, the vast majority of small claims cases involve	The committee appreciates the commentator's responses to the questions presented, and notes its agreement with the proposal if modified. The committee has decided not to make the form a page longer at this time, but will reconsider this

	Commentator	Position	Comment	DRAFT Committee Response
			more than one defendant.	issue in the future if indicated.
			Q: Would the proposal provide cost savings? No. It will actually increase staffing costs because more staff time will be needed to explain & work with parties who are filing the forms.	The committee acknowledges that there may be some initial implementation requirements, but is confident that, in the long run, the revised forms will reduce costs by clarifying the law for litigants.
			Q: What are implementations requirements for courts? Updating case management systems with updated forms & testing those changes. Updating training materials and training effected staff.	The committee thanks the commentator for taking the time to explain its implementation issues.
			Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Unsure. Our forms are loaded into our CCMS system and it will take several months for our IT staff to have the time to upload, test and implement them.	The committee thanks the commentator for taking the time to explain its position regarding implementation timing.
			Q: How well would this proposal work in courts of different sizes? It seems like the larger the court, the more staff & public would be effected, thereby increasing implementation costs.	The committee thanks the commentator for opining on this issue.
			SC-100 Comments: Re: Item 2: It is more likely that a claim will contain multiple defendants, then the plaintiff will know and/or complete the person authorized for service for a business/entity.	The committee appreciates this feedback on its question. The committee has decided not to modify the proposed revisions at this time, but will reconsider this issue in the future if indicated.

SPR16-08
Small Claims: Plaintiff's Claim and Information Forms (revise forms SC-100, SC-100-INFO and SC- 100A)
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			Propose moving and incorporating language in item 10 re: $2,500 into item 3. Including the information in the item where the plaintiff indicates the amount he or she is seeking seems clearer. Changes to some of the forms should be effective sooner than January 1, 2017, as currently proposed. For example, the current version of the SC-100 INFO form says there may be a fee for using a court interpreter, which is no longer allowed; therefore, the changes should go into effect sooner (e.g., July 1, 2016) rather than later (January 1, 2017).	The committee thanks the commentator and has considered this suggestion. The committee decided the placement of item 10 will remain unchanged as it highlights this statutory requirement. The committee appreciates this comment and that the law regarding charging for a court interpreter has already changed. However, the committee is not able to alter the time frame for the revised forms to take effect.
	Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee Joint Rules Subcommittee	AM	Form SC-100 We suggest that form SC-100 remain at its current length of 5 pages. Otherwise, plaintiffs who currently name only one defendant would have to file a 6-page form unnecessarily. Under "What if I don't speak English well?" The current language creates an expectation that the court will provide an interpreter and this is problematic for the court and misleading to our customers. Unfortunately, not all courts have interpreters available in Small Claims at this time, and those that do, cannot provide one in every case. In addition, some courts have an automated request system in place, and this would be a good place to inform customers of its availability. We request that individual courts be allowed to insert their own local court procedure into this section.	The committee thanks for commentator for its suggestions and notes its agreement with the proposal if modified. The committee agrees with the suggestion to keep the form at five pages. The committee acknowledges the commentator's concerns with the revised language of this section and has considered a number of options. With modifications, the committee has accepted the commentator's alternative proposed language. ("Ask the court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney to interpret for you or ask the court for a list of interpreters for hire.")

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			If this is not possible, at least change the section to read: "Ask the court clerk if your court has a court-provided interpreter and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness to interpret for you or ask the court for a list of interpreters for hire."	
			SC-100 INFO, under "How Does the Defendant Find Out About the Claim?" Number 3 currently states: "Certified Mail – You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court before the hearing to see if the receipt for certified mail was returned by the court. Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out of state defendants." CCP 116.340 (1) states that, "The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt." The use of "must" in the last sentence implies that the clerk must provide this service. We suggest changing the last sentence to, "Service by certified mail may not be done by you except in motor vehicle accident cases involving out of state defendants."	The committee thanks the commentator for this suggestion and will retain it for future consideration.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and AT-138/EJ-125)

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

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@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: 17. Order of examination of judgment debtor. Revise form SC-134, Application and Order to Produce Statement of Assets and to Appear for Examination to correct inconsistency in items (one item stating it "may" be served by a registered process server, etc., while the instruction says it "must" be so served). At same time add information concerning impact of service by law enforcement. Lack of such information leads to small claims judgment creditors making futile requests for bench warrants due to inadequate service, resulting in expense to parties and extra hearings for court. Consider revising form AT-138/EJ-125, the parallel form for other types of civil cases, which also lacks any notice of the consequence if service is not made by a law enforcement officer.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Civil Practice and Procedure: Order of Examination

Rules, Forms, Standards, or Statutes Affected
Revise forms SC-134 and AT-138/EJ-125

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 24, 2016

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising the forms used to order examination of a judgment debtor to clarify in the instructions that, to be enforceable by the court, the order must be served by a law enforcement officer or a registered process server. This proposal, based on a suggestion from a superior court commissioner who handles small claims cases, will assist litigants and eliminate needless appearances by judgment creditors seeking court enforcement of orders that were not served in this manner and therefore are unenforceable.

The committee also recommends revisions to these forms to improve clarity and readability.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise *Application and Order to Produce Statement of Assets and Appear for Examination* (form SC-134), used in small claims cases, and *Application and Order for Appearance and Examination* (form AT-138/EJ-125), the parallel form used in civil actions generally, to

clarify in the instructions that, although service may be completed by any means proper for serving a summons, to be enforceable by the court service *must* be effected by a sheriff, marshal, or a registered process server;

2. Further revise forms SC-134 and AT-138/EJ-125 to add instructions for those who are hard of hearing regarding requesting accommodations for a court appearance;

3. Further revise form SC-134 by reorganizing the top of the first page to allow space for file-stamping; adding a parenthetical statement to explain that the judgment debtor should have provided the statement of assets within 30 days after service of notice of entry of the judgment; and reformatting item 2 and reorganizing the instructions on the second page for clarity and readability; and

4. Further revise form AT-138/EJ-125 to delete a requirement in the box on the second page titled "Appearance of a Third Person (Enforcement of Judgment)" that the description of the property must be made "using typewritten capital letters."

The revised forms are attached at pages 7–10.

Previous Council Action

The Judicial Council adopted form SC-134 in 1998 and most recently revised it effective January 1, 2007, to update the reference to Small Claims Act statutes in the lower right-hand corner. No change has been made to item 3, the instruction regarding service of the order, since the initial adoption of the form.

The Judicial Council adopted form AT-138/EJ-125 in 1984 and most recently revised it effective July 1, 2000, to remove "constable" as one of the item 3 categories of persons permitted to serve the order.

Rationale for Recommendation

Service of an order enforceable by the court

Judgments in small claims cases may be enforced under the same provisions applicable to all civil cases, including examination of judgment debtors and third parties regarding attachable assets, and sanctions for the failure to appear for such examination (Code Civ. Proc., §§ 116.820, 116.830, 708.170).[1] However, sanctions (such as a bench warrant) are available under section 708.170 only if an order of examination has been served by a sheriff, marshal, or registered process server (hereafter referred to collectively as "law enforcement"). This requirement is not well understood by litigants. The recommendation is intended to address this problem.

[1] All further statutory references are to the Code of Civil Procedure.

Both *Application and Order to Produce Statement of Assets and Appear for Examination* (form SC-134), used in small claims cases, and *Application and Order for Appearance and Examination* (form AT-138/EJ-125), the parallel form used in civil actions generally, currently include a provision (item 3 on each form) that the order "may" be served by law enforcement. The statute authorizing the judgment creditor to examine the judgment debtor provides that the order for examination is to be served "in the manner specified in Section 415.10," i.e., in any manner that is proper for service of a summons. (See § 708.110, subd. (d); see also § 708.120, subd. (b) [service of an order requiring third party's appearance must be by personal delivery to that person].) So the provisions on the forms are correct that a judgment creditor is not *required* to have the order served by law enforcement. However, a problem with other means of service arises if the judgment debtor or third party fails to appear for the examination and the judgment creditor seeks to enforce the order. The court is authorized to issue a bench warrant or apply other sanctions (such as awarding attorney's fees) only if the order was served by law enforcement (§ 708.170).

The recommended revisions to these forms would add instructions to the judgment creditor that, *in order to be enforced by the court*, the order *must* be served by law enforcement. On both forms, this information is placed on the second page (the back of the form), in revised paragraph 4 in the Instructions for Applicant on the back of form SC-134, and in a new box entitled "Information for Judgment Creditor Regarding Service" on the back of form AT-138/EJ-125.

Other revisions

While revising the forms to address the issue of service, the committee recommends other minor, nonsubstantive revisions. A new item has been added to both forms with instructions for those who are hard of hearing regarding requesting accommodations for a court appearance. This information is being included on all new or revised Judicial Council forms that set a hearing or other court appearance.

Form SC-134 has also been revised by reorganizing the top of the first page to allow space for file-stamping. The provisions of item 2 of the order section have been reformatted to make them easier for the judgment debtor to understand, and a parenthetical statement has been added to explain that the judgment debtor should have provided the statement of assets within 30 days after service of notice of entry of the judgment. The instructions on the second page have been reorganized, moving the current last paragraph to the top and renumbering all the paragraphs.

Form AT-138/EJ-125 has been further revised to delete a requirement in the box on the second page titled "Appearance of a Third Person (Enforcement of Judgment)" that the description of the property must be made "using typewritten capital letters" to reflect modern methods of document production.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed revisions to forms SC-134 and AT-138/EJ-125 were circulated for public comment between April 15 and June 14, 2016, as part of the regular spring 2016 comment cycle. Twelve individuals or organizations submitted comments on the proposal. Four commentators agreed with the proposal, four agreed if the proposal is amended, and four did not state a position but submitted specific comments. Commentators included superior courts, judicial officers, a State Bar committee, a county bar association, and a collections organization.

A chart with the full text of the comments received and the committee's responses is attached at pages 11–25. Based on these comments, the committee recommends adopting this proposal as circulated.

Comments on text regarding service of the orders. The Orange County Bar Association suggested that the language in item 3 regarding service on form SC-134 should be revised to be the same as that on form AT-138/EJ-125, which states that the order "may be served by a sheriff, marshal, registered process server, or the following specially appointed person," along with space for the name to be written. This language tracks with the provisions of section 708.170, subdivision (a). The same item on form SC-134 states that the order "may be served by a sheriff, marshal, or registered process server"; it does not include a "specially appointed person." The advisory committee concluded that this provision on form SC-134 should not be revised to mirror that of form AT-138/EJ-125 because including language that the order may be served by a "specially appointed person" and space to write in that name could cause confusion for self-represented litigants and unintended consequences for courts required to enforce the orders. Moreover, the omission of this language from the form does not preclude a small claims court from specially appointing someone to effect service and writing in that person's name.

Several other comments suggested changes to item 3 on form SC-134. The collections organization suggested removing item 3 regarding service from the top half of form SC-134 on the basis that this section of the form is the order to appear, directed at the judgment debtor, and information regarding service is not relevant to the debtor. Alternatively, the collections organization suggested changing the wording of item 3 to state that the order "should" be served by law enforcement or "shall" be served by law enforcement (in conjunction with amending section 708.110, subdivision (d)). Similarly, a judicial officer suggested changing the word "may" to "must" in item 3. The advisory committee concluded that item 3 correctly states the law, is helpful to parties, and is necessary to allow courts to specially appoint a person to serve the order and therefore declined to make these changes.

Other comments on both forms. The collections organization suggested adding reference to sections 708.170 and 1993 to the lower right-hand corner of both form SC-134 and form AT-138/EJ-125. The committee agreed with adding section 708.170, which addresses

disciplinary proceedings on failure to appear for an examination when required, but declined to add section 1993, on issuing an arrest warrant, because it is not directly relevant to the forms.

Other comments on form AT-138/EJ-125. Two judicial officers suggested revising the signature line, which currently reads "Judge or Referee," to state "Judicial Officer." The committee discussed this point and decided the signature line should read simply "Judge," because this term is defined to mean "judges of the superior courts, and court commissioners and referees" (§ 170.5, subd. (a)).

The collections organization suggested a change to item 4, in which the applicant self-identifies as, among other things, a judgment creditor or an assignee of record by checking a particular box. The collections organization stated that assignees who comply with the requirements of section 673 and become assignees of record also consider themselves to have become the judgment creditor. Therefore, some of them check both boxes, for judgment creditor and assignee of record, which can cause confusion in the clerk's office. The suggested change was to consolidate the two boxes. The committee declined to make this change because not all assignees of record acquire all rights and interest in the judgment. Rather, the committee decided that the matter could best by clarified by changing "judgment creditor" to "original judgment creditor."

Comments in response to whether the forms should be split into two forms. The invitation to comment requested feedback on whether forms such as the ones in this proposal, that are both incoming to the court (the application that gets filed) and outgoing from the court (the order that gets issued), should be split into two forms for ease of handling by the courts. Of the seven commentators that responded to this question, all stated that the forms should not be split. Specific comments included that keeping the application and order together on one form was more efficient for courts and litigants and caused no filing or case management problems.

Alternatives considered

In addition to the alternatives raised in the comments, the committee considered the alternative of not revising the forms, but rejected this option in light of the burden on both parties and the courts resulting from the parties' not understanding that a bench warrant cannot be issued for failure to appear at a debtor's examination if the order to appear has not been served by law enforcement. Correcting and adding instructions to the forms regarding service should eliminate needless appearances by parties seeking court enforcement of orders on which bench warrants cannot be issued.

Implementation Requirements, Costs, and Operational Impacts

The recommended revisions to these forms will clarify for parties that service of the order must be by law enforcement if they want to seek enforcement by the court for nonappearance. This clarification should result in cost savings by eliminating the need for second applications and orders when the first cannot be enforced and by setting fewer hearings on orders of examination. Courts will need training to recognize the new forms, and forms issued as part of electronic case management systems will need to be revised within those systems.

Attachments

1. Judicial Council forms SC-134 and AT-138/EJ-125, at pages 7–10
2. Chart of comments, at pages 11–25

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 08-17-16 Not approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF DEFENDANT	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION ☐ **ENFORCEMENT OF JUDGMENT** ☐ **ATTACHMENT (Third Person)** ☐ **Judgment Debtor** ☐ **Third Person**	CASE NUMBER:

ORDER TO APPEAR FOR EXAMINATION

1. TO *(name):*
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
   a. ☐ furnish information to aid in enforcement of a money judgment against you.
   b. ☐ answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
   c. ☐ answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date:	Time:	Dept. or Div.:	Rm.:
Address of court ☐ is shown above ☐ is:			

3. This order may be served by a sheriff, marshal, registered process server, **or** the following specially appointed person *(name)*:

Date:

JUDGE

This order must be served not less than 10 days before the date set for the examination.

IMPORTANT NOTICES ON REVERSE

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. ☐ Original judgment creditor ☐ Assignee of record ☐ Plaintiff who has a right to attach order applies for an order requiring *(name):* to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
   a. ☐ the judgment debtor.
   b. ☐ a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than $250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7. ☐ This court is **not** the court in which the money judgment is entered or *(attachment only)* the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8. ☐ The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

(Continued on reverse)

Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER

APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

(1) NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

(2) NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined under this order has possession or control of property that is yours or owes you a debt. This property or debt is as follows *(describe the property or debt)*:

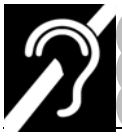
If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ORGANIZATION

It is your duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with your property and debts.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation* (form MC-410). (Civil Code, § 54.8.)

NAME AND ADDRESS OF COURT:

SMALL CLAIMS CASE NO.:

SC-134

FOR COURT USE ONLY

DRAFT
08/16/2016
NOT APPROVED
BY JUDICIAL
COUNCIL

PLAINTIFF/DEMANDANTE *(name, address, and telephone number of each)*:

Telephone No.:

DEFENDANT/DEMANDADO *(name, address, and telephone number of each)*:

Telephone No.:

☐ See attached sheet for additional plaintiffs and defendants.

ORDER TO PRODUCE STATEMENT OF ASSETS AND TO APPEAR FOR EXAMINATION

1. TO JUDGMENT DEBTOR *(name):*
2. YOU ARE ORDERED
   a. to pay the judgment and file proof of payment (a canceled check or money order or cash receipt, and a written declaration that shows full payment of the judgment, including postjudgment costs and interest) with the court before the hearing date shown in the box below, **OR**
   b. to (1) personally appear in this court on the date and time shown below, and
      (2) bring with you a completed *Judgment Debtor's Statement of Assets* (form SC-133).

   At the hearing you will be required to
   - answer questions about your income and assets; and
   - explain why you did not complete and mail form SC-133 to judgment creditor in a timely manner. (You should have sent it within 30 days after the *Notice of Entry of Judgment* (form SC-130) was mailed or handed to you by the clerk.)

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

If you fail to appear and have not paid the judgment, including postjudgment costs and interest, a bench warrant may be issued for your arrest, you may be held in contempt of court, and you may be ordered to pay penalties.	**Si usted no se presenta y no ha pagado el monto del fallo judicial, inclusive las costas e intereses posterlores al fallo, la corte puede expedir una orden de detencion contra usted, declararle en desacato y ordenar clue pague multas.**

3. This order may be served by a sheriff, marshal, or registered process server.

Date:

▶ _____
(SIGNATURE OF JUDGE)

APPLICATION FOR THIS ORDER

(See Instructions on reverse)

A. Judgment creditor (the person who won the case) *(name)*: applies for an order requiring judgment debtor (the person or business who lost the case and owes money) *(name)*:
to (1) pay the judgment or (2) personally appear in this court with a completed *Judgment Debtor's Statement of Assets* (form SC-133), explain why judgment debtor did not pay the judgment or complete and mail form SC-133 to judgment creditor within 30 days after the *Notice of Entry of Judgment* was mailed or handed to judgment debtor, and answer questions about judgment debtor's income and assets.

B. I, judgment creditor, state the following:
   (1) Judgment debtor has not paid the judgment.
   (2) Judgment debtor either did not file an appeal or the appeal has been dismissed or judgment debtor lost the appeal.
   (3) Judgment debtor either did not file a motion to vacate or the motion to vacate has been denied.
   (4) More than 30 days have passed since the *Notice of Entry of Judgment* was mailed or delivered to judgment debtor.
   (5) I have not received a completed *Judgment Debtor's Statement of Assets* from judgment debtor.
   (6) The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.

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) (DECLARANT)

– The county provides small claims advisor services free of charge –

Form Adopted for Mandatory Use
Judicial Council of California
SC-134 [Rev. January 1, 2017]

APPLICATION AND ORDER TO PRODUCE STATEMENT OF ASSETS AND TO APPEAR FOR EXAMINATION
(Small Claims)

Code of Civil Procedure, §§ 116.820, 116.830, 708.170
www.courts.ca.gov

INSTRUCTIONS FOR APPLICANT

1. This form is intended to be an easy tool to enforce your right to receive a completed *Judgment Debtor's Statement of Assets* (form SC-133). This form is not intended to replace the *Application and Order for Appearance and Examination* (form EJ-125), often called an "Order for Examination." The *Application and Order for Appearance and Examination* should still be used to enforce a small claims judgment if you are not seeking at the same time to make the debtor complete a *Judgment Debtor's Statement of Assets.*

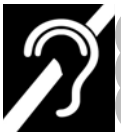
2. To set a hearing on an *Application and Order to Produce Statement of Assets and to Appear for Examination,* you must complete this form, present it to the court clerk, and pay the fee for an initial hearing date or a reset hearing date.

3. After you file this form, the clerk will set a hearing date, note the hearing date on the form, and return two copies or an original and one copy of the form to you.

4. If you want to be able to ask the court to enforce the order on the judgment debtor (the person or business who lost the case), you must have a copy of this form and a blank copy of the *Judgment Debtor's Statement of Assets* (form SC-133) personally served on the judgment debtor by a sheriff, marshal, or registered process server at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court. The law provides for a new fee if you reset the hearing.

5. If the judgment is paid, including all postjudgment costs and interest, you must immediately complete the *Acknowledgment of Satisfaction of Judgment* on the reverse of the *Notice of Entry of Judgment* (form SC-130) and file a copy with the court.

6. You must attend the hearing unless the judgment has been paid.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation (*form MC-410). (Civil Code, § 54.8.)

SPR16-09
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
1.	Hon. Mark A. Borenstein Superior Court of Los Angeles County	A	Excellent idea. Often times a party will seek a bench warrant even though service was not accomplished by the sheriff, marshal or RPS. There is some confusion though about whether a licensed private investigator qualifies as a registered process server for purposes of an ORAP. I've held no, but if a licensed PI is appropriate, then the licensed PI should be added to the list of appropriate servers.	The committee appreciates the comment and notes that the commentator supports the proposal. The committee notes the issue of whether a licensed private investigator qualifies as a registered process server, but resolving the question is beyond the committee's purview.
2.	California Association of Judgment Professionals by Gretchen D. Lichtenberger	A	On behalf of the California Association of Judgment Professionals, we would like to submit our comments regarding the proposed changes to the Judicial Council forms EJ-125, Application and Order for Appearance and Examination and the SC-134 Order to Produce Statement of Assets and Appear for Examination. We welcome changes to the forms to provide some clarity for creditors seeking the Court's help holding the debtors responsible for their failures to comply. <u>Regarding the SC-134 form:</u> We support the changes and are happy to see a spot created for the Court to date-stamp the form for filing. We do have a few comments regarding the SC-134 form. We would like to suggest removing item 3 from the top half of the form altogether. The top half of the SC-134 form is the Order to Appear directed at the Judgment Debtor. The wording	The committee appreciates the commentator's support for the proposal and the detailed comments, which are addressed below. The committee declined to make this change to maintain the similar format and content as form AT-138/EJ-125.

	Commentator	Position	Comment	DRAFT Committee Response
			in item 3 has no relevance as far as the Debtor is concerned. This sentence only leads to confusion and is not necessary. The Judicial Officer signing the Order does not need to give a sheriff, marshal or registered process server permission to serve this form; the statutes do that. [Removing item 3 may allow extra space for the rest of the form. We would like to see more space allotted to the "(name)" spaces in item A of the Application for This Order section.] In the alternative to removing item 3 altogether, we would like to suggest a revision of CCP §708.110(d) by the removal of the words "Service shall be made in the manner specified in Section 415.10" and replacing those words with the words "Service shall be made by a sheriff, marshal, registered process server or a person specially appointed by the court." *suggested change:* CCP §708.110(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. ~~Service shall be made in the manner specified in Section 415.10.~~ Service shall be made by a sheriff, marshal, registered process server or a person specially appointed by the court. Service of the order creates a lien on the personal property of the judgment debtor for a period of one year from	The committee acknowledges this concern and will retain the suggestion for future consideration. The committee acknowledges the suggestion to amend Code of Civil Procedure section 708.110, subdivision (d) and notes that it is beyond the scope of this proposal for Judicial Council form revisions.

	Commentator	Position	Comment	DRAFT Committee Response
			the date of the order unless extended or sooner terminated by the court. Concurrently or after Section 708.110(d) is amended, then item 3 in the top half of the SC-134 form can be changed to read "This order shall be served by a sheriff, marshal or registered process server." As a third alternative, item 3 can be changed to read "This order should be served by a sheriff, marshal or registered process server." We would also like to suggest the inclusion of "§708.170 and §1993", along with "Code of Civil Procedure §§116.820, 116.830" in the lower right area of this form as reference. Clerks and litigants look to the lower right hand corner of Judicial Council forms to find the statutes that govern each form. Regarding the SC-133 form: We don't think this current proposal would solve one of the problems you mentioned. In Small Claims Court, after entry of judgment, the Clerk mails the Notice of Entry of Judgment along with a blank SC-133 form to the judgment debtor [CCP §116.830(a)]. The debtor then has 30 days to return the completed SC-133 form to the judgment creditor [CCP §116.830(b)]. The problem not truly addressed in this current proposal is when a judgment creditor wants to hold the judgment debtor accountable for not returning the completed SC-133 form without	The committee will modify the form to include Code of Civil Procedure section 708.170, which is referenced in the Small Claims statutes, in the lower right hand corner of the form. The committee declines to add section 1993. Form SC-134 may be used to order a debtor to appear and provide a statement of assets; the form does not require examination. If the debtor does not appear and provide the statement, sanctions under section Code of Civil Procedure section 708.170 may apply. This suggestion is beyond the scope of the current proposal, but it will be retained by the committee for future consideration.

	Commentator	Position	Comment	DRAFT Committee Response
			conducting an examination of the debtor. A creditor who has not received the timely completed SC-133 form may ask the Court to hold the debtor in contempt pursuant to CCP §1209(a)(5) or possibly §1209(a)(9) without applying for and conducting an examination Unfortunately, the wording of CCP §116.830(d) is not very clear. That subsection can be read as follows: In case of the judgment debtor's willful failure to comply with subdivision (b) or (c), the judgment creditor may request the court to apply the sanctions,….. including arrest and attorney's fees, as provided in Section 708.170, ……on contempt of court. [meaning the creditor may ask for contempt of court] Or In case of the judgment debtor's willful failure to comply with subdivision (b) or (c), the judgment creditor may request the court to apply the sanctions, including arrest and attorney's fees, as provided in Section 708.170, on contempt of court. [meaning the only remedy is provided in Section 708.170] The current wording of §116.830(d) seems to imply the only remedy available is that provided in Section 708.170. We would like to suggest that CCP §116.830(d) be amended to remove the reference to "Section 708.170" because this	The committee agrees that the only remedy suggested is that provided by section 708.170, and will leave it to the Legislature whether to make any changes to this statutory provision.

	Commentator	Position	Comment	DRAFT Committee Response
			particular statute (§116.830) does not pertain to examinations in any way. Section 116.830 only pertains to what happens if the debtor fails to return the SC-133 form provided by the Clerk of the Court. "Section 708.170" is applicable for orders to appear for examination only and would have no application if a debtor failed to comply with CCP §116.830(a) or (b). The two statutes (§116.830(d) and §708.170) are mutually exclusive. It appears from this Invitation to Comment that the only remedy available for a creditor, should the debtor fail to timely return the completed SC-133 form given to the debtor by the Clerk, would be for the creditor to apply to the court for an examination of the debtor by completing and having issued an SC-134 form and having that form personally served upon the debtor. Only then could the Court hold the debtor accountable for failure to return the completed SC-133 form. We understand that a very minute percentage of judgment debtors actually comply by mailing the completed SC-133 form to the creditor after entry of judgment however the debtor is directed to do so as part of entry of judgment in small claims court so there must be some way to hold them accountable without setting an examination hearing. There is nothing that we know of that mandates	

	Commentator	Position	Comment	DRAFT Committee Response
			that a creditor must apply to examine the debtor in order to elicit help from the Court in holding the debtor accountable for not returning the completed SC-133 form. Currently, a creditor can complete the SC-105 form to ask the court for an Order to hold the debtor in contempt for failing to return the SC-133. The Clerk then mails the filed SC-105 form to the debtor giving the debtor an opportunity to answer. After receiving the debtor's answer or if no answer is returned, the Court may make a ruling or choose to set a hearing and notify both parties by mail. The SC-105 form would act as an affidavit under penalty of perjury in compliance with CCP §1211 for a contempt committed outside the immediate view of the court. The court could then issue a warrant of attachment for the debtor under CCP §1212. In other words, a warrant may issue pursuant to CCP §708.170 for a person who fails to appear for an examination, if the debtor or third party was personally served with the Order to Appear by a sheriff, marshal or registered process server. Alternately, a warrant may issue pursuant to CCP §1212 for a person found in contempt pursuant to CCP §1209 for a person who was disobedient of any lawful judgment, order or process of the court, as in the case of a debtor who fails to return the completed SC-133 form to the creditor. Two separate and distinct processes which tend to have similar results but that originate from different 'violations'. This	

	Commentator	Position	Comment	DRAFT Committee Response
			is a very misunderstood process by most creditors and most judges. Additionally, we would like to comment that the current SC-133 form indicates the "(name)" of the judgment creditor be put at the top of the form. It would be very beneficial if the SC-133 form said "(name and address)" for the judgment creditor and for the judgment debtor. That way, the debtor easily has the address for the creditor available when mailing the SC-133 form to the creditor. <u>Regarding AT-138/EJ-125 form:</u> In item 3, we would like to suggest the alternate wording of "In addition to a sheriff, marshal or registered process server, this order may be served by the following specially appointed person (name):" [See also our comments regarding item 3 under the SC-134 form above]. In item 4, there are two check boxes, one for "judgment creditor" and one for "assignee of record". There are also two separate check boxes like this on several other judicial council forms (which we will address when those forms are being changed for other reasons). This causes confusion because some assignees of record check both boxes and the Clerks of the Court will reject the forms saying that only one box can be checked. An assignee of record, who has properly	The committee appreciates this suggested revision to form SC-133 and will consider it at a future time. The committee has considered this suggestion and decided not to make the change because of the potential for a self-represented litigant to mistakenly write in someone's name. The judge retains the authority under the statute to specially appoint someone to serve the order. To clarify the distinction, the committee has changed "judgment creditor" to "original judgment creditor."

	Commentator	Position	Comment	DRAFT Committee Response
			complied with CCP §673 steps into the shoes of the original judgment creditor and becomes the judgment creditor by acquiring all rights, title and interest to the judgment. By definition, "judgment creditor" includes an assignee of record pursuant to CCP §680.240. We would like to suggest that you remove those two check boxes and corresponding text, putting instead one check box and simply typing "Judgment creditor (includes an assignee of record per CCP 680.240)." Also in item 4, we would request that you move the words "to appear and furnish" down to the third line thus leaving a longer line for the name of the person to be examined. The extra space for the name of the examinee is needed especially when the judgment debtor is a corporation and the creditor is requiring the appearance of an officer (ie. Name: "ABC Corporation, Inc. by and through Robert Smith, Chief Financial Officer"). On the back of the form, in the Appearance of a Third Person box, you removed the words "using typewritten capital letters" and left the words "(Describe the property or debt):". We would like to suggest those words be changed to "(Description of property or debt)" because that is the actual wording in the statute [CCP §708.120(e)].	The committee agrees with the request to move the indicated text down to the next line to provide more space for the name of the examinee. This formatting change also improves the clarity and readability of the item. The committee has decided to leave this wording as it stands because it is an instruction directing an action.

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Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			We would also like to suggest the inclusion of "§708.170 and §1993", along with "Code of Civil Procedure §§491.110, 708.110, 708.120" in the lower right corner of this form as reference. <u>Regarding the Splitting of Forms into Incoming and Outgoing:</u> We cannot speak for the Court or the Clerks, of course, however we do have some comments regarding splitting forms. Simpler is better. We fully understand it becomes somewhat problematic trying to squeeze everything onto one form. However, though the Application part of the form appears to be somewhat redundant of the information in the top half of the form in the Order portion, currently, if they were a separate documents, there is no statute that would mandate service of the Application upon the debtor along with the Order. Having the Application and Order together is good so the debtor (or Third Party) can see what information was given to the court to obtain the Order without going to the court to get a copy. Though the information should be uniform and consistent between the two parts of the form, sometimes it isn't and is overlooked by the Clerk. We believe the more separate forms, the more chance for a creditor to forget one of the forms causing rejection at filing time by the Clerks, especially in Small Claims.	The committee agrees with the suggestion to include section 708.170 because it references the instruction that is being added to the form. The committee declines to include section 1993; this statute is cross-referenced in section 708.170, which is sufficient. The committee appreciates the detailed and thoughtful comments on its question, including the possibility of splitting the form into one for judgment debtor examinations and one for third party examinations. This suggestion will be retained for future consideration.

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Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
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	Commentator	Position	Comment	DRAFT Committee Response
			Should the Council seek to split forms, they may want to look at splitting this EJ-125 form into two separate forms: one exclusively for use for Judgment Debtors Examinations and another exclusively for use for Third Party Examinations, each for use in both attachment and enforcement of judgments. There are statutory differences between examining judgment debtors and examining third parties. By splitting these off, as we propose, the form for third parties could include a warning that the person serving must tender to the third person fees for mileage pursuant to CCP §708.120(f) as well as other items unique to examining third parties. Additionally, it would be easier for the Court, the Clerks and the recipient to determine who is being examined. Then, the third party examination form could have an additional page to include the "application" required pursuant to CCP §708.120(a) to include all the substantiation necessary to be supplied by the creditor in order to be permitted to exam a third party. Just a suggestion for future discussion.	
3.	Hon. Christine Copeland Commissioner, Superior Court of Santa Clara County	AM	Form SC-134, item 3: change the word "may" to "must" when describing who has to serve the Debtor's Exam.	The committee appreciates the comment but declines to follow the suggestion. Section 708.110(d) provides that the form be served in the manner specified in section 415.10, which allows service by other individuals.
4.	Hon. David L. Haet Commissioner, Superior Court of Solano County	N/I	It has come to my late attention that the Council is considering a proposal to revise form AT-138/EJ-125 to include information regarding	The committee thanks the commentator for this suggestion and has changed the signature line to "Judge," which includes a judge, a commissioner,

SPR16-09
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			service by a law enforcement officer. While I would have no objection to that proposal, I would point out that the form as it exists at present and revised 7-1-00 has under the signature line, the notation "Judge or Referee". Given the fact that we have few if any Referees at this point some 16 years later, it would appear to make sense to revise the form to state "Judicial Officer" as most if not all forms in this area currently use. Given the fact that most of these forms are signed by Commissioners and from time to time a Judge, then this might clarify what in practice occurs quite often. If the form is to be revised otherwise, it might make sense to make this minor change at the same time.	and a temporary judge under California Rules of Court, rule 1.6.
5.	Orange County Bar Association by Todd G. Friedland, President	AM	The OCBA believes that generally the proposal appropriately addresses its stated purposes if it is modified as follows: Form SC-134 should be modified in the same manner as Form AT-138 to refer to service "by a sheriff, marshal, registered process server, or person specially appointed by the Court" since as proposed the Form SC-134 incorrectly eliminates the authority of the court to specially appoint a person for service contrary to C.C.P. §708.170(a).	The committee appreciates the comments and notes the commentator's general agreement with the proposal if modified. The committee has considered this suggestion and decided not to make the change because of the potential for a self-represented litigant to mistakenly write in someone's name. The judge retains the authority under the statute to specially appoint someone to serve the order.

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Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			The OCBA believes that the forms should not be split into two forms each and that one form each are appropriate.	The committee thanks for commentator for the response to its question.
6.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, chair	A	Does the proposal appropriately address the stated purpose? Yes. The proposal would make clearer, both to judgment creditors and court personnel, that an order to produce a judgment debtor's statement of assets cannot be enforced (via a bench warrant, sanctions, etc.) unless it was served by a law enforcement officer or registered process server. This would simplify the process of enforcing orders for low or moderate-income litigants and reduce needless court appearances by them to enforce orders that are not capable of enforcement. SCDLS also supports the addition of instructions about accommodations for the hard of hearing during court appearances. Should forms such as the ones in this proposal, that are both incoming to the court and out going from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court? From the litigants' standpoint, the forms in this proposal should not be split into two forms because it is easier to understand all processes	The committee notes that the commentator agrees with the proposal and appreciates the commentator's detailed responses to specific questions presented.

SPR16-09
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			and associated instructions if they are consolidated in a single place.	
7.	Superior Court of Los Angeles County	A	This proposal addresses the stated purpose. Forms such as these should not be split because they can be handled electronically without undue burden to the court. No cost savings have been identified. In regard to implementation requirements for the court, no changes or special training have been identified. The forms are simply being made clearer. Two months would be sufficient for implementation after approval of this proposal. We have no comment regarding courts of different sizes.	The committee notes the commentator's agreement with the proposal and appreciates the input.
8.	Superior Court of Orange County, Civil and Probate Managers by Bryan Chae, Principal Analyst	N/I	Can the information regarding the use of an appropriate process server be interpreted as legal advice? As the proposal notes, service can be produced in several ways, one of which is advantageous over the others. When given legal choices like this, shouldn't the courts abstain from suggesting the best routes?	The committee acknowledges the concern expressed in the comment. The proposed changes clarify the statutory requirement for service if the judgment creditor wants the order to be enforceable by a court. The proposed changes do not constitute an opinion or suggestion to a litigant that one form of service is preferable to another, and do not constitute legal advice.
9.	Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang, Program Coordinator Specialist	N/I	These forms should remain together for ease to ensure they do get filed together and do not delay the process and make it easier for the Family Law window clerks to handle these forms. In addition, our case management system is able to process these forms and add	The committee appreciates the commentator's feedback on this question.

SPR16-09
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			them as an event whether filed separately or together.	
10.	Superior Court of Riverside County by Marita Ford, Senior Management Analyst	N/I	One form is more efficient than splitting it into two forms.	The committee thanks the commentator for the response to this question.
11.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Should forms such as the ones in this proposal that are both incoming to the court and outgoing from the court, be split into two forms? Is it easier for courts to handle the forms physically or electronically if there is one form (e.g., the application) that gets filed, and another one (e.g., the order or notice) that gets issued by the court? No, it should remain one form. If the forms are split into two, there is increased likelihood that one form will be misplaced or not submitted by litigants. Additionally, if the "outgoing from the court" form is to be completed by court staff aside from what is currently completed (e.g., hearing, date, and time), there would be an increase in workload for staff. Q: Would the proposal provide cost savings? No. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee appreciates these comments and notes the commentator's general agreement with the proposal.

SPR16-09
Civil Practice and Procedure: Order of Examination (revise forms SC-134 and EJ-125)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	DRAFT Committee Response
			The proposed revisions to SC-134 provide insufficient space to list the name and address of the plaintiff/defendant. It is preferred that the boxes be listed as they are on the current form and be made narrower to accommodate the "For Court Use Only" box.	The committee understands the concern but declines to make the change due to space and formatting constraints.
12.	Hon. Rebecca Wightman Commissioner, Superior Court of San Francisco County	AM	It has been pointed out to me by some of my colleagues that for the Application and Order form AT-138/EJ-125, it has the words "Judge or Referee" under the signature line. Many other forms that have come to the attention of those who put forth proposed changes have been changing the signature line to read "Judicial Officer". This is one of those forms deserving of such a change, as it is my understanding there are many Commissioners (neither Judges nor Referees) that end up having to sign these. Please consider making this change at this time.	The committee thanks the commentator for this suggestion and has changed the signature line to "Judge," which includes a judge, a commissioner, and a temporary judge under California Rules of Court, rule 1.6.

Item number: 16

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Forms: Declarations of Demurring Party Regarding Meet and Confer

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

Staff contact (name, phone and e-mail): Susan McMullan susan.mcmullan@jud.ca.gov, 415-865-7990

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: Forms to implement new meet-and-confer requirements on demurrers. Senate Bill 383 provides that parties must meet-and-confer prior to filing a demurrer. New forms would be helpful both to educate the parties on the requirements and to make it easier for courts to find that the requirement had been met.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Forms: Declarations of Demurring Party Regarding Meet and Confer

Rules, Forms, Standards, or Statutes Affected
Approve forms CIV-140 and CIV-141

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 24, 2016

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Senate Bill 383 (Stats. 2015, ch. 418) added to and amended statutes governing demurrers to pleadings. New Code of Civil Procedure section 430.41 requires a meet-and-confer session before a party can file a demurrer. The Civil and Small Claims Advisory Committee recommends two new optional forms to implement the meet-and-confer requirements that a demurring party must comply with before filing a demurrer, and to obtain an automatic 30-day extension of time to file a demurrer when the parties were unable to meet before the due date of the responsive pleading.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2017, approve:

1. *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140); and
2. *Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141).

The new forms are attached at pages 8–9.

Previous Council Action

The Judicial Council has not previously approved or adopted any forms for use with demurrers and was not a sponsor to Senate Bill 383 (Stats. 2015, ch. 418), which added to and amended statutes governing demurrers to pleadings. Effective January 1, 1984, the council adopted rule 325 (renumbered as rule 3.1320) on demurrers and has amended the rule several times since then. The rule does not address meet-and-confer requirements before filing a demurrer.

Rationale for Recommendation

Proposed new *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140) and *Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141) would be used by a party demurring to a complaint, amended complaint, cross-complaint, or answer to demonstrate compliance with the meet-and confer requirements of Code of Civil Procedure section 430.41(a)[1] and when seeking an automatic 30-day extension of time to file the demurrer. The forms would be useful to implement the new statutory requirements.

***Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140).** This new form would be filed with the demurrer, consistent with the requirements of section 430.41(a)(3), which provides:

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

The form provides check boxes for the demurring party or his or her attorney to indicate to which pleading the party is demurring and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer, whether the meeting was by telephone or in person, and that the parties did not reach an agreement resolving the objections raised in the demurrer; or (2) that the party who filed the pleading failed to respond to a request to meet and confer or otherwise failed to meet and confer in good faith.

***Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141).** This new form would be used by the demurring party or his or her attorney to state under penalty of perjury that he or she made a good faith attempt to meet and confer with the party who filed the

[1] All further statutory references are to the Code of Civil Procedure.

pleading at least five days before the date the responsive pleading was due. It includes space for the demurring party to describe, as required by the statute, the reasons why the parties could not meet and confer before the initial due date for the responsive pleading. The extension is automatic, provided the party seeking the extension files a declaration on or before the date on which a demurrer would be due.[2] Any further extensions must be obtained by court order upon a showing of good cause.[3] Thus, form CIV-141 would be used only for an initial extension of time.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from April 15 to June 14, 2016. Nine commentators submitted comments. Commentators included the California Judges Association (CJA), the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, a judge, a local bar association, two sections of the State Bar of California, and three superior courts. Comments were generally favorable: one commentator agreed with the proposal and eight agreed if modified. The JRS, for example, commented:

> This proposal should be implemented because although not required by statute, the forms will educate counsel and parties to the meet and confer requirement, as well as help develop consistency in implementing the amended statute. The proposal may also save judicial time and ensure better compliance with the law if amended as suggested below.

The text of all comments received and committee responses is included in a comment chart attached at pages 10–28. The main substantive comments are discussed below.

Expanded requirements for information about meet-and-confer session

Several commentators suggested that the proposed new forms should be modified to collect additional information about the meet and confer sessions. Suggestions included that:

- The demurring party should be required to disclose by what means he or she requested the other party to meet and confer (form CIV-140 and form CIV-141);
- The demurring party should be required to describe how the meet-and-confer was conducted (form CIV-140);
- The demurring party should be required to explain why no agreement was reached, that is i.e., why the meet-and-confer session was unsuccessful and, if he or she contends that it was not in good faith, to explain why it was not in good faith (form CIV-140);

The allowable means by which the parties may meet and confer is stated in the statute: "[T]he demurring party shall meet and confer *in person or by telephone* with the party who filed the

[2] Section 430.41(a)(2).

[3] *Ibid.*

pleading that is subject to demurrer ….”[4] Proposed form CIV-140 includes this in item 1, where the demurring party must check a box indicating whether the meet-and-confer was in person or by telephone. One commentator, the Superior Court of Los Angeles County, suggested revising the form to require the demurring party to also state how he or she requested the other party to meet and confer. The court commented: “CIV-140 should be amended to state, under number 2, ‘The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing party was not in good faith are set forth [below or on form MC-031].’ ” The JRS submitted an identical comment suggesting those changes to form CIV-140.

The CJA and a judge commentator agreed with the Superior Court of Los Angeles County that form CIV-140 should require the declarant to describe how he or she asked to meet and confer, and noted that the manner of the request could be related to why the meet-and-confer session did not occur or why the other party failed to meet and confer in good faith. Both commentators wrote:

> If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details.

Both also commented that if the demurring party claimed that the effort failed because the opposing party failed to confer in good faith, the court will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The CJA and the judge commentator suggested adding specific questions to the form to elicit this information.

The Superior Court of Los Angeles County and the JRS also commented that form CIV-140 should require an explanation of why an agreement that resolved the issues raised in the demurrer was not reached.

In response to these comments, the committee revised the attached recommended form CIV-140 to indicate that additional information may be provided, but declined to *require* this additional information. In developing the forms, the advisory committee intentionally did not require detailed information about the areas suggested by the commentators because this information is beyond what the statute requires in the declaration that the demurring party must file and serve with the demurrer. As noted above, section 430.41 requires that the declaration state:

[4] Section 431.41(a) (italics added).

- The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer; and
- That the party who filed the pleading subject to demurrer failed to respond to the meet-and-confer request of the demurring party or otherwise failed to meet and confer in good faith.[5]

By its language, the statute also provides that the adequacy of the meet-and-confer process is not a basis for determining the merits of the demurrer: "Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer."[6]

The committee recognized that the purpose of the forms is to establish that a meet-and-confer session took place—or could not take place, through no fault of the demurring party—prior to the filing of the demurrer, as required by section 430.41. The forms themselves are not designed for the purpose of providing a judicial officer with information necessary to determine whether the demurring party allowed enough time or made enough contacts with the other party to achieve a meaningful meet-and-confer session. Nor are they intended to describe what took place during the meet-and-confer or to provide any information as to why it was unsuccessful or why the other party did not meet in good faith.[7]

All of these issues are collateral to the demurrer. Furthermore, making all of the changes suggested by the commentators would result in the form possibly requiring information about (1) the substance of legal issues presented by the demurrer or (2) collateral issues about how the meet-and-confer session was conducted. Neither of these is intended by the new meet-and-confer statutory requirements.[8]

Declaration of Demurring Party Regarding Meet and Confer (form CIV-140) has space for the information required by section 430.41 and tracks the statute's language. The committee's view is that this is appropriate and the committee therefore declined to change the form to *requir*e more information about the request for, and conduct of, the meet-and-confer process. However, in response to comments, the committee has added to form CIV-140 the following: "If you would like to provide additional information, please use form MC-031 Attached Declaration."

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[5] Section 431.41(a)(3)(A) & (B).

[6] Section 430.41(a)(4).

[7] The slight exception to this is that *Declaration of Demurring Party Regarding Meet and Confer or in Support of Automatic Extension* (form CIV-141) does require an explanation of why the declarant was unable to meet and confer at least five days before the responsive pleading was due. The declarant can do so on the space provided on the form or on an attached declaration.

[8] The advisory committee acknowledges that section 430.41 sets out what should happen as part of the meet-and-confer process: "[T]he demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint … shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint … could be amended to cure any legal insufficiency." (§ 430.41(a)(1).) But under the statute, this is not required to be stated in the declaration that accompanies the demurrer.

That multiuse form declaration includes, among other things, the statement that the declaration is made under penalty of perjury. It has enough space for a demurring party who wishes to do so, to include information about the circumstances and conduct of the meet-and-confer session or about why it did not take place.

Use of forms by attorney or self-represented litigant

As circulated, both forms began with "I (name) was served with," but the forms' signature lines are for a party or an attorney. Two commentators noted that if the form is completed and signed by an attorney for a party, the initial statement should not begin with the party's declaration; it should be modified to be used by either an attorney representing a party or a self-represented litigant.[9] They suggested changing the initial sentence so that it begins with "(Name of party) was served with" rather than "I (name) was served with." Another commentator suggested addressing this by adding the word "represent" after the initial "I." The committee agreed with these comments and modified the recommended forms to provide for completion and filing by either a party or an attorney.

Combining forms into a single form

One commentator and a member of the Rules and Projects Committee suggested that the two forms be combined into one. The commentator did not state any benefits of having one form. Because each form serves a different purpose (obtaining an extension to file a responsive pleading or stating that the demurring party has complied with the prerequisite for filing a demurrer), is used at a different time, and the form for requesting an extension may not need to be used, the advisory committee declined to combine the forms.

Other comments

The Superior Court of Ventura County, through its court program supervisor, commented that it would be helpful if form CIV-141 had a space to fill in with the new responding pleading due date. The committee considered this but decided that it could be confusing having two dates for the responsive pleading on the form and that the date could easily be calculated from the initial date.

Other changes

Declaration of Demurring Party Regarding Meet and Confer (form CIV-140) has been changed to add a notice, on the first line, that it must be filed with the demurrer. A judge member of the Rules and Projects Committee suggested this change because if the declaration and demurrer are not together, it can be difficult to determine whether the demurring party filed the required declaration.

[9] The statute applies to most self-represented litigants. The only exceptions are "[a]n action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution" and "[a] proceeding in forcible entry, forcible detainer, or unlawful detainer." (§ 430.41(d)(1).)

Alternatives

The advisory committee considered not recommending the two proposed forms but decided that they would be useful to educate parties on the new meet-and-confer requirements and make it easier for courts to find that the requirements had been met. The advisory committee also considered combining the two forms into one form that could be used for both purposes—obtaining an automatic 30-day extension and demonstrating compliance with the meet-and confer requirements on filing a demurrer. The committee did not make this change because the forms serve different purposes and would never be used at the same time.

Implementation Requirements, Costs, and Operational Impacts

The JRS commented that courts will likely need to add new action codes to existing case management systems to implement the forms, but the cost to do so would be minimal. Similarly, the superior courts of Los Angeles and San Diego Counties noted that case management programming would be needed. Both courts also commented that two months following approval of the proposal would not be sufficient time for implementation. The proposal would require training of courtroom staff and clerical staff who manage new filings and requests for default. The JRS noted that the statutory changes that prompted the development of the new forms also have an effect on staff workload, even without the forms.

Attachments and Links

1. Forms CIV-140 and CIV-141, at pages 8–9
2. Chart of comments, at pages 10–28
3. Senate Bill 383 (Stats. 2015, ch. 418)
   www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0351-0400/sb_383_bill_20151001_chaptered.pdf

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:	
Plaintiff/Petitioner: Defendant/Respondent:	
DECLARATION OF DEMURRING PARTY REGARDING MEET AND CONFER	CASE NUMBER:

To the demurring party: This form must be filed with the demurrer.

(*Name of demurring party*) was served with

☐ a complaint ☐ an amended complaint ☐ a cross-complaint

☐ an answer ☐ other *(specify):*

in the above-titled action and is filing a demurrer to the pleading.

DECLARATION *(Choose either (1) or (2) below.)*

(1) ☐ At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ☐ by telephone ☐ in person and we did not reach an agreement resolving the matters raised by the demurrer.

(2) ☐ The party who filed the pleading subject to demurrer failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

If you would like to provide additional information, please use form MC-031 Attached Declaration.

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

Date:

(NAME OF PARTY OR ATTORNEY FOR PARTY)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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:	
Plaintiff/Petitioner: Defendant/Respondent:	
DECLARATION OF DEMURRING PARTY IN SUPPORT OF AUTOMATIC EXTENSION	CASE NUMBER:

(*Name of demurring party*) was served with

☐ a complaint ☐ an amended complaint ☐ a cross-complaint

☐ an answer ☐ other *(specify):*

in the above-titled action. A responsive pleading is due on *(date):*

DECLARATION

I intend to file a demurrer in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am demurring to at least five days before the date when the responsive pleading is due. We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure section 430.41, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due. I was unable to meet with that party because:
(The reasons why the parties could not meet and confer are set forth):

☐ below ☐ on form MC-031, *Attached Declaration*

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

Date:

(NAME OF PARTY OR ATTORNEY FOR PARTY)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

Form Approved for Optional Use
Judicial Council of California
CIV-141 [New January 1, 2017]

DECLARATION OF DEMURRING PARTY IN SUPPORT OF AUTOMATIC EXTENSION

Code of Civil Procedure, § 430.41(a)(2)
www.courts.ca.gov

SPR16-11
Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Lexi Howard, Legislative Director	AM	Thank you for the opportunity to provide comments on behalf of the California Judges Association (CJA). The first form declaration is designed to demonstrate compliance or an attempt at compliance. The second form declaration is designed to obtain the extension of time. CJA supports this proposal if the proposed first form declaration were amended to elicit sufficient information from which the Court can determine (1) whether the demurring party made a good-faith effort to meet and confer with the other side and (2) whether the opposing party met and conferred in good faith. The first declaration offers two check-the-box choices. The first option reads: "At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ___by telephone ___in person and we did not reach an agreement resolving the matters raised by the demurrer." This language is adequate. In addition, it appropriately reminds counsel that the meeting must be either in person or by telephone; merely sending a letter is not sufficient. The second option reads simply: "The party who filed the pleading subject to demurrer	

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

	Commentator	Position	Comment	Committee Response
			failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith." This language suffers from several defects, as follows: 1. It does not inform the Court whether the effort failed because the opposing side did not respond, or because the opposing side responded but failed to confer in good faith. 2. If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details. Just as we expect the meeting to be conducted either by telephone or in person, the request should be made by telephone, or the demurring party should follow up on the written request by a telephone call if a letter or email does not elicit a response. The conclusory language of the proposal does not permit the Court to determine whether the demurring party's efforts to meet were sufficient.	The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful or did not occur. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, "Form MC-031 *Attached Declaration* may be used if more space is needed.

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

	Commentator	Position	Comment	Committee Response
			3. If the effort failed because the opposing party failed to confer in good faith, the Court will need more than simply that bare assertion. Instead, it will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The proposed form does not elicit evidence sufficient to allow the Court to make such a judgment. In short, this form does not give the Court the information it needs to determine whether the demurring party made a good-faith effort to meet with the other side. To remedy that omission, the second option should be replaced with something similar to the following: (2) I asked the party who filed the pleading subject to demurrer to meet and confer. (a) ___I did so by sending that request in a letter or email and telephoning that party when that party did not respond to my written request. (b)___I did so by telephoning the party and describing my request. (c)___ I did so by _____. (3) The party who filed the pleading subject to the demurrer:	The form has been modified to add the following sentence, "Form MC-031 *Attached Declaration* may be used if more space is needed.

	Commentator	Position	Comment	Committee Response
			(a) ___ Did not respond to my request to meet and confer. (b) ___ Refused to meet and confer. (c) ___ Did not refuse to meet, but thereafter failed to meet and confer in good faith, as shown by: ___ The following facts: _____ ___The evidence recited in attachment 3 to this declaration. We find the proposed second form declaration to be adequate. Our comments here are intended to assist with this proposal at this stage and are not representative of a position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.	
2.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	Recommended JRS Position: Agree with proposed changes if modified. General Note: This proposal should be implemented because although not required by statute, the forms will educate counsel and parties to the meet and confer requirement, as well as help develop consistency in implementing the amended statute. The proposal may also save judicial time and ensure better compliance with the law if amended as suggested below.	The committee appreciates the comment and agrees that the proposal may be time-saving.

SPR16-11
Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Regarding the impact on existing automated systems: Courts will likely be required to add new action codes to existing case management systems, however, the cost to do so would be minimal. Regarding additional training: This proposal will require minimal training on the new court forms for staff. Regarding increases to court staff's workload: This proposal will result in a slight increase in workload for court staff. It should be noted, however, that the statutory changes which prompted development of the new forms would have also increased staff workload. Other impact: In order to save judicial time at the demurrer hearing, it is necessary for the parties to describe the problems they encountered in the required meet and confer process. In addition, requiring the parties to be more specific will save judicial time by encouraging a meet and confer process that is effective. Request for Specific Comments: • Does the proposal appropriately	The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in

	Commentator	Position	Comment	Committee Response
			address the stated purpose? Comment: Yes. • Would the proposal provide a cost savings? If so please quantify. Comment: This proposal will not provide a cost savings. • What would the implementation requirements be for courts? Comment: It is likely that most courts will be required to add new codes to reflect that the forms have been filed. • Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Comment: Yes. • How well would this proposal work in courts of different sizes? Comment: It is unlikely that the size of a court would make any difference in implementing this proposal. Suggested Modifications: If implemented without amendment, proposed form CIV-140 may encourage counsel to adopt a "check-the-box" or dismissive attitude toward the meet and confer requirement.	good faith. A sentence has been added to the form that reads, "Form MC-031 *Attached Declaration* may be used if more space is needed.

	Commentator	Position	Comment	Committee Response
			Form CIV-141 requires a party who has not been able to meet and confer timely to give a reason why that is the case. However, Form CIV-140 does not provide room under number 2 for the declarant to explain why the meet and confer did not take place or why it was not in good faith. CIV-140 should be amended to state, under number 2, "The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing party was not in good faith are set forth: [below or on form MC-031]." In addition, CIV-140 should require the demurring party to explain why agreement resolving the issues raised in the demurrer was not reached. While the demurring party cannot explain what was in the mind of the opposing party, he or she can explain what issues were discussed, why he or she decided to continue to pursue the demurrer, and what reasons were given by the opposing party for not amending. If no explanation is required, there is no way for the Court to determine whether or not the meet and confer was in good faith or rather whether the meet and confer was completely perfunctory. We recommend that under what is now number 1, the	The committee has modified the form to specifically refer to attaching Form MC-031 if more space is needed. The committee declined to make this change and believes that requiring more information on the declaration could result in unnecessary time spent on issues collateral to those in the demurrer.

	Commentator	Position	Comment	Committee Response
			following be included: "The specific reasons why the meet and confer discussion was unsuccessful as to each of the issues raised in the demurrer are set forth: [below or on form MC-031]."	
3.	Orange County Bar Association Todd G. Friedland, President	AM	The forms would be helpful to the litigant but they should be combined as one form. It is a good idea to clarify who the declarant is. Perhaps add the word "represent" after the initial "I".	The committee declined to combine the two forms into one because they are used for different purposes and filed at different times. The committee has modified both forms to read "(Name of demurring party)" rather than "I (name)."
4.	Hon. Craig G. Riemer, Judge Superior Court of Riverside County	AM	**First Form Declaration**: The first declaration offers two check-the-box choices. The first option reads: "At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ___by telephone ___in person and we did not reach an agreement resolving the matters raised by the demurrer." This language is adequate. In addition, it appropriately reminds counsel that the meeting must be either in person or by telephone; merely sending a letter is not sufficient. The second option reads simply: "The party who filed the pleading subject to demurrer failed to respond to my request to meet and confer or otherwise failed to meet and	

	Commentator	Position	Comment	Committee Response
			confer in good faith." The language of the second option suffers from several weaknesses: 1. It does not inform the Court whether the effort failed because the opposing side did not respond, or because the opposing side responded but failed to confer in good faith. 2. If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details. Just as we expect the meeting to be conducted either by telephone or in person, the request should be made by telephone, or the demurring party should follow up on the written request by a telephone call if a letter or email does not elicit a response. The conclusory language of the proposal does not permit the Court to determine whether the demurring party's efforts to meet were sufficient.	The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful or did not occur. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, "Form MC-031 *Attached Declaration* may be used if more space is needed.

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

	Commentator	Position	Comment	Committee Response
			3. If the effort failed because the opposing party failed to confer in good faith, the Court will need more than simply that bare assertion. Instead, it will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The proposed form does not elicit evidence sufficient to allow the Court to make such a judgment. In short, this form does not give the Court the information it needs to determine whether the demurring party made a good-faith effort to meet with the other side. To remedy that omission, the second option should be replaced with something similar to the following: "(2) I asked the party who filed the pleading subject to demurrer to meet and confer. (a) ___I did so by sending that request in a letter or email and telephoning that party when that party did not respond to my written request. (b)___I did so by telephoning the party and describing my request. (c)___ I did so by _____ _____. "(3) The party who filed the pleading subject to the demurrer: (a) ___ Did not respond to my request	The form has been modified to add the following sentence, "Form MC-031 *Attached Declaration* may be used if more space is needed.

	Commentator	Position	Comment	Committee Response
			to meet and confer. (b) ___ Refused to meet and confer. (c) ___ Did not refuse to meet, but thereafter failed to meet and confer in good faith, as shown by: ___ The following facts: _____ ___The evidence recited in attachment 3 to this declaration. **Second Form Declaration**: The language of the second form declaration is adequate. In summary, SPR16-11 should not be approved unless the proposed first form declaration is expanded to elicit sufficient information from which the Court can determine both (1) whether the demurring party made a good-faith effort to meet and confer with the other side and (2) whether the opposing party met and conferred in good faith.	
5.	State Bar of California Litigation Section Jessica Barclay-Strobel, Vice Chair, Rules and Legislation Committee	AM	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose of providing two new optional forms to implement the new meet-and-confer requirements that a demurring party must	

	Commentator	Position	Comment	Committee Response
			comply with before filing a demurrer, and to obtain an automatic 30-day extension of time to file a demurrer when the parties were unable to meet before the due date of the responsive pleading. We suggest the following edits so as to avoid confusion where the individual who was served with the pleading (e.g. the party) is not the same individual conducting the meet and confer (e.g. the party's attorney), or where a party disputes proper service. We also propose language that includes the relevant code citation and eliminates extraneous text. Form CIV-140 We suggest the following revision to Form CIV-140 to appear above the check boxes listing pleadings (complaint, cross-complaint, etc.): "I _____ ~~was served with~~ am filing a demurrer to the following pleading in the above-titled action: ☐ a complaint ☐ an amended complaint ☐ ☐ an answer ☐ other *(specify):*	The committee has made a change similar to that proposed by the commentator.

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

	Commentator	Position	Comment	Committee Response
			~~in the above-titled action.~~" We also suggest editing the Declaration in Form CIV-140 as follows: "At least five days before filing the demurrer, I met and conferred pursuant to Code of Civil Procedure section 430.41 with the party who filed the pleading subject to the demurrer …." Form CIV-141 We suggest the following revisions to Form CIV-141: "I _____ ~~was served with~~ am seeking a 30-day automatic extension for filing a demurrer to the following pleading in the above-titled action : ☐ a complaint ☐ an amended complaint ☐ ☐ an answer ☐ other *(specify):* ~~in the above-titled action.~~" We also suggest editing the Declaration in Form CIV-141 as follows:	The committee does not think it necessary to add the citation to the declaration. The citation is referenced in the footer. The committee has made a change similar to that proposed by the commentator. The committee declined to make this change.

	Commentator	Position	Comment	Committee Response
			"I intend to file a demurrer in this action. ~~Before I can do so, I am required to meet and confer with the party who filed the pleading that I am demurring to at least five days before the date when the responsive pleading is due. We have not been able to meet and confer.~~ I have not previously requested an automatic extension of time. ~~Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure section 430.41, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading.~~ I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due. I was unable to meet with that party pursuant to Code of Civil Procedure	

	Commentator	Position	Comment	Committee Response
			section 430.41 because:" **DISCLAIMER** **This position is only that of the Rules and Legislation Committee of the State Bar of California's Litigation Section. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Rules and Legislation Committee and in the Litigation Section is voluntary, and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.**	
6.	State Bar of California Committee on Administration of Justice (CAJ) Saul Bercovitch, Legislative Counsel	AM	CAJ supports this proposal subject to the comments below. CAJ recommends that the first paragraph of proposed Form CIV-140 be modified as follows: "~~I (*name*)~~ **(*Name of party*)** was served with [a pleading] in the above-titled action and ~~I am~~ **is** filing a demurrer to the pleading." CAJ recommends that the first paragraph of proposed Form CIV-141 be modified as follows: "~~I (*name*)~~ **(*Name of party*)** was served with [a pleading]…"	The committee agrees and has made this change.

	Commentator	Position	Comment	Committee Response
			These recommended revisions are intended to make the forms suitable for situations in which the pleading subject to demurrer is served on the party directly, as is often the case with original pleadings, rather than the party's counsel. CAJ believes the revised language would also be appropriate for other pleadings, whether served on a party directly or on a party's counsel as authorized representative.	
7.	Superior Court of Los Angeles County	AM	**Suggested modifications:** If implemented without amendment, proposed form CIV-140 may encourage counsel to adopt a "check-the-box" or dismissive attitude toward the meet and confer requirement. Form CIV-141 requires a party who has not been able to meet and confer timely to give a reason why that is the case. However, Form CIV-140 does not provide room under number 2 for the declarant to explain why the meet and confer did not take place or why it was not in good faith. CIV-140 should be amended to state, under number 2, "The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing	The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to explain why the meet-and-confer session was not in good faith or was unsuccessful. In response to

	Commentator	Position	Comment	Committee Response
			party was not in good faith are set forth: In addition, CIV-140 should require the demurring party to explain why agreement resolving the issues raised in the demurrer was not reached. While the demurring party cannot explain what was in the mind of the opposing party, he or she can explain what issues were discussed, why he or she decided to continue to pursue the demurrer, and what reasons were given by the opposing party for not amending. If no explanation is required, there is no way for the Court to determine whether or not the meet and confer was in good faith or rather whether the meet and confer was completely perfunctory. We recommend that under what is now number 1, the following be included: "The specific reasons why the meet and confer discussion was unsuccessful as to each of the issues raised in the demurrer are set forth: [below or on form MC-031]."	comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, "Form MC-031 *Attached Declaration* may be used if more space is needed.
			Request for Specific Comments: ☐ This proposal does address the stated purpose. ☐ No cost savings have been identified. ☐ Implementation would require training of clerical and courtroom staff and programming of the case management system (CMS) regarding the forms related	The committee appreciates these comments.

	Commentator	Position	Comment	Committee Response
			to the meet and confer and the automatic 30-day continuance. ☐ Two months after approval of this proposal would not be sufficient time for implementation. Up to 6 months may be needed for implementation in order to ensure proper training and programming of the CMS. ☐We have no comment regarding courts of different sizes.	
8.	Superior Court of San Diego County Mike Roddy, CEO	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Would the proposal provide cost savings? No. It would increase costs paid to staff managing filings-both new proposed filings and Requests for Default. Q: What are implementations requirements for courts? Need a better understanding of how this would impact CCP §585 Default Guidelines. New Case Management System programming needed – new filings. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? No. Q: How well would this proposal work in courts of different sizes? Large volume courts would have a greater impact than smaller volume courts.	The committee appreciates these comments.

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

SPR16-11

Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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

	Commentator	Position	Comment	Committee Response
9.	Superior Court of Ventura County Ned Elfrink, Court Program Supervisor	A	It would be good if form CIV-141 had space for a new date filled in as to the NEW date when a responsive pleading is due. This will avoid any confusion with the clerk's office as to when a default can be accepted.	The committee discussed this comment and declined to add a space for a new date, believing it would be confusing to have two dates on the form and relatively easy for a clerk to determine the new responsive pleading due date.

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

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedures: Privacy in Appellate Opinions (adopt Cal. Rules of Court, rules 1.201, 8.41, 8.90; amend rule 1.20; revise form MC-120)

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@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: 6. Privacy protection--Consider whether to recommend amendments to the Rules of Court or other actions to better protect the privacy of victims, wintesses, and others who are described in or otherwise affected by appellate opinions.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Appellate Procedure: Privacy in Appellate Opinions

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 1.201, 8.41, 8.90; amend rule 1.20; revise form MC-120

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 26, 2016

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends adopting a new rule to provide guidance on the use of protective nondisclosure of names in appellate court opinions to protect the privacy of specific categories of individuals. To better highlight existing requirements for protecting the privacy of social security and financial account numbers in filed documents, the committee also proposes moving these existing requirements to a new rule and cross-referencing the requirements in the appellate rules. This proposal is based on concerns about privacy protection raised by appellate justices and individuals whose identity or personal information has been revealed in appellate opinions.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Adopt California Rules of Court, rule 1.201 (Protection of privacy), to contain the content of former rule 1.20(b);

2. Adopt rule 8.41 to cross-reference in the appellate rules the existing requirements for protecting the privacy of social security and financial account numbers in filed documents;

3. Adopt rule 8.90 (Privacy in opinions) to provide guidance on the use of names in appellate court opinions, and place this rule in new article 7 (Privacy), within title 8, division 1, chapter 1, of the California Rules of Court;

4. Amend rule 1.20 (Filing) to move the requirements for protecting the privacy of social security and financial account numbers in filed documents from subdivision (b) of this rule to new rule 1.201; and

5. Revise *Confidential Reference List of Identifiers* (form MC-120), making a technical change to substitute new rule number 1.201 in place of 1.20(b).

The text of the adopted and amended rules and the revised form is attached at pages9–14.

Previous Council Action

Rule 8.401

The Judicial Council adopted a general rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. That rule was amended effective July 1, 1981, to provide for confidentiality of the record and briefs in these proceedings. Rule 39 was further amended effective January 1, 1997, to provide that all information in the appellate file in such cases is confidential. On January 1, 2005, all rules relating to juvenile appeals were repealed and replaced with new rules. Rule 37, adopted at that time, specified the general procedures in juvenile appeals and included a provision regarding confidentiality that addressed the use of initials to refer to parties in appellate proceedings in juvenile cases. Effective January 1, 2007, this rule was renumbered as rule 8.400. Effective July 1, 2010, the provisions relating to confidentiality of juvenile appellate proceedings were moved into a separate rule, rule 8.401. Effective January 1, 2012, rule 8.401 was amended to require the use of a juvenile's first name and last initial or just initials in published opinions; permit the use of either the juvenile's first name and last initial or just the juvenile's initials in unpublished opinions and in court orders; and provide that if the use of the name of a juvenile's relative would defeat anonymity for the juvenile, the relative's first name and last initial or just initials must be used.

Rule 1.20 and form MC-120

The Judicial Council adopted rule 1.20, effective January 1, 2007, to specify the effective date of filing of documents. The rule was amended effective January 1, 2008, to require parties and their attorneys to exclude or redact social security and financial account numbers from documents presented for public filing.

Also effective January 1, 2008, the Judicial Council adopted *Confidential Reference List of Identifiers* (form MC-120) to enable parties, if they obtain a court order, to file a confidential list

of the redacted account numbers and corresponding references to be used to refer to those account numbers in publicly filed documents.

Rationale for Recommendation

Privacy concerns in electronic era

In the past, unless someone was a subscriber to a service such as Westlaw or Lexis, appellate opinions could be accessed only on a case-by-case basis, in paper format. For unpublished opinions, access to the opinions was limited to the courthouse. Because accessing paper records is difficult and time-consuming, even though these opinions are public, information from the opinions was not generally extracted, disseminated, or used by those not involved in the case, except in high-profile cases. The U.S. Supreme Court referred to the difficulty in gathering information from paper files as "practical obscurity" (*United States Department of Justice* v. *Reporters Committee for Freedom of the Press* (1989) 489 U.S. 749, 762, 780).[1] The practical obscurity of paper-based opinions created a de facto protection for the privacy of information contained in these opinions, and as a result, concerns about the privacy of information in these opinions arose infrequently in the past.

Times have changed, and both published and unpublished appellate opinions and information contained in these opinions are now readily accessible and searchable on the Internet via Google and other search engines. The California Courts website is a source for these opinions. All opinions are posted to the Opinions page of this website, published opinions for 120 days and unpublished opinions for 60 days. After the 120 or 60 days, published and unpublished opinions remain available on the website through the Search Case Information tool. During the time the opinions are posted to the Opinions section, Google and other search engines search and index the opinions, making them widely available on the Internet with no time limit. Once indexed in this way, appellate opinions will show up in Internet search results when, for example, a searcher enters the name of a person and that person's name is included in an appellate opinion.

The new electronic searchability of appellate opinions has brought to the fore privacy concerns about information in these opinions. Judicial Council staff regularly receive requests to remove appellate opinions and identifying information in appellate opinions from the Internet. The requests range from victims and witnesses in criminal, family law, domestic violence, and other sensitive cases to criminal defendants who have served their sentences and are now having trouble finding employment and getting their lives back on track. The committee has noted the disincentive to participate as either a victim or a witness in court proceedings such as domestic violence or other sensitive cases if that information will forever be available and linked to that person's name on the Internet.

[1] In this case, the court recognized a privacy interest in information that is publicly available through other means, such as in paper court files, but is "practically obscure."

Existing privacy protection rules

As noted above, rule 8.401 protects the anonymity of juveniles involved in juvenile court proceedings in the appellate courts. Concerning appellate opinions, the rule provides as follows:

> In opinions that are not certified for publication and in court orders, a juvenile may be referred to either by first name and last initial or by his or her initials. In opinions that are certified for publication in proceedings under this chapter, a juvenile must be referred to by first name and last initial; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the initials of the juvenile may be used.

(Cal. Rules of Court, rule 8.401(a)(2).)[2]

Rule 1.20, which is applicable to all courts, contains provisions designed to protect the privacy of social security numbers and financial account numbers. Subdivision (b) of this rule generally requires parties and attorneys to leave out or redact these numbers from all filings.

Effective January 1, 2016, new rules governing public access to electronic appellate court records, rule 8.80 et seq., took effect. The stated intent of these rules is "to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests" (rule 8.80). Rule 8.83 identifies which electronic appellate court records may be made available remotely and which are to be made accessible only at the courthouse because they raise greater privacy concerns. In recognition that opinions, calendars, and dockets were already being made available on the California Courts website, this rule provides that these materials will be available remotely in all cases. With respect to other types of records, this rule provides for remote access to records only in civil cases, with certain exceptions. Records in the following types of cases are to be made available only at the courthouse:

(A) Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
(B) Juvenile court proceedings;
(C) Guardianship or conservatorship proceedings;
(D) Mental health proceedings;
(E) Criminal proceedings;
(F) Civil harassment proceedings under Code of Civil Procedure section 527.6;

[2] The *California Style Manual* also addresses protective nondisclosure of the identity of juveniles and victims of sex crimes in appellate opinions. Section 5:9, part of the chapter on editorial policies followed in official reports, provides in relevant part: "The Supreme Court has issued the following policy statement to all appellate courts: 'To prevent the publication of damaging disclosures concerning living victims of sex crimes and minors innocently involved in appellate court proceedings it is requested that the names of these persons be omitted from all appellate court opinions whenever their best interests would be served by anonymity.' "

(G) Workplace violence prevention proceedings under code of Civil Procedure section 527.8;
(H) Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;
(I) Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and
(J) Proceedings to compromise the claims of a minor or a person with a disability.

(Cal. Rules of Court, rule 8.83(c)(2).)

Rule 8.83(d) allows an appellate court to permit remote electronic access to additional records in an individual case under extraordinary circumstances, but it lists information that must be redacted from these records when remote access is permitted, specifically:

> "[D]river's license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information."

(Cal. Rules of Court, rule 8.83(d)(2).)

Proposal

The recommendations to the council are designed to build on and further emphasize the existing privacy protection rules.

Rules 1.20, 1.201, and 8.41. As noted above, current rule 1.20(b) requires redacting or excluding social security and financial account numbers in filed documents. The committee is concerned, however, that many people may be unaware of these privacy protection requirements because they are contained in a rule entitled "Filing" and in a chapter entitled "Service and Filing."

The committee recommends moving the content of rule 1.20(b)—with minor, nonsubstantive changes—to new rule 1.201. The new rule is entitled "Protection of privacy," which should make the requirements easier for rule users to locate. In addition, it would be moved to chapter 7, Form and Format of Papers, where users would be more likely to notice the requirements for redacting this information from papers. The committee also recommends adopting proposed new rule 8.41 to cross-reference rule 1.201 to make its provisions more apparent to those filing documents in appellate courts.

Rule 8.90. Proposed new rule 8.90 is designed to protect the identity of certain categories of individuals when they are parties or referred to in appellate opinions and to confirm that a reviewing court has discretion to refer to these individuals by first name and last initial or initials only. The rule lists categories of individuals in proceedings in which new rule 8.83 limits electronic access to records. As noted above, rule 8.83 does not permit remote electronic access

to records (other than records such as opinions, calendars, dockets, and indexes) in criminal cases, juvenile court cases, family law cases, mental health proceedings, and other specified proceedings. Public access to these electronic appellate court records is available at the courthouse only. (Cal. Rules of Court, rule 8.83(c)(2).) The advisory committee believes that the same privacy considerations that limit remote access to records in these proceedings support providing privacy protections to specified categories of individuals in these proceedings when they are referred to in appellate court opinions. Proposed new rule 8.90(b) would therefore encourage the reviewing court to consider referring by first name and last initial or initials only to the individuals whose privacy interests are at risk in these proceedings, such as victims in criminal cases, protected parties in protective order proceedings, and patients in mental health proceedings. Proposed new rule 8.90(b) also articulates a reviewing court's discretion to extend this privacy protection to other individuals not specifically listed.

Form MC-120. This proposal requires that a technical change be made to the form that filers use to file a confidential reference list of identifiers for each redacted identifier. Form MC-120 would be revised to replace the reference to rule 1.20(b) with a reference to new rule 1.201.

Comments, Alternatives Considered, and Policy Implications

The proposal to adopt new rules 1.201, 8.41, and 8.90; amend rule 1.20; and revise form MC-120 was circulated for public comment between April 15 and June 14, 2016, as part of the regular spring comment cycle. Ten individuals or organizations submitted comments on the proposal. All commentators expressed support for improving privacy protections and either agreed with the proposal or agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 15–40.

The committee also received internal comments from the Family and Juvenile Law Advisory Committee. The main comments and the committee responses to these comments are discussed below.

Rule 8.90

Three commentators suggested that proposed new rule 8.90's protective nondisclosure of names should be mandatory rather than discretionary. One suggested giving the court discretion to make an exception or establishing a rebuttable presumption that protective nondisclosure would apply.

The committee is not recommending at this time that the use of protective nondisclosure be made mandatory. Making it mandatory would be an important substantive change to the proposal, and thus is not something that the committee could recommend for adoption without another circulation for public comment. The committee's view is that addressing these privacy concerns now is important and that the committee can revisit the issue to determine if stronger measures are needed. The committee acknowledged that, as circulated, the rule merely highlighted the court's pre-existing discretion to anonymize individuals referenced in appellate court opinions. To better express the intent of the rule, the committee modified the proposed language from "it is within the discretion of the reviewing court" to "the reviewing court should consider" protective

nondisclosure in the specified circumstances. Further, the committee expressed the belief that publicity about the rule and education and training in drafting opinions to eliminate unnecessary use of names will significantly reduce the use of names in cases where such use would affect privacy interests.

Two commentators and the Family and Juvenile Law Advisory Committee expressed concerns about a potential inconsistency between proposed rule 8.90 and rule 8.401, which *requires* that the names of juveniles be anonymized in juvenile court proceedings. Although proposed rule 8.90(a) states that the rule provides guidance on the use of names in appellate court opinions and that other more specific laws are controlling (which was intended to address the fact that rule 8.401 is stricter), in light of these comments, the committee decided to modify the proposed rule. To clarify that juveniles in juvenile court proceedings are differently situated, the committee recommends deleting from proposed rule 8.90(b) "juveniles in juvenile court proceedings" as a category of protected persons that the reviewing court should consider for protective nondisclosure, and instead to state, in proposed rule 8.90(a), that "[r]eference to juveniles in juvenile court proceedings is governed by rule 8.401(a)."

Two other commentators suggested that two new categories of protected persons be added to proposed rule 8.90(b): nonprotected parties in protective order proceedings and civil jurors. The committee discussed the situation in which persons' identities are revealed in appellate opinions by virtue of their relationship to someone else who is named, such as children or a spouse or partner of an alleged abuser in domestic violence restraining order proceedings. The committee added to rule 8.90(b) the category of "[p]ersons in other circumstances in which use of that person's full name would defeat the objective of anonymity" for someone else. With respect to civil jurors, the committee decided that this category is adequately encompassed by the rule 8.90(b)(10) catch-all provision of "[p]ersons in other circumstances in which personal privacy interests support not using the person's name."

Other considerations

The invitation to comment also specifically asked whether form MC-120 or a similar form to be filed in appellate courts is necessary. Two of three responses to this question were negative, and the committee concluded that to pursue developing such a form or modifying it for appellate purposes was unnecessary.

Several commentators, including the Family and Juvenile Law Advisory Committee, urged the consideration of additional privacy protections such as a process by which a person already named in an appellate opinion could petition the court to mask his or her name, procedures for persons to request privacy protection, and technological solutions. The committee plans to continue its discussion of these and other possible actions to further address privacy concerns in appellate opinions.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require judicial, court staff, and attorney training in expanding the use of first names and initials, initials only, or an individual's status (such as "daycare provider"), instead of a victim's or witness's name, when writing briefs and appellate opinions.

Attachments and Links

1. Cal. Rules of Court, rules 1.20, 1.201, 8.41, and 8.90, at pages 9–13
2. Form MC-120, at page 14
3. Chart of comments, at pages 15–40

Rules 1.201, 8.41, and 8.90 of the California Rules of Court are adopted and rule 1.20 is amended, effective January 1, 2017, to read:

Rule 1.20. Effective Date of Filing

~~**(a) Effective date of filing**~~

Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.

~~**(b) Protection of privacy**~~

~~(1) *Scope*~~

~~The requirements of this subdivision that parties or their attorneys must not include, or must redact, certain identifiers from documents or records filed with the court do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.~~

~~(2) *Exclusion or redaction of identifiers*~~

~~To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:~~

~~(A) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.~~

~~(B) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.~~

~~(3) *Responsibility of the filer*~~

~~The responsibility for excluding or redacting identifiers identified in (b)(2) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.~~

~~(4) *Confidential reference list*~~

~~If the court orders on a showing of good cause, a party filing a document containing identifiers listed in (b)(2) may file, along with the redacted document that will be placed in the public file, a reference list. The~~

~~reference list is confidential. A party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.~~

Rule 1.201. Protection of privacy

(a) Exclusion or redaction of identifiers

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court:

(1) Social security numbers. If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used.

(2) Financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used.

(b) Responsibility of the filer

The responsibility for excluding or redacting identifiers identified in (a) from all documents filed with the court rests solely with the parties and their attorneys. The court clerk will not review each pleading or other paper for compliance with this provision.

(c) Confidential reference list

If the court orders on a showing of good cause, a party filing a document containing identifiers listed in (a) may file, along with the redacted document that will be placed in the public file, a reference list. The reference list is confidential. A party filing a confidential reference list must use *Confidential Reference List of Identifiers* (form MC-120) for that purpose. The confidential list must identify each item of redacted information and specify an appropriate reference that

uniquely corresponds to each item of redacted information listed. All references in the case to the redacted identifiers included in the confidential reference list will be understood to refer to the corresponding complete identifier. A party may amend its reference list as of right.

(d) Scope

The requirements of this rule do not apply to documents or records that by court order or operation of law are filed in their entirety either confidentially or under seal.

Article 2. Service, Filing, Filing Fees, Form, and ~~Number of Documents~~ Privacy

Rule 8.41. Protection of privacy in documents and records

The provisions on protection of privacy in rule 1.201 apply to documents and records under these rules.

Article 7. Privacy

Rule 8.90. Privacy in opinions

(a) Application

(1) This rule provides guidance on the use of names in appellate court opinions.

(2) Reference to juveniles in juvenile court proceedings is governed by rule 8.401(a).

(3) Where other laws establish specific privacy-protection requirements that differ from the provisions in this rule, those specific requirements supersede the provisions in this rule.

(b) Persons protected

To protect personal privacy interests, in all opinions, the reviewing court should consider referring to the following people by first name and last initial or, if the

first name is unusual or other circumstances would defeat the objective of anonymity, by initials only:

(1) Children in all proceedings under the Family Code and protected persons in domestic violence–prevention proceedings;

(2) Wards in guardianship proceedings and conservatees in conservatorship proceedings;

(3) Patients in mental health proceedings;

(4) Victims in criminal proceedings;

(5) Protected persons in civil harassment proceedings under Code of Civil Procedure section 527.6;

(6) Protected persons in workplace violence–prevention proceedings under Code of Civil Procedure section 527.8;

(7) Protected persons in private postsecondary school violence–prevention proceedings under Code of Civil Procedure section 527.85;

(8) Protected persons in elder or dependent adult abuse–prevention proceedings under Welfare and Institutions Code section 15657.03;

(9) Minors or persons with disabilities in proceedings to compromise the claims of a minor or a person with a disability;

(10) Persons in other circumstances in which personal privacy interests support not using the person's name; and

(11) Persons in other circumstances in which use of that person's full name would defeat the objective of anonymity for a person identified in (1)–(10).

Advisory Committee Comment

Subdivision (b)(1)–(9) lists people in proceedings under rule 8.83 for which remote electronic access to records—except dockets or registers of actions, calendars, opinions, and certain Supreme Court records—may not be provided. If the court maintains these records in electronic form, electronic access must be provided at the courthouse only, to the extent it is feasible to do so. (Cal. Rules of Court, rule 8.83(c).) Subdivision (b)(1)–(9) recognizes the privacy considerations of certain persons subject to the proceedings listed in rule 8.83(c). Subdivision

(b)(10) recognizes people in circumstances other than the listed proceedings, such as witnesses, in which the court should consider referring to a person by first name and last initial, or, if the first name is unusual or other circumstances would defeat the objective of protecting personal privacy interests, by initials. Subdivision (b)(11) recognizes people in circumstances other than the listed proceedings, such as relatives, in which the court should consider referring to a person by first name and last initial or by initials if the use of that person's full name would identify another person whose personal privacy interests support remaining anonymous.

CONFIDENTIAL

MC-120

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 2016-08-08
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
SHORT TITLE:	
CONFIDENTIAL REFERENCE LIST OF IDENTIFIERS ☐ _____ **AMENDED**	CASE NUMBER:

TO COURT CLERK: THIS LIST IS CONFIDENTIAL

INSTRUCTIONS FOR FILER

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, social security numbers and financial account numbers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided by law or ordered by the court. (Cal. Rules of Court, rule 1.201.) If the court orders on a showing of good cause, a party may file, along with the redacted pleading or paper that will be placed in the public file, this *Confidential Reference List of Identifiers*. The list must identify each identifier that has been redacted from the pleading or paper in the public file and specify an appropriate reference that uniquely corresponds to each item of redacted information listed. All references included in the list will be understood to refer to the corresponding complete identifier. Additional pages may be attached to this form as necessary.

REFERENCE LIST

	COMPLETE IDENTIFIER *Use this column to list the social security and financial account numbers that have been redacted from the document that is to be placed in the public file.*	CORRESPONDING REFERENCE *Use this column to list the reference or abbreviation that will refer to the corresponding complete identifier.*	LOCATION *Use this column to identify the document or documents where the reference appears in place of the identifier.*
1.			
2.			
3.			
4.			
5.			
6.			

☐ Additional pages are attached. Number of pages attached: _____

Form Adopted for Mandatory Use
Judicial Council of California
MC-120 [Rev. January 1, 2017]

CONFIDENTIAL REFERENCE LIST OF IDENTIFIERS

Cal. Rules of Court, rule 1.201
www.courts.ca.gov

Item number: 18

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Juvenile Proceedings

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2015
Project description from annual agenda: Item 5 - Record on appeal in juvenile cases - Consider whether to recommend amendments to the rules regarding the record on appeal in juvenile cases to clarify requirements for inclusion of items relating to Indian Child Welfare Act compliance.
Item 7 - Application of rules on juvenile appeals - Consider whether to recommend amendment to the rules on juvenile appeals to clarify that they apply to appeals under Probate Code 1516.5

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Appellate Procedure: Juvenile Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.400 and 8.407

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 17, 2016

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the rule that identifies the proceedings governed by the juvenile appellate rules to clarify that these rules apply to appeals of orders terminating parental rights under Probate Code section 1516.5 and Family Code section 7662 et seq. The committee also recommends amending the rule that lists what must be included in the normal record in juvenile appeals to clarify that the clerk's transcript must include various notices under the Indian Child Welfare Act and to add hearings at which certain advisements are to be given to the hearings that must be included in the reporter's transcript. This proposal, which originated from a suggestion submitted by an attorney at one of the appellate projects that assist the Courts of Appeal with appointed counsel in juvenile appeals, is intended to save time and costs for courts associated with requests to augment or receive copies of the record on appeal, and the costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts when such requests are granted.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Amend rule 8.400 of the California Rules of Court to provide that the rules regarding juvenile appeals apply to appeals of orders:
   a. Terminating parental rights under Probate Code section 1516.5; and
   b. Requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and
2. Amend rule 8.407 of the California Rules of Court to:
   a. Require that the oral proceedings of hearings at which certain advisements are to be given to the hearings be included in the reporter's transcript in juvenile appeals; and
   b. Clarify that in appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the reporter's transcript must include all section 366.26 hearings; and
3. Amend the advisory committee comment to rule 8.407 to clarify that the clerk's transcript in juvenile appeals must include various notices and responses under the Indian Child Welfare Act.

The text of the amended rules is attached at pages 11–14.

Previous Council Action

Juvenile rules

The Judicial Council adopted a rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. As originally adopted, this rule applied only to appeals from the juvenile court. Effective July 1, 1987, the council amended this rule to make it applicable to appeals in actions under Civil Code section 232 (now Family Code section 7800 et seq.) to declare a child free from parental custody and control. This rule has subsequently been amended and renumbered as rule 8.400, but its provision regarding application of the rules on juvenile appeals remains substantively unchanged.

Clerk's transcript

Rule 39, as originally adopted, also addressed the contents of the normal record in juvenile appeals. With respect to the clerk's transcript, this rule identified several specific types of reports and filings that were required to be included in the transcript. This rule was subsequently amended several times to add and modify the contents of the clerk's transcript. On January 1, 2005, all of the rules relating to juvenile appeals were repealed by the Judicial Council and replaced with new rules. The new rule regarding the clerk's transcript required the transcript to include, among other things, "any report or other document submitted to the court." The rule regarding the record on appeal was subsequently renumbered as rule 8.407, but this provision remains substantively unchanged.

Reporter's transcript

With respect to the reporter's transcript, rule 39, as adopted in 1977, generally provided that the transcript was to include "the oral proceedings taken at the jurisdiction and disposition hearing, but excluding opening statements and oral arguments." This rule was subsequently amended several times to add and modify the contents of the reporter's transcript. As of December 2004, it provided that the reporter's transcript was to include "the oral proceedings taken at the jurisdiction, disposition, review, and hearings under section 366.26 of the Welfare and Institutions Code, including oral arguments to the court and any oral opinions of the court, but excluding opening statements." In addition, there was a separate rule relating to appeals from orders terminating parental rights, which required that reporter's transcripts include only "the portions of the hearing from which the appeal is taken."

On January 1, 2005, the Judicial Council adopted a new rule regarding the record on appeal in juvenile cases that essentially adopted the approach of the former rule on appeals from orders terminating parental rights, providing that, except in appeals from dispositional orders, the reporter's transcript must include only the oral proceedings at any hearing that resulted in the order or judgment being appealed and any oral opinion of the court. In appeals from dispositional orders, the rule provided that the reporter's transcript must include the oral proceedings at hearings on jurisdiction and disposition, any motion by the appellant that was denied in whole or in part, and any oral opinion of the court. The reason given for this substantive change was to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal. This provision regarding reporter's transcripts remains substantively unchanged.

Rationale for Recommendation

Rule 8.400

Chapter 5 of title 8, division 1 of the California Rules of Court, which is entitled "Juvenile Appeals and Writs," sets out the procedures for appeals and writ proceedings in juvenile delinquency and dependency proceedings and certain other similar proceedings. Rule 8.400 identifies the proceedings that are governed by chapter 5. Currently, the proceedings listed in rule 8.400 include appeals from judgments or appealable orders in actions to free a child from parental custody and control under Family Code section 7800 et seq.

The rules in chapter 5 differ from the rules governing other civil appeals in several important ways. Among other things, these rules specify the contents of the record on appeal, rather than requiring parties to designate the items to be included in the record. In addition, these rules do not include procedures for charging advance fees to parties for their copy of the record. This structure reflects statutory provisions that provide for immediate preparation and transmission of

the record on appeal without the advance payment of fees for the record in proceedings under the Welfare and Institutions Code[1] and under Family Code section 7800 et seq.[2]

Like proceedings under Family Code section 7800 et seq., Probate Code section 1516.5 pertains to the termination of parental rights, but in the context of a probate guardianship. Section 1516.5 specifically provides that these probate proceedings may be brought in accordance with the procedures set out in Family Code section 7800 et seq.[3] Similarly, Family Code section 7669 provides that an order under Family Code section 7662 et seq. requiring or dispensing with an alleged father's consent for the adoption of a child[4] may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court. Currently, however, rule 8.400 does not identify appeals in proceedings under Probate Code section 1516.5 or under Family Code section 7662 et seq. as being among the proceedings governed by the juvenile appellate rules. This has caused confusion in some appeals about whether the record should be prepared and sent to counsel without the necessity of filing a designation or the advance payment of fees for the record. Consequently, appellate counsel have had to prepare and file requests to have the record prepared, resulting in delay and additional costs to the courts.

To eliminate confusion about the record preparation process in these cases and to reduce the delay and costs associated with requests for preparation of the record, the committee recommends that rule 8.400 be amended to clarify that appeals under Probate Code section 1516.5 and appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq. be included among the proceedings governed by the juvenile appellate rules.

Rule 8.407

Rule 8.407 sets out the content of the normal record in juvenile appeals. Subdivision (a)(4) of this rule currently requires that the clerk's transcript in these appeals include, among other

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[1] Welf. & Inst. Code, § 395(a)(4) provides that in juvenile appeals "[t]he record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees."

[2] Fam. Code, § 7895(c) provides that in appeals under Fam. Code, § 7800 et seq., "[t]he reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at court expense and without advance payment of fees."

[3] Prob. Code, § 1516.5 provides, in relevant part: "A proceeding to have a child declared free from the custody and control of one or both parents may be brought in accordance with the procedures specified in [Fam. Code, § 7800 et seq.]." It also provides: "The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section."

[4] Under these Family Code sections, the determination of whether the father's consent is needed is essentially the determination of whether to terminate the father's parental rights. Fam. Code, § 7664(c) provides: "If the court finds that it is in the best interest of the child that the biological father should be allowed to retain his parental rights, the court shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the biological father, or that if he is the biological father it is in the child's best interest that an adoption be allowed to proceed, the court shall order that the consent of that man is not required for an adoption. This finding terminates all parental rights and responsibilities with respect to the child."

things, "[a]ny report or other document submitted to the court." Subdivision (b) requires that the reporter's transcript in juvenile appeals generally include the oral proceedings at any hearing that resulted in the order or judgment being appealed, but that in appeals from dispositional orders, it include the oral proceedings at the hearings on jurisdiction and disposition and any motion by the appellant that was denied in whole or in part. Under subdivision (c), any party or Indian tribe that has intervened in the proceedings may apply to the superior court for the inclusion of additional oral proceedings in the reporter's transcript. Under rule 8.410, either on the motion of a party or on its own motion, the Court of Appeal can also order that additional items be included in the record on appeal.

Under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related California law (see Welf. & Inst. Code, § 224 et seq.; Cal. Rules of Court, rule 5.481 et seq.), in juvenile proceedings the trial court has an affirmative and continuing duty to inquire whether a child for whom a juvenile petition is to be, or has been, filed is or may be an Indian child and if the court knows or has reason to know that an Indian child is involved, notices must be sent to, among others, the child's Indian custodian, if any, and the child's tribe (see Welf. & Inst. Code, §§ 224.2, 224.3). The failure to comply with ICWA inquiry and notice requirements can be the basis for seeking to invalidate the trial court decision.

In the experience of committee members, the normal record on appeal in juvenile dependency cases may not always include all of the written documents or transcripts of the hearings that are needed to determine whether there was appropriate compliance with these ICWA inquiry and notice requirements. The Court of Appeal, Fourth Appellate District, has a local order that requires that reporter's transcripts in dependency appeals include additional hearings, such as the detention hearing. In other appellate districts, if additional items are needed in the record, they must be requested either through an application to the superior court under rule 8.407(c) or through a motion to augment under rule 8.410. However, it takes additional time and resources for counsel to prepare and for the courts to consider such applications and motions. For those parties who are represented by appointed counsel, the time spent by counsel on such requests or motions constitutes an additional cost for the Courts of Appeal. Furthermore, if the superior courts or Courts of Appeal routinely grant these applications or motions, it does not save trial courts any record preparation costs *not* to have included these hearings in the original clerk's or reporter's transcript. In fact, it may actually cost trial courts more to separately prepare and transmit to the reviewing court supplemental transcripts at a later time.

To reduce the delay and costs associated with augmentation requests, the committee recommends that rule 8.407(b), which identifies the hearings that must be included in the reporter's transcript as part of the normal record in juvenile appeals, be amended to require that, in juvenile dependency appeals, the following also be included:

- The detention hearing; and
- The hearing(s) at which the child's parent(s) first appeared.

These hearings have been identified as those at which ICWA inquiries are likely to be conducted, and thus it is the committee's understanding that transcripts of these hearing are likely to be routinely needed in dependency appeals to determine if there has been compliance with the ICWA.

The committee also recommends two amendments to provide clarifications about materials that should already be included in the normal record in juvenile appeals:

- Amend subdivision (b) of rule 8.407 to clarify that in appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the reporter's transcript must including all section 366.26 hearings; and
- Amend the advisory committee comment to subdivision (a) of rule 8.407 to clarify that the clerk's transcript must include written ICWA notices and responses submitted to the court.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposed amendments to rules 8.400 and 8.407 were circulated for public comment between April 15 and June 14, 2016 as part of the regular spring comment cycle. Ten organizations submitted comments on this proposal. Four commentators agreed with the proposal, five agreed with the proposal if modified, and one did not indicate a positon on the proposal but provided substantive comments. A chart with the full text of these external public comments received and the committee's responses is attached at pages 15-29.

The committee also received internal comments from the Family and Juvenile Law Advisory Committee.

The main comments and the committee responses to these comments are discussed below.

Rule 8.400

As circulated for public comment, the proposal would have amended rule 8.400 to provide that the rules for juvenile appeals apply to appeals of orders terminating parental rights under Probate Code section 1516.5. No commentator expressed opposition to this proposed amendment. The committee is therefore recommending this amendment for adoption as circulated for public comment.

The invitation to comment also specifically asked whether rule 8.400 should be further amended to provide that appeals of actions under Family Code section 7662 et seq., relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, are governed by the juvenile appellate rules. Four commentators provided input on this issue:

- Two superior courts supported making this change. The Superior Court of San Diego County indicated that it already treats appeals of actions under Family Code section 7662 et seq. as under the juvenile appellate rules;

- One commentator responded that there is no need for this information unless the issue on appeal relates to Family Code section 7662 et seq.; and
- The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee did not indicate a preference, but stated that any steps the courts can take up front to provide all necessary information are likely to improve the outcome and efficiency of processing the case.

The committee also received internal comments on this issue from the Family and Juvenile Law Advisory Committee. Members of that committee expressed support for amending rule 8.400 to provide that appeals of actions under Family Code section 7662 et seq. are governed by the juvenile appellate rules.

Based on all of these comments and the language of Family Code section 7669,[5] the committee recommends that rule 8.400 be amended to provide that appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq. are governed by the juvenile appellate rules.

Rule 8.407

Clerk's transcript

No commentator expressed opposition to the concept of clarifying that ICWA notices and responses filed with the court should be included in the clerk's transcript. However, one commentator suggested that this clarification should be included in the text of rule 8.407, rather than the advisory committee comment to the rule. The committee considered this suggestion, but concluded that the existing rule text requiring inclusion in the clerk's transcript of "[a]ny report or other document submitted to the court" already requires inclusion of these ICWA notices in the transcript and, therefore, that it was unnecessary to modify the rule text. The purpose of the amendment to the advisory committee comment that was circulated for public comment is not to add any substantive requirements, but only to provide examples of the types of documents already required to be included in the clerk's transcript under the rule. To make this intent clearer, the committee has modified the proposed language of the comment to specify that ICWA notices are just an example of the types of documents that must be included in the clerk's transcript under this rule.

Commentators also suggested some nonsubstantive changes to the advisory committee comment. The committee made several changes to the proposed advisory committee comment text in response to these public comments.

[5] As noted above, this section provides, in relevant part "An order requiring or dispensing with an alleged father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court."

Reporter's transcript. A number of commentators provided input on the proposed changes to subdivision (b) of rule 8.407 relating to the content of reporter's transcripts.

The invitation to comment asked for specific input on two interrelated questions the hearings that should be included in the normal record in juvenile dependency appeals:

- *Are transcripts of the detention hearing and of the hearing at which a child's parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?* This question was included because, while automatically including transcripts of these hearings in the record will reduce costs if routinely needed for appellate review in these cases, it may increase costs if they are not needed.
- *Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?* This question was included because one Court of Appeal district has already adopted such a local rule and because such an approach could be used to accommodate local differences.

The commentators who provided specific input were split about whether the transcripts of the proposed additional hearings are needed in all cases, but the weight of the comments indicated that these transcripts are needed to assess compliance with ICWA and should be included in the record on appeal. The specific responses to this inquiry included:

- Two bar organizations indicated that these transcripts are routinely needed.
- The Superior Court of Los Angeles County indicated that these transcripts are not routinely needed, although it also indicated that they are needed to determine whether the ICWA inquiry was done.
- The Superior Court of San Diego County, which is in a Court of Appeal District that has adopted a local rule requiring that additional hearings be included in the reporter's transcript, responded "Unknown";
- The TCPJAC/CEAC Joint Rules Subcommittee did not state a preference but noted that some courts have already begun including these records, finding that while the workload has increased initially, the up-front work has demonstrated a lower reversal rate and fewer requests to augment the record on appeal; and
- Members of the Family and Juvenile Law Advisory Committee generally supported including these hearings in the transcript.

In addition to these specific comments, four commentators expressed general support for the proposal as circulated, which included amendments to add transcripts of these hearings to the normal record.

There was a split among the commentators regarding whether there should be a statewide rule on this or whether each district should be able to adopt its own local rule:

- One of the bar organizations and the TCPJAC/CEAC Joint Rules Subcommittee expressed support for a statewide rule; and
- The superior courts of Los Angeles and San Diego Counties expressed support for local rules.

In discussing these comments, the committee noted that the practices in the two superior courts that supported the local rule approach would not be impacted by the adoption of a statewide rule requiring inclusion of these transcripts in the normal record since the Courts of Appeal for the districts in which these superior courts are located already have local rules that require the inclusion of these transcripts, and more, in the normal record.[6] Thus, in both these courts, the transcripts at issue would have to be prepared regardless of whether a statewide rule is adopted.

Based on the weight of the public comments and the committee's conclusion that having these transcripts prepared as part of the normal record would reduce overall costs for the courts and reduce delay in these cases, the committee decided to recommend that, as proposed in the invitation to comment, subdivision (b) of rule 8.407 be amended to provide that transcripts of the detention hearing and the hearing at which a parent of the child made his or her initial appearance be part of the normal record in juvenile dependency appeals.

Two commentators expressed concern that subdivision (b) of rule 8.407, as circulated, was hard to follow and made suggestions to improve its clarity. In response to these comments, the committee recommends that subdivision (b) be reorganized, including that each hearing that must be included in the reporter's transcript be listed in a separately lettered or numbered paragraph or item.

Alternatives

In addition to the alternatives considered as part of the public comment process, which are discussed above, the committee also considered whether it would be preferable not to propose any amendments to either rule 8.400 or rule 8.407 at this time. The committee concluded, however, that the amendments recommended in this report would save time and reduce the costs for courts associated with requests to augment or receive copies of the record on appeal and the costs associated with preparing and transmitting supplemental clerk's and reporter's transcripts when such requests are granted, and therefore that it would be beneficial to propose these amendments at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require changes in existing procedures relating to what material is included in the reporter's transcripts in juvenile dependency cases and, in some courts, relating to the

[6] The Court of Appeal, Fourth Appellate District, in which appeals from cases in the Superior Court of San Diego County are considered, has for some time had a standing order requiring the inclusion of these transcripts in the record in juvenile dependency appeals. The Court of Appeal, Second Appellate District, in which appeals from cases in the Superior Court of Los Angeles County are considered, has recently adopted a local rule amendment requiring the inclusion of these transcripts in the record.

preparation of the record in appeals of orders terminating parental rights under Probate Code section 1516.5. This is likely to require some additional training for court clerks and court reporters. However, the intent of this proposal is to decrease overall costs and improve efficiency by:

- Reducing Court of Appeal expenses for appointed counsel in juvenile dependency cases associated with preparing motions to augment;
- Reducing costs for the trial courts and Courts of Appeal in considering requests to prepare the record and motions to augment the record; and
- Reducing trial court costs and saving time associated with preparing and transmitting supplemental clerk's and reporter's transcripts.

The TCPJAC/CEAC Joint Rules Subcommittee indicated that these rules changes would likely not have significant fiscal and/or administrative impacts on the trial courts.

Attachments and Links

1. California Rules of Court, rules 8.400 and 8.407, at pages 11–14
2. Chart of comments, at pages 15–29

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

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

Chapter 5. Juvenile Appeals and Writs

Article 1. General provisions

Rule 8.400. Application

The rules in this chapter govern:

(1) Appeals from judgments or appealable orders in:

(A) Cases under Welfare and Institutions Code sections 300, 601, and 602; and

(B) Actions to free a child from parental custody and control under Family Code section 7800 et seq. and Probate Code section 1516.5; ~~and~~

(2) Appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code section 7662 et seq.; and

~~(2)~~(3) Writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

Article 2. Appeals

Rule 8.407. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) The petition;

(2) Any notice of hearing;

(3) All court minutes;

(4) Any report or other document submitted to the court;

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

(5) The jurisdictional and dispositional findings and orders;

(6) The judgment or order appealed from;

(7) Any application for rehearing;

(8) The notice of appeal and any order pursuant to the notice;

(9) Any transcript of a sound or sound-and-video recording tendered to the court under rule 2.1040;

(10) Any application for additional record and any order on the application;

(11) Any opinion or dispositive order of a reviewing court in the same case; and~~;~~

(12) Any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court.

(b) Normal record: reporter's transcript

The reporter's transcript must contain any oral opinion of the court and:

~~(1) Except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;~~

~~(2)~~(1) In appeals from dispositio~~al~~ orders, the oral proceedings at hearings on:

(A) Jurisdiction; ~~and~~

(B) Disposition; ~~and~~

~~(B)~~(C) Any motion by the appellant that was denied in whole or in part; and

(D) In cases under Welfare and Institutions Code section 300 et seq., hearings:

(i) On detention; and

(ii) At which a parent of the child made his or her initial appearance.

(2) In appeals from an order terminating parental rights under Welfare and Institutions Code section 300 et seq., the oral proceedings at all section 366.26 hearings.

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

(3) ~~Any oral opinion of the court~~ In all other appeals, the oral proceedings at any hearing that resulted in the order or judgment being appealed.

(c) Application in superior court for addition to normal record

(1) Any party or Indian tribe that has intervened in the proceedings may apply to the superior court for inclusion of any oral proceedings in the reporter's transcript.

(2) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(3) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(4) The clerk must immediately present the application to the trial judge.

(5) Within five days after the application if filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 8.155.

(6) If the judge does not rule on the application within the time prescribed by (5), the requested material—other than exhibits—must be included in the clerk's transcript or the reporter's transcript without a court order.

(7) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (5) or (6).

(d) Agreed or settled statement

To proceed by agreed or settled statement, the parties must comply with rule 8.344 or 8.346, as applicable.

(e) Transmitting exhibits

Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the reviewing court as provided in rule 8.224.

Rules 8.400 and 8.407 of the California Rules of Court are amended, effective January 1, 2017, to read:

Advisory Committee Comment

Rules 8.45–8.47 address the appropriate handling of sealed or confidential records that must be included in the record on appeal. Examples of confidential records include records of proceedings closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

Subdivision (a)(4). Examples of the documents that must be included in the clerk's transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries regarding a child under the Indian Child Welfare Act (*Indian Child Inquiry Attachment* [form ICWA-010(A)]), any *Parental Notification of Indian Status* (form ICWA-020), any *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) sent, any signed return receipts for the mailing of form ICWA-030, and any responses received to form ICWA-030.

Subdivision (b). Subdivision (b)(1) provides that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This provision is intended to achieve consistent record requirements in all appeals of cases under Welfare and Institutions Code section 300, 601, or 602 and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Subdivision (b)~~(2)~~(1)(A)recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing disposition~~al~~ order. The rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a disposition~~al~~ order.

Subdivision (b)~~(2)(B)~~(1)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.

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	Commentator	Position	Comment	Committee Response
1.	California Court Reporters Association by Karen Kronquest Director, District B	A	CCRA agrees that transcripts of the suggested hearings in juvenile dependency cases should be automatically included in appeals.	The committee notes the commentator's support for the proposal; no response required.
2.	Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Principal Deputy County Counsel	NI	See comments on specific provisions below.	
3.	Orange County Bar Association by Todd G. Friedland, President	AM	The suggested changes are well-taken and useful in clarifying record-preparation procedures in juvenile dependency matters. See comments on specific provisions below.	
4.	State Bar of California, Committee on Appellate Courts by Paul J. Killion Chair	A	The State Bar of California's Committee on Appellate Courts supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
5.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair	A	See comments on specific provisions below.	
6.	Superior Court of Los Angeles County	AM	See comments on specific provisions below.	
7.	Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	See comments on specific provisions below.	

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

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	Commentator	Position	Comment	Committee Response
8.	Superior Court of Riverside County by Marita Ford Senior Management Analyst	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
9.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	See comments on specific provisions below.	
10.	TCPJAC/CEAC Joint Rules Subcommittee	AM	See comments on specific provisions below.	

Does the proposal appropriately addresses the stated purpose?

Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	Yes, the proposal is appropriate because it includes that rule 8.400 be amended to also include appeals under Probate Code 1516.5 among the proceedings governed by the juvenile appellate rule and to require that, in juvenile dependency appeals, the detention hearing and the hearing(s) at which the child's parent(s) first appeared be included in the reporter's transcript. These changes will help to eliminate confusion and provide clarity to the appellate counsel.	The committee appreciates this input.
Superior Court of Los Angeles County	Yes	The committee appreciates this input.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Yes, but as noted below, it may be preferable to have each appellate district determine whether to adopt relevant local rules.	The committee appreciates this input.

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Does the proposal appropriately addresses the stated purpose?		
Commentator	**Comment**	**Committee Response**
TCPJAC/CEAC Joint Rules Subcommittee	Yes, the rule proposal addresses preparing and transmitting supplemental transcripts for proceedings related to orders terminating parental rights and notices regarding ICWA.	The committee appreciates this input.

Should appeals of actions under Family Code sections 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, also be added to the list of proceedings governed by the juvenile appellate rules?		
Commentator	**Comment**	**Committee Response**
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	No, there is no need for this information unless the issue on appeal relates to Family Code sections 7662-7666.	Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.400 be amended to encompass appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code sections 7662–7666. This would mean that any such appeals would be governed by the juvenile appellate rules, rather than the rules for other civil appeals.
Superior Court of Los Angeles County	Yes	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Yes. The proposal states, "The committee decided not to include [appeals of actions under Fam. Code §§ 7662-7666] in this proposal because … it was not clear whether the statutes contemplated that the record in these proceedings would be	The Committee notes that Government Code section 98926 addresses only the fees for filing a notice of appeal. There are separate statutes that also specifically state that no advance fee for the record is to be collected

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Should appeals of actions under Family Code sections 7662–7666, relating to termination of parental rights of alleged or unknown fathers in adoption proceedings, also be added to the list of proceedings governed by the juvenile appellate rules?		
Commentator	**Comment**	**Committee Response**
	prepared and transmitted without the advance payment of fees." (SPR16-03, p. 4,¶ 1.) However, Government Code section 68926(c) clearly states, "A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or **proceedings to declare a minor free from parental custody or control** …." Thus, there is no basis for an argument that such appeals might require the advance payment of fees. Family Code section 7662-7666 actions are handled in the juvenile court in San Diego, and appeals from those actions are already being handled in the same manner as dependency appeals.	in either juvenile appeals or appeals under Family Code section 7800 et seq. (see Welf. & Inst. Code sec. 395(a)(4) and Fam. Code sec. 7895(c)). There is no equivalent statutory provision specifically providing that no advance fees are to be charged for the record in appeals under Family Code sec. 7662 et seq.. However, as noted above, based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.400 be amended to encompass appeals of orders requiring or dispensing with an alleged father's consent for the adoption of a child under Family Code sections 7662–7666. The committee appreciates this information.
TCPJAC/CEAC Joint Rules Subcommittee	Any steps the courts can take up front to provide all necessary information are likely to improve the outcome and efficiency of processing the case. See comments below as well.	The committee appreciates this input. Please see response above to the comments of the Superior Court of Los Angeles County.

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Are transcripts of the detention hearing and of the hearing at which a child's parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association by Todd G. Friedland, President	As for the request for specific comments, transcripts for the hearings specifically referenced in the proposed changed – namely, for the detention hearing and/or for the parents' first appearances – are indeed necessary. Any review of an appellate record for possible reversible error will include review for Indian Child Welfare Act compliance. The early hearings mentioned in these proposed changes will typically include the most germane portions of the entire record on those compliance issues. Further, these hearing dates are extremely unlikely to be cited in a parent's notice of appeal, making their standard inclusion desirable to avoid delays engendered by augmentation requests.	The committee appreciates this input. Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.407 be amended to require that the reporter's transcript in juvenile dependency appeals include the transcript of the detention hearing and the hearing at with the child's parent(s) first appear.
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	Yes, such transcripts are needed in both areas. Having a transcript of a detention hearing will provide appellate counsel with information that is needed to conduct appellate review.	The committee appreciates this input. Please see the response above to the comments of the Orange County Bar Association.
Superior Court of Los Angeles County	Normally, it is not needed. It would only be needed to: *1.* Determine if inquiry re ICWA was done; or *2.* If an appellant appeals from an order made during the time of the detention hearing. We propose that the addition to rule 8.407 (b)(2)(A) "Detention and at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code sections 300 et seq.;" be removed or amended because it would cause increased costs to the court. . . . Please note the following chart.	The main focus of this proposal is to ensure that the appellate courts have the necessary information to determine if there was compliance with ICWA inquiry and notice requirements. Based on the weight of the public comments, including this commentator's acknowledgment that transcripts proposed to be included in the normal records are needed for this purpose, the committee is recommending that rule 8.407 be amended to require that the reporter's transcript in juvenile dependency appeals include the transcript of the detention hearing and the hearing at with the child's parent(s) first appear. In addition, the committee notes that the Court of Appeal, Second Appellate District has

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Are transcripts of the detention hearing and of the hearing at which a child's parent(s) first appeared routinely needed in the substantial majority of the juvenile dependency appeals?

Commentator	Comment	Committee Response
	<table><tr><th></th><th>Notice of Appeal/Intent</th><th>Augmentation</th><th>Rule 8</th></tr><tr><td>2014</td><td>1,426</td><td>102</td><td>209</td></tr><tr><td>2015</td><td>1,462</td><td>138</td><td>221</td></tr><tr><td>2016 (end of March)</td><td>428</td><td>35</td><td>63</td></tr></table>	recently amended its local rules to require that these transcripts be included in the record. Therefore, the impact on the Superior Court of Los Angeles County, in terms of preparing these transcripts, would be the same even if rule 8.407 were not amended to require these transcripts.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Unknown.	The committee appreciates this input.
TCPJAC/CEAC Joint Rules Subcommittee	It is noted that some courts have already begun including these records finding that while the workload has increased initially the upfront work has demonstrated a lower reversal rate and fewer requests to augment the record on appeal.	The committee appreciates this input. Please see the response above to the comments of the Orange County Bar Association.

Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?

Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong, Chair	For consistency purposes, rule 8.407 should be amended as a single statewide rule and not as to each appellate district. Having a uniform statewide rule would cut down on any confusion and would be more efficient and beneficial to self-	The committee appreciates this input. Based on the weight of the public comments and internal comments from the Family and Juvenile Law Advisory Committee, the committee is recommending that rule 8.407 be

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Would it be preferable for the Judicial Council to amend rule 8.407 to add the suggested items to the normal record in juvenile appeals or to have each appellate district determine whether to adopt local rules specifying any items in addition to those listed in rule 8.407 that must be included in the record in that district?		
Commentator	**Comment**	**Committee Response**
	represented litigants.	amended.
Superior Court of Los Angeles County	We would prefer that each appellate district should establish its own local rule to address the issue.	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services. In addition, the committee notes that the Court of Appeal, Second Appellate District has recently amended its local rules to require that these transcripts be included in the record. Therefore, the adoption of a statewide rule addressing this issue will not have a practical impact on record preparation by the superior court.
Superior Court of San Diego County by Michael M. Roddy Executive Officer	Perhaps it would be preferable to have each appellate district determine whether to adopt local rules (4th DCA already has local Order No. 091515 in place to address it; and each district court of appeal can determine if current augment practice requires modification).	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services.
TCPJAC/CEAC Joint Rules Subcommittee	Statewide consistency is preferred regarding appellate rules. Inconsistency often creates confusion, which can eventually lead to a statewide implementation and in the meantime creates costs increase for varying agencies attempting to follow the inconsistent rules.	The committee appreciates this input. Please see response above to the comments of the State Bar of California, Standing Committee on the Delivery of Legal Services.

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Cost saving and workload/implementation impact		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	**Would the proposal provide cost savings? If so please quantify.** It will not provide cost savings for the appeals unit because the responsibility of obtaining and providing these items in the record on appeal will shift from the augmentation/ rule 8 clerk to the appeals clerk preparing the initial record on appeal. In fact, the amount of time to prepare the record will increase if the ICWA inquiry did not happen during the detention hearing. The appeal clerk will have to go through each minute order to determine when the inquiry happened. **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.** All appeals clerks will have to be trained. The training can last approximately one week. The appeal processes involving the preparation of the notice to reporters and the preparation of the clerk's transcript will need to be revised. The training will need to include how to identify what hearings to include on the notice to reporter and what documents to include in the clerk's transcript. Ideally, we would like our current Case Management System to generate a docket so that the appeals clerks can review the case without printing each and every minute order (if the file is not available). **Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes	The committee appreciates this information.

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Cost saving and workload/implementation impact		
Commentator	**Comment**	**Committee Response**
Superior Court of San Diego County by Michael M. Roddy Executive Officer	**Would the proposal provide cost savings?** No. **What are the implementation requirements for courts?** Division One of the 4th DCA already has a local Order requiring RTs including all 366.26 termination hearings (see 4th DCA Order No. 091515, scanned and attached). In addition to the need to revise or vacate the local Order to the extent necessary, the proposal would require additional clerk time and training. The clerks will need to review the trial court record to determine the additional hearing(s) to be transcribed (e.g., the hearing(s) at which the parent(s) first appeared, etc.). **Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?** Yes.	The committee appreciates this information.
TCPJAC/CEAC Joint Rules Subcommittee	**Would the proposal provide cost savings?** Comment: This change could potentially provide some cost savings in that appellate requests would be addressed at one time rather than follow up requests for documents later regarding other matters should they become known. However, cost savings would likely not be significant. The change is more significant in relation to efficiency of processing. **What would the implementation requirements be for courts?** Comment: Courts may need to implement new forms and train staff. The amount of time and number of staff depend upon the size of the court. A small court may have one designated juvenile court and a back-up position whereas a large court may have an entire division of juvenile clerks and several supervisors or a manager. Whether small or large, most	The committee appreciates this information.

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Cost saving and workload/implementation impact		
Commentator	**Comment**	**Committee Response**
	courts tend to have general staffing meeting updates wherein these types of changes can be addressed. Training time would be minimal, potentially anywhere from 2 – 10 hours depending upon number of staff and updating of written procedures. Case management system updates for action codes or other pertinent data information would also be minimal for this rule change. [While this rule change does increase workload, some courts that have already implemented this process based upon the request of their court's appellate district have found that their reversal rate has dropped and requests for additional transcripts on appeal are reduced. Ultimately with this outcome, the likelihood of handling the case or related cases once and providing all information upfront balances out the cost of multiple requests and re-handling files multiple times. This rules change would likely not have significant fiscal and/or administrative impacts on the trial courts. Some training for personnel would be necessary in regards to transcripts and other documents, forms related to the change, however, this is common with any rule change whether local or statewide and could not be classified as significant. The overall changes in the rule would provide for improved clarification.]	
	Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Comment: 120 days is a more realistic timeframe to allow for dissemination of information, arranging for training time, updating materials, and making case management system changes.	Based on the weight of the comments received on this issue, the committee is not recommending a change in the proposed January 1, 2017 effective date.

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Cost saving and workload/implementation impact		
Commentator	**Comment**	**Committee Response**
	Suggested Modification: The concern noted at this time is that two months from implementation is not enough time for courts to add any necessary code changes or additions to case management systems and to provide training for staff. The JRS therefore requests that the implementation period be extended to at least 120 days to provide the courts with sufficient time for case management system changes and staff training.	

Suggested Modifications		
Commentator	**Comment**	**Committee Response**
Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Principal Deputy County Counsel	(b)(2)(A) – this is confusing; perhaps it should be broken up into two subdivisions: (i) detention hearing; (ii) hearing at which a parent makes his/her first appearance (b)(3) – WIC 366.26 appeals – the amendment states the normal record should include the oral proceedings at all WIC 366.26 hearings. The normal record for a WIC 366.26 appeal should also include the oral proceedings from: (1) the detention hearing, (2) the hearing at which a parent makes his/her first appearance, (3) the jurisdiction hearing, (4) the disposition hearing, (5) the hearing at which the WIC 366.26 hearing is set, (6) and all WIC 366.26 hearings. Perhaps the better practice, though less cost effective, would be to return to the original way in which appellate records were generated to include all the oral proceedings for every hearing in the case.	Based on this and other comments, the committee has revised the proposal to individually list each hearing that must be included in the reporter's transcript. The committee sought input from its members in each Court of Appeal district and from the appellate projects on what is routinely needed in the record on appeal in these cases. The responses were mixed, with some, including a representative of the appellate project in Los Angeles, indicating that the materials suggested by the commentator are not routinely needed. Both because practices appear to vary, and because any proposal to modify the rule to require these additional materials could not be recommended for adoption without first being circulated for public comment, the committee is not recommending modifying the rule as suggested by the commentator at this time.

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Suggested Modifications		
Commentator	**Comment**	**Committee Response**
	(b)(4) – This is unclear – for what hearing? It would seem to include all oral proceedings for every hearing. The additions to subdivision (c) are unlikely to be helpful as appellate attorneys usually will not know what is missing from the record until after the record is filed.	This provision is in the current rule and was included in the invitation to comment, unchanged other than being renumbered. The intent is to require that the reporter's transcript in all cases include any oral opinion of the court. The committee has revised the proposal to make this clearer. The committee did not propose any changes to subdivision (c) of rule 8.407; the existing provisions of the rule were included for reference only.
Orange County Bar Association by Todd G. Friedland, President	One modification would make these changes more effective. On the Advisory Committee Comment to rule 8.407, Subdivision (a)(4) should begin: "The documents that must be included in the clerk's transcript under this provision include all documents filed with the court relating to the Indian Child Welfare Act, including but not limited to all inquiries . . .." This modification to the proposed changes would clarify that all Indian Child Welfare Act documents, not just the ones delineated in the original proposed change, should be included in the clerk's transcript. Agencies sometimes produce additional documents (such as tracking logs for sent notices) that are filed with the juvenile court, and all such filings should be included in the appellate record.	The committee agrees with this suggestion and has modified the proposal accordingly.
Superior Court of Orange County, Family and Juvenile Court Managers by Michelle Wang	We recommend further clarification as to rule 8.407, if this should be limited to alleged, presumed and/or biological parents only. We are unsure about defacto parents, but would like clarification from JCC. We recommend further defining	Rule 5.481, relating to ICWA inquiries and notices uses the term "parent." The committee's view is that rule 8.407, should use the same terminology to encompass hearings at which this inquiry is made.

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Suggested Modifications		
Commentator	**Comment**	**Committee Response**
Program Coordinator Specialist	transcripts for hearings where biological parents make first appearance.	
Superior Court of San Diego County by Michael M. Roddy Executive Officer	**CRC 8.400(1)(B)** (B) Actions to free a child from parental custody and control under Family Code sections 7662 et seq. and 7800 et seq. and Probate Code section 1516.5; and Alternatively: (B) Actions to free a child from parental custody and control under Family Code sections 7662, 7664, 7665, 7669, 7671, and 7800 et seq. and Probate Code section 1516.5; and Note: The proposed change to CRC 8.400 would also impact the probate division. **CRC 8.407** Our Court of Appeal already has a local order requiring additional transcripts. For clarity, the subdivisions within the proposed rule should separately list the various oral proceedings: (2) In appeals from dispositional orders, the oral proceedings at the following hearings: (A) The hearing at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code sections 300 et seq.; (B) Detention; (C) Jurisdiction; (D) Disposition; and (E) A hearing on any motion by the appellant that was denied in whole or in part; **CRC 8.407(a)(11)**	The committee agrees with this suggestion regarding the format of the citation to these Family Code sections and has modified the proposal accordingly. Based on this and other comments, the committee has revised the proposal to individually list each hearing that must be included in the reporter's transcript.

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

SPR16-03
Appellate Procedure: Juvenile Proceedings (amend rules 8.400 and 8.407)

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

Suggested Modifications		
Commentator	**Comment**	**Committee Response**
	(11) Any opinion or dispositive order of a reviewing court in the same case; and~~:~~ **CRC 8.407(b)(2)-(3)** (2) … (A) Detention and at which a parent of the child made his or her initial appearance in cases under Welfare and Institutions Code section~~s~~ 300 et seq.; (B) Jurisdiction and disposition; and (C) Any motion by the appellant that was denied in whole or in part; (3) The oral proceedings at all section 366.26 hearings in appeals from an order terminating parental rights under Welfare and Institutions Code section~~s~~ 300 et seq.; and **Advisory Committee Comment**: The proposed new Comment contains substantive information that should be in the body of the rule.	The committee agrees with this suggestion and has modified the proposal accordingly. The committee agrees with this suggestion and has modified the proposal accordingly. The committee specifically considered whether to include language regarding ICWA notices in the text of the rule itself. The committee concluded, however, that the existing rule text requiring inclusion in the clerk's transcript of "[a]ny report or other document submitted to the court;" already requires inclusion of these ICWA notices in the transcript and, therefore, that it was unnecessary to modify the rule text. The committee concluded that it would be appropriate for the advisory committee comment to include examples of the types of documents required by this rule text, as other advisory committee comments, including the first paragraph of the

Suggested Modifications		
Commentator	**Comment**	**Committee Response**
		comment to rule 8.407 provide similar examples. In response to this comment, the committee has, however, modified the proposed language of the comment to make it clearer that ICWA notices are just an example of the types of documents that must be included in the clerk's transcript under this rule text.
	CRC 8.407 Advisory Comm. Comment, ¶ 2 Subdivision (a)(4). The documents that must be included in the clerk's transcript under this provision include all inquiries regarding a child under the Indian Child Welfare Act (Indian Child Inquiry Attachment [form ICWA-010(A)]), any Parental Notification of Indian Status (form ICWA-020), any Notice of Child Custody Proceeding for Indian Child (form ICWA-030) sent to an Indian tribe or the Bureau of Indian Affairs, any signed return receipts for the mailing of form ICWA-030, and any responses to form ICWA-030 from an Indian tribe or the Bureau of Indian Affairs.	The committee appreciates this suggestion. The suggestion highlighted for the committee there are several potential recipients of form ICWA-030, including the Indian tribe, the Bureau of Indian Affairs, and the Department of Interior. Rather than listing all of these, the committee has modified the proposal to simply note that the documents required to be included in the clerk's transcript include any form ICWA-030 sent and any responses to form ICWA-030 that are received.
	CRC 8.407 Advisory Comm. Comment, ¶ 5 For consistency with previous paragraph: Subdivision (b)(2)(C) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a dispositional order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent dispositional order. Routine inclusion of these proceedings in the record will promote expeditious resolution of appeals of cases under Welfare and Institutions Code section 300, 601, or 602.	The committee agrees with the suggestion that the rule should use consistent terminology when referring to these orders. However, the committee concluded that the more appropriate term was "disposition order" and has therefore recommended amending the rule to use this term throughout.

Item number: 19

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Transcripts of Marsden Hearings

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2015
Project description from annual agenda: Item 10 - Marsden transcripts – Consider whether to recommend a rule amendment to clarify requirement to provide copy of Marsden transcript to defendant's appellate counsel or, if not yet appointed, the district appellate project

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Appellate Procedure: Transcripts of *Marsden* Hearings

Rules, Forms, Standards, or Statutes Affected
Amend advisory committee comment to Cal. Rules of Court, rule 8.45

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 17, 2016

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee recommends amending the advisory committee comment accompanying the rule that addresses the transmission of confidential records to clarify that a copy of the confidential reporter's transcript of any in-camera hearings conducted by the superior court under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden* transcripts) must be transmitted to the appellate counsel for the party that participated in the hearing or, if such counsel has not yet been appointed, to the district appellate project. This change, which is based on a suggestion received from the assistant clerk/administrator of a Court of Appeal, is intended to eliminate confusion about whether copies of *Marsden* transcripts should be provided to appellate counsel and should result in decreased costs associated with motions by counsel to receive a copy of any such transcripts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017, amend the advisory committee comment to California Rules of Court, rule 8.45 to:

1. Clarify that a copy of any confidential *Marsden* transcript must be transmitted to the appellate counsel for the party that participated in the hearing or, if such counsel has not yet been appointed, to the district appellate project;
2. Correct a cross-referencing error; and
3. Make other minor, nonsubstantive changes.

The text of the proposed advisory committee comment is attached at page 5.

Previous Council Action

The former rule relating to confidential records in felony and juvenile appeals,[1] originally rule 33.5, was adopted by the Judicial Council effective July 1, 1990, to ensure that confidential records are properly included in the record on appeal in these cases and to specify the procedures for ensuring that confidential information is not disclosed. As adopted, this rule specifically provided that appellate counsel for a defendant (or an appellant or respondent entitled to appointed counsel in juvenile appeals) was entitled to receive a copy of any confidential *Marsden* transcript.[2] Effective January 1, 2004, to reflect existing practice, the Judicial Council amended this rule to specifically provide that, if appellate counsel has not yet been retained or appointed, the defendant's copy of any confidential *Marsden* transcript must be sent to the appellate project for the district. This rule was renumbered as rule 8.328 effective January 1, 2007 as part of the general reorganization of the California Rules of Court. Effective January 1, 2014, the Judicial Council amended the appellate rules relating to sealed and confidential records. Rule 8.328 and several other rules were repealed and replaced with rules 8.45 through 8.47, which address sealed and confidential records in general.

Rationale for Recommendation

The January 1, 2014 amendments to the appellate rules relating to sealed and confidential records were not intended to change the practice of sending a copy of any *Marsden* transcripts to the appellate counsel for a party who participated in a *Marsden* hearing or, if the party is not yet represented by appellate counsel, to the appellate project for the district. Transmission of confidential transcripts is now addressed in rule 8.45, which generally addresses access to and transmission of sealed and confidential records. Rule 8.45(d)(2) provides that a reporter's transcript or any document related to any in-camera hearing from which a party was excluded in the trial court, such as a *Marsden* hearing, must be transmitted to the reviewing court and to the party or parties who participated in the in-camera hearing. The term "party" includes any attorney of record for that party and, thus, when a party who participated in an in-camera

[1] Prior to January 1, 2004, rule 39(a) provided that the rules in criminal appeals governed appeals and writs in juvenile cases, except where otherwise provided. Thus, under rule 39(a), rule 33.5 and its successor rules relating to confidential records in felony appeals applied to juvenile appeals as well.

[2] These in-camera hearings are held to hear motions to substitute new counsel by criminal defendants and parties in juvenile cases who have appointed counsel.

hearing, such as a criminal defendant or child in a juvenile proceeding who participated in a *Marsden* hearing, is represented by appellate counsel, the confidential transcript of that hearing must be transmitted to that party's appellate counsel. Rule 8.336(g), which was not substantively modified in 2014, also provides that one copy of the reporter's transcript in a felony appeal must be sent to appellate counsel for each defendant represented by separate counsel and that if the defendant is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that defendant's counsel's copy of the transcripts to the district appellate project. Similarly, rule 8.409(e)(2) provides that in juvenile appeals, if appellate counsel has not yet been retained or appointed for the appellant or the respondent when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

The committee understands that, despite there being no intent to change the existing practice, the repeal of former rule 8.328 has resulted in some confusion about whether a copy of any *Marsden* transcripts must be sent to appellate counsel. In some cases, this confusion has resulted in appellate counsel having to file a motion to obtain the necessary copy of a *Marsden* transcript. To eliminate any confusion about this, the committee is proposing an amendment to the advisory committee comment accompanying rule 8.45 addressing subdivision (d) clarifying the continuing requirement to send a copy of any *Marsden* transcripts to appellate counsel for the party who participated in a *Marsden* hearing or, if the party is not yet represented by appellate counsel, to the appellate project for the district.

The committee is also proposing a few nonsubstantive changes to the comment regarding rule 8.45(c) and (d) that would correct a cross-referencing error, provide a more specific citation to another rule provision, and clarify that a reference to "transcripts" encompasses both clerk's and reporter's transcripts.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to the advisory committee comment to rule 8.45 were circulated for public comment between April 15 and June 14, 2016 as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, one agreed with the proposal if amended, and one did not state a position on the proposal but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 7–8. Based on these comments, the committee recommends adopting this proposal, with two changes.

The commentator who agreed with the proposal if amended pointed out a typographical error. The committee has modified its proposal to correct this error.

The committee specifically sought comment on whether, rather than amending the advisory committee comment, it would be preferable to amend rule 8.47 to add language specifically

requiring the superior court clerk to send one copy of a *Marsden* transcript to appellate counsel for the party that participated in the hearing or, if such counsel has not yet been appointed, to the district appellate project. Three commentators provided input on this question: one indicated that amending the advisory committee comment is sufficient; one indicated that perhaps the rule could be amended in the future, but that the comment is helpful at this point; and one recommended amending rule 8.47. The committee discussed these comments and concluded that the best approach at this time is to amend the advisory committee comment, rather than the rule. As noted above, rule 8.45 already requires copies of confidential records, including *Marsden* transcripts, to be sent to the party or parties who had access to these records in the trial court. The committee was concerned that adding another provision separately addressing *Marsden* transcripts could result in rule 8.45 being interpreted as not encompassing certain confidential records, which would be inconsistent with the original intent of rule 8.45.

The commentator who recommended amending rule 8.47 to address the transmission of *Marsden* transcripts also suggested that either rule 8.47 or rule 8.401 be amended to clarify the handling of *Marsden* transcripts in juvenile proceedings. Because the provisions relating to transcripts of confidential hearings in rule 8.45 and rule 8.47's provisions relating to *Marsden* transcripts already cover appellate proceedings in juvenile cases, the committee declined to recommend the rule amendments suggested by the commentator. However, the committee did modify the recommended amendments to the advisory committee comment to rule 8.45 so that the example provided more clearly encompasses *Marsden* transcripts in juvenile proceedings as well as criminal proceedings.

Alternatives

In addition to the alternative discussed above, the committee considered not proposing any amendments to address the concerns about the provision of *Marsden* transcripts. However, the committee concluded that eliminating confusion about whether copies of *Marsden* transcripts should be provided to appellate counsel would likely result in decreased costs and delay associated with motions by counsel to receive a copy of any such transcripts, and therefore that it would benefit the courts and litigants to propose these amendments.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts and should result in decreased costs associated with motions by counsel to receive a copy of any *Marsden* transcripts.

Attachments and Links

1. Advisory Committee Comment to California Rules of Court, rule 8.45, at pages 5–6
2. Chart of comments, at pages 7–8

The advisory committee comment to rule 8.45 of the California Rules of Court is amended, effective January 1, 2017, to read:

Rule 8.45. General provisions

(a) Application * * *

(b) Definitions * * *

(c) Format of sealed and confidential records * * *

(d) Transmission of and access to sealed and confidential records

(1) Unless otherwise provided by (2)–(4) or other law or court order, a sealed or confidential record that is part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be transmitted only to the reviewing court and the party or parties who had access to the record in the trial court or other proceedings under review and may be examined only by the reviewing court and that party or parties. If a party's attorney but not the party had access to the record in the trial court or other proceedings under review, only the party's attorney may examine the record.

(2) Except as provided in (3), if the record is a reporter's transcript or any document related to any in-camera hearing from which a party was excluded in the trial court, the record must be transmitted to and examined by only the reviewing court and the party or parties who participated in the in-camera hearing.

(3) A reporter's transcript or any document related to an in-camera hearing concerning a confidential informant under Evidence Code sections 1041–1042 must be transmitted only to the reviewing court.

(4) A probation report must be transmitted only to the reviewing court and to appellate counsel for the People and the defendant who was the subject of the report.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b)(5). * * *

Subdivisions (c) and (d). The requirements in this rule for format and transmission of and access to sealed and confidential records apply only unless otherwise provided by law. Special requirements that govern transmission of and/or access to particular types of records may supersede the requirements in this

rule. For example, rules 8.619(g) and 8.622(e) require copies of reporters' transcripts in capital cases to be sent to the Habeas Corpus Resource Center and the California Appellate Project in San Francisco, and under rules 8.336 ~~(d)~~(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

Subdivision (c)(1)(C). * * *

Subdivision (c)(2). * * *

Subdivision (c)(3). * * *

Subdivision (d). See rule 8.47(b) for special requirements concerning access to certain confidential records.

Subdivision (d)(1) and (2).

Because the term "party" includes any attorney of record for that party, under rule 8.10(3), when a party who had access to a record in the trial court or other proceedings under review or who participated in an in-camera hearing—such as a *Marsden* hearing in a criminal or juvenile proceeding—is represented by appellate counsel, the confidential record or transcript must be transmitted to that party's appellate counsel. Under rules 8.336(g)(2) and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant or the respondent—is not represented by appellate counsel when the clerk's and reporter's transcripts are certified as correct, the clerk must send the copy of the transcripts that would go to appellate counsel, including confidential records such as transcripts of *Marsden* hearings, to the district appellate project.

Subdivision (d)(4). * * *

SPR16-04

Appellate Procedure: Transcripts of Marsden Hearings (amend advisory committee comment to rule 8.45)

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

	Commentator	Position	Comment	Committee Response
1.	Family Law and Juvenile Court Managers Superior Court of Orange County	AM	Whether it would be preferable to amend rule 8.47 to add language specifically requiring the superior court clerk to send one copy of a *Marsden* transcript to the defendant's appellate counsel or, if not yet represented by appellate counsel, the district appellate project. We recommend amending rule 8.47 to add language specifically requiring the court clerk to send one copy of a Marsden transcript to the defendant's appellate counsel. It appears appropriate within this sections since it discusses Marsden hearings and procedures specific to Marsden hearings. Furthermore, 8.47(b)(2)(A) references 8.401 as governing the format and access to such Marsden briefs in juvenile cases; however, rule 8.401 makes no mention of Marsden transcripts in juvenile. Therefore, we recommend amending 8.401 to include Marsden reference as it pertains in juvenile; or alternatively, including the pertinent information in 8.47 for juvenile cases to add clarity regarding the handling of Juvenile cases.	The committee appreciates the commentator's response to this question. Based on the weight of the comments on this issue, however, the committee decided to recommend that the Judicial Council amend the advisory committee comment to rule 8.45, rather than the text of rule 8.47. Rule 8.45 addresses the transmission of sealed and confidential records generally. This reflects a policy decision to consolidate provisions relating to confidential records to the extent possible, rather than having multiple, separate but similar provisions addressing access to and transmission of different types of confidential documents. The committee's view is that it would be contrary to this policy approach, and could cause interpretive issues, to also have a separate requirement regarding transmission of *Marsden* transcripts in rule 8.47 when transmission of such transcripts is already covered by rule 8.45. For the same reasons articulated above, the committee decided against adding references regarding *Marsden* transcripts in rule 8.401. This topic is covered in rules 8.45-8.47 and rule 8.401(b)(3) includes a cross reference to these rules. Similarly, the committee decided against adding an additional mention of juvenile proceedings in rule 8.47(b). Rule 8.45(a) provides that rules 8.45-8.47 apply in all proceedings in the Court of Appeal. Thus, rule 8.47's provisions relating to *Marsden* transcripts generally cover appellate proceedings in

SPR16-04
Appellate Procedure: Transcripts of Marsden Hearings (amend advisory committee comment to rule 8.45)

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

	Commentator	Position	Comment	Committee Response
				juvenile cases. The specific mention of rule 8.401 in rule 8.47 is there to clarify an exception in juvenile cases to one provision of rule 8.47– the requirement of publically filing any brief raising a *Marsden* issue – since no briefs in juvenile cases are publically filed. However, the committee did modify the recommended amendments to the advisory committee comment to rule 8.45 so that the example provided more clearly encompasses Marsden transcripts in juvenile proceedings as well as criminal proceedings.
2.	Jonathan Berger Attorney Sebastopol	A	Good plan. Most courts do routinely include Marsden hearing transcripts with the record, but when they don't, it's at least mildly inconvenient to hunt them down. Every appellate defense attorney needs them, every time with no exception, so it would be in the interests of efficiency to just make it automatic.	The committee notes the commentator's support for the proposal; no response required.
3.	Orange County Bar Association Todd G. Friedland, President	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
4.	State Bar of California Paul Killion, Chair, 2015-2016 Committee on Appellate Courts	A	The Committee on Appellate Courts supports the proposal to amend the advisory committee comment to rule 8.45, to clarify that superior court clerks are required in criminal cases to send a copy of the confidential transcript from any in-camera *Marsden* hearing to defendant's appellate counsel or, if not yet appointed, the district appellate project. This seems to be the easiest solution for clarifying the rule. The effectiveness	The committee notes the commentator's support for the proposal.

SPR16-04
Appellate Procedure: Transcripts of Marsden Hearings (amend advisory committee comment to rule 8.45)

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

	Commentator	Position	Comment	Committee Response
			of this change will likely depend on whether superior court clerks receive notification of it and adopt procedures for ensuring compliance. The invitation to comment asks whether it would be preferable to formally amend rule 8.47, which discusses the use of a *Marsden* transcript in the Court of Appeal. As above, the Committee believes that adding an advisory committee comment to Rule 8.45 would be sufficient. However, if a more formal approach is taken, the Committee suggests amending rule 8.45, rather than rule 8.47. Rule 8.45 already addresses the superior court's role in transmitting certain confidential documents once an appeal is filed. Rule 8.45(d)(3) and (4) address two types of criminal documents specifically: a transcript from a confidential informant hearing, and a probation report. Along these lines, a new subdivision (d)(5) could be added to address *Marsden* transcripts.	The committee appreciates the commentator's response to this question. As noted above, based on the weight of the comments on this issue, the committee decided to recommend that the Judicial Council amend the advisory committee comment to rule 8.45, rather than the text of either rule 8.45 or rule 8.47.
5.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court of San Diego County Mike Roddy, Executive Officer,	AM	Q: Does the proposal appropriately address the stated purpose? Yes – clarification. However, it should be noted that there is an incorrect spelling on the fourth line of the proposed amendment to the Advisory Committee Comment to rule 8.45 – "musty" should read "must." Q: Whether it would be preferable to amend rule 8.47 to add language specifically requiring the	The committee appreciates the commentator catching this typographical error; the committee has revised the proposal to correct this error. The committee appreciates the commentator's response to this question. Based on the weight

SPR16-04

Appellate Procedure: Transcripts of Marsden Hearings (amend advisory committee comment to rule 8.45)

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

	Commentator	Position	Comment	Committee Response
			superior court clerk to send one copy of a Marsden transcript to the defendant's appellate counsel or, if the defendant is not yet represented by counsel, [to the district appellate project]? Perhaps in the future, but the comment itself is helpful at this point and mirrors current practice. Q: Would the proposal provide cost savings? No. Q: What are implementations requirements for courts? None – mirrors current practice. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes. Additional comments: None.	of the comments on this issue, the committee decided to recommend that the Judicial Council amend the advisory committee comment to rule 8.45, rather than the text of rule 8.47. The committee appreciates the commentator's responses to these questions.

Item number: 20

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Heather Anderson, heather.anderson@jud.ca.gov, 415-865-7691

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: December 10, 2015
Project description from annual agenda: Item 11 - Amicus Briefs – Consider whether to recommend amendments to rules on amicus briefs to address whether a party may file a response to an amicus supporting that party and whether to develop rules regarding amicus briefs in writ proceedings

If requesting July 1 or out of cycle, explain:

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.487

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 19, 2016

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending the California Rule of Court governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs in those writ proceedings in which an alternative writ or order to show cause is issued. This change, which is based on a suggestion received from an attorney, is intended to provide potential amicus curiae with guidance regarding applications to file amicus briefs in these writ proceedings, which may reduce questions about how to do this and also ensure that the court has the information it needs to consider such applications.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2017, amend rule 8.487 to add a new procedure for submission of applications to file amicus curiae briefs in those writ proceedings in which an alternative writ or order to show cause is issued. The text of the amended rule is attached at pages 6–7.

Previous Council Action

As part of the Rules on Appeal adopted effective July 1, 1943, the Judicial Council adopted a general rule requiring that individuals or organizations wishing to file amicus briefs first obtain permission from the Chief Justice of the California Supreme Court or the presiding justice of the Court of Appeal. Effective July 1, 2000, the Judicial Council amended this rule to allow the Attorney General's office to file amicus briefs without seeking permission from the Chief Justice or presiding justice and to establish time frames for the filing of these briefs. Effective January 1, 2002, as part of the overall revision and reorganization of the appellate rules, the provisions relating to amicus briefs were placed in new, separate rules relating to briefs in the Supreme Court and briefs in the Court of Appeal. At that time, the language regarding amicus briefs from the Attorney General's office was also copied into the rule relating to writ proceedings. These rules have subsequently been revised and renumbered, but remain substantively unchanged.

Rationale for Recommendation

Rules 8.200(c) and 8.520(f) of the California Rules of Court address, respectively, applications to file amicus curiae briefs in appeals in the Court of Appeal and in cases in which the Supreme Court has granted review. Rule 8.487(f)(8) addresses amicus curiae briefs from the Attorney General in writ proceedings. Currently, however, there are no rules that specifically address the filing of applications to file amicus curiae briefs by any other person or entity in writ proceedings.

To provide guidance about how to seek permission to file an amicus brief in writ proceedings, the Appellate Advisory Committee is proposing amendments to rule 8.487 that add a new subdivision to address amicus curiae briefs by anyone other than the Attorney General. This provision is modeled on a combination of rules 8.200(c) and 8.520(f). The proposed new provision would govern only those situations in which the court issues an alternative writ or order to show cause. The amendment would require that the amicus application be filed no later than 14 days after the return is filed, unless the Chief Justice or presiding justice allows a later filing. This is the same time frame within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed. It is also similar to the time frame for filing an amicus application in the Court of Appeal under rule 8.200, but considerably shorter than the time frame for filing such an application in the Supreme Court under rule 8.520. To reflect the courts' inherent power and to provide more complete parallelism within the rule for amicus briefs in writ proceedings, the committee is also recommending that a provision be added to the subdivision relating to amicus curiae briefs from the Attorney General to indicate that the time for filing these briefs may also be extended by the Chief Justice or presiding justice.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.487 were circulated for public comment between April 15 and June 14, 2016, as part of the regular spring comment cycle. Thirteen individuals or

organizations submitted comments on this proposal. Seven commentators agreed with the proposal, two agreed with the proposal if amended, one did not agree with the proposal, and three did not indicate a position on the proposal, but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 8–28.

The one commentator who disagreed with the proposal expressed concern that it would cause undue delay in the writ proceedings, particularly in dependency proceedings, because it would encourage entities who do not have a direct interest to weigh in. The committee respectfully disagrees with this comment. The committee does not believe that this proposed amendment will encourage additional applications to file amicus briefs in dependency or other writ proceedings. Instead, the committee believes that this proposed amendment will provide guidance and uniformity in practice in circumstances in which individuals are already filing amicus applications in writ proceedings. The committee's view on this issue is consistent with the input provided by the other commentators who support the proposal. The committee therefore is recommending adoption of the amendment to rule 8.487.

Should the rules address amicus applications when the court issues a* Palma *notice?
The committee sought specific comments on whether the proposed rule should address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance (commonly known as a *Palma* notice). The committee decided not to address amicus participation when a *Palma* notice is issued in the proposal that was circulated because such notices are typically issued when the petitioner's right to relief is obvious or there is unusual urgency, making amicus participation unlikely to be helpful to the court's decisionmaking.

Five commentators provided input on this issue: three suggested that the proposal should not address amicus participation when a *Palma* notice is issued and two suggested that it should address amicus participation in such circumstances. Given the committee's original concerns about whether amicus participation when a *Palma* notice is issued would be helpful to the courts and the weight of the public comments, the committee decided not to revise its proposal to encompass these circumstances. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.

Should the rules address amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show cause?
The invitation to comment indicated that the committee had considered, but ultimately decided against, proposing a rule to address the filing of amicus letters supporting or opposing a writ petition before the court has determined whether to issue an alternative writ or order to show

cause. This decision was based on the fact that the majority of writ petitions are summarily denied within a short period of time after filing and the committee's concern that providing for amicus participation at this stage might delay action in these cases or encourage the preparation of amicus letters that are not helpful to the court's decisionmaking. Two bar organizations—the Association of Southern California Defense Counsel and the San Diego County Bar Association—suggested that the committee should reconsider its decision on this issue. They urged the committee to propose an amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues. In the alternative, the Association of Southern California Defense Counsel recommended that the committee make clear in the advisory committee comment to rule 8.487 that the proposed change is not intended to limit the existing discretion of presiding justices to accept amicus letters before the issuance of an alternative writ or order to show cause.

Because adding a rule amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues would be an important substantive change, under rule 10.22, this is not something the committee could recommend for adoption without first circulating a proposal for public comment. The committee will therefore consider this suggestion for potential development in a later rules cycle. However, as suggested by the Association of Southern California Defense Counsel and as discussed above in connection with amicus briefs when *Palma* notices are issued, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case before the court has determined whether to issue an alternative writ or order to show cause.

Deadline for filing an amicus application

As circulated for public comment, the proposal required that the amicus application be filed no later than 14 days after the return is filed. This is the same time frame within which rule 8.487(d) currently requires that amicus briefs from the Attorney General be filed in writ proceedings. It is also similar to the time frame for filing an amicus application in the Court of Appeal under rule 8.200. Several commentators provided input on this deadline. Two commentators expressed support for the deadline as circulated. One specifically indicated that, to avoid extending time in these writ proceedings, the proposed rule should incorporate the same deadline for filing amicus applications as for amicus briefs from the Attorney General. Another indicated that the fact that the proposal mirrors the procedure for Attorney General amicus briefs was a basis for the commentator's support for the proposal. Two other commentators suggested that the time frame for filing an amicus brief should be longer. One commentator suggested that the longer filing period would be more appropriate, apparently referring to the period for amicus applications in the Supreme Court set by rule 8.520. Another commentator, the League of California Cities, suggested that amicus applications should be due on the same date as the reply, the deadline for

which is within 15 days after the return or opposition is filed unless otherwise ordered by the court.

In light of these comments, the committee considered whether to modify the proposal to set a different, longer time period for filing an application to file an amicus brief. Ultimately, the committee decided against making a change in the proposed time period. Members' view was that it would be helpful to both the court and parties if amicus briefs from the Attorney General and from other entities or individuals were subject to the same deadline. In addition, members noted that the proposed rule includes a provision specifically allowing the Chief Justice or presiding justice to extend the time for filing an amicus application, which they thought should enable entities or individuals to seek additional time when this is needed. To reflect the courts' inherent power and to provide more complete parallelism within the rule for amicus briefs in writ proceedings, the committee did decide to recommend that a provision be added to the subdivision relating to amicus curiae briefs from the Attorney General to indicate that the time for filing these briefs may also be extended by the Chief Justice or presiding justice.

Alternatives

The committee considered not proposing a rule regarding amicus briefs in writ proceedings. The committee concluded, however, that such a rule will provide litigants with helpful guidance about filing such applications and will assist courts by establishing uniformity in this practice, and therefore that it was appropriate for the committee to recommend this amendment.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because the proposed procedures mirror existing procedures for amicus applications in other contexts. The proposed rules should provide potential amicus curiae with guidance regarding applications to file amicus briefs in writ proceedings, which may reduce questions about how to do this and also ensure that the court has the information it needs to consider such applications.

Attachments and Links

1. California Rules of Court, rule 8.487 at page 6–7
2. Chart of comments, at pages 8–28

Rule 8.487 of the California Rules of Court is amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

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

Chapter 7. Writs of Mandate, Certiorari, and Prohibition in the Supreme Court and Court of Appeal

Rule 8.487. Opposition and ~~Attorney General~~ amicus curiae briefs

(a) Preliminary opposition * * *

(b) Return or opposition; reply * * *

(c) Supporting documents * * *

(d) Attorney General's amicus curiae brief

(1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.

(2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due. For good cause, the Chief Justice or presiding justice may allow later filing.

(3) The brief must provide the information required by rule 8.200(c)(2) and comply with rule 8.200(c)~~(4)~~(5).

(4) Any party may serve and file an answer within 14 days after the brief is filed.

(e) Other amicus curiae briefs

(1) This subdivision governs amicus curiae briefs when the court issues an alternative writ or order to show cause.

(2) Any person or entity may serve and file an application for permission of the Chief Justice or presiding justice to file an amicus curiae brief.

Rule 8.487 of the California Rules of Court is amended, effective January 1, 2017, to read:

(3) The application must be filed no later than 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due. For good cause, the Chief Justice or presiding justice may allow later filing.

(4) The proposed brief must be served on all parties. It must accompany the application and may be combined with it.

(5) The proposed brief must provide the information required by rule 8.200(c)(2) and (3) and comply with rule 8.200(c)(5).

(6) If the court grants the application, any party may file either an answer to the individual amicus curiae brief or a consolidated answer to multiple amicus curiae briefs filed in the case. If the court does not specify a due date, the answer must be filed within 14 days after either the court rules on the last timely filed application to file an amicus curiae brief or the time for filing applications to file an amicus curiae brief expires, whichever is later. The answer must be served on all parties and the amicus curiae.

Advisory Committee Comment

* * *

Subdivisions (d) and (e). These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause or when it notifies the parties that it is considering issuing a peremptory writ in the first instance.

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Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (amend rule 8.487)

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

	Commentator	Position	Comment	Committee Response
1.	Association of Southern California Defense Counsel by Steven Fleischman	AM	ASCDC generally supports the proposed change to rule 8.487 because the Rules of Court should clearly reflect that appellate courts have discretion to grant applications to file amicus briefs in civil writ proceedings just as they do in civil appeals. We recommend, however, that rule 8.487 also be changed to reflect that appellate courts have discretion to accept amicus letters in support of petitions before an alternative writ or order to show cause issues. ASCDC respectfully submits that such letters can greatly assist appellate courts in deciding whether to grant writ review and that the amicus curiae process should track the rules that govern the Supreme Court's discretionary review of civil matters. Consistent with the Committee's proposed change to rule 8.487, the Rules of Court allow the Supreme Court to grant amici curiae leave to file briefs on the merits after the court has ordered review. (Cal. Rules of Court, rule 8.520(f).) But, unlike the Committee's proposed change to rule 8.487, amici curiae also may submit letters supporting or opposing the petition for review. (Cal. Rules of Court, rule 8.500(g).) Such letters can provide invaluable assistance to the Supreme Court in evaluating whether to grant review: They help the Court appreciate the broader context and importance of the issue presented, crucial factors to determining whether a case warrants discretionary review.	The committee notes the commentator's support for the proposal. Adding a rule amendment that addresses filing amicus letters in support of petitions before an alternative writ or order to show cause issues would be an important substantive change to the proposal that was circulated for public comment. Under the rule that governs the Judicial Council rule-making process, California Rules of Court, rule 10.22, only a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy may be recommended for adoption by the Judicial Council without first being circulating it for comment. Therefore, the committee cannot recommend adoption of a rule regarding amicus letters at this time; any such proposal must first be circulated for public comment. The committee will therefore consider this suggestion for potential development in a later rules cycle. However, in response to this and other comments, the committee did revise the proposed rule amendment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and, as suggested by the commentator, the accompanying advisory committee comment to clarify that it does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances.

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

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	Commentator	Position	Comment	Committee Response
			Rule 8.500(g) amicus letters create no significant administrative burden on the Court. They are relatively short, informal submissions that do not require applications for leave to file or any court ruling. They do not give rise to any right of opposition. And there are no deadlines or formatting requirements that would require a court clerk to check for compliance. The letters are not even technically "filed" or listed on the court's docket in the same way as other court submissions. The Supreme Court's amicus curiae rules actually *avoid* administrative burdens by prohibiting amici curiae from presenting formal briefs on the merits at the petition stage. The rule 8.500(g) process ensures that the informal letters are available to the Court as a resource in deciding whether to grant review to the extent the Court chooses to use them. In the exact same way, amicus letters can be useful to intermediate appellate courts, with no significant administrative burden, in helping them determine whether to issue alternative writs or orders to show cause in civil writ proceedings. A key reason for granting interlocutory review is to take the opportunity to address important issues on a timely basis. (E.g., *Los Angeles Gay & Lesbian Center v. Superior* Court (2011) 194 Cal.App.4th 288, 300 ["review [by writ] is appropriate where the order raises an issue of first impression of general importance to the legal community"];	This should prevent any confusion about whether a court can request or permit amicus participation in a particular case before the court has determined whether to issue an alternative writ or order to show cause.

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	Commentator	Position	Comment	Committee Response
			Pugliese v. Superior Court (2007) 146 Cal.App.4th 1444, 1448 ["Writ review is appropriate where the petition presents a significant issue of first impression"]; *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 767 ["We believe these issues are sufficiently novel and important to justify review by extraordinary writ"]; *Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 438 [writ review of order overruling demurrer warranted where petition raised "a significant issue of law"].) Letters from amici curiae can greatly assist courts in determining whether an issue raised by a writ petition is, indeed, of widespread importance or of first impression. For example, in *Regents of the University of California v. Superior Court* (2013) 220 Cal.App.4th 549 (Second Dist., Div. Seven) (*Regents*), the court's published opinion explained that amici curiae had submitted letter briefs in support of the petition before the court issued its order to show cause, and that those amicus letters were important to its decision to grant writ review. (*Id.* at pp. 557-58.) Here, the issue of statutory construction raised by the superior court's ruling and presented by the Regents's petition has not previously been addressed by an appellate court *and, based on the amici curiae submissions we have received, appears to be of widespread interest.*	

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	Commentator	Position	Comment	Committee Response
			Accordingly, writ review is appropriate. (*Id.* at p. 558, emphasis added.) *Regents* is not an aberration in this regard. Other Courts of Appeal issuing published opinions in civil cases have similarly accepted amicus letters filed *before* the court issued an alternative writ or order to show cause. (See *Sutter Health v. Superior Court* (2014) 227 Cal.App.4th 1546 [Third Dist.] [C072591, docket entries dated December 7 and 12, 2012]; *Fireman's Fund Ins. Co. v. Superior Court* (2011) 196 Cal.App.4th 1263 [Second Dist., Div. Three] [B229880, docket entries dated January 12, 20, and 25, 2011]; *Eisenhower Medical Center v. Superior Court* (2014) 226 Cal.App.4th 430 [Fourth Dist., Div. Two] [E058378, docket entries dated April 18, May 7, 2013, and July 11, 2013].) ASCDC itself has submitted letters in numerous courts explaining that particular writ petitions have widespread import across California. Because some appellate courts already accept amicus letters before issuing alternative writs or orders to show cause, and because such letters serve the same valid purpose (with no administrative burden) as rule 8.500(g) letters supporting Supreme Court discretionary review, ASCDC suggests that the Committee reconsider its recommendation and revise rule 8.487 to endorse terms parallel to the Supreme Court	

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	Commentator	Position	Comment	Committee Response
			amicus curiae process. We recommend the following language, which tracks rule 8.500(g) and adds another subdivision to the Committee's currently-proposed change to rule 8.487: **(f)** Before an alternative writ or order to show cause is issued, any person or entity wanting to support or oppose a petition for writ of interlocutory appellate review must serve on all parties and send to the Court an amicus curiae letter rather than a brief. The letter must describe the interest of the amicus curiae, and may not exceed five pages. Any matter attached to the letter or incorporated by reference must comply with rule 8.204(d). Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under paragraph (e) if an alternative writ or order to show cause is issued. The Committee's "Invitation to Comment" indicates that the Committee chose not to address the filing of amicus letters supporting/opposing writ petitions out of concern that most petitions are summarily denied shortly after filing and amicus letters could delay such actions. But ASCDC's proposed rule would not alter a court's ability to summarily deny the pending writ petition *at any time*, just as the submission of amicus letters to the California Supreme Court under rule 8.500(g) does not restrict that Court's ability to	

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	Commentator	Position	Comment	Committee Response
			deny a petition for review *at any time*. Further, although the Rules of Court permit a real party in interest to file a preliminary opposition to a writ petition within ten days (see rule 8.487(a)), they also specify that "[*w*]*ithout requesting preliminary opposition or waiting for a reply*, the court may grant *or deny* a request for temporary stay, *deny the petition*, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance" (rule 8.487(a)(4), emphases added). ASCDC's proposal would not change an appellate court's express unrestricted power to deny a writ petition whenever it wants. Moreover, ASCDC's proposal will alleviate potential confusion and administrative burdens by making it clear that leave to file full-on briefs on the merits by amici curiae may be sought only after the Court has issued an alternative writ or order to show cause. For all these reasons, ASCDC asks that the Committee change its initial recommendation by amending rule 8.487 to permit the submission of amicus letters under a procedure similar to that set forth in rule 8.500(g). In the alternative, ASCDC asks that the Committee make clear in the Comment to rule 8.487 that the proposed change is not intended to limit the existing discretion of Presiding Justices to accept amicus letters before the issuance of an alternative writ or order to show	

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	Commentator	Position	Comment	Committee Response
			cause. We suggest the following language: Paragraph (e) is not intended to limit the discretion of Presiding Justices to accept amicus curiae letters before issuing an alternative writ or order to show cause. (See, e.g., *Regents of the University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558; Cal. Rules of Court, rule 8.500(g).)	
2.	California Appellate Court Clerks Association by Kevin Lane CACCA President	NI	In subpart (e)(3), an application may be combined with a brief. For e-filing, two documents are better; otherwise, we end up doing a work around to file the brief once the application is approved. For a combined application/brief, we file the application (send all the way to ACCMS) and note as to application only. When/if the application is approved, we add a second stamp for the brief and note as to brief. With two documents, you would file the application. When it is acted on, you file or reject the brief. I would suggest eliminating the phrase "and may be combined with it."	The committee appreciates this suggestion. Since this language mirrors language that currently appears in both rules 8.200(c)(4) and 8.520(f)(5), the committee believes it would be best to consider whether all of these provisions should be modified. The committee will take this matter up during a later rules cycle.
3.	Court of Appeal, Second Appellate District Joseph Lane Clerk/Administrator	NI	**1. Rule 8.487 (e) (3) page 5** Delete "and may be combined". Especially with e-filing it is easiest on the courts to have the application separate from the brief. The proposed brief must be served on all parties. It must accompany the application. ~~and may be combined with it.~~	Please see response to comments of the California Appellate Court Clerks Association above.

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	Commentator	Position	Comment	Committee Response
4.	Family Violence Appellate Project by Jeannafer Dorfman Wagner Director of Programs	A	FVAP supports the proposed rule change, which provides guidelines for amicus curiae seeking permission to file briefs in pending writ actions. Many of this state's most important appellate decisions derive from writ actions, to wit, *Elkins v. Superior Court* (2007) 41 Cal. 4th 1337. This rule specifically addressing how and when to seek permission to file briefs in pending writ actions is in line with the process for other appellate amicus briefs, and will lessen confusion about whether and how such participation is permitted. The committee has specifically asked for comments on whether the rule should address situations in which a *Palma* notice is issued. FVAP believes adopting the rule as it is currently proposed, including the time-line whereby amicus briefs will generally be submitted only after the court determines to issue an alternative writ or an order to show cause, is appropriate. Although our writ practice has been limited, there is a general understanding that *Palma* letters serve to allow appellate court's to informally intervene on a much more expedited basis where the trial court can quickly correct any improper actions. Permitting amicus curiae participation at that point in the writ process would only serve to hinder and delay what is intended to be an expedited process used in limited circumstances.	The committee notes the commentator's support for the proposal. The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a *Palma* notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.

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	Commentator	Position	Comment	Committee Response
5.	John Michael Jensen Attorney Law Offices of John Michael Jensen	A	I support including a procedure for the submission of applications to file amicus curiae briefs in writ proceeding. It is important and needed. As the invitation to comment indicates, Rules 8.200(c) and 8.520(f) of the Rules of Court allow amicus curiae briefs, but no rule allows an individual or entity to file an amicus in support or opposition to writ proceedings. Many issues that affect large groups of people are decide by Writ. The public should be allowed to the opportunity to file amicus briefs. However, the longer filing period would be more appropriate.	The committee notes the commentator's support for the proposal. Please see the response to the comments of the League of California Cities below.
6.	League of California Cities by Alison Leary, Deputy General Counsel Sacramento	NI	The League supports the proposal to amend the rules governing writ proceedings to include a new procedure for submission of applications to file amicus curiae briefs. However, the League is concerned with the proposed timeframe. The proposed amendment would require that the amicus application be filed no later than 14 days after the return is filed. This deadline is at least one day shorter than the deadline on which the reply to the return is due.[1] [1And in many cases, this deadline is more than one day shorter. In our experience, Courts of Appeal typically "order otherwise" pursuant to rule 8.487(b)(2) and allow the reply to be filed 20 days after the return.] The League recommends that the amicus application be due on the same date as the reply.	The committee notes the commentator's support for the proposal. The committee considered whether to modify the proposal to set a different, longer time period for filing an application to file an amicus brief. Ultimately, the committee decided against making a change in the proposed time period. Members' view was that it would be helpful to both the court and parties if amicus from the Attorney General and from other entities or individuals were subject to the same deadline. In addition, members noted that the proposed rule includes a provision specifically allowing the Chief Justice or presiding justice to extend the time for filing an amicus application, which they thought should enable entities or individuals to seek additional time when this is needed.

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	Commentator	Position	Comment	Committee Response
			This will not only allow membership organizations, such as the League, enough time to participate as amicus curiae in writ proceedings, but also will not lengthen the proceedings and therefore, will advance the court's interest in operating expeditiously. **1. Extending the deadline for the amicus application so that it is due on the same date as the reply, will allow for greater amicus participation by membership organizations such as the League.** Like many comparable membership organizations, the League has developed a formal Legal Advocacy Program through which it considers whether to participate in a case as amicus curiae. This Program takes time to administer, but ensures that valuable public resources are not expended on a case unless the League's amicus participation will ultimately help the court reach a wise and just resolution of a case impacting cities. When League staff are notified or become aware of a case potentially impacting cities, League staff carefully evaluate the case to determine whether it meets certain criteria such that it should be presented to the League's Legal Advocacy Committee (LAC) – the body of 24 city attorneys from throughout the state charged with administering the Legal Advocacy Program. If the case meets the criteria, League staff transmit the case to the LAC members for	

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	Commentator	Position	Comment	Committee Response
			consideration. The LAC then meets in person or by conference call to discuss the case and debate its merits, with the ultimate goal of determining whether: (1) the case involves issues that may impact cities on a statewide basis; (2) cities hold uniform views on the issues presented by the case; and (3) League participation is beneficial to advance or preserve cities' collective interests. If League participation is approved, League staff then identify an attorney who is willing to draft the approved amicus brief on a pro bono basis. The League attempts to identify attorneys who are experts in the field of law at issue. Because those experts are in high demand, the more time they have to prepare, the more likely they are to agree to draft the brief. Once a draft is complete, League staff review the brief to ensure that it complies with League policies and standards. Current League practice is to file an amicus brief in a writ proceeding no later than the date that the reply brief is due. This practice affords the League as much time as possible to complete the above described internal review process, while ensuring that writ proceedings are fully briefed expeditiously. A review of the League's past participation in writ proceedings suggests that this deadline is typically twenty days after the return is filed. Frequently, it is not possible for the League to complete its internal review process any earlier than this date. The effect of requiring an amicus brief to be	

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	Commentator	Position	Comment	Committee Response
			filed no later than fourteen days after the return is filed, which in many cases is six days before the League can typically turn these types of amicus briefs around, will likely be that the League and similarly situated member associations will not be able to participate in as many cases. Given the expedited nature of writ proceedings and their far reaching impacts, this result may have severe consequences, as member associations often provide courts with valuable insight into the broad, practical effects of their decisions. For example, if a city were involved in a writ proceeding regarding the validity of a tax that the city imposed, the League may be able to enlighten the court as to the implications and importance of its decision to non-parties by surveying its members to determine how many cities currently impose or plan to impose such a tax and why they do so—information which the court would not otherwise have available to it. **2. Extending the deadline for the amicus application to be due on the same date as the reply does not prolong the proceedings and promotes judicial efficiency.** The League recognizes that the court has a vested interest in ensuring that writ proceedings are briefed expeditiously. However, the League cannot discern and the Invitation to Comment does not explain why a rule that allows amicus applications to be due on the same date as the reply would prolong a writ proceeding.2 If	

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	Commentator	Position	Comment	Committee Response
			anything, a rule that allows amicus applications to be due on the same date as the reply, thus affording member associations the opportunity to participate as amicus, would promote judicial efficiency by ensuring that courts are apprised of all relevant facts before making conclusions of law, decreasing the likelihood of an appeal. The League of California Cities fully supports the Judicial Council's efforts to codify the process for filing an amicus brief in writ proceedings, however the proposed rule does not provide any significant benefit when compared with a rule that allows amicus briefs to be filed when the reply brief is due, particularly in light of the potential practical effects of the proposed rule as discussed in our comments. The League of California Cities respectfully requests that the Supreme Court reject the rule as proposed and adopt an alternative rule which would allow amicus briefs to be submitted no later than the date that the reply brief is due.	
7.	Office of the County Counsel, County of Los Angeles by Alyssa Skolnick Deputy General Counsel	N	This proposed amendment would cause undue delay in the writ proceedings. It would encourage entities who do not have a direct interest to weigh in on numerous dependency writ proceedings, thereby delaying resolution in situations where prompt relief is necessary.	The committee respectfully disagrees with this comment. The committee does not believe that this proposed amendment will encourage additional applications to file amicus briefs in dependency or other writ proceedings. Instead, the committee believes that this proposed amendment will provide guidance and uniformity in practice in circumstances in which individuals are already filing amicus applications in writ proceedings.

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	Commentator	Position	Comment	Committee Response
8.	Orange County Bar Association by Todd G. Friedland President	A	The OCBA believes that the proposal appropriately addresses the stated purpose and agrees that there is a need to address possible amicus participation in other situations such as when the court notifies the parties that it is considering issuing a writ. Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance? **Yes**	The committee notes the commentator's support for the proposal and appreciates this input regarding addressing amicus participation in other situations. Based on this and other comments, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.
9.	San Diego County Bar Association Appellate Practice Section	AM	We support the proposed changes to Rule 8.487 to provide a formal procedure to submit an application to file amicus curiae briefs if the court issues an alternative writ or order to show cause. An amicus brief is intended to bring to the attention of the court an issue that is not already presented by the parties but important to the court's consideration of the case. Often, amicus briefs highlight impacts the court's decision may have that reach beyond the parties involved in the judicial proceeding. Amici curiae sometimes endeavor to guide the court to either take a more broad or narrow approach in dealing with the issues presented on appeal.	The committee notes the commentator's support for the proposal.

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	Commentator	Position	Comment	Committee Response
			Incorporating an option for interested third parties to submit amicus briefs in connection with a writ petition that is being considered by the court is particularly important because writs are only issued in rare situations where there is an immediate need for review. Some of the circumstances in which the court will choose to grant writ review include when the petition presents (1) an issue of widespread public importance; (2) a novel constitutional issue; (3) a statute that requires prompt interpretation because of a conflict of law requiring immediate resolution; or (4) prejudice or other time-sensitive considerations specific to the parties seeking relief. In the first three circumstances, amicus curiae would assist the court to evaluate whether the writ actually warrants attention and will bring a fresh perspective that may not have been addressed by the parties in seeking or opposing writ relief. ***Submission of Amicus Curiae Briefs when Palma notices are issued.*** The committee also requested input on whether the rule should address situations in which a *Palma* notice has issued. We suggest a procedure that would also allow interested parties to submit an application to file amicus curiae briefs when a *Palma* notice is issued would be beneficial to the bench, the bar, and the public. The California Supreme Court explained the circumstances behind a *Palma* notice in *Lewis v. Superior Court* (1999)	The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a *Palma* notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the

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

	Commentator	Position	Comment	Committee Response
			19 Cal.4th 1232, 1236 (*Lewis*): When an appellate court considers a petition for a writ of mandate or prohibition, it is authorized in limited circumstances to issue a peremptory writ in the first instance, without having issued an alternative writ or order to show cause. (Code Civ. Proc., § 1088, 1105; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223 [23 Cal. Rptr. 2d 397, 859 P.2d 96] (*Alexander*); *Palma v. U.S. Industrial Fasteners, Inc*. (1984) 36 Cal.3d 171, 178 [203 Cal. Rptr. 626, 681 P.2d 893] (*Palma*).) In *Palma*, we held that even in such circumstances, a peremptory writ of mandate or prohibition should not issue in the first instance unless the adverse parties have received notice that such a writ in the first instance is being sought or considered. In addition, absent exceptional circumstances requiring immediate action, the court should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected. (*Palma*, *supra*, 36 Cal. 3d at p. 180.) Because *Palma* notices are issued to ensure the court is aware of the potential impacts of issuing a preemptory writ in the first instance, the court may benefit from additional insight into whether the writ should or should not be issued due to	court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.

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

	Commentator	Position	Comment	Committee Response
			the impact on persons outside the litigation. Providing an opportunity for amicus curiae briefs to be filed within the same timeframe that the respondent has to respond to the *Palma* notice would not delay the court's review of the case. It would, however, provide an additional perspective on the issue being considered that highlights the impact the writ would have outside the litigation. Allowing the opportunity to submit applications for the consideration of amicus curiae briefs to be filed will provide the court with additional information regarding whether other entities or individuals are actually interested in the issue or whether immediate guidance on a novel issue or conflict of law is required that should not be delayed through the normal course of litigation. ***Permitting Applications for Amicus Curiae Briefs Before Issuance of a Palma notice, an Alternative Writ, or an OSC***. We submit that the committee should propose an amendment that creates a procedure to file applications for amicus curiae to discuss the impact of a writ petition *before* the court has taken any action. As noted above, writs are granted in rare circumstances and only when there is a pressing need. Permitting the court to accept applications for amicus curiae briefs would allow it to have an additional perspective regarding whether to issue a *Palma* notice, an alternative writ, or an OSC. We believe	Please see the response to the comments of the Association of Southern California Defense Counsel above.

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

	Commentator	Position	Comment	Committee Response
			providing a procedure to file amicus curiae briefs in writ proceedings would not significantly increase the filings the court would need to review nor would it delay review. The court has the option to respond to the writ at any time, and, of course, the court would retain that option. It would only provide a mechanism for parties to provide additional information to the court while the court is still considering whether or not the writ warrants immediate attention. Allowing the court to receive this additional briefing would notify it that others are monitoring the case and also request the court to grant writ review. Additionally, it is likely that applications to file amicus briefs would only occur in matters of public importance or conflicts of law. For example, the California Academy of Appellate Lawyers attempted to submit a letter supporting writ review in *ISHR LLC v. Superior Court*, Case No. B271243, in which the real party in interest had requested review of the superior court's denial of a motion to use a settled statement in a case where there was no reported transcript of the oral proceedings. The court would not accept the request to submit an amicus brief, and thus was denied the insight regarding the impact of the bench's refusal to hear motions for a settled statement to be used on appeal. We suggest that the committee consider adding a provision to the proposed rule	

SPR16-05
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (amend rule 8.487)

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

	Commentator	Position	Comment	Committee Response
			so Courts of Appeal can accept letters like the one submitted in *ISHR*.	
10.	State Bar of California, Committee on Appellate Courts	A	The Committee on Appellate Courts supports this proposal. The rules currently do not provide a procedure by which individuals and entities other the Attorney General may file amicus curiae briefs in writ proceedings. The proposed changes to rule 8.487 would furnish such a procedure. Because the rules should provide a procedure by which any amicus may file a brief in writ proceedings, and because the procedure proposed by the Appellate Advisory Committee generally mirrors the procedure already in place for amicus briefs filed by the Attorney General, we support this proposal. We also agree with the Appellate Advisory Committee's decision not to address amicus participation in situations where the court notifies the parties that it is considering issuing a *Palma* notice.	The committee notes the commentator's support for the proposal. The committee appreciates this input. Based on the weight of the public comments, the committee decided not to revise its proposal to encompass situations in which a *Palma* notice is issued. However, the committee did revise the proposed rule amendment and accompanying advisory committee comment to clarify that this proposed amendment governs amicus briefs only in those cases in which an alternative writ or order to show cause has been issued and does not alter the court's authority to either request or permit the filing of amicus briefs in other circumstances. This should prevent any confusion about whether a court can request or permit amicus participation in a particular case in which a *Palma* notice has been issued.

SPR16-05
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (amend rule 8.487)

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

	Commentator	Position	Comment	Committee Response
11.	Superior Court of Los Angeles County	A	No specific comment.	The committee notes the commentator's support for the proposal.
12.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Should the rule also address possible amicus participation in situations in which the court notifies the parties that it is considering issuing a peremptory writ in the first instance? No. Q: Would the proposal provide cost savings? No. Q: What are implementations requirements for courts? Any requests to file amicus briefs should be treated as urgent miscellaneous requests; associated additions/revisions of processing procedures. Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes. Additional comments: Proposed rule 8.487(e)(5) should mirror (d)(4) to avoid extension of response time.	The committee notes the commentator's support for the proposal and appreciates the responses to the committee's questions. **Response to be discussed by committee – see staff memo**
13.	D'vora Tirschwell Writ Attorney Court of Appeal, First Appellate	A	Proposed rule 8.487(e) strikes an appropriate balance in writ proceedings, by limiting amicus applications and briefs to proceedings in which	The committee notes the commentator's support for the proposal. Please see the response to the comments of the Association of Southern

SPR16-05
Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (amend rule 8.487)

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

	Commentator	Position	Comment	Committee Response
	District		an alternative writ or order to show cause has issued. In the alternative writ scenario, however, an amicus application should probably not be submitted until after the superior court has decided to change its ruling in response to the alternative writ, since if the court does change its ruling, the writ proceeding in the appellate court will likely be dismissed as moot. Since amicus participation in cases in which a Palma writ/peremptory writ in the first instance will likely be unhelpful to the court, the proposed rule properly excludes amicus participation in such situations. A Palma writ is only proper where a petitioner's entitlement to relief is clear, or where the case is unusually urgent. It is difficult to imagine how an amicus brief would assist the court in resolving clear cases, and if the petition is unusually urgent the amicus process would cause a slowdown in the granting of relief.	California Defense Counsel above.

Item number: 21

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 09/07/2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70-8.79 and 8.204)

Committee or other entity submitting the proposal:
Appellate Advisory Committee and Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Katherine Sher, katherine.sher@jud.ca.gov, 415-865-8031

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/10/2015
Project description from annual agenda: Item 8 on AAC annual agenda - E-Filing rules - Review the rules on electronic filing in the appellate courts and compare with local practices to determine if there are inconsistencies that need to be addressed or where uniform practice might be beneficial.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title
Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices

Rules, Forms, Standards, or Statutes Affected
Amend title 8 (Cal. Rules of Court, rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79, and 8.204)

Recommended by
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 26, 2016

Contact
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Executive Summary

The Information Technology Advisory Committee and the Appellate Advisory Committee propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

Recommendation

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) recommend that the Judicial Council, effective January 1, 2017:

- Revise rule 8.70 to eliminate outdated references to e-filing "projects" in the appellate courts.

- Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.

- Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (A detailed description of proposed renumbered rule 8.78 is given below.)

- Create new rule 8.71, implementing mandatory e-filing in the appellate courts; exempting self-represented parties from mandatory e-filing unless they agreed to e-file, by e-filing a document or otherwise; exempting trial courts from e-filing unless they agreed to e-file; and requiring appellate courts to have procedures for parties to ask to be excused from e-filing upon a showing of undue hardship or significant prejudice.

- Delete rule 8.72, which specifies which documents may be filed electronically, with some of its provisions moved into new rule 8.71.

- Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (A detailed description of proposed renumbered rule 8.79 is given below.)

- Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.

- Renumber rule 8.75 as rule 8.73 and add a provision stating that, whenever possible, a court should include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.

- Renumber rule 8.76 as rule 8.74, add a requirement that a court's required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents.

- Renumber rule 8.77 as rule 8.75.

- Renumber rule 8.78 as rule 8.76.

- Renumber rule 8.79 as rule 8.77, add language requiring the court to "arrange for" confirmation of filing to an electronic filer, delete the requirement that such a notice include notice of any fees assessed for the filing, and revise the provision regarding delayed delivery of a filing due to technical problems with the court's electronic filing

system, allowing a filer who misses a deadline to file late and move to have the document accepted as timely filed.

- Revise rule 8.78, renumbered from existing rule 8.71, (1) so a party who files a document electronically will be able, by filing a notice with the court and serving it on the other parties, to indicate that the party prefers to be served paper copies; (2) to apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) to state that a proof of electronic service need not state that the person making service is not a party; and (4) to delete the requirement that a proof of electronic service state time of service.

- Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service, and to delete the subdivision which prohibited the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee.

- Revise rule 8.204 to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be suppressed from the cover page, and to require that briefs submitted in paper form be submitted unbound unless otherwise provided by local rule or court order.

Previous Council Action

Rules 8.70 to 8.79, the existing appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended since that time.

Rationale for Recommendation

When the rules governing e-filing in the appellate courts—California Rules of Court, rules 8.70 to 8.79—were first adopted in 2010, the Courts of Appeal had just begun to implement e-filing systems. By the end of this year, it is anticipated that all six appellate districts of the Courts of Appeal will have implemented systems making e-filing and e-service mandatory for most parties in most cases; the Supreme Court will follow in 2017. Many of the originally adopted e-filing rules are simply no longer applicable, such as those referring to e-filing pilot projects. In other instances, the rules need to be amended to reflect the current e-filing practices and preferences of the appellate courts. The Joint Appellate Technology Subcommittee (JATS), a joint subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee, undertook to propose revisions to the appellate e-filing rules so that they do not conflict with the practices of the appellate courts and, where the experience of those courts has shown that a certain practice is desirable, amend the rules to ensure statewide consistency. The committees recommend adopting certain rule changes now to reflect existing practices and needs, but to wait on other proposals until all the appellate courts—including the Supreme Court—have implemented e-filing and can better evaluate the desirability of additional statewide

e-filing rules. The committees recommend adoption of these proposed amendments to bring the appellate e-filing rules up to date and into conformity with current e-filing practices.

Mandatory e-filing

The proposed amendments to the e-filing rules recognize that in those appellate courts that have already implemented e-filing, e-filing is mandatory in most cases. Proposed rule 8.71 states that except as otherwise provided in the rules, in the local rules of the reviewing court, or by court order, all parties are required to file all documents electronically. Exemptions are created for self-represented parties and trial courts, who are not required to e-file, but may agree to do so. Under the proposed language for rule 8.71(d), a party must be excused from e-filing upon a showing of undue hardship or significant prejudice, and each court must also have a process allowing a party to apply for such an excuse.

The existing requirements for a court to give notice when a document is received by the court and when a document is accepted or rejected for filing are revised to reflect the actual practice of the courts and electronic filing service providers, which is that the notice is automatically generated by the e-filing system. Under amended rule 8.73(d)(3) (renumbered from rule 8.75(d)(3)) and 8.77(a), the court will "arrange" to give notice to the electronic filer of receipt, filing or rejection of filing.

The amendments to the rules also change the procedure used when a party is prevented from timely filing a document because of technical problems with the electronic filing system. Under amended rule 8.77(d) (renumbered from 8.79(d)), a new procedure is created allowing a party to file a document as soon as practicable, on paper or electronically, accompanied with a motion asking that the document be accepted as timely filed.

Revised rules for e-service

Under the existing rules governing e-service, a party is automatically considered to have consented to receive electronic service of documents if that party electronically files any document with the court. The amendments to rule 8.78 (renumbered from rule 8.71) will allow a party to opt out of e-service by filing a notice with the court and serving it on the other parties, even if that party chooses to electronically file documents.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated from April 15, 2016, to June 14, 2016, in the regular spring 2016 comment cycle. Comments from 12 commentators were received. Four commentators agreed with the proposal, none disagreed, seven agreed if modified, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of the comments received and the committees' responses, is attached at pages 29–58.

E-filing by self-represented parties. To protect self-represented parties who may not have ready access to the resources needed to e-file documents, proposed rule 8.71 exempts self-represented parties from mandatory e-filing. In the proposed language of rule 8.71(b) as circulated for comment, a self-represented party could only opt in to e-filing by filing a notice with the court and serving it on the other parties. The California Appellate Court Clerks Association (CACCA) noted that this places an unnecessary burden on self-represented parties who wish to use e-filing, and on the courts as well. CACCA suggested that subsection 8.71(b)(3) be revised to provide that a self-represented party can agree to e-filing simply by electronically filing a document with the court. Based on this comment, the committees have revised proposed rule 8.71(b)(3) to allow a self-represented party to agree to e-filing by electronically filing any document.

Comments from both CACCA and the Court of Appeal, Second Appellate District, noted that rule 8.71(b)(3) as circulated prohibited self-represented parties, in cases where there are both self-represented and represented parties, from e-filing unless the party affirmatively agreed to e-file. The committees have revised proposed rule 8.71(b)(3) to delete the requirement that self-represented litigants file in paper form, but to provide that a self-represented party in such a case may file documents in paper form.

Excuse from e-filing. The Court of Appeal, Second Appellate District (the Second Appellate District), suggested that in rule 8.71(d) the requirement for a court to have a process for parties to apply for relief from mandatory e-filing should be replaced with a specific requirement that the court excuse a party on the motion of that party showing good cause or undue prejudice. The State Bar Standing Committee on the Delivery Services commented that greater specificity as to procedure would make it easier for those parties needing exemption to apply. Because different Courts of Appeal have different practices and different local rules as to how a party requests exemption from e-filing, the committees declined to make the suggested change.

Publication of e-filing requirements. The Second Appellate District commented that the rule 8.72(a) requirement for each appellate court to publish its local e-filing requirements (renumbered from rule 8.74(a)) is unnecessary, as any variations in e-filing requirements are done by local rule, which must be published. The committees believe that it is valuable to state, in the context of the rules of court specifically regarding appellate e-filing, that any local requirements for e-filing must be published. The committees therefore declined to revise the proposed rule as suggested.

Contracts with e-filing service providers. Proposed rule 8.73(b) (renumbered and revised from rule 8.75(b)) would expressly allow a court's contract with an electronic filing service provider to require that the service provider, upon court order, waive an electronic filing service provider fee that would normally be charged to an electronic filer. This new provision is meant to encourage courts to include this protection in their contracts with electronic filing service providers. The new language takes a different approach to protecting parties for whom these fees may be a hardship: it will delete the language of existing rule 8.73(a)(2)(B), which prohibits a

court from ordering a party to electronically file or serve documents if that party objects to paying the electronic filing service provider fee.

The Second Appellate District suggested that the new language be revised to read, "The contract may require that the electronic filing service provider waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party." The committees declined to make this revision, as the intent is to allow the court to decide separately whether an electronic filing service provider's fee should be waived in a particular instance, whether or not the filing fee has been waived.

The Family Violence Appellate Project suggested strengthening the language to say that, "Whenever possible, the contract should require" fee waiver upon court order. As this may provide greater protection to parties in need of it, the committees have revised the rule with the suggested language.

How notice is given when documents are received or filed. The proposed rules as circulated renumbered but otherwise left unchanged the provisions of rules 8.75(d) (renumbered 8.73(d)) and 8.79(a) (renumbered 8.77(a)), which state requirements for courts to send notice to electronic filers when documents are received and when they are accepted or rejected for filing. Both CACCA and the Second Appellate District commented that in practice, such notices are automatically generated by the e-filing system. The committees have revised these rules to provide that the court will "arrange" to provide such notice, thus retaining the requirement for notice but providing flexibility as to how the notice is delivered, now and in the future as technology changes.

The Court of Appeal, Third Appellate District (in a comment included in CACCA's comments), and the Second Appellate District both commented that rule 8.77(a)(2)(C), which requires that when a document has been filed, notice to an electronic filer must specify the fees assessed for the filing, goes beyond what the current e-filing systems can do. Both of the courts suggested deleting the provision, and the committees have revised the rule to do so.

Formatting issues. The amended rules make several changes regarding the required format for documents e-filed in the appellate courts, and there were many comments on these changes.

In rule 8.74(b) (renumbered from rule 8.76(b)) and rule 8.204(b)(7), the rules put in place a new requirement for the pagination of electronically filed documents, applicable also under rule 8.204 to all briefs, whether electronically or paper filed. The new requirement states that documents/briefs are to be numbered starting with page one on the cover or first page, and using only Arabic numerals. The requirement mirrors that which will apply to various documents filed in trial courts under rules 2.109, 3.1110, and 3.1113, under the Rules Modernization Phase 2 proposal, SPR16-25. Existing rule 8.204(b)(7) allows the tables and body of an appellate brief to have different numbering systems. This means the page numbering of an electronically filed brief, such as a PDF, differs from the numbering shown on the pages—complicating the court's

task in reviewing these documents. The change is intended to make sure that PDF (or other electronic document format) page numbers match those shown on the pages.

The Second Appellate District, with the support of CACCA, suggested that the language of both rules be revised to say that "the page number may be suppressed and need not appear on the cover page." This suggested change may also help to address the concern of the California Court Reporters Association (CCRA) which, in its comment, read the rule as allowing a cover page not to be numbered—which would leave the page numbering of an electronic document out of sync with what is shown on the pages. The committees have revised these rules to make this change.

Although the subject of how paper briefs are to be bound was not addressed in the proposed rules as circulated, both CACCA and the Second Appellate District see the amendment of rule 8.204 (b)(8) as a minor change unlikely to create controversy, and as an opportunity to bring that rule into conformance with the current preference of most appellate courts, which is that briefs be submitted unbound to assist in scanning them into electronic form. To ensure that each appellate court can continue to set its own policy as to whether briefs should be bound or unbound, the committees have made the suggested change to rule 8.204 (b)(8) to state that paper briefs should be submitted unbound, with the addition of language stating "unless otherwise provided by local rule or court order."

The Second Appellate District further suggested that rule 8.204(b)(8) and (b)(10), together with rule 8.40, be revised to eliminate the requirements for cover color for paper briefs. The committees declined to make these newly proposed changes, which go beyond the scope of the proposed rules. Appellate local rules currently address this issue.

CCRA commented that the rules should specify further requirements for the electronic format of a reporter's transcript, such as hyperlinks. CCRA also suggested that rule 8.75(d), renumbered but otherwise unchanged from rule 8.77(d), be revised to require a digital signature on an electronically submitted copy of a reporter's transcript. Requirements specifically applicable to reporters' transcripts are not recommended at this time. The committees recommend that any such changes be developed with input from court reporters and other affected parties.

Commentator D'vora Tirschwell, a writ attorney for the Court of Appeal, First Appellate District, commented that the rules should require descriptive bookmarking of electronically filed documents. Ms. Tirschwell further suggested that the rules require that electronically filed exhibits be submitted in "volumes" of no more than 300 pages each. JATS, in developing this proposal, specifically considered whether to address these issues, and decided to wait to take action until all of the appellate courts have had more experience implementing e-filing. The committees therefore declined to make these changes, but will be considering these issues in the future.

Alternatives considered

In addition to the alternatives considered as a result of the public comments discussed above, the committees considered whether this comprehensive revision of the appellate e-filing rules should be completely delayed until all of the appellate courts, including the Supreme Court, have implemented e-filing. Although on some topics, such as requirements for bookmarking electronic documents, the committees decided that further experience was needed before a rule should be proposed, the committees concluded that it was important to update the appellate e-filing rules in line with current practices. By doing so, the committees hope that courts and litigants will no longer face the confusion created when a statewide rule does not fit with existing practices.

Implementation Requirements, Costs, and Operational Impacts

Because this proposal is intended to update the rules of court in line with the e-filing practices already implemented in many appellate courts (and rolling out in others), and because trial courts are specifically exempted from mandatory appellate court e-filing, the proposal should not impose significant implementation requirements. To the extent the changes facilitate e-filing and e-service in the appellate courts, and ensure that the appellate courts receive e-filed documents in their preferred formats, they should provide some cost efficiencies.

Attachments and Links

1. Cal. Rules of Court, rules 8.70–8.79 and rule 8.204, at pages 9–28
2. Chart of comments, at pages 29–58

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204 of the California Rules of Court are amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 5. E-filing

Rule 8.70. ~~Purpose,~~ a<u>A</u>pplication, construction, and definitions

~~(a) Purpose~~

~~The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.~~

~~(b)~~<u>(a)</u> Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and ~~any~~ <u>the</u> Court<u>s</u> of Appeal ~~that elects to implement an e-filing project~~.

~~(c)~~<u>(b)</u> Construction

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

~~(d)~~<u>(c)</u> Definitions

As used in this article, unless the context otherwise requires:

(1) "The court" means the Supreme Court or ~~any~~ a Court of Appeal ~~that elects to implement an e-filing project~~.

(2) ~~A document may be in paper or electronic form.~~ A "document" is:

(A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;

(B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript; or

(C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.

<u>(D) A document may be in paper or electronic form.</u>

(3) "Electronic service" is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party, by an agent of a party including the party's attorney, through an electronic filing service provider, or by a court.

(4) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(5) "Electronic notification" means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(6) "Electronic service address" of a party means the electronic address at or through which the party has authorized electronic service.

(7) An "electronic filer" is a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.

(8) "Electronic filing" is the electronic transmission to a court of a document in electronic form.

(9) An "electronic filing service provider" is a person or entity that receives an electronic filing from a party for retransmission to the court or for electronic service on other parties, or both. In submission of filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

Advisory Committee Comment

The definition of "electronic service" has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to modify the rules on electronic service to expressly authorize electronic notification as a legally effective alternative means of service to electronic transmission. This rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing electronic transmission as the only effective means of electronic service.

~~Rule 8.71. Electronic service~~

(a) Authorization for electronic service

(1) A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

(B) If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

(2) A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).

(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

(4) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.

(b) Maintenance of electronic service lists

When the court orders or permits electronic filing in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.

(c) Service by the parties

Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(d) Change of electronic service address

~~(1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.~~

~~(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).~~

~~(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.~~

~~(e) Reliability and integrity of documents served by electronic notification~~

~~A party that serves a document by means of electronic notification must:~~

~~(1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;~~

~~(2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and~~

~~(3) Maintain the hyperlink until the case is final.~~

~~(f) Proof of service~~

~~(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, except that the proof of service must state:~~

~~(A) The electronic service address of the person making the service, in addition to that person's residence or business address;~~

~~(B) The date and time of the electronic service, instead of the date and place of deposit in the mail;~~

~~(C) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and~~

~~(D) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.~~

~~(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.~~

~~(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.77(c).~~

~~**(g) Electronic service by or on court**~~

~~(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.~~

~~(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:~~

~~(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or~~

~~(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.~~

Rule 8.71. Electronic filing

(a) Mandatory electronic filing

Except as otherwise provided by these rules, the local rules of the reviewing court, or court order, all parties are required to file all documents electronically in the reviewing court.

(b) Self-represented parties

(1) Self-represented parties are exempt from the requirement to file documents electronically.

(2) A self-represented party may agree to file documents electronically. By electronically filing any document with the court, a self-represented party agrees to file documents electronically.

(3) In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, each self-represented party may file documents in paper form.

(c) Trial courts

Trial courts are exempt from the requirement to file documents electronically, but are permitted to file documents electronically.

(d) Excuse for undue hardship or significant prejudice

A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them in paper form.

(e) Applications for fee waivers

The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

(f) Effect of document filed electronically

(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.

(2) Filing a document electronically does not alter any filing deadline.

(g) Paper documents

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to file the document in paper form.

~~**Rule 8.72. Documents that may be filed electronically**~~

~~**(a) In general**~~

~~The court may permit electronic filing of a document by a party or trial court in any appeal or original proceeding unless the rules in this article or other legal authority expressly prohibit electronic filing.~~

~~**(b) Application for waiver of court fees and costs**~~

~~The court may permit electronic filing of an application for waiver of court fees and costs in any proceeding in which the court accepts electronic filings.~~

~~(c) Orders, opinions, and notices~~

~~The court may electronically file any notice, order, opinion, or other document prepared by the court.~~

~~(d) Effect of document filed electronically~~

~~(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.~~

~~(2) Filing a document electronically does not alter any filing deadline.~~

~~Rule 8.73. Court order requiring electronic service or filing~~

~~(a) Court order~~

~~(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties to:~~

~~(A) Serve all documents electronically, except when personal service is required by statute or rule;~~

~~(B) File all documents electronically; or~~

~~(C) Serve and file all documents electronically, except when personal service is required by statute or rule.~~

~~(2) The court will not:~~

~~(A) Order a self-represented party to electronically serve or file documents;~~

~~(B) Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or~~

~~(C) Order a trial court to electronically serve or file documents.~~

~~(3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.~~

~~**(b) Additional provisions of order**~~

~~The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.~~

~~**(c) Filing in paper form**~~

~~When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve, file, or serve and file the document in paper form.~~

Rule ~~8.74~~ 8.72. Responsibilities of court

(a) Publication of electronic filing requirements

~~When the court permits electronic filing it~~ The court will publish, in both electronic and print formats, the court's electronic filing requirements.

(b) Problems with electronic filing

If the court is aware of a problem that impedes or precludes electronic filing, it must promptly take reasonable steps to provide notice of the problem.

Rule ~~8.75~~ 8.73. Contracts with electronic filing service providers

(a) Right to contract

(1) The court may contract with one or more electronic filing service providers to furnish and maintain an electronic filing system for the court.

(2) If the court contracts with an electronic filing service provider, the court may require electronic filers to transmit the documents to the provider.

(3) If the court contracts with an electronic service provider or the court has an in-house system, the provider or system must accept filing from other electronic filing service providers to the extent the provider or system is compatible with them.

(b) Provisions of contract

The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. Whenever possible, the contract should require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party. The contract may also allow the

electronic filing service provider to make other reasonable requirements for use of the electronic filing system.

(c) Transmission of filing to court

An electronic filing service provider must promptly transmit any electronic filing and any applicable filing fee to the court.

(d) Confirmation of receipt and filing of document

(1) An electronic filing service provider must promptly send to an electronic filer its confirmation of the receipt of any document that the filer has transmitted to the provider for filing with the court.

(2) The electronic filing service provider must send its confirmation to the filer's electronic service address and must indicate the date and time of receipt, in accordance with rule 8.77 ~~9(a)~~.

(3) After reviewing the documents, the court must arrange to promptly transmit ~~to the electronic filing service provider and the electronic filer the court's~~ confirmation of filing or notice of rejection ~~of filing,~~ to the electronic filer in accordance with rule 8.77 ~~9~~.

(e) Ownership of information

All contracts between the court and electronic filing service providers must acknowledge that the court is the owner of the contents of the filing system and has the exclusive right to control the system's use.

Rule ~~8.76~~ 8.74. Responsibilities of electronic filer

(a) Conditions of filing

Each electronic filer must:

(1) Comply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information;

(2) Furnish information that the court requires for case processing;

(3) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court's electronic filing system and to other users of that system;

(4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service; and

(5) Immediately provide the court and all parties with any change to the electronic filer's electronic service address.

(b) Format of documents to be filed electronically

(1) A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format.

(2) The format adopted by a court must meet the following minimum requirements:

(A) The format must be text-searchable while maintaining original document formatting.

~~(1)~~ (B) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.

~~(2)~~ (C) The printing of documents must not result in the loss of document text, format, or appearance.

(3) The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.

(4) If a document is filed electronically under the rules in this article and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this article prevail.

Rule ~~8.77~~ 8.75. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

If a document to be filed electronically must be signed under penalty of perjury, the following procedure 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.

(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) Documents not signed under penalty of perjury

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

(c) Documents requiring signatures of multiple parties

When a document to be filed electronically, such as a stipulation, requires the signatures of multiple parties, the following procedure applies:

(1) The party filing the document must obtain the signatures of all parties either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document. By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signatures of all parties in a form permitted by this rule in his or her possession.

(2) The party filing the document must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document and any copies of signed signature pages in the manner provided in (a)(3)–(5).

(d) Digital signature

A party is not required to use a digital signature on an electronically filed document.

(e) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Rule ~~8.78~~ 8.76. Payment of filing fees

(a) Use of credit cards and other methods

The court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of filing fees associated with electronic filing, as provided in Government Code section 6159 and other applicable law. The court may also authorize other methods of payment.

(b) Fee waivers

Eligible persons may seek a waiver of court fees and costs, as provided in Government Code section 68634.5 and rule 8.26.

Advisory Committee Comment

Subdivision (b). A fee charged by an electronic filing service provider under rule ~~8.75(b)~~ 8.73(b) is not a court fee that can be waived under Government Code section 68634.5 and rule 8.26.

Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing

(a) Confirmation of receipt and filing of document

(1) *Confirmation of receipt*

When the court receives an electronically submitted document, the court must arrange to promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created.

(2) *Confirmation of filing*

If the document received by the court under (1) complies with filing requirements, the court must arrange to promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the date and time of filing and is proof that the document was filed on the date and at the time specified. The filing confirmation must also specify:

(A) Any transaction number associated with the filing; and

(B) The titles of the documents as filed by the court.~~; and~~

~~(C) The fees assessed for the filing.~~

(3) *Transmission of confirmations*

The court must arrange to send receipt and filing confirmation to the electronic filer at the electronic service address that the filer furnished to the court under rule 8.7~~6~~4(a)(4). The court or the electronic filing service provider must maintain a record of all receipt and filing confirmations.

(4) *Filer responsible for verification*

In the absence of ~~the court's~~ confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the electronic filer submitted to the court electronically.

(b) Notice of rejection of document for filing

If the clerk does not file a document because it does not comply with applicable filing requirements, the court must arrange to promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing.

(c) Document received after close of business

A document that is received electronically by the court after 11:59 p.m. is deemed to have been received on the next court day.

(d) Delayed delivery

~~If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.~~

If a filer fails to meet a filing deadline imposed by court order, rule, or statute because of a failure at any point in the electronic transmission and receipt of a document, the filer may file the document on paper or electronically as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date the filer originally sought to transmit the document electronically.

(e) Endorsement

(1) The court's endorsement of a document electronically filed must contain the following: "Electronically filed by [Name of Court], on _____ (date)," followed by the name of the court clerk.

(2) The endorsement required under (1) has the same force and effect as a manually affixed endorsement stamp with the signature and initials of the court clerk.

(3) A record on appeal, brief, or petition in an appeal or original proceeding that is filed and endorsed electronically may be printed and served on the appellant or respondent in the same manner as if it had been filed in paper form.

Rule ~~8.71~~ 8.78. Electronic service

(a) Authorization for electronic service; exceptions

(1) A document may be electronically served under these rules:

(A) If electronic service is provided for by law or court order; or

(B) If the recipient agrees to accept electronic services as provided by these rules and the document is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission.

(2) A party indicates that the party agrees to accept electronic service by:

(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing ~~is evidence that the party~~ shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.7~~6~~4(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice.

~~(3) A party that has consented to electronic service under (2) and has used an electronic filing service provider to serve and file documents in a case consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.~~

~~(4)~~ (3) A document may be electronically served on a nonparty if the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order. All provisions of this rule that apply or relate to a party also apply to any nonparty who has agreed to or is otherwise required

by law or court order to accept electronic service or to electronically serve documents.

(b) Maintenance of electronic service lists

When the court orders or permits electronic ~~filing~~ service in a case, it must maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses as provided by the parties that have ~~filed electronically~~ been ordered to or have consented to electronic service in the case.

(c) Service by the parties

Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

(d) Change of electronic service address

(1) A party whose electronic service address changes while the appeal or original proceeding is pending must promptly file a notice of change of address electronically with the court and must serve this notice electronically on all other parties.

(2) A party's election to contract with an electronic filing service provider to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (1).

~~(3) An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.~~

(e) Reliability and integrity of documents served by electronic notification

A party that serves a document by means of electronic notification must:

(1) Ensure that the documents served can be viewed and downloaded using the hyperlink provided;

(2) Preserve the document served without any change, alteration, or modification from the time the document is posted until the time the hyperlink is terminated; and

(3) Maintain the hyperlink until the case is final.

(f) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that the proof of service must state~~ with the following exceptions:

(A) The proof of electronic service does not need to state that the person making the service is not a party to the case.

(B) The proof of electronic service must state:

(i) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~ (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~ (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) Proof of electronic service may be in electronic form and may be filed electronically with the court.

(3) The party filing the proof of electronic service must maintain the printed form of the document bearing the declarant's original signature and must make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed, in the manner provided in rule 8.~~77(c)~~75.

(g) Electronic service by or on court

(1) The court may electronically serve any notice, order, opinion, or other document issued by the court in the same manner that parties may serve documents by electronic service.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rule ~~8.73~~ 8.79. Court order requiring electronic service ~~or filing~~

(a) Court order

(1) The court may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order some or all parties to do either or both of the following:

(A) Serve all documents electronically, except when personal service is required by statute or rule; or

(B) ~~File all~~ Accept electronic service of documents. ~~electronically; or~~

~~(C) Serve and file all documents electronically, except when personal service is required by statute or rule.~~

(2) The court will not:

(A) Order a self-represented party to electronically serve ~~or file~~ or accept electronic service of documents; or

(B) ~~Order a party to electronically serve or file documents if the party would be required to pay a fee to an electronic filing service provider to file or serve the documents and the party objects to paying this fee in its opposition to the motion under (1); or~~

~~(C)~~ Order a trial court to electronically serve ~~or file~~ documents.

(3) If the reviewing court proposes to make an order under (1) on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or as the court specifies.

~~**(b) Additional provisions of order**~~

~~The court's order may also provide that documents previously filed in paper form may be resubmitted in electronic form.~~

~~(c)~~ (b) ~~Filing~~ Serving in paper form

When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, the court may allow that party to serve~~, file, or serve and file~~ the document in paper form.

Chapter 2. Civil Appeals

Article 3. Briefs in the Court of Appeal

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached and of at least 20-pound weight.

(2) Any conventional font may be used. The font may be either proportionally spaced or monospaced.

(3) The font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the font size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5) The lines of text must be unnumbered and at least one-and-a-half-spaced. Headings and footnotes may be single-spaced. Quotations may be block-indented and single-spaced. Single-spaced means six lines to a vertical inch.

(6) The margins must be at least 1½ inches on the left and right and 1 inch on the top and bottom.

(7) The pages must be consecutively numbered. ~~The tables and the body of the brief may have different numbering systems.~~ The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.

(8) If filed in paper form, the brief must be ~~bound on the left margin~~ filed unbound unless otherwise provided by local rule or court order. ~~If the brief is stapled, the bound edge and staples must be covered with tape.~~

(9) The brief need not be signed.

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information required by rule 8.40(c), the cover must state:

(A) The title of the brief;

(B) The title, trial court number, and Court of Appeal number of the case;

(C) The names of the trial court and each participating trial judge;

(D) The name of the party that each attorney on the brief represents.

(11) If the brief is produced on a typewriter:

(A) A typewritten original and carbon copies may be filed only with the presiding justice's permission, which will ordinarily be given only to unrepresented parties proceeding in forma pauperis. All other typewritten briefs must be filed as photocopies.

(B) Both sides of the paper may be used if a photocopy is filed; only one side may be used if a typewritten original and carbon copies are filed.

(C) The type size, including footnotes, must not be smaller than standard pica, 10 characters per inch. Unrepresented incarcerated litigants may use elite type, 12 characters per inch, if they lack access to a typewriter with larger characters.

(c)–(e) * * *

Advisory Committee Comment

*** * ***

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	California Appellate Court Clerks Association by Kevin Lane, President	AM	See comments on specific provisions below.	
2.	California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	AM	See comments on specific provisions below.	
3.	California Court Reporters Association by Karen Kronquest, Director, Division B	AM	See comments on specific provisions below.	
4.	Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	A	See comments on specific provisions below.	
5.	Orange County Bar Association by Todd G. Friedland, President	A	See comments on specific provisions below.	
6.	Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-Chairs	AM	See comments on specific provisions below.	
7.	Superior Court of Los Angeles County	A	No comment.	The committees note the court's support for the proposal. No response is necessary.

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

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
8.	Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst	NI	See comments on specific provisions below.	
9.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	See comments on specific provisions below.	
10.	State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	AM	See comments on specific provisions below.	
11.	State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	AM	See comments on specific provisions below.	
12.	D'vora Tirschwell Writ Attorney First District Court of Appeal	AM	See comments on specific provisions below.	

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Rule 8.71(b)(2)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.71 page 10 section (b) (2) Why require a notice be filed with the court that a self-rep party agrees to e-filing…the DCA's believe the same purpose would be served by the following suggested edit: (2) A self-represented party may agree to file documents electronically. ~~A self-represented party agrees to file documents electronically by filing a notice with the court and serving it on the other parties.~~ By submitting an electronic document to the court, and serving it electronically on other parties, a self-represented party agrees to electronic filing with the court.	Several commentators have noted that requiring a self-represented party to "opt in" to e-filing by filing and serving a notice could place an unwanted burden on both the party and the court. Although the committees were concerned in developing the proposed rule that self-represented parties not be compelled to use e-filing, nor to accept electronic service, a self-represented party will still be able, using the approach suggested by CACCA, to decide whether or not to e-file. Moreover, under the proposed language for rule 8.78 regarding e-service, a party will not be compelled to accept e-service because the party has e-filed a document. The committees therefore recommend that the language suggested by the commentator for rule 8.71 (b)(2) be adopted with the suggested change, but with the added sentence revised to read "By electronically filing any document with the court, a self-represented party agrees to file documents electronically."

Rule 8.71(b)(3)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	In subsection (3), we propose to delete subsection (3) altogether as we feel it is confusing or in the alternative substituting "may" in place of "is to", and to delete "unless the self-represented party affirmatively agrees otherwise." Rule 8.71 (b)(3): "Committee to consider: Since there is no definition of 'non-electronic means,' should we state 'paper' documents?"	See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.

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

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

Rule 8.71(b)(3)		
Commentator	**Comment**	**Committee Response**
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	Rule 8.71 page 10 section (b) (3) Why insist on filing by non-electronic means? Instead, mirror the language in the section right above wherein "may file" is used. Also we recommend a hyphen in nonelectronic, i.e., non-electronic. See below for revised (b) (3). Additions highlighted in yellow, deletions with strikeout. In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, ~~each~~ a self-represented party ~~is to~~ may file documents by non-electronic means~~ unless the self-represented party affirmatively agrees otherwise~~.	The committees agree that self-represented parties in cases involving both represented and self-represented parties should be given the option of filing electronically or on paper. In response to the comment by CACCA, above, regarding the term "nonelectronic means" the committees note that the convention in the appellate rules is to use the language "in paper form" or "in paper format." See, e.g., rule 8.40 (b). The committees therefore recommend that the proposed changes to rule 8.71(b)(3) be adopted with the following language: "In cases involving both represented and self-represented parties, represented parties are required to file documents electronically, however, in these cases, a self-represented party may file documents in paper form."

Rule 8.71(d)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	Committee to consider: Since there is no definition for 'conventional means,' should we state 'paper'?	See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	Rule 8.71 page 10 section (d) Delete A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for	The committees, in developing the proposed rule, intended to preserve the ability of each district court of appeal to implement its own procedures for parties to apply to be excused from filing electronically. The committees therefore decline to make the suggested change, but recommend that "by conventional means" be changed to "in paper form" as

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Rule 8.71(d)		
Commentator	**Comment**	**Committee Response**
	parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means. And replace with: The court will, on the motion of a party showing of good cause or undue prejudice, excuse a party from filing documents electronically. Said motion may be filed in paper. The above sentence would show the process as well, i.e. by motion.	suggested by CACCA.
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants.	See response above to comment on this subsection by the California Court of Appeal, Second Appellate District.

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Rule 8.72(a)		
Commentator	**Comment**	**Committee Response**
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	Rule 8.72 (a) page 12 and 13 WHY require us to publish the already published rules? Rule 8.71 (a) states E-filing is mandatory. This is a holdover from the days when court had to mandate e-filing. In addition, if a court requires any variations of e-filing, it will do so by local rule, which is already covered and already requires publication. DELETE section (a) shown below and renumber (b) Problems with electronic filing to (a) ~~(a)Publication of electronic filing requirements When the court permits electronic filing it The court will publish, in both electronic and print formats, the court's electronic filing requirements.~~ New (a) Problems with electronic filing	8.72 (a): The language of proposed rule 8.72(a) is taken directly from existing rule 8.74(a), changed only to reflect that e-filing is now mandatory in all of the courts of appeal. The requirement for each court to publish its own local e-filing requirements reiterates, in the context of the general rules for appellate e-filing, the generally applicable requirement that the courts of appeal publish whatever specific local requirements they may impose. The committees therefore decline to make the suggested change.

Rule 8.73(b)		
Commentator	**Comment**	**Committee Response**
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.73 (b) page 13 Insert "filing" before fee in line 30, on page 13 as shown below highlighted in yellow. The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. <u>The contract may require that the electronic filing service</u>	The intent of the proposed language is to allow the court to order the waiver of an electronic service provider's fee, if the contract so allows. The proposed addition of the word "filing" would impose such waivers across the board whenever a court orders the waiver of a filing fee. The committee declines the suggested change, and recommends that the proposed amended language of rule 8.73(b) be adopted without this change, giving courts the discretion to order the waiver of an electronic service

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Rule 8.73(b)		
Commentator	**Comment**	**Committee Response**
	provider agree to waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party. The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.	provider's fee, or not, as a separate decision from the decision to waive the court's filing fee. Please see response, below, to comment by the Family Violence Appellate Project, for language recommended by the committees to be added to the changes to this subsection.
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).	With regard to rule 8.73 (b), the intent of the proposed language is to allow courts, by contract, to provide that the court can order the waiver of an electronic service provider's fee in the court's discretion, as when the court has ordered the waiver of the court's filing fee due to the economic hardship it would pose for a party. The committees believe that the decision is appropriately left in the court's discretion. The committees therefore recommend that the proposed language be adopted as circulated, with the additions discussed in the response to the comments of the Family Violence Appellate Project.
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	While exempting pro se litigants from e-filing avoids concerns that indigent pro se litigants who qualify for fee waivers will be subject to mandatory e-filing fees, we would encourage the courts to negotiate vendor contracts that provide for all litigants who qualify for fee waivers to e-file without cost and without having to submit credit card information to e-file. For many litigants, e-filing is vastly	8.73(b): The proposed language of rule 8.73(b) is intended to provide some protection for litigants who may have difficulty paying an electronic filing service provider's fee, while recognizing that the court's ability to order the waiver of such fees is subject to the court's contract with the particular provider. The committees agree that courts should be encouraged to include provisions allowing the court to order

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Rule 8.73(b)		
Commentator	**Comment**	**Committee Response**
	more convenient, time-saving, and less expensive than traditional paper filing. Currently, proposed Rule 8.73(b) provides, ". . . The contract may require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party." We suggest changing the language as follows: ". . . Wherever possible, t ~~T~~he contract ~~may~~ should require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party."	that fees be waived. The committees therefore recommend that the amendments to subsection 8.73(b) be adopted with the changes suggested by the Family Violence Appellate Project.

Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.73 (d)(3): "Since the confirmation of filing or rejection is automatically generated when the deputy either accepts or rejects the document, the DCA's suggest the wording in red font below. The problem with this rule is if the electronic filer "unchecks" the notification box to receive these notices (confirmation of filing or rejection), they will not receive the notice and the courts will not know that it was not received." Suggested language for rule 8.73 (d)(3): "Following review of the documents for filing, an automatic confirmation of filing or rejection of a document is generated by the electronic filing system in compliance with rule 8.77."	See response below to comment on these subsections by the California Court of Appeal, Second Appellate District.

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	**Comment**	**Committee Response**
	Rule 8.77 (a) (1), suggested language: "When the court receives an electronically submitted document, ~~the court or the court's service provider must promptly send~~ the electronic filer will receive a computer generated confirmation of the receipt of the document, indicating the date and time of receipt…. ~~filed. The filing confirmation must indicate the …~~ " Rule 8.77 (a)(2), suggested language: "If the document received by the court under (1) complies with filing requirements, ~~the court or the court's service provider must promptly send~~ the electronic filer receives a computer generated confirmation …." CACCA also submits this further comment from the Third District Court of Appeal: "How do we control what they receive? We can only control what we send. We can verify or track what we send." And this further comment on rule 8.77(a)(2) from the Third District Court of Appeal: "Delete section (C) The fees assessed for the filing. The current system does not support this section.	The Third District Court of Appeal suggests that proposed rule 8.77(a)(2)(C), which renumbers but otherwise does not change existing rule 8.79(a)(2)(C), imposes a requirement which the existing e-filing systems are not capable of meeting. To eliminate the conflict between the existing rule and current practices, the committees recommend the deletion of subsection 8.77(a)(2)(C).
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the	8.73 (d) (3) Page 14 and 8.77 (a) (1) and (2) pages 16 and 17 Confirmation of filings go through the current TrueFiling	8.73(d)(3): Both the Second District Court of Appeal and CACCA suggest that the language of rule 8.73(d)(3) should reflect the actual practice of the appellate courts, which is that notice that a document has been filed or rejected is

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	**Comment**	**Committee Response**
Court	system, i.e., the emails to the electronic filer come from ImageSoft (it is part of the TrueFiling system) and are automatically generated. The court does not send an email directly to the filer. Therefore, the section in rule 8.73 (d)(3) and 8.77(a) (1) and (2) must be modified. See below for modification to rule 8.73. For rule 8.77, insert "or the court's service provider", as shown further below. Additions highlighted in yellow, deletions with strikeout. a) Rule 8.73, Contracts with electronic filing service providers: (d) (3) After reviewing the documents, the court must promptly transmit ~~to the electronic filing service provider and the electronic filer the court's~~ confirmation of filing or notice of rejection in accordance with rule 8.77 ~~9~~ to the electronic service provider, who will immediately send the notice to the electronic filer. b) Rule 8.77 (a) Confirmation of receipt – Page 17 (1) When the court receives an electronically submitted document, the court or the court's service provider must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the … (2) Confirmation of filing	automatically generated. The committees note that the proposed language of rule 8.73(d)(3) is unchanged from the language of existing rule 8.75(d)(3). Moreover, the language proposed by CACCA fails to specify what the court and the electronic service provider are required to do with regard to sending notice. However, the committees agree that the rule should reflect the practice, which is that the courts do not directly notify an electronic filer of filing or rejection of a document. The committees therefore recommend that the proposed amendments be revised to state that the court "must arrange" to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered, now and in the future as technology changes. The committees recommend that the proposed amendments be revised to state that the court "must arrange" to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered.

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	**Comment**	**Committee Response**
	If the document received by the court under (1) complies with filing requirements, the court or the court's service provider must promptly send the electronic filer confirmation ….	

Rule 8.74(b)		
Commentator	**Comment**	**Committee Response**
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b) – states the format for attorneys to file electronic documents. It should also contain the minimum requirements for a reporter's transcript, including hyperlinks, etc.	The committees note that the only changes proposed to existing rule 8.76 (renumbered as rule 8.74) are to put in place a requirement that electronically filed documents be in a text searchable format, and that pagination begin with the cover or first page as 1 and use only Arabic numerals. More specific format requirements applicable to reporters' transcripts are set forth elsewhere in the rules, including in rule 8.144, and no changes to those requirements were included in the proposed changes as circulated for comment. Any potential changes to these requirements should be circulated for comment before a change is made.

Rule 8.74(b)(2)		
Commentator	**Comment**	**Committee Response**
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face	Although the committees appreciate the need to keep e-filing accessible to litigants who may find it difficult to meet specific format requirements, they proposed this new requirement with the understanding that the rules need to consider and balance the needs of the courts and the needs of litigants. Text-searchable format is important to allow efficient court review

Rule 8.74(b)(2)		
Commentator	**Comment**	**Committee Response**
	difficulties gaining physical access to buildings where public, shared computers are available.	of documents, and software for the creation of text-searchable documents is readily available for reasonable or no cost. Parties who find this requirement too great of a barrier may request exemption from e-filing under the proposed language of rule 8.71(d).
D'vora Tirschwell Writ Attorney First District Court of Appeal	Descriptive electronic bookmarking of exhibits and section headings in briefs is required by the First Appellate District's Local Rule 16. Electronic bookmarks serve the same function of index tabs in paper-filed documents, which are required by other court rules (e.g., rule 8.486(c)(1)(B)). Descriptive electronic bookmarks are *absolutely critical* to sifting through an electronic record, particularly in writ proceedings, which are often time-sensitive and require speedy review. I do not read the proposed rules as conflicting with the electronic bookmarking requirements of the First Appellate District's Local Rule 16. Because electronic bookmarks are so necessary for court staff, however, I recommend proposed rule 8.74(b)(2), which sets forth minimum requirements for the formatting of electronically-filed documents, expressly include a requirement for descriptive electronic bookmarks to the first page of each exhibit and each section heading in a brief. I further suggest that descriptive electronic bookmarks be defined as including not only the exhibit number or letter as indicated in a required index of contents, but also a short description of the document (such as Exh. 1-Notice of MSJ).	The committees considered including specific requirements for bookmarking of electronic documents in this proposal. However, because some of the courts of appeal have only recently begun using e-filing, the committees decided to wait until all of the courts of appeal have had more experience with e-filing, and better know what bookmarking requirements work best for them, before moving towards a statewide rule on this topic.

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Rule 8.74(b)(3)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	Comment on Second District Court of Appeal's proposed change to rule 8.74 (b)(3): "Agreed – the DCA's really like the addition of 'may be suppressed'!"	8.74(b)(3): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.74 (b) (3) page 15 a) Insert "may be suppressed and" in line 11. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.	8.74(b)(3): Both the Second District Court of Appeal and CACCA recommend the addition of the phrase "may be suppressed" to the language proposed for rule 8.74(b)(3). The committees note that the language for rule 8.74 (b)(3) is taken from the parallel rule proposed for the trial courts, in rules 2.109, 3.1110 and 3.1113 as proposed to be amended in proposal SPR16-25. However, the language need not be identical to the language that will be used in the trial court rules. The committees therefore recommend that the proposed amendments to rule 8.74(b)(3) be revised to add the words "may be suppressed and" after "page number," as suggested by the Second District Court of Appeal.
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b)(3) – states the cover does not need a page number. In order to file a reporter's transcript electronically it needs to have a page number on every single page, otherwise the pagination will be incorrect when uploading.	The committees note that the intent of the new requirement for pagination is to ensure that the pagination of an electronically filed document match the pagination shown on the document, with the first page (or cover, if there is one) as page 1 and then all further pages numbered with consecutive Arabic numerals. Although the page number may be suppressed on the cover or first page, that page will be required to be page 1. (See response, above, to comments by Court of Appeal for the Second Appellate District for discussion of exact language to be used.)

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Rule 8.75(d)		
Commentator	**Comment**	**Committee Response**
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.75(d)- digital signature not required. You must have a digital signature on a reporter's transcript otherwise it enables someone to change the text without anyone every knowing it. The digital signature that we use lets you know that it has been changed, on what date, and who did it.	The committees note that this language remains unchanged from existing rule 8.77. The intent was not to make a substantive change at this time as to when a digital signature is required. The committees recommend that the amendments, which simply renumber the rule, be adopted as circulated for comment.

Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.78 (a) (2) (b) page 19 Opposed to the deletion of section (a)(2)(b). Currently this rule works and there is no advantage to removing it. Instead it would cause more work, trouble, and cost for all concerned. ~~Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).~~	Please see response to comment by Santa Clara County Bar Association Committee on Appellate Courts.
Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-	The proposed rule would, among other things, permit parties to choose between receiving documents electronically or in hard copy. The SCCBA Committee suggests that rather than offering a procedure for "opting into" electronic service, the rule should offer a procedure for "opting out" of electronic service. An "opt out" option	The committees' intent, in drafting the changes to the rule regarding e-service, was to separate out parties' decisions regarding use of e-filing and acceptance of e-service. With some exceptions, parties will be mandated to use e-filing under the proposed changes to the rules. Rule 8.78(a)(3) was proposed to be deleted because using e-filing to establish

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Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
Chairs	would be both more efficient and more effective because most parties prefer electronic service and are unlikely to choose paper service. Under the current rule, a party that electronically files documents is presumed to agree to accept electronic service. (See Cal. Rules of Court, rule 8.71(a)(2)(B).) This presumption is appropriate because most parties that can file documents electronically prefer to receive electronic service. Electronic service is quicker than service of paper copies by mail or by courier. It allows counsel who are traveling to access the documents before returning to their offices, and avoids the need to convert paper copies to electronic form in order to distribute the document to clients and colleagues. The Information Technology Advisory Committee's proposal does not suggest that there have been any significant problems with electronic service or that electronic service unfairly disadvantages some parties. Instead, the proposal's objective appears to be to provide parties wishing to receive paper copies with the option of doing so. Currently, parties lack this option because under the current rule the presumption that a party electronically filing documents has agreed to electronic service is both automatic and absolute. The SCCBA Committee supports giving parties who prefer to receive documents in paper form this option. But the SCCBA Committee's suggestion would provide this option more efficiently. An "opt out" requirement, as opposed to the proposed "opt-in" requirement, would substantially reduce the number of	acceptance of e-service would, with mandated e-filing, give parties no choice as to whether to accept e-service. However, several commentators have expressed concern that requiring a party to file and serve a notice of acceptance of e-service is unduly burdensome on parties and the courts. The committees agree that an opt-out provision, as suggested by the Santa Clara Bar Association Committee on Appellate Courts (SCBACAC), to allow parties, now mandated to e-file, to decide whether to accept e-service. The committees therefore recommend that the proposed amendments to rule 8.78(a) be revised to include the language suggested by SCBACAC, with the suggested phrase "hard copies" changed to "paper copies."

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

Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
	notices to be filed, and the burden on the courts and the parties. It would also help avoid confusion in multi-party cases in which only one or two of the many parties wish to be served by paper. The SCCBA Committee recommends that the proposed Rule 8.78 be revised to maintain the current rule's presumption that parties filing documents electronically agree to electronic service, and to add a procedure for "opting out" of electronic service, as follows: **(a) Authorization for electronic service; exception** (1) A document may be electronically served under these rules: (A) If electronic service is provided for by law or court order; or (B) If the recipient agrees to accept electronic service as provided by these rules and that document is otherwise authorized to be served by mail, express mail, overnight delivery or fax transmission. (2) A party indicates that the party agrees to accept electronic service by; (A) Sserving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the parties agrees to accept service; or	

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Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
	(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under Rule 8.74(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and prefers instead to be served hard copies at an address specified in the notice.	
State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	The members of the Committee on Appellate Courts are divided on the advisability of the proposed change to rule 8.71(a)(2), which currently states that "[a] party indicates that the party agrees to accept electronic service" either: (A) by "[s]erving a notice on all parties that the party accepts electronic service and filing the notice with the court"; or (B) by "[e]lectronically filing any document with the court." Proposed rule 8.78(a)(2) eliminates the presently existing alternative means of indicating agreement to accept electronic service by electronically filing any document with the court. Under the proposed rule, agreement to accept electronic service may be indicated only by serving a notice on all parties that the party accepts electronic service and filing the notice with the court. A majority of the members of the Committee on Appellate Courts disapprove of the proposed amendment because it is unduly burdensome. In their view, electronic service is often preferable to manual service because it is timelier, more efficient, and more reliable. Requiring parties and	With regard to the specific issue of whether e-filing should create a presumption of consent to acceptance of e-service, see response, above, to the comment from the Santa Clara Bar Association Committee on Appellate Courts.

Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
	their attorneys to file a notice in each case therefore imposes an additional step merely so they may opt-in to a regime that is generally preferred. Instead, a majority of the members of the Committee on Appellate Courts believe that rule 8.71(a)(2) should be preserved and that the onus should be on parties to opt-out of electronic service should they prefer manual service. The members of the Committee on Appellate Courts who disapprove of the proposed amendment to rule 8.71(a)(2) recognize that the calculus may be different with respect to self-represented parties. But even assuming that self-represented parties lack the same access to electronic forms of communication as represented parties, proposed rule 8.71(b)(1) addresses that concern by exempting self-represented parties from the requirement of filing documents electronically. Should self-represented parties agree to file documents electronically pursuant to proposed rule 8.71(b)(2) by filing a notice with the court and serving it on the other parties, it is unduly burdensome to require those self-represented parties to additionally opt-in to electronic service. Again, a majority of the members of the Committee believe a preferable approach would be to provide a method for self-represented parties who agree to file documents electronically to opt-out of electronic service in the event such parties prefer to file documents electronically but to receive them manually. A minority of the members of the Committee on Appellate Courts approve of the proposed amendment to rule 8.71(a)(2). The members of the Committee who approve	

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Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))
All comments are verbatim unless indicated by an asterisk (*).

Rule 8.78(a)(2)		
Commentator	**Comment**	**Committee Response**
	of the proposed amendment are concerned that those who are not sophisticated in the use of electronic communication (such as the elderly) or are without regular access to it (such as people of limited means) may accomplish an initial e-filing with the assistance of a clinic, librarian, friend, or family member without understanding the electronic service implications of the e-filing. In those circumstances, the self-represented parties would find themselves bound by rules recognizing the validity of service of documents they never actually received or reviewed.	

Rule 8.79(a)		
Commentator	**Comment**	**Committee Response**
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	Finally, we believe that there is an "or" that should be "and/or" in proposed rule 8.739(a)(1)(A)[sic]: "Serve all documents electronically, except when personal service is required by statute or rule; or [and/or] (B) Accept electronic service of documents."	Use of the word "or" rather than "and/or" is in accordance with the conventions of rule drafting. The committees recommend revision of the amended rule as follows, to clarify that the court may order either or both options: "The court may … order some or all parties to do either or both of the following;"

Rule 8.204(b)		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.204 (b), suggested language: "If filed in paper form, the documents must be filed unbound. ~~the cover must be in the color prescribed by rule 8.40(b).~~ In addition to providing the cover information	8.204(b): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.

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

Rule 8.204(b)		
Commentator	**Comment**	**Committee Response**
	required by rule 8.40(c), the cover or first page must state:	
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.204 (b) Form page 23 a) Add "may be suppressed and" to section (7) as shown below. The pages must be consecutively numbered. ~~The tables and the body of the brief may have different numbering systems.~~ The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page. b) Delete Section (8). The courts want the paper copy submitted unbound.	8.204 (a)(7): As discussed above with regard to rule 8.74(b)(3), the committees recommend the adoption of the proposed amendment with the suggested added language. CACCA and the Second District both suggest elimination of the requirement set forth in rule 8.204 (b)(8) that paper briefs be bound. Although this proposed change in the format of paper briefs does not directly pertain to electronic filing, the committees note that receiving briefs unbound makes it easier for courts to scan paper briefs and convert them to electronic form. It appears that most of the appellate courts prefer to have paper briefs submitted unbound. As most of the appellate courts are in agreement that the existing rule 8.204(b)(8) is inconsistent with the practices and preferences of those courts, and this is a minor, non-controversial change, the committees recommend that the proposed changes to rule 8.204 be adopted as circulated, with the additional change that rule 8.204(b)(8) be amended to read: "If filed in paper form, the brief must be filed unbound unless otherwise provided by local rule or court order."

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Rule 8.204(b)		
Commentator	**Comment**	**Committee Response**
	c) In section (10), delete reference to rule 8.40(b) and insert "submit unbound" as shown below. In addition, the recommendation is to delete section (b) rule 8.40 altogether. With mandatory e-filing, color requirements for the cover of documents is no longer relevant and as the majority of the courts do not require additional copies there is no need for this rule. If filed in paper form, file unbound. ~~the cover must be in the color prescribed by rule 8.40(b).~~ In addition to providing the cover information required by rule 8.40(c), the cover or first page must state:	The committees note that the proposed changes regarding the requirements for cover color would require a change to a rule not proposed to be amended in the proposal as circulated. The committees recommend against making such a change without the opportunity for public input.

General Comments		
Commentator	**Comment**	**Committee Response**
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	FVAP supports the proposed rules, designed to implement mandatory e-filing at all appellate courts. The proposed rules are consistent with the current appellate e-filing practices and local rules where we have participated in e-filing: the 1st, 2nd, 3rd, and 6th Districts. In regard to the expense of paper filing multiple bound copies, we encourage the Judicial Council to remove these requirements for litigants opting out of the e-filing system which are currently found at Rule of Court 8.212(c), so as to lessen the financial burden placed on pro se or other parties who cannot afford to participate in e-filing or for whom e-filing is not otherwise accessible. We would also	The committees note FVAP's support for the proposal. The comment regarding the requirements of rule 8.212 suggests changes to provisions of the rules not addressed in this proposal. The committees note the comment and may consider the suggested changes in the future.

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General Comments		
Commentator	**Comment**	**Committee Response**
	encourage the Judicial Council to consider permitting such paper filing to be accepted by the Courts of Appeal, instead of having to be filed at the Supreme Court, which may enable pro per litigants to paper file by hand delivery, instead of going to the expense of mailing briefs. We would also encourage the courts to ensure that all e-filing systems are accessible to persons who utilize screen readers because of visual, hearing or mobility impairments. While opting out of the e-filing system would be permitted under the proposed rules by represented parties for whom e-filing is not accessible, access should be universal.	The committees note the commentator's concern regarding accessibility of e-filing.
Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst	While the filing date is the day it arrives electronically, the documents are frequently not reviewed by the clerk until days later. To reduce confusion, there should be a clear delineation between filing date and when the document is considered officially filed.	The committees note that the language proposed for rule 8.73(d), taken from the language of existing rule 8.75(d) (with recommended changes to the language of the circulated rule as discussed above in the response to the comments of the Second District Court of Appeal to rule 8.73(d)) clearly delineates between the receipt of a document and the filing (or rejection) of that document, and requires separate notice to the filing party of each of these events.
State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	With one exception, the Committee on Appellate Courts supports the changes proposed by the Judicial Council's Information Technology Advisory Committee and Appellate Advisory Committee to the Rules of Court concerning e-filing. By and large, the proposed changes are designed to accomplish the goal of eliminating conflicts between appellate court local rules and the rules of court, and ensuring consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.	The committees note the support of the Committee on Appellate Courts, and address its specific concerns above.

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

General Comments		
Commentator	**Comment**	**Committee Response**
D'vora Tirschwell Writ Attorney First District Court of Appeal	Additionally, it would be helpful if electronic filers were asked not to submit exhibits individually, but rather in electronic "volumes" not exceeding 300 pages each, with consecutive page numbering. (See rule 8.486(c)(1)(A).) The submission of exhibits individually unnecessarily consumes staff time in dealing with the electronic filing.	Requiring electronically submitted exhibits to be submitted in volumes is another area where the committees determined that it would be better to wait to address the issue. When the courts have had more experience with e-filing, they will be better able to assist in development of a rule that fits their needs. In this area, there may also be technological developments that affect what the rule should be. For example, as it becomes technologically possible to transmit and review larger documents, it may be that the size of the "volumes" allowed could be greater than 300 pages.

Responses to Requests for Specific Comments		
Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposal addresses the stated purpose.	No response is necessary.

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

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Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Responses to Requests for Specific Comments		
Does the proposal appropriately address the stated purpose?		
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Yes	No response is necessary.
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Yes	No response is necessary.

Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	YES, AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES, AS FAR AS THEY GO. In time we will need to address other format changes for e-documents.	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposed rules are consistent with current appellate efiling practices and local rules.	No response is necessary.
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Our court is just beginning e-filing. The juvenile division is far from being	The committees note the San Diego court's support of the proposal, and its reminder that some trial court divisions are not yet able to use e-filing and e-service.

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Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
	paperless. Our court is making small strides toward electronic filing and service in juvenile appeals. The proposed rules do exempt the trial courts from having to file or serve documents electronically. At least for now, that is an important exemption that must be included.	
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Yes.	No response is necessary.

Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The rules provide protections for parties who are unable to efile.	No response is necessary.

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

Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	**Comment**	**Committee Response**
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Yes, in part. Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants. Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face difficulties gaining physical access to buildings where public, shared computers are available.	On the issue of providing a specific procedure to request an exemption from e-filing, please see response, above, in the section on rule 8.71(d), to the comments of the Second District Court of Appeal. On the issue of requiring electronically filed documents to be in a text searchable format, please see response, above, in the section on rule 8.74(b)(2). On the issue of when a court may order waiver of an electronic filing service provider's fee, please see response, above, in the section on rule 8.73(b).

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

Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	**Comment**	**Committee Response**
	Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).	

Responses to Requests for Specific Comments		
Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.		
Commentator	**Comment**	**Committee Response**
State Bar of California, Standing Committee on the Delivery of Legal	The proposed language seems fine, as nonparties are not automatically subject to e-	No response is necessary.

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

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Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Responses to Requests for Specific Comments		
Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.		
Commentator	**Comment**	**Committee Response**
Services,by Phong S. Wong 2015–2016 Chair	service.	

Responses to Requests for Specific Comments (from Courts)		
Are the proposed amended rules consistent with current appellate e-filing practices and local rules?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	YES AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES AS FAR AS THEY GO. See above.	No response is necessary.

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Responses to Requests for Specific Comments (from Courts)		
Would the proposal provide cost savings? If so please quantify.		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).

Responses to Requests for Specific Comments (from Courts)		
What would the implementation requirements be for courts?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.

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Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Responses to Requests for Specific Comments (from Courts)		
Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Kevin Lane, President	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 2016

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)

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

Staff contact (name, phone and e-mail): Kimberly DaSilva, (415) 865-4534

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO:
Collection and Disbursement of Fines and Fees After Intercounty Probation Case Transfers

Intercounty Transfer Procedures

Project description from annual agenda:
Collection and Disbursement of Fines and Fees After Intercounty Probation Case Transfers: Develop recommendations to clarify the requirements for the collection and disbursement of fines, fees, and assessments after intercounty transfers under Penal Code section 1203.9; develop related rule and form proposals as needed.

Intercounty Transfer Procedures: Consider rule, form, and legislative proposals to facilitate court implementation of intercounty transfer procedures under Penal Code section 1203.9.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
As circulated, the proposal contained three distinct areas of amendment: (1) to clarify file transfer requirements after intercounty transfer under Penal Code section 1203.9 , (2) to require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or otherwise disposes of a case after transfer , and (3) to make the rule consistent with recent amendments to section 1203.9. (Assembly Bill 673 (2015) ch. 251.)

However, due to the recent California First District Appellate Court case, People v. Curry, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See People v. Curry (2016) 1 Cal. App. 5th 1073.)

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2016

Title
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer

Rules, Forms, Standards, or Statutes Affected
Amend rule 4.530

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 19, 2016

Contact
Kimberly DaSilva, (415) 865-4534
kimberly.dasilva@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.530 of the California Rules of Court, which provides courts with procedures for implementing intercounty transfers of persons on probation and mandatory supervision pursuant to Penal Code section 1203.9. The proposed amendment would bring the rule into compliance with changes to Penal Code section 1203.9 regarding the collection and disbursement of court-ordered debt pursuant to Assembly Bill 673 (AB 673), which took effect January 1st of this year.

Recommendation

The Criminal Law Advisory Committee (CLAC) recommends that the Judicial Council amend California Rule of Court 4.530, effective January 1, 2017 to bring rule 4.530 into compliance with changes to Penal Code section 1203.9 regarding the collection and disbursement of court ordered debt pursuant to AB 673.

The text of the proposed amendments is attached at page 5.

Previous Council Action

At its June 24, 2016 business meeting, the Judicial Council approved Intercounty Probation Case Transfer Statewide Fiscal Procedures (Judicial Council Fiscal Procedures), effective July 1, 2016 for the collection, accounting, and distribution of any outstanding court-ordered debt, which must be followed by the transferring and receiving court, county agency, or its authorized collection program for intercounty transfers of probation and mandatory supervision cases. A link to the Judicial Council Fiscal Procedures is included on page 4 for ease of reference. These procedures will help implement the new jurisdictional requirements of Penal Code section 1203.9 regarding court-ordered debt.

Rationale for Recommendation

As noted above, Rule 4.530 establishes procedures for intercounty transfers of persons on probation and mandatory supervision pursuant to Penal Code section 1203.9.

Compliance with Assembly Bill 673 (Collection and Disbursement of Court-Ordered Debt)

AB 673, effective January 1, 2016, changed court jurisdiction over the collection and distribution of court-ordered debt after intercounty transfer. Although receiving courts continue to accept entire jurisdiction over cases transferred under Penal Code section 1203.9,[1] as of January 1, jurisdiction over the collection and disbursement of fines, forfeitures, penalties, assessments, and restitution ordered by the transferring court but not fully paid, remains with the transferring court unless the receiving court elects to collect and the transferring court approves the arrangement. Specifically, AB 673 made the following changes to Penal Code section 1203.9:

- Changed the effective date of transfer to the date the transferring court makes the order of transfer (subdivision (b)).
- Required courts to order that unpaid fines, fees, forfeitures, penalties, assessments, or restitution at the time of transfer be paid by the defendant to the collection program for the transferring court for distribution and accounting once collected (subdivision (d)(1)).
- Allowed receiving courts and county probation departments to impose additional local fees and costs as authorized and requires that they notify the collection program for the transferring court of those changes (subdivision (d)(2)).
- Required that local fees imposed by receiving courts and county probation departments be paid by the defendant to the collection program for the transferring court, which shall remit those fees and costs to the receiving court for accounting and distribution (subdivision (d)(3)).
- Allowed a receiving court, upon approval of the transferring court, to elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised and required that the receiving court's collection program

[1] With the exception of jurisdiction over undetermined victim restitution, pursuant to section 1203.9, subdivision (a)(3), which also remains with the transferring court.

transmit the revenue collected to the collection program for the transferring court for deposit, accounting, and distribution. In this situation, the collection program for the receiving court shall not charge administrative fees without a written agreement with the transferring court's collection program and the collection program for the receiving court, and the receiving court shall not report revenue owed or collected on behalf of the collection program for the transferring court in annual reports to the Judicial Council (subdivisions (e) (1), (2)).

- The bill also required that the Judicial Council consider the adoption of rules of court as it deems appropriate to implement the collection, accounting, and disbursement requirements of the bill (subdivision (g)).

This proposal would bring rule 4.530 into compliance with these changes to Penal Code section 1203.9 by amending it to:

- Change the effective date of the transfer to the date of the transfer order;
- Require the transferring court to retain records of payment upon transfer of the court file to the receiving court;
- Require the probation officer of the transferring county to retain records of payment upon transfer of the file to the receiving county;
- Delete the two-week holding period of the transferring court and probation files on the transferred case;
- Add a subdivision detailing the new jurisdictional requirements regarding court-ordered debt; and,
- Require court collection, accounting, and disbursement of court-ordered debt procedures to be consistent with Judicial Council fiscal procedures located on the Budget and Finance page of the Judicial Council website.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment during the spring 2016 cycle. It received five comments. A chart with all comments received and the committee's responses is attached at pages 8 - 14.

As circulated, the proposal contained three distinct areas of amendment: (1) to clarify file transfer requirements after intercounty transfer under Penal Code section 1203.9[2], (2) to require receiving courts to notify transferring courts when the receiving court either reduces a felony to a

[2] This proposal would have clarified that the transferring court is required to transmit the entire *original* court file except in co-defendant cases, in which case the proposal would require transferring courts to transmit certified copies of the file and to retain the original to properly adjudicate any pending or future codefendant proceedings. Note that this proposal originally circulated for public comment in 2011 but was deferred. The committee recirculated this proposal this year due to the number of years since its original circulation and the fact that it may have been overshadowed by another proposal to amend rule 4.530 in 2011.

misdemeanor or otherwise disposes of a case after transfer[3], and (3) to make the rule consistent with recent amendments to section 1203.9. (Assembly Bill 673 (2015) ch. 251.)

Only one of the comments addressed the compliance portion of the proposal. That comment stated that the circulated proposal did not specifically address the situation in their county, where the supervisees typically paid their court-ordered debt to the county probation department, not to the court's collections department. The comment recommended adding clarifying language to support other entities collecting payments ordered by the court. The committee considered this comment and has added an advisory comment to subdivision (h), clarifying that court collections programs may include county probation departments.

The bulk of the public comments focused on the proposal to require receiving courts to notify transferring courts when the receiving court either reduced a felony to a misdemeanor or dismissed a transferred case. Additionally, one court suggested that the proposal concerning file transfer, address electronic records. However, due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) That case held that after intercounty transfer, petitions under Penal Code section 1170.18 must be filed in the sentencing, rather than the receiving, court.

Implementation Requirements, Costs, and Operational Impacts

Staff training required for compliance with AB 673 may be significant given the new Judicial Council Fiscal Procedures. However, this is unavoidable due to the change in the law.

Attachments and Links

1. Cal. Rules of Court, rule 4.530 with proposed amendments, at page 5.
2. Judicial Council approved Intercounty Probation Case Transfer Statewide Fiscal Procedures https://jcc.legistar.com/View.ashx?M=F&ID=4494246&GUID=F0163E08-393E-4F3B-99D6-86FA33DC2176
3. Chart of comments, at pages 8-14
4. Assembly Bill 673 http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB673

[3] Because transferring courts' case management systems do not show changes to the status of a case unless those changes are manually entered into their systems, subsequent dispositions in a receiving court are not normally recorded by the transferring court. As a result when members of the public perform record searches concerning those defendants, the information provided by the transferring court may not be accurate.

Rule 4.530. Intercounty transfer of probation and mandatory supervision cases

(a)–(f) * * *

(g) Transfer

(1) If the transferring court determines that the permanent residence of the supervised person is in the county of the receiving court, the transferring court must transfer the case unless it determines that transfer would be inappropriate and states its reasons on the record.

(2) To the extent possible, the transferring court must establish any amount of restitution owed by the supervised person before it orders the transfer.

(3) Transfer is effective the date the transferring court orders the transfer. Upon transfer of the case, the receiving court must accept the entire jurisdiction over the case.

(4) The orders for transfer must include an order committing the supervised person to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the county of the transferring court in accordance with Penal Code section 1203.1b.

(5) Upon transfer of the case, t~~T~~he transferring court must transmit ~~any records of payments and~~ the entire court file, except exhibits and any records of payments, to the receiving court ~~within two weeks of the transfer order~~.

(6) Upon transfer t~~T~~he probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans~~, and all records of payments~~ to the probation officer of the receiving county ~~within two weeks of the transfer order~~.

(7) Upon transfer of the case, the probation officer of the transferring county must notify the supervised person of the transfer order. The supervised person must report to the probation officer of the receiving county no later than 30 days after transfer unless the transferring court orders the supervised person to report sooner. If the supervised person is in custody at the time of transfer, the supervised person must report to the probation officer of the receiving county no later than 30 days after being released from custody unless the transferring court orders the supervised person to report sooner. Any jail sentence imposed as a condition of probation or mandatory

supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

(h) Court-ordered debt

(1) In accordance with Penal Code section 1203.9(d) and (e):

(A) If the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order must require that those and any other amounts ordered by the transferring court that are still unpaid at the time of transfer be paid by the defendant to the collection program for the transferring court for proper distribution and accounting once collected.

(B) The receiving court and receiving county probation department may impose additional local fees and costs as authorized.

(C) Upon approval of a transferring court, a receiving court may elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised.

(2) Policies and procedures for implementation of the collection, accounting, and disbursement of court-ordered debt under this rule must be consistent with Judicial Council *Intercounty Probation Case Transfer Statewide Fiscal Procedures* available at XXX.

Advisory Committee Comment

Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits and any records of payments, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or mandatory supervision before transfer must be served in the transferring county unless otherwise authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties with work furlough programs to enter into agreements to allow work-furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another county jail.

Subdivision (h) requires defendants still owing fines, fees, forfeitures, penalties, assessments, or restitution to pay the transferring court's collection program. In counties where the county

probation department collects this court-ordered debt, the term “collection program” is intended to include the county probation department.

SPR16-12

Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	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? (1) Response: For courts that maintain an electronic record, there should be language relating to electronic records and being able to send those records electronically and also document that successful receipt for records electronically as well as currently being done with Orange County, Los Angeles and Riverside. (2) Also, there should be clarifying language that only documents related to the transferring defendant (on multiple defendant cases) need to be transmitted to the receiving court. (3) Subsection (g) (3) specifies that if approved, a transfer will be effective the date the transferring court orders the transfer. Subsection (g)(5) further states that if the case involves more than one defendant, the original file must be transmitted to the receiving court within two weeks. However, there is no	(1) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (2) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (3) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals.

SPR16-12
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			specific timeframe within which the case must be transmitted if there is only one defendant. We recommend that the rule provide consistent language for either type of case transmittal. (4) Proposed new subsection (h) requires a receiving court to notify the transferring court when the supervised person's conviction is reduced from a felony to a misdemeanor, or there is some other disposition of the supervised person's case. Since legislation was approved by the voters of California in November 2014, many cases have had reductions of felony convictions to misdemeanors under Proposition 47. The legislation enacted pursuant to the Proposition, PC 1170.18, sunsets this provision in 2017 unless the court is provided a showing of good cause. Will there be a retroactive component of the notification requirement in cases where reductions of charges have already taken place, if practicable? Language should be added to subsection (h) which allows notification from one court to another, whether an action on the case was initiated at the transferring or receiving court. As to the notification component, if courts are required to undertake the retroactive updating of cases it will require a large commitment of resources. However, it does make sense to do this, particularly for Proposition 47 cases, in order to provide a consistent and accurate case record for this sizeable population.	(See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (4) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.)

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Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)

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

	Commentator	Position	Comment	Committee Response
			(5) Proposed new subsection (i) indicates that monies previously ordered and still owing at the time of the transfer will be paid by the defendant to the collection program for the transferring court unless an agreement exists that the receiving court will collect payment from the defendant. Since cases transferred pursuant to PC 1203.9 are typically on formal probation and mandatory supervision, any fines, fees, or other money ordered is collected through Orange County's Probation Department, not the court's Collections Department. Recommend adding clarifying language to support other entities that are collecting payments ordered by the court. 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. (6) Response: No. •What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.	(5) This comment is addressed to the proposal for rule compliance with Assembly Bill 673. Both this subdivision and Penal Code section 1203.9, as amended, allow for collection by either the court or the court's collection program. The committee has added an advisory comment to this subdivision, clarifying that court collections programs may include county probation departments. (6) No response required.

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	Commentator	Position	Comment	Committee Response
			(7) Response: Procedure changes, training of staff (minimal), docket code changes to update the court record for cases that are transferred and were ultimately reduced to misdemeanors or dismissed. Also creation of a form to notify transferring courts when the receiving court modifies the Felony record, and the creation of docket codes to capture the noticing process in the minutes. •Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? (8) Response: 3 – 4 months •How well would this proposal work in courts of different sizes? (9) Response: Unknown, depends on their level of automation.	(7) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (8) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (9) No response required.
2.	Orange County Bar Association By Todd Friedland President	A		No response required.
3.	Superior Court of California, Los	A	This proposal is to (1) clarify file transfer	

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

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Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)

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

	Commentator	Position	Comment	Committee Response
	Angeles		requirements after intercounty transfer under Penal Code section 1203.9, (2) require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a case after transfer, and (3) make the rule consistent with Assembly Bill 673's amendments to section 1203.9. (1) The first proposal clarifies that the entire original file must be transferred except exhibits, and recommends that the transferring court keep a copy for future writ purposes. When there are co-defendants, however, the transferring court should keep the original file and send certified copies. That is certainly more work and expense for the transferring court, we are not sure how common this would be. (2) The second proposal is that the receiving court advise the transferring court if a felony is reduced or a charge dismissed so that the transferring court's docket reflects current accurate information, and helps to prevent incomplete information from affecting employment and benefit eligibility. This also would involve more work for both courts but again it is difficult to determine how often this happens. (3) The third proposal merely makes conforming changes to the rules. We agree with modifications to status updates	(1) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (2) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (3) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to

SPR16-12
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			for transferred cases; agree in full that the transferring court should retain jurisdiction over the collection and disbursement of fines, forfeitures, penalties, assessments, and restitution ordered but not fully paid at the time of transfer. A uniform mechanism for notification of significant changes in case status to the transferring court by the receiving court should be instituted prior to implementation.	notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.)
4.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	(1) Q: Does the proposal appropriately address the stated purpose? Yes (2) Q: Would the proposal provide cost savings? No. It is anticipated that there may be an insignificant increase of use of staff time. (3) Q: What are implementations requirements for courts? Create a procedure for notifying other courts. Suggestion is for the receiving court to send a completed copy of the JUS 8715 to the sending court. It is also recommended that the responsibility of notifying the DOJ of subsequent actions fall on the receiving court. (4) Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes (5) Q: How well would this proposal work in courts of different sizes? No issue in large or	(1) No response required. (2) No response required. (3) Due to the recent California First District Appellate Court case, *People v. Curry*, the committee is withholding both the file transfer proposal and the proposal for receiving courts to notify transferring courts when a case is reduced from a felony to a misdemeanor, in order to further consider its impact on those proposals. (See *People v. Curry* (2016) 1 Cal. App. 5th 1073.) (4) No response required. (5) No response required.

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Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer (Amend rule 4.530)

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

	Commentator	Position	Comment	Committee Response
			small courts.	
5.	Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee Joint Rules Subcommittee	A	General Note: This proposal should be implemented because it would provide better access to information for the public and justice partners. Regarding increases to court staff's workload: A small increase in court staff workload is anticipated, but this increase is only a minor concern.	No response required.

Item number: 23

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/7/16

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Law: Criminal Realignment and Military Service: Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480

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

Staff contact (name, phone and e-mail): Adrienne Toomey, 415-865-7977
Adrienne.toomey@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: 12/15/15
Project description from annual agenda:

"Omnibus Rule Proposal: Develop an omnibus rule proposal to update all criminal rules of court to reflect changes to felony sentencing laws and parole procedures after criminal justice realignment."

"Rule 4.411.5: Military Status: Develop a rule proposal to amend rule 4.411.5 to require probation presentence reports to include certain military history information about the defendant.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Criminal Law: Criminal Realignment and Military Service

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 17, 2016

Contact
Adrienne Toomey, 415-865-7977
Adrienne.toomey@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act, which made significant changes to the sentencing and supervision of persons convicted of felony offenses; (2) facilitate the court's determinations under Penal Code section 1170.9 for defendants with military service; and (3) make nonsubstantive technical amendments. The proposed amendments respond, in part, to recent legislation directing the Judicial Council to amend the rules to promote uniformity in sentencing under the Realignment Act.

Recommendation

The Criminal Law Advisory Committee (CLAC) recommends that the Judicial Council, effective January 1, 2017:

1. Amend rules 4.403, 4.405, 4.406, 4.410, 4.412, 4.414, 4.420, 4.421, 4.423, 4.425, 4.427, 4.433, 4.435, 4.452, and 4.480 and/or the corresponding advisory committee comments to reflect the Criminal Justice Realignment Act by incorporating references to imprisonment in county jail under Penal Code section 1170(h)[1], mandatory supervision under section 1170(h)(5), postrelease community supervision under sections 3450–3465, parole under section 3000.08, and/or local county correctional administrator or sheriff, where appropriate.

2. Further amend rule 4.405 and the advisory committee comment to incorporate terms relevant to the Criminal Justice Realignment Act: mandatory supervision; postrelease community supervision; evidence-based practices; community-based corrections program; local supervision; and county jail; and make other specified nonsubstantive amendments.

3. Further amend rule 4.406 by adding paragraph (b)(11): "(11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A)."

4. Further amend rule 4.410 and the corresponding advisory committee comment to add references to the policies underlying the Criminal Justice Realignment Act.

5. Amend rule 4.411.5 to reflect the statutory requirement that the court consider as a factor in granting probation include those relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service.

6. Amend rule 4.415 and the corresponding advisory committee comment to reflect the decision in *People v. Borynack* (2015) 238 Cal.App.4th 958, that courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

7. Further amend rule 4.433 to incorporate relevant provisions of the Criminal Justice Realignment Act: mandatory supervision, postrelease community supervision, parole.

8. Amend rule 4.472 by adding "4019" after "2933.2(c), and" in the first sentence.

9. Further amend rules 4.403, 4.405, 4.409, 4.414, 4.421, 4.427, 4.431, and 4.433 and/or relevant portions of advisory committee comments to add references to relevant statutory provisions and make nonsubstantive changes.

The text of the proposed rule amendments is attached at pages 6–19.

[1] All statutory references are to the Penal Code unless otherwise specified.

Previous Council Action

Realignment-related amendments

The specific proposed amendments to the various rules relating to the Criminal Justice Realignment Act are new; no previous Judicial Council action directly relates to these proposed amendments.

Presumption of mandatory supervision, rule 4.415

Rule 4.415 was adopted effective January 1, 2015. The proposal would amend this rule for the first time since adopted.

Military information in probation officer's presentence investigation report, rule 4.411.5

Rule 4.411.5 was adopted as rule 419, effective July 1, 1981; amended and renumbered as rule 411.5, effective January 1, 1991; renumbered effective January 1, 2001; and amended effective July 1, 2003, January 1, 2007, and January 1, 2015. The specific proposed amendments are new; no previous Judicial Council action directly relates to the amendment currently proposed.

Rationale for Recommendation

Realignment-related amendments

The Criminal Justice Realignment Act applied several amended sentencing and supervision provisions to persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison (§ 1170(h)). When sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department, unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case (§ 1170(h)(5)(A)). This term of supervision is referred to as "mandatory supervision" (§ 1170(h)(5)(B)).

The Realignment Act also created "postrelease community supervision," whereby certain offenders released from state prison are no longer supervised by the state parole system but instead supervised by a local county supervision agency (§§ 3450–3465). Postrelease community supervision does not apply to prisoners released from state prison after serving a term for certain of the more dangerous and violent crimes; these prisoners continue to be placed on parole under supervision of the Department of Corrections and Rehabilitation, Division of Adult Parole Operations (§ 3000.08(a)). Following the Realignment Act, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings but instead adversarial judicial proceedings conducted in county superior courts (§ 1203.2).

In addition, the realignment legislation amended section 4019, governing entitlement to custody credits applicable to sentences served in county jail, where the underlying crime occurred on or after October 1, 2011.

Finally, Assembly Bill 1156, effective January 1, 2016, amended section 1170.3 to direct the Judicial Council to adopt rules providing criteria for trial judge consideration in sentencing under the Realignment Act.

This proposal updates the rules and corresponding advisory committee comments to reflect the current statutory sentencing provisions by including reference, where appropriate, to:

- Mandatory supervision under section 1170(h)(5), and the exception to the presumption of mandatory supervision under section 1170(h)(5)(A);
- Postrelease community supervision under sections 3450–3465;
- Parole under section 3000.08;
- Terms of imprisonment in county jail under section 1170(h); and
- Custody credits under section 4019.

The proposal is also designed to incorporate into the rules the legislative policies underlying the Realignment Act of promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety, where appropriate. (See, e.g., §§ 17.5, 3450.)

Presumption of mandatory supervision, rule 4.415

Section 1170(h)(5)(A) was amended, effective January 1, 2015, to require courts to impose mandatory supervision for all felony terms of imprisonment in county jail unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Section 1170.3(a) was amended at the same time to require the Judicial Council to adopt rules of court to prescribe criteria for the court to consider in deciding whether to deny a period of mandatory supervision "in the interests of justice" under section 1170(h)(5)(A) and in determining the appropriate period and conditions of mandatory supervision. The Judicial Council adopted rule 4.415, effective July 1, 2015, in response.

The appellate court's recent opinion in *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied October 21, 2015, held that courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

The proposal would clarify this exception to the presumption of mandatory supervision in rule 4.415.

Military information in probation officer's presentence investigation report, rule 4.411.5

Section 1170.9 directs that if a defendant convicted of a criminal offense alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. military, the court shall, before sentencing, make a determination about the allegations. If the court determines that the allegations are true and the defendant is otherwise eligible for probation, the

court must consider these circumstances as a factor in favor of granting probation (§ 1170.9(a), (b)(1)).

The proposal would amend rule 4.411.5 to require probation presentence reports to include relevant information about the defendant's military service to facilitate the court's determinations under section 1170.9.

Comments, Alternatives Considered, and Policy Implications

Comments

The committee circulated the proposal for public comment this spring. A total of 5 comments were received; 4 agreed and 1 did not indicate a position. Commentators from the Superior Courts of Los Angeles and San Diego Counties agreed with the proposal, as did the Orange County Bar Association and the Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee.

The Joint Rules Subcommittee noted that the suggested changes are appropriate and helpful based on the ruling in *People v. Borynack*. And the amendment regarding military information in probation officers' presentence investigation reports is appropriate and will be helpful for the increasing number of courts that have or are in the process of establishing veterans courts.

Alternatives

The committee considered not proposing any changes to the rules at this time. But it determined that these amendments are appropriate because they are necessary to conform the rules with the Penal Code and in some cases required by recent legislation.

Additionally, the committee is currently developing and will separately propose other sentencing-related amendments to title 4, division 5 of the California Rules of Court.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements or operational impacts are likely.

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480, at pages 6–19.
2. Chart of comments, at pages 20–22.

The California Rules of Court, rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480, would be amended, effective January 1, 2017, to read:

Rule 4.403. Application

These rules apply only to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170).

Advisory Committee Comment

The sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences for which sentence is imposed under section 1168(b).

The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison sentences, sentences in county jail under section 1170(h), and the grant or denial of probation. ~~Criteria dealing with jail sentences, fines, or jail time and fines as conditions of probation, would substantially exceed the mandate of the legislation.~~

Rule 4.405. Definitions

As used in this division, unless the context otherwise requires:

(1)–(3) * * *

(4) "Aggravation" or "circumstances in aggravation" means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b).

(5) "Mitigation" or "circumstances in mitigation" means factors that the court may consider in its broad discretion in imposing one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) or factors that may justify the court in striking the additional punishment for an enhancement when the court has discretion to do so.

(6)–(7) * * *

(8) "Imprisonment" means confinement in a state prison or county jail under section 1170(h).

(9)–(10) * * *

(11) "Mandatory supervision" means the period of supervision defined in section 1170(h)(5)(A), (B).

(12) "Postrelease community supervision" means the period of supervision governed by section 3451 et seq.

(13) "Evidence-based practices" means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

(14) "Community-based corrections program" means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)–(5).

(15) "Local supervision" means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.

(16) "County jail" means local county correctional facility.

Advisory Committee Comment

"Base term" is the term of imprisonment selected under section 1170(b) from the three possible terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. 270 ~~[127 S.Ct. 856.]~~, the Legislature amended the determinate sentencing law. (See Sen. Bill 40; Stats. 2007, ch. 3.) To comply with those changes, these rules were also amended. In light of those amendments, for clarity, the phrase "base term" in (4) and (5) was replaced with "one of the three authorized prison terms." This language was subsequently changed to "three authorized terms of imprisonment" to incorporate county jail sentences under section 1170(h) in light of more recent legislative amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.) It is an open question whether the definitions in (4) and (5) apply to enhancements for which the statute provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an enhancement with three possible terms. The latter sections provide that "the court shall impose the middle term unless there are circumstances in aggravation or mitigation." (See, e.g., section 1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement triad with the presumptive imposition of the middle term runs afoul of Cunningham. Because of this open question, rule 4.428(b) was deleted.

"Enhancement." The facts giving rise to an enhancement, the requirements for pleading and proving those facts, and the court's authority to strike the additional term are prescribed by statutes. See, for example, sections 667.5 (prior prison terms), 12022 (being armed with a firearm or using a deadly weapon), 12022.5 (using a firearm), 12022.6 (excessive taking or damage), 12022.7 (great bodily injury), 1170.1(e) (pleading and proof), and 1385(c) (authority to strike the additional punishment). Note: A consecutive sentence is not an enhancement. (See section 1170.1(a); *People v. Tassell* (1984) 36 Cal.3d 77, 90 [overruled on other grounds in *People v. Ewoldt* (1994) 7 Cal.4th 380, 401].)

"Sentence choice." Section 1170(c) requires the judge to state reasons for the sentence choice. This general requirement is discussed in rule 4.406.

"Imprisonment" in state prison or county jail under section 1170(h) is distinguished from confinement in other types of facilities.

"Charged" and "found." Statutes require that the facts giving rise to all enhancements be charged and found. See section 1170.1(e).

Item (13), see sections 17.5(a)(9) and 3450(b)(9).

Item (15), see section 1229(e).

Rule 4.406. Reasons

(a) * * *

(b) When reasons required

Sentence choices that generally require a statement of a reason include:

(1) Granting probation;

(2) Imposing a prison sentence or sentence in county jail under section 1170(h) and thereby denying probation;

(3)–(8) * * *

(9) Not committing an eligible defendant to the California Rehabilitation Center;

(10) Striking an enhancement or prior conviction allegation under section 1385(a).; and

(11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

Rule 4.409. Consideration of criteria

* * *

Advisory Committee Comment

Relevant criteria are those applicable to the facts in the record of the case; not all criteria will be relevant to each case. The judge's duty is similar to the duty to consider the probation officer's report. Section 1203.

In deeming the sentencing judge to have considered relevant criteria, the rule applies the presumption of Evidence Code section 664 that official duty has been regularly performed. (See *People v. Moran* (1970) 1 Cal.3d 755, 762 ([trial court presumed to have considered referring

eligible defendant to California Youth Authority in absence of any showing to the contrary, citing Evidence Code section 664~~)~~].)

Rule 4.410. General objectives in sentencing

(a) General objectives of sentencing include:

(1)–(5) * * *

(6) Securing restitution for the victims of crime; ~~and~~

(7) Achieving uniformity in sentencing~~.~~; and

(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

(b) * * *

Advisory Committee Comment

Statutory expressions of policy include:

Welfare and Institutions Code section 1820 et seq., which provides partnership funding for county juvenile ranches, camps, or forestry camps.

Section 1203(b)(3), which requires that eligible defendants be considered for probation and authorizes probation if circumstances in mitigation are found or justice would be served.

Section 1170(a)(1), which expresses the policies of uniformity, proportionality of ~~prison~~ terms of imprisonment to the seriousness of the offense, and the use of imprisonment as punishment.

Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety through a reduction in recidivism.

Other statutory provisions that prohibit the grant of probation in particular cases.

Rule 4.411.5. Probation officer's presentence investigation report

(a) Contents

A probation officer's presentence investigation report in a felony case must include at least the following:

(1)–(5) * * *

(6) Any relevant facts concerning the defendant's social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings. This includes facts relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her U. S. military service.

(7)–(12) * * *

(b)–(c) * * *

Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims

(a) * * *

(b) Agreement to sentence abandons section 654 claim

By agreeing to a specified term in prison or county jail under section 1170(h) ~~term~~ personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include facts relating to the crime and facts relating to the defendant.

(a) * * *

(b) Facts relating to the defendant

Facts relating to the defendant include:

(1) * * *

(2) Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole ~~and present probation or parole status~~;

(3)–(8) * * *

Advisory Committee Comment

The sentencing judge's discretion to grant probation is unaffected by the Uniform Determinate Sentencing Act (section ~~§~~ 1170(a)(3)).

The decision whether to grant probation is normally based on an overall evaluation of the likelihood that the defendant will live successfully in the general community. Each criterion points to evidence that the likelihood of success is great or small. A single criterion will rarely be determinative; in most cases, the sentencing judge will have to balance favorable and unfavorable facts.

Under criteria (b)(3) and (b)(4), it is appropriate to consider the defendant's expressions of willingness to comply and his or her apparent sincerity, and whether the defendant's home and work environment and primary associates will be supportive of the defendant's efforts to comply with the terms of probation, among other factors.

Rule 4.415. Criteria affecting the imposition of mandatory supervision

(a) Presumption

Except where the defendant is statutorily ineligible for suspension of any part of the sentence, when imposing a term of imprisonment in county jail under section 1170(h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.

(b)–(d) * * *

Advisory Committee Comment

Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe criteria for the consideration of the court at the time of sentencing regarding the court's decision to "[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of subdivision (h) of Section 1170 or determine the appropriate period of and conditions of mandatory supervision."

Subdivision (a). Penal Code section 1170(h)(5)(A): "Unless the court finds, in the interests of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion." Under *People v. Borynack* (2015) 238 Cal.App.4th 958, review denied, courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

Subdivisions (b)(3), (b)(4), and (c)(3) * * *

Subdivision (c)(7). * * *

Rule 4.420. Selection of term of imprisonment

(a) * * *

(b) In exercising his or her discretion in selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.

(c)-(d) * * *

(e) The reasons for selecting one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) must be stated orally on the record.

Advisory Committee Comment

The determinate sentencing law authorizes the court to select any of the three possible ~~prison~~ terms of imprisonment even though neither party has requested a particular term by formal motion or informal argument. Section 1170(b) vests the court with discretion to impose any of the three authorized ~~prison~~ terms of imprisonment and requires that the court state on the record the reasons for imposing that term.

It is not clear whether the reasons stated by the judge for selecting a particular term qualify as "facts" for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified, judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For example, the court is not permitted to use a reason to impose a greater term if that reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The court should not use the same reason to impose a consecutive sentence as to impose an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

The rule makes it clear that a fact charged and found as an enhancement may, in the alternative, be used as a factor in aggravation.

People v. Riolo (1983) 33 Cal.3d 223, 227 (and note 5 on 227) held that section 1170.1(a) does not require the judgment to state the base term (upper, middle, or lower) and enhancements,

computed independently, on counts that are subject to automatic reduction under the one-third formula of section 1170.1(a).

Even when sentencing is under section 1170.1, however, it is essential to determine the base term and specific enhancements for each count independently, in order to know which is the principal term count. The principal term count must be determined before any calculation is made using the one-third formula for subordinate terms.

In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at an informed decision whether to make terms consecutive or concurrent; and the base term for each count must be stated in the judgment when sentences are concurrent or are fully consecutive (i.e., not subject to the one-third rule of section 1170.1(a)).

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) * * *

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1)–(2) * * *

(3) The defendant has served a prior <u>term in</u> prison <u>or county jail under section 1170(h)</u> ~~term~~;

(4) The defendant was on probation<u>, mandatory supervision, postrelease community supervision,</u> or parole when the crime was committed; and

(5) The defendant's prior performance on probation<u>, mandatory supervision, postrelease community supervision,</u> or parole was unsatisfactory.

(c) * * *

Advisory Committee Comment

Circumstances in aggravation may justify imposition of the upper of three possible ~~prison~~ terms <u>of imprisonment</u>. (Section 1170(b).)

The list of circumstances in aggravation includes some facts that, if charged and found, may be used to enhance the sentence. The rule does not deal with the dual use of the facts; the statutory prohibition against dual use is included, in part, in rule 4.420.

Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a taking or loss of great value may be circumstances in aggravation even if not meeting the statutory definitions for enhancements.

Facts concerning the defendant's prior record and personal history may be considered. By providing that the defendant's prior record and simultaneous convictions of other offenses may not be used both for enhancement and in aggravation, section 1170(b) indicates that these and other facts extrinsic to the commission of the crime may be considered in aggravation in appropriate cases. This resolves whatever ambiguity may arise from the phrase "circumstances in aggravation . . . of the crime." The phrase "circumstances in aggravation or mitigation of the crime" necessarily alludes to extrinsic facts.

Refusal to consider the personal characteristics of the defendant in imposing sentence would also raise serious constitutional questions. The California Supreme Court has held that sentencing decisions must take into account "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society." *In re Rodriguez* (1975) 14 Cal.3d 639, 654, quoting *In re Lynch* (1972) 8 Cal.3d 410, 425. In *In re Rodriguez* the court released petitioner from further incarceration because "[I]t appears that neither the circumstances of his offense *nor his personal characteristics* establish a danger to society sufficient to justify such a prolonged period of imprisonment." (*Id*. at 655.) (Footnote omitted, emphasis added.) "For the determination of sentences, justice generally requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." (*Pennsylvania v. Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v. Georgia* (1976) 428 U.S. 153, 189.)

The scope of "circumstances in aggravation or mitigation" under section 1170(b) is, therefore, coextensive with the scope of inquiry under the similar phrase in section 1203.

The 1990 amendments to this rule and the comment included the deletion of most section numbers. These changes recognize changing statutory section numbers and the fact that there are numerous additional code sections related to the rule, including numerous statutory enhancements enacted since the rule was originally adopted.

Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion; cases in which that possible circumstance in aggravation was relied on were frequently reversed on appeal because there was only a single victim in a particular count.

Old age or youth of the victim may be circumstances in aggravation; see section 1170.85(b). Other statutory circumstances in aggravation are listed, for example, in sections 422.76, 1170.7, 1170.71, ~~1170.75,~~ 1170.8, and 1170.85.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) * * *

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1)–(5) * * *

(6) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

Rule 4.425. Criteria affecting concurrent or consecutive sentences

Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

(a) * * *

(b) Other criteria and limitations

Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

(1) * * *

(2) A fact used to otherwise enhance the defendant's sentence in prison or county jail under section 1170(h) ~~sentence~~; and

(3) * * *

Rule 4.427. Hate crimes

(a) * * *

(b) Felony sentencing under section 422.7

If one of the three factors listed in section 422.7 is pled and proved, a misdemeanor conviction that constitutes a hate crime under section 422.55 may be sentenced as a felony. The punishment is imprisonment in state prison or county jail under section 1170(h) as provided by section 422.7.

(c)–(e) * * *

Rule 4.431. Proceedings at sentencing to be reported

* * *

Advisory Committee Comment

Reporters' transcripts of the sentencing proceedings are required on appeal (rule ~~8.420~~ 8.320, except in certain cases under subdivision (d) of that rule), and when the defendant is sentenced to prison (section 1203.01).

Rule 4.433. Matters to be considered at time set for sentencing

(a) In every case, at the time set for sentencing under section 1191, the sentencing judge must hold a hearing at which the judge must:

(1) Hear and determine any matters raised by the defendant under section 1201; ~~and~~

(2) Determine whether a defendant who is eligible for probation should be granted or denied probation, unless consideration of probation is expressly waived by the defendant personally and by counsel~~.~~; and

(3) Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).

(b) If the imposition of a sentence is to be suspended during a period of probation after a conviction by trial, the trial judge must identify and state circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) if probation is later revoked. The circumstances identified and stated by the judge must be based on evidence admitted at the trial or other circumstances properly considered under rule 4.420(b).

(c) If a sentence of imprisonment is to be imposed, or if the execution of a sentence of imprisonment is to be suspended during a period of probation, the sentencing judge must:

(1) Determine, under section 1170(b), whether to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b) and state on the record the reasons for imposing that term~~.~~;

(2)–(5) * * *

(d) * * *

(e) When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant~~,~~:

(1) Under section 1170(c), of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation~~.~~;

(2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or

(3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A)(B), in addition to any period imprisonment for a violation of mandatory supervision.

Advisory Committee Comment

This rule summarizes the questions that the court is required to consider at the time of sentencing, in their logical order.

Subdivision (a)(2) makes it clear that probation should be considered in every case, without the necessity of any application, unless the defendant is statutorily ineligible for probation.

Under subdivision (b), when imposition of sentence is to be suspended, the sentencing judge is not to make any determinations as to possible length of a ~~prison~~ term of imprisonment on violation of probation (section 1170(b)). If there was a trial, however, the judge must state on the record the circumstances that would justify imposition of one of the three authorized ~~prison~~ terms of imprisonment based on the trial evidence.

Subdivision (d) makes it clear that all sentencing matters should be disposed of at a single hearing unless strong reasons exist for a continuance.

Rule 4.435. Sentencing on revocation of probation

(a) * * *

(b) On revocation and termination of probation under section 1203.2, when the sentencing judge determines that the defendant will be committed to prison or county jail under section 1170(h):

(1) * * *

(2) If the execution of sentence was previously suspended, the judge must order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Secretary of the Department

of Corrections and Rehabilitation or local county correctional administrator or sheriff for the term prescribed in that judgment.

Advisory Committee Comment

Subdivision (a) makes it clear that there is no change in the court's power, on finding cause to revoke and terminate probation under section 1203.2(a), to continue the defendant on probation.

The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652: "[T]he primary term must reflect the circumstances existing at the time of the offense."

A judge imposing ~~a prison sentence~~ imprisonment on revocation of probation will have the power granted by section 1170(d) to recall the commitment on his or her own motion within 120 days after the date of commitment, and the power under section 1203.2(e) to set aside the revocation of probation, for good cause, within 30 days after the court has notice that execution of the sentence has commenced.

Consideration of conduct occurring after the granting of probation should be distinguished from consideration of preprobation conduct that is discovered after the granting of an order of probation and before sentencing following a revocation and termination of probation. If the preprobation conduct affects or nullifies a determination made at the time probation was granted, the preprobation conduct may properly be considered at sentencing following revocation and termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.)

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

(1)–(2) * * *

(3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include the decision to impose one of the three authorized ~~prison~~ terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement.

Rule 4.472. Determination of presentence custody time credit

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under sections 2900.5, 2933.1(c), ~~and~~ 2933.2(c) and 4019. On referral of the defendant to the probation

officer for an investigation and report under section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

Rule 4.480. Judge's statement under section 1203.01

A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records.

The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports.

If a section 1203.01 statement is prepared, it should be submitted no later than two weeks after sentencing so that it may be included in the official Department of Corrections and Rehabilitation, Division of Adult Operations case summary that is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections and Rehabilitation, Division of Adult Operations.

SPR16-13
Criminal Law: Criminal Realignment and Military Service
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court Of California, Orange County	N/I	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? Response: These modifications will not have a significant impact on our court since the statutory amendments on which these rules are based have been in effect for some time. 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. Response: No •What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Response: Minimal, procedure updates. •Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: Yes.	No response needed.

SPR16-13
Criminal Law: Criminal Realignment and Military Service
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association By Todd Friedland President	A		
3.	Superior Court of California, Los Angeles	A	The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act, which made significant changes to the sentencing and supervision of persons convicted of felony offenses; (2) facilitate the court's determinations under Penal Code section 1170.9 for defendants with military service; and (3) make non-substantive technical amendments. The proposed amendments respond, in part, to recent legislation directing the Judicial Council to amend the rules to promote uniformity in sentencing under the realignment act. The proposed amendments all seem to be conforming. For example, they reflect that there are other forms of supervision besides probation and parole, such as PRCS and mandatory supervision. These changes are unobjectionable.	No response needed.

SPR16-13
Criminal Law: Criminal Realignment and Military Service
All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
4.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? Yes Q: Would the proposal provide cost savings? No Q: What are implementations requirements for courts? Judicial notice Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response needed.
5.	Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee Joint Rules Subcommittee	A	The JRS believes that the changes suggested are appropriate and helpful based on the ruling in *People v. Borynack*. As to the military information in Probation's presentencing report – this information is appropriate and it will be helpful as many courts have or are in the process of establishing veterans' courts.	No response needed.

Item number: 24

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: 9/7/16

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment

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

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

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

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
Dismissals under Penal Code section 1203.43 for those who had previously received Deferred Entry of Judgment, as a result of recent legislation, AB 1352 (Eggman; Stats. 2015, ch. 646). Provides defendants who had previously received Deferred Entry of Judgment with a process for dismissal relief.

Forms CR-180 and CR-181

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-180 and CR-181

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

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 9, 2016

Contact
Eve Hershcopf, 415-865-7961
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Executive Summary

In response to legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.43 for defendants who were granted deferred entry of judgment on or after January 1, 1997, who successfully completed a deferred entry of judgment program, and for whom the criminal charge(s) were dismissed under Penal Code section 1000.3, as well as to make related revisions to the format, advisements, and instructions on both forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2017, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add the phrase, "or was granted deferred entry of judgment," to item 1 on form CR-180 to clarify that defendants granted deferred entry of judgment may use the form to request dismissal relief;

2. Add a check box and related instructions in new item 6 on form CR-180 to facilitate requests for dismissal under Penal Code section 1203.43, including check boxes to indicate whether the petitioner has attached a copy of his or her state summary criminal history information;

3. Add the phrase "or nolo contendere" and a check box for Penal Code section 1203.43 to the request for relief in item 8 on form CR-180, and to the grant or denial of relief in items 3 and 4 on form CR-181;

4. Add check boxes to items 3 and 4 on form CR-181 to clarify whether the court is granting or denying the request for dismissal relief under Penal Code section 1203.43 for all or some of the convictions, and add phrases referencing "pleas for deferred entry of judgment" to both items;

5. Add new item 10 to form CR-181 as an advisement to clarify that the basis for the dismissal under Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in Penal Code section 1000.4 regarding the actual consequences of making a plea combined with successful completion of a deferred entry of judgment program;

6. Revise the format, advisements, and instructions on both forms by (a) adding a reference to Penal Code section 1203.43 to the caption and footer of both forms, (b) including instructions to "check one" where appropriate, and (c) making other minor format revisions.

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

Previous Council Action

Revisions to both forms were previously approved by the Judicial Council on October 27, 2015, with an effective date of January 1, 2016, in response to criminal justice legislation that provided a new statutory basis for dismissals under Penal Code section 1203.49 for victims of human trafficking. In 2014, revisions to both forms were approved in response to criminal justice realignment legislation for cases under section 1203.41 in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5).

Rationale for Recommendation

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, 1203.41, and 1203.49.[1] These are two of the most heavily used optional

[1] All further statutory references are to the Penal Code unless otherwise specified.

criminal law forms and are frequently submitted by unrepresented petitioners. Recent legislation added section 1203.43 to authorize a defendant who was granted deferred entry of judgment on or after January 1, 1997, to petition the court for dismissal relief.[2] Under section 1203.43, the court is required to permit a petitioner (the defendant in the underlying criminal action) who performed satisfactorily during the period in which deferred entry of judgment was granted, and who had the criminal charge(s) dismissed under section 1000.3, to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty. If the court determines the petitioner is eligible for relief under section 1203.43 based on court records or the petitioner's declaration under penalty of perjury, the statute requires the court to dismiss the complaint or information. The legislation was intended to aid those whose deferred entry of judgment dismissal did not provide the intended relief, particularly in the immigration context.[3] In response, the committee recommends adding the new statutory basis for relief to the *Petition* and *Order for Dismissal* forms.

Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from April 14 to June 15, 2016. A total of 55 comments were received; 3 agreed with the proposed changes, 50 agreed if modified, one did not agree, and one did not indicate a position. All 50 of the commentators who "agreed if modified" provided a nearly identical request to include an explanatory paragraph on form CR-181. A chart with all comments received and the committee's responses is attached at pages 9–19.

Notable comments

Fifty commentators requested that, in addition to the proposed changes, form CR-181 include a paragraph to explain the basis for dismissal under Penal Code section 1203.43 to help ensure that the dismissals are recognized by immigration officials as "for cause." More than 20 commentators added that, "by explaining that the conviction is dismissed for cause, this additional paragraph helps ensure that 1203.43 dismissals are honored by immigration authorities." Other commentators offered similar explanations. In response, the committee recommends adding item 10 to the *Order for Dismissal* (form CR-181) to state as follows:

> "The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program."

[2] Assem. Bill 1352 [Eggman]; Stats. 2015, ch. 646.

[3] Penal Code section 1203.43(a) states, "(1) The Legislature finds and declares that the statement in Section 1000.4, that 'successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate' constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.
(2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant's prior plea is invalid."

One commentator suggested that item 6b on the *Petition for Dismissal* (form CR-180), as proposed, be revised to clarify the use of state summary criminal history information in support of a defendant's declaration. The commentator noted that the proposed item inaccurately implied that a defendant is required to provide the information if court records showing the case resolution are no longer available, rather than simply creating a presumption that the declaration is true. In response, the committee recommends revising proposed item 6b to allow the petitioner to indicate whether copies of the state summary criminal history information are attached to the petition.

The Superior Court of California, County of Los Angeles, suggested developing an information sheet to assist self-represented litigants in completing form CR-180. The committee agreed that such an information sheet, although beyond the scope of this proposal, would be useful and recommended that staff consider incorporating development of an information sheet for form CR-180 into a future work plan.

Alternatives considered

The committee considered postponing or declining to recommend any form revisions in light of the fiscal situation faced by courts. The committee, however, decided to recommend the revisions in response to recent legislation. The committee believes that the revisions would impose no significant changes in court practices; rather, the recommended revisions are designed to improve conviction reduction and dismissal procedures by enhancing the information on the forms.

Implementation Requirements, Costs, and Operational Impacts

Expected implementation requirements and costs are limited to training and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Judicial Council forms CR-180 and CR-181, at pages 5–8
2. Chart of comments, at pages 9–19

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43, 1203.49)**	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

1. On *(date):* , the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense *(felony, misdemeanor, or infraction)*:	Eligible for reduction to misdemeanor under Penal Code, § 17(b) *(yes or no)*	*Eligible for reduction to infraction under Penal Code § 17(d)(2) (yes or no)*

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

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***
Probation was granted on the terms and conditions stated in the docket of the above-entitled court. Petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*)
   a. ☐ has fulfilled the conditions of probation for the entire period thereof.
   b. ☐ has been discharged from probation prior to the termination of the period thereof.
   c. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***
Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime, and the petitioner *(check one)*
   a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land.
   b. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

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

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

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

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

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.41)***

   Petitioner is not under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or charged with the commission of any offense; and should be granted relief in the interests of justice, and *(check one)*

   a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B).

   b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

   (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

6. ☐ **Deferred entry of judgment *(Pen. Code, § 1203.43)***

   Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under Penal Code section 1000.3 on *(date):* . Furthermore *(check one)*

   a. ☐ court records are available showing the case resolution.

   b. ☐ petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner *(check one)*

      ☐ has

      ☐ has not

      attached a copy of his or her state summary criminal history information.

7. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

8. Petitioner requests that he or she be permitted to withdraw the plea of guilty or nolo contendere, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section *(check one)*

☐ 1203.4 ☐ 1203.4a ☐ 1203.41 ☐ 1203.43 ☐ 1203.49 of the Penal Code.

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

Date:

▶ _____
(SIGNATURE OF PETITIONER OR ATTORNEY)

_____
(ADDRESS OF PETITIONER)

_____
(CITY) (STATE) (ZIP CODE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.43,1203.49)**	CASE NUMBER:

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

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces *(check one)*
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action.
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
   - ☐ only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

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

3. The court **GRANTS** the petition for dismissal under Penal Code ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☐ §1203.43 ☐ § 1203.49 and it is ordered that the pleas of guilty or nolo contendere, or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for *(check one)*
   - ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
   - ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action *(specify charges and date of conviction or plea for deferred entry of judgment)*:

4. The court **DENIES** the petition for dismissal under Penal Code ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☐ § 1203.43 ☐ § 1203.49 for *(check one)*
   - ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
   - ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action *(specify charges and date of conviction or plea for deferred entry of judgment)*:

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

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

6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41,
   a. Petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission; and
   b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

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

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

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

10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

FOR COURT USE ONLY

Date:

_____
(JUDICIAL OFFICER)

SP16-14

Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	Recommend revising item 6 to read "6.Deferred entry of judgment (Pen. Code, § 1203.43) *The petitioner requests that the original guilty plea be declared constitutionally invalid pursuant to Penal Code1203.43 (a).* *The* petitioner *has* performed satisfactorily during the period in which deferred entry of judgment was granted and the criminal charge(s) were dismissed under Penal Code section 1000.3 on: (date): Furthermore (check one) a. court records are available showing case resolution. b. *the* petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, and petitioner has attached a copy of his or her state summary criminal history information maintained by the Department of Justice. 1203.4, 1203.4a, 1203.41,1203.43, or 1203.49 of the Penal Code." In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:	The committee declines to add the suggested sentence because Penal Code section 1203.43 does not provide a legal basis for such a statement.

SP16-14
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			•Does the proposal appropriately address the stated purpose? **Yes, with comments suggested on the form as noted in the attachment.** •Are the proposed revisions as effective way to address the legislation that added Penal Code section 1203.43? **Yes** 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. **N/A** •What would the implementation requirements be for the courts – for example, training staff(please identify position and expected hours of training) revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **None – we currently use local forms to support these requests.** •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? **Very well.**	See above response to comment.
2.	George Abbes Attorney Linda Barreto Attorney Lazaro Salazar Law, Inc Helen Beasley Senior Immigration Attorney	A/M	Please add Paragraph 10 to page 2 of CR 181. This paragraph should state: 10. If the order is granted under the provisions of Penal Code section 1203.43, the plea of guilty or nolo contendere is withdrawn and the charge or charges are dismissed because the information given to the defendant pursuant to Penal Code section 1000.4 "constitutes	The committee accepts the suggestion that form CR-181 provide information about the basis for the dismissal under Penal Code section 1203.43. The committee will add item 10 to form CR-181 to state as follows: "The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in Penal Code

SP16-14
Criminal Procedure: Petition and Order for
Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Community Legal Services in East Palo Alto Ann Block Attorney Rosina Boulos Celine Dinh Janelle Martin Gauto Monica Glicken Judith Goodman Attorney Goodman Immigration Law Firm Lena Graber Special Projects Attorney Immigrant Legal Resource Center Tala Hartsough Attorney Law Office of Tala Harts Barbara Horn Partner Horn & Johnson Talia Inlender Jennifer Lee Koh		misinformation about the actual consequences of making a plea in the case" and "based on this misinformation and the potential harm, the defendant's prior plea is invalid." (Penal Code section 1203.43). Note: By explaining that the conviction is dismissed for cause, this additional paragraph helps ensure that 1203.43 dismissals are honored by immigration authorities. Commentator included this introductory statement: As an immigration law professor and	section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.”

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Criminal Procedure: Petition and Order for
Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Professor of Law/Director, Immigration Clinic Western State College of Law Law Office of Robert B. Jobe by Sarah Castello Attorney Leiserowitz Law Office by Naomi Leiserowitz Attorney Christine Lin Hon. Dana Leigh Marks Immigration Judge USDOJ-EOIR Vivek Mittal Law Offices of Vivek Mittal Orange County Alternate Defender by Sierra Nelson Law Clerk Anne E. Peterson Attorney Law Office of Robert B. Jobe Vanessa Sanchez Associate Attorney Wolfsdorf Rosenthal LLP Irina Sarkisyan		director of a law school immigration clinic, I applaud the Council for creating this proposed form for applications granted under PC 1203.43.	

SP16-14

Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)

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

	Commentator	Position	Comment	Committee Response
	Hill & Piibe, Immigration Attorneys **Note: The following commentators provided comments with the indentical provision but without the addition of the "Note".** Megan Brewer Law Offices of Stacy Tolchin Hani Bushra Howard R. Davis Gleckman & Sinder by Roger Jay Gleckman Attorney Human Rights Watch by Grace Meng Senior Researcher Immigrant Legal Resource Center by Katherine Brady Senior Staff Attorney Kerosky Purves & Bogue by Liliana Gallelli Angela Krueger Supervisory Attorney Tulare County Public Defender's Office			

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Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Law Offices of Doreen A. Emenike by Doreen A. Emenike Attorney at Law Law Offices of Gita B Kapur by Gita Kapur Lawyer Law Offices of Kelly H Bu by Honglei Bu Attorney Law Offices of Sonia Figueroa-Lee by Sonia Figueroa Attorney Law Offices of Susy Mancia by Susy Mancia Attorney Christina Lee Partner Becker & Lee LLP Los Angeles County Bar Association Immigration Section by Leslie Reyes Russell Marshak Immigration Attorney Popkin, Samir & Golan		Commentator included this introductory statement: The following language is needed to clarify to the Immigration Authorities that this is not merely rehabilitative relief, but is instead a	

	Commentator	Position	Comment	Committee Response
			determination regarding the legal validity of the prior judgment.	
	Morales Law Office by Alexander Morales Attorney Scott Mossman Attorney Law Office of Scott Mossman Pangea Legal Services by Marie Vincent Co-Director Keli M Reynolds Attorney at Law Olmos & Reynolds Law Group, LLP Shirley Sher Principal Attorney Wei Sher Law Wayne Spindler Attorney First Stop Immigration Service		Commentator included the following statements: It is ABSOLUTELY IMPERATIVE THAT THE FORM CONTAIN THE PRECISE LANGUAGE THAT THIS IS A WITHDRAWAL OTHER THAN PURELY IMMIGRATION CONSEQUENCES… This ensures the Legislative intent is followed and ameliorative relief to the intending undocumented individual or documented individual to save her residency card is fulfilled.	

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Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)

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

	Commentator	Position	Comment	Committee Response
			Thank you, God bless this legislation and its proponents. The same should also apply for expungements under PC 1203.40 by amending that form to include similar language.	
	Robert Swain Attorney		Commentator included this statement: This amendment is requested because without some more specificity about the withdrawal of the plea, there is a substantial risk that immigration authorities will not recognize the expungement.	
	Norton Tooby Law Office of Norton Tooby		Commentator included this statement: By explaining that the conviction is dismissed for cause, this additional paragraph helps avoid the prejudice to the defendant's immigration status caused by the misinformation.	
	Isabel Wagner Attorney at Law Immigration Law Center			
	Eric Welsh Reeves Miller Zhang & Diza, APLC			
3.	Orange County Bar Association by Todd G. Friedland President	N	The proposed amendments to the Petition for Dismissal (form CR-180) and Order for Dismissal (form CR-181) do not appropriately address the stated purpose of facilitating dismissal procedures authorized by Penal Code section 1203.43 and the proposed revisions do not effectively address the relief contemplated by the statute.	The committee accepts the commentator's suggestion, and will separate the elements currently listed in proposed item 6b. on form CR-181 to state: • Petitioner declares under penalty of perjury that the charges were dismissed after he or she completed the requirements for deferred entry of judgment. Petitioner (*check one*)

SP16-14
Criminal Procedure: Petition and Order for
Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			The petition (form CR-180) requires the petitioner to aver that either court records are available showing the case resolution or that charges were dismissed after he or she completed the requirements for deferred entry of judgment if the court records are no longer available. If the latter box is checked, the proposed revised form of petition also requires the petitioner to attach a copy of his or her state summary criminal history information maintained by the Department of Justice. This requirement is inconsistent with the statute. Penal Code section 1203.43 does not require a petitioner to attach his or her state summary criminal history information. Instead, it simply creates a presumption that the declaration is true if the petitioner does so.	☐ has ☐ has not attached a copy of his or her state summary criminal history information.
4.	State Bar of California , Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair	A	Does the proposal appropriately address the stated purpose? Yes, it seeks to comply with recent legislation. The addition of the words "or was granted deferred entry of judgment for the following offenses:" on CR-180 is most helpful and adds clarity for those petitioners who completed programs or other court orders to satisfy the terms of probation, etc., and who are often times unsure if there is a Judicial Council form for deferred entry of judgments. The check boxes and the addition of 1203.43 in the caption and footer of both CR-180 and CR-181, and the incorporation of sections 6, 7 and 8 on form CR-180 are very helpful for clients. The	• No response required.

SP16-14
Criminal Procedure: Petition and Order for
Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			proposal is also effective in dealing with cases that are reduced. Are the proposed revisions an effective way to address the legislation that added Penal Code section 1203.43? Yes, the proposed revisions add clarity to the forms and provide for a process of proof by the petitioner regarding request for a dismissal if the court records no longer exists. The proposed petition and order comply with 1203.43 in that there are check boxes and areas of instructions that specifically relate to Penal Code section 1203.43. Additional Comments The proposal would assist those who are low to moderate-income with requesting a dismissal(s) of a Deferred Entry of Judgment with less confusion and more ease. Requests for dismissals under section 1000.3 are common and are submitted frequently by persons who are not represented. This proposal would be an asset to those seeking to submit the form(s) on his or her own and would also comply with the recently enacted section 1203.43.	• No response required. • No response required.
5.	Superior Court of California, County of Los Angeles	A	This proposal adds dismissals under deferred entry of judgement to the standard expungement form. A worksheet on how to complete the	The suggestion to create an information sheet that provides directions for self-represented litigants in completing form CR-180 is beyond the scope of

SP16-14
Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (Revise forms CR-180 and CR-181)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			petition would be helpful for self-represented litigants.	this proposal. The committee agrees that such an information sheet would be useful and has recommended that staff consider incorporating development of an information sheet for form CR-180 into a future work plan.
6.	Superior Court of California, County of San Diego by Mike Roddy Chief Executive Officer	A		No specific comment.

RUPRO ACTION REQUEST FORM

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

RUPRO Meeting: September 7, 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 October 27–28, 2016

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.200; revise forms CR-160, CR-161, DV-101, and EPO-002

Recommended by
Judicial Council staff
Susan R. McMullan, Senior Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
August 1, 2016

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Various Judicial Council advisory committee members, members of the public, and Judicial Council staff have identified errors in forms resulting from inadvertent omissions, typographical errors, and changes resulting from legislation. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

Recommendation

The staff to the Judicial Council recommends that the council, effective January 1, 2017:

1. Amend rule 8.200(a) of the California Rules of Court to correct an internal reference from "(c)(6)" to "(c)(7)."

2. Revise *Criminal Protective Order—Domestic Violence* (form CR-160), and *Criminal Protective Order—Other Than Domestic Violence* (form CR-161) to implement Assembly Bill 307 (Campos; ch. 291, 2013), which added the phrase "or subject to mandatory supervision," to Penal Code section 136.2(i)(1). Forms CR-160 and CR-161 would be

revised to add the phrase to the Warnings and Notices on each of the forms (paragraph 6 on form CR-160 and paragraph 5 on form CR-161).

3. Revise *Description of Abuse* (form DV-101), an optional attachment to *Request for Domestic Violence Restraining Order* (form DV-100), to be consistent with changes made to DV-100 effective July 1, 2016. Form DV-100 was revised to allow the applicant to describe a second incident of abuse. Form DV-101 would be revised to make it consistent with the format on form DV-100, specifically to allow the applicant to describe other incidents of abuse without requiring the applicant to provide the "second most recent incident of abuse."

4. Revise *Firearms Emergency Protective Order* (EPO-002), item 2, to clarify that a receipt must also be filed if any firearms have been surrendered to law enforcement: "You must ~~then~~ file a receipt proving surrender, sale, or storage with the court."

Copies of the revised rule and forms are attached at pages 3–11.

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 8.200, at page 3
2. Forms CR-160, CR-161, DV-101, and EPO-002 at pages 4–11

Rule 8.200 of the California Rules of Court is amended, effective January 1, 2017, to read:

Rule 8.200. Briefs by parties and amici curiae

(a) Parties' briefs

(1)–(3) * * *

(4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)~~(6)~~(7).

(5) * * *

**(b)–(c) * * *

Advisory Committee Comment

* * *

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. January 1, 2017]
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, county jail, or subject to mandatory supervision, 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, county jail, or subject to mandatory supervision, 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.

DV-101 Description of Abuse

Case Number:

This form is attached to DV-100, *Request for Domestic Violence Restraining Order* .

(1) **Name of person asking for protection:** _____

(2) **Name of person you want protection from:** _____

(3) **Describe abuse to you or your children.**

a. Date of abuse: _____

b. Who was there? _____

c. Describe how the person in (2) abused you or your children: _____

d. Describe any use or threatened use of guns or other weapons: _____

e. Describe any injuries: _____

f. Did the police or other law enforcement come? ☐ No ☐ Yes
If yes, did they give you or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No ☐ I don't know
The Emergency Protective Order protects ☐ You ☐ The person in (2)
Attach a copy of the Emergency Protective Order if you have one.

Case Number:

4 Describe abuse to you or your children.

Has the person in (2) abused you (or your children) other times?

a. Date of abuse: _____

b. Who was there? _____

c. Describe how the person in (2) abused you or your children: _____

d. Describe any use or threatened use of guns or other weapons: _____

e. Describe any injuries: _____

f. Did the police or other law enforcement come? ☐ No ☐ Yes
If yes, did they give you or the person in (2) an Emergency Protective Order? ☐ Yes ☐ No ☐ I don't know
The Emergency Protective Order protects ☐ You ☐ The person in (2)
Attach a copy of the Emergency Protective Order if you have one.

5 Describe abuse to you or your children.

☐ *Check here if you need more space. Attach a sheet of paper and write "DV-101—Description of Abuse" for a title.*

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 **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.

JUDICIAL COUNCIL
OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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RULES AND PROJECTS COMMITTEE

MINUTES OF OPEN MEETING

February 25, 2016
12:10 PM

Advisory Body Members Present:	Hon. Harry E. Hull (chair), Hon. Brian J. Back, Mr. Jake Chatters, Ms. Kimberly Flener, Hon. Dalila C. Lyons, Hon. Brian L. McCabe, Ms. Debra Elaine Pole, and Hon. Eric C. Taylor.
Advisory Body Members Absent:	Hon. Emilie H. Elias, Mr. Patrick M. Kelly, and Hon. Martin J. Tangeman.
Others Present:	Mr. Rick Feldstein, Ms. Tara Lundstrom, Ms. Camilla Kieliger, Ms. Susan McMullan, and Ms. Josely Yangco-Fronda.

DISCUSSION AND ACTION ITEMS

Item 1

Court Records: Records Sampling and Destruction (Action required – approval for circulation for comment on a special cycle)

Action: The Rules and Projects Committee approved the proposal for circulation on a special cycle.

Item 2

Minutes (Action required)

Action: The Rules and Projects Committee approved the minutes for the February 2, 2016 meting.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Approved by the advisory body on enter date.

JUDICIAL COUNCIL
OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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RULES AND PROJECTS COMMITTEE

MINUTES OF OPEN MEETING

03/18/16
12:10 PM
Teleconference

Advisory Body Members Present:	Hon. Harry E. Hull, Jr., Chair; Hon. Brian Back, Vice-Chair; Mr. Jake Chatters; Ms. Kimberly Flener; Mr. Patrick M. Kelly; Hon. Dalila C. Lyons; and Ms. Debra E. Pole.
Advisory Body Members Absent:	Hon. Emilie H. Elias; Hon. Brian L. McCabe; and Hon. Eric C. Taylor.
Staff Present:	Ms. Heather Anderson; Ms. Christine Cleary; Ms. Kim Da Silva; Ms. Kerry Doyle; Ms. Audrey Fancy; Ms. Nicole Giacinti; Ms. Diana Glick; Mr. Bruce Greenlee; Mr. Jay Harrell; Ms. Frances Ho; Ms. Bonnie Hough; Ms. Tracy Kenny; Ms. Camilla Kieliger; Ms. Tara Lundstrom; Ms. Anne Marx; Mr. Doug C. Miller; Mr. Patrick O'Donnell; Ms. Anne Ronan; Ms. Gabrielle Selden; Mr. Corby Sturges; and Ms. Julia Weber.
Others Present:	Hon. Steve Austin; Hon. Jerilyn L. Borack; and Hon. Mark A. Juhas.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 PM, and roll was called.

DISCUSSION AND ACTION ITEMS (ITEMS X–X)

Item 1

Civil Procedures: Revision of Wage Garnishment Form Instructions (revise forms WG-002 and WG-030) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 2

Civil Procedures: Expedited Jury Trials (adopt new rule 3.1546, amend rules 3.1545–3.1552, and renumber rule 3.1553; adopt new form EJT-003 and EJT-004; approve new forms EJT-005, and EJT-018; revise and renumber forms EJT-001 and EJT-022A; and revise EJT-020) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, discussion agenda.

Item 3

Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee Protective Order Continuance Forms (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda with modification to the Judicial Council Report to reflect that the Family and Juvenile Law Advisory Committee co-chairs adopted the minority opinion with respect to whether the Domestic Violence and Family Law request for continuance forms should include a question about prior continuances and that RUPRO agrees with the co-chair's recommendation.

Item 4

Civil Law: Disability Access Litigation (revise forms DAL-) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 5

Domestic Violence Restraining Orders: New and Updated Forms to Reflect Recent Legislative Changes (approve Forms DV-805, DV-815, DV-900, DV-901 and Revise Forms DV-100, DV-110, DV-120, DV-120-INFO and DV-130) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 6

Family Law: Special Immigrant Juvenile Findings (adopt rule 5.130 and revise forms FL-356, FL-357, FL-358) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 7

Family Law: Changes to Petition and Response (revise forms FL-100, FL-120 and FL-160) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 8

Juvenile Law: Psychotropic Medication (amend rule 5.640; approve forms JV-218, JV-219, JV-220(B), and JV-224; revise forms JV-220, JV-220(A), JV-221, and JV-223; revise form JV-219-INFO and renumber as JV-217-INFO) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, discussion agenda with modification to the Judicial Council Report to reflect that RUPRO considered the issues raised in the late comments from the County Welfare Directors Association and agreed with the recommended responses to these comments.

Item 9

Juvenile Law: Sealing of Records (adopt 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) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee raised a concern the Family and Juvenile Law Advisory Committee's recommendation on the date for destruction of sealed records under Welfare and Institutions Code section 786 might result in some records being destroyed too early. Fam/Juv Advisory Committees co-chairs opted to recommend to the committee that it revise this proposal with regard to record destruction to give the court discretion to set the date but to limit that discretion by placing age parameters on the earliest date a record could be ordered destroyed and to use the time frame in section 781 as the upper limit for the date of destruction. RUPRO approved the report for the consent agenda contingent on this change being approved by the committee and reflected in the report.

Item 10

Juvenile Dependency: Petition Allegations for Commercially Sexually Exploited Children (amend forms JV-101(A) and JV-121) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 11

Juvenile Law: Delinquency Defense Attorney Qualifications (adopt rule 5.613 and form JV-700) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 12

Juvenile Law: Notice of Juvenile Hearings via Electronic 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)(Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 13

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (Implementation of AB 1519) (amend rule 2.257) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 14

Probate Guardianship: Wards 18-20 Years of Age (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 15

Rules and Forms: Miscellaneous Technical Changes (amend rule 10.67 and Appendix F; revise forms CR-160, CR-161, CR-165, EPO-002, JV-100, and POS-040(P)) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 16

Court Interpreters: Request for Interpreter (adopt Cal. Rules of Court, rule 2.895; recommend model form INT-300) (Action required – recommend Judicial Council action)

Action: The Rules and Projects Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 17

Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, and Assessments (amend rule 4.105 and adopt rule 4.106) (Action required – approve for circulation for comment on a special cycle)

Action: The Rules and Project Committee approved to circulate for comment.

Item 18

Traffic Procedure: Installment Payment of Bail Forfeiture and Traffic Violator School Fees (revise forms TR-300 and TR-310) (Action required – approve for circulation for comment on a special cycle)

Action: The Rules and Project Committee approved to circulate for comment.

Item 19

Traffic Procedure: Online Installment Payment (approve forms TR-305 and TR-315) (Action required – approve for circulation for comment on a special cycle)

Action: The Rules and Project Committee approved to circulate for comment.

Item 20

Probate Conservatorship: Conservatee's Capacity to Vote (revise forms GC-320, GC-330, and GC-331) (Action required – recommend Judicial Council action)

Action: The Rules and Project Committee recommended approval on the Judicial Council's April 15, 2016, consent agenda.

Item 21

Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions from Enforcement of Judgments (revise form EJ-156) (Action required – initiate circulating order)

Action: The Rules and Project Committee approved the circulating order.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:30 PM.

Approved by the advisory body on enter date.

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RULES AND PROJECTS COMMITTEE

MINUTES OF OPEN MEETING

04/14/16
11:00 AM
Teleconference

Advisory Body Members Present:	Hon. Harry E. Hull, Jr., Chair; Hon. Brian Back, Vice-Chair; Hon. Stacy Boulware Eurie; Mr. Jake Chatters; Ms. Kimberly Flener; Hon. Scott Gordon; Mr. Patrick M. Kelly; Hon. Dalila C. Lyons; Hon. Brian McCabe; and Hon. Eric Taylor.
Advisory Body Members Absent:	Ms. Debra Pole.
Staff Present:	Ms. Heather Anderson; Ms. Jenie Chang; Ms. Kim Da Silva; Ms. Kerry Doyle; Ms. Audrey Fancy; Ms. Diana Glick; Mr. Bruce Greenlee; Mr. Jay Harrell; Ms. Eve Hershcopf; Ms. Frances Ho; Ms. Bonnie Hough; Ms. Tracy Kenny; Ms. Camilla Kieliger; Ms. Nicole Giacinti; Mr. Bob Lowney; Ms. Tara Lundstrom; Ms. Ruth McCreight; Ms. Susan McMullan; Mr. Douglas C. Miller; Ms. Diane Nunn; Ms. Anne Ronan; Ms. Gabrielle Selden; Ms. Katherine Sher; Ms. Christy Simons; Mr. Corby Sturges; and Ms Adrienne Toomey.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 11:00 AM and roll was called.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 26)

Item 01

Probate Conservatorship Forms: Adoption of Notice of Conservatee's Death (adopt form GC-399) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 02

Probate Decedent Estates: Revision of Two Decedent Estate forms (revise forms DE-111 and DE-310) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 03

Civil Form: Request for Entry of Default (revise form CIV-100) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 04

Civil Forms: Small Claims Forms (revise forms SC-100, SC-100-INFO and SC-100A) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 05

Civil Forms: Order of Examination (revise forms SC-134 and EJ-125) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 06

Civil Procedures and Forms: Writ of Execution (revise form EJ-130) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 07

Civil Form: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 08

Child Support: Statutory Relief for Incarcerated/Involuntarily Institutionalized Obligors (revise forms FL-342, FL-350, FL-490, FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688 and FL-692) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 09

Family Law: Child Support Forms: Uniform Interstate Family Support Act (revise forms FL-510, FL-511, FL-515, FL530, FL-560, FL-570, and FL-575) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 10

Family Law: Simplifying Limited Scope Representation Procedures (amend rule 5.425 and revise forms FL-950, FL-955, FL-956, FL-957, and FL-958) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved to circulate for comment with the following modification:

- Request specific comment on whether the rule or forms should provide that an attorney appearing at the hearing must prepare the order after hearing, if so directed by the judge?

Item 11

Juvenile Law: Termination of Juvenile Court Jurisdiction- Nonminor (amend rule 5.555; revise form JV-365, JV-367) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 12

Juvenile Law: Dependency Hearings (amend rules 5.534, 5.668, 5.674, 5.682, 5.690, 5.695, 5.706, 5.707, 5.708, 5.710, 5.715, 5.720, 5.722, 5.726, 5.727, 5.728, 5.730, 5.735, 5.740; repeal rules 5.680, 5.686 and 5.688, and revise form JV-421) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 13

Juvenile Law: Inter-county Transfers (amend rules 5.610, 5.612, adopt rule 5.613, and revise forms JV-550, JV-561, new JV-551) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 14

Protective Orders: Requests for the Possession and Protection of Animals (revise forms CH-100, CH-110, CH-120, CH- 130, EA-100, EA-120, EA-110, EA-130, JV- 245, JV 250, and JV-255)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 15

Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.252, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 16

Technology: Modernization of the Appellate Rules of Court (Phase II of the Rules Modernization Project) (amend rules 8.104, 8.130, 8.144, 8.150, 8.336, 8.409, 8.416, 8.450, 8.452, 8.454, 8.456, 8.480, 8.482, 8.489, 8.619, 8.625, 8.834, 8.866, 8.919, 8.1007, and 10.1028); revise forms APP-002, APP-003, APP-004, APP-005, APP-006, APP-007, APP-008, APP-009, APP-009-INFO, APP-010, APP-011, APP-012, APP-101-INFO, APP-102, APP-103, APP-104, APP-106, APP-107, APP-109, APP-109-INFO, APP-110, APP-150-INFO, APP-151, CR-120, CR-126, CR-132, CR-133, CR-134, CR-135, CR-137, CR-141-INFO, CR-142, CR-143, CR-145, JV-810, JV-816, JV-817, JV-822, JV-825, and MC-275; and approve forms APP-009E and APP-109E) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 17

Appellate and Trial Court Procedure: Privacy in Documents (amend rule 1.20 and adopt rules 1.201, 8.41, and 8.90) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 18

Appellate Procedure: Juvenile Proceedings (amend rules 8.400 and 8.407) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 19

Appellate Procedure: Transcripts of *Marsden* Hearings (amend advisory committee comment to rule 8.45) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation..

Item 20

Appellate Procedure: Amicus Curiae Briefs in Writ Proceedings (Amend Cal. Rules of Court, rule 8.487) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 21

Appellate Procedure: E-filing Rules (amend rules 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 22

Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer Rule (amend rule 4.530) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 23

Criminal Law: Criminal Realignment and Military Service (amend rules 4.403, 4.405, 4.406, 4.409, 4.410, 4.411.5, 4.412, 4.414, 4.415, 4.420, 4.421, 4.423, 4.425, 4.427, 4.431, 4.433, 4.435, 4.452, 4.472, and 4.480) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 24

Criminal Procedure: Petition and Order for Dismissal—Deferred Entry of Judgment (revise forms CR-180 and CR-181) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 25

Judicial Branch Education: Minimum Requirements for Judicial Council Staff (amend rule 10.491) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for circulation.

Item 26

Trial Courts: Financial Policies and Procedures (amend rule 10.804) (Action required – approval for circulation for comment)

Action: The Rules and Projects Committee approved to circulate for comment as modified, with the first sentence of the rule text deleted.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:00 PM.

Approved by the advisory body on enter date.

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RULES AND PROJECTS COMMITTEE

MINUTES OF OPEN MEETING

August 3, 2016
12:10 PM
Telephone

Advisory Body Members Present:	Hon. Harry E. Hull, Jr., Chair; Hon. Brian Back, Vice-Chair; Hon. Stacy Boulware Eurie; Ms. Kimberly Flener; Hon. Scott Gordon; Mr. Patrick M. Kelly; Hon. Brian McCabe; and Ms. Debra Pole.
Advisory Body Members Absent:	Mr. Jake Chatters; Hon. Dalila C. Lyons; and Hon. Eric Taylor
Others Present:	Ms. Diane Cowdrey; Ms. Shelley Curran; Mr. Doug Denton; Mr. Bruce Greenlee; Mr. Jay Harrell; Ms. Tara Lundstrom; Ms. Susan McMullan; Mr. Patrick O'Donnell; Ms. Jamie Schechter; Ms. Robin Seeley; Ms. Katherine Sher; Ms. Elizabeth Tam; and Adrienne Toomey.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 PM, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS X–X)

Item 01

Criminal Jury Instructions: Proposed Revisions (Action required – recommend for Judicial Council action)

Action: The Rules and Projects Committee approved the proposal for the Judicial Council's August 26, 2016, consent agenda.

Item 02

Civil and Small Claims Advisory Committee Annual Agenda: Approve additions of projects to annual agenda and technical revisions to forms (Action required–recommend to adopt)

Action: The Rules and Projects Committee approved the additions to the Civil and Small Claims Advisory Committee's annual agenda.

Item 03

Judicial Branch Education: Minimum Requirements for Judicial Council Staff (amend rule 10.491) (Action required – recommend for Judicial Council action)

Action: The Rules and Projects Committee approved the proposal for the Judicial Council's August 26, 2016, consent agenda.

Item 04

Language Access: Development of Statewide Language Access Model Complaint Form and Process (information)

Action: The Court Interpreter's Program (CIP) provided the Rules and Projects Committee an overview of the Language Access compliant form and process. No action required by the committee.

Item 05

Traffic and Criminal Procedure: Infraction Procedures Regarding Bail, Fines, and Assessments, Mandatory Courtesy Notices, and Ability to Pay Determinations (amend rule 4.105 and adopt rules 4.106, 4.107, and 4.335; and repeal Judicial Administration Standard 4.41) (Action required – approve for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for public circulation.

Item 06

Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees (revise forms TR-300 and TR-310) (Action required – approve for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for public circulation.

Item 07

Traffic: Online Installment Payment of Bail Forfeiture and Traffic Violator School Fees (adopt rule 4.108 and approve forms TR-300 and TR-310) (Action required – approve for circulation for comment)

Action: The Rules and Projects Committee approved the proposal for public circulation.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:30 PM.

Approved by the advisory body on enter date.