JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 15, 2017

Title
Appellate Procedure: Settled Statements in Unlimited Civil Cases

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.137; approve form APP-014; revise form APP-003

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 14, 2017

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Executive Summary

The Appellate Advisory Committee recommends amending the rule regarding settled statements in Court of Appeal proceedings to remove the requirement for obtaining a court order to use this procedure in certain circumstances, approving a new optional form for appellants to use in preparing proposed statements, and revising the form for designating the record on appeal to conform to these changes. The rule amendments and new form are intended to make the settled statements procedure in unlimited civil cases less burdensome for appellants and the courts.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Amend California Rules of Court, rule 8.137, to:

- Permit an appellant to use the settled statement procedure without filing a motion either if the trial court proceedings were not recorded by a court reporter or if the appellant received a fee waiver;
- Allow the respondent to pay for a reporter's transcript in cases in which a court reporter recorded the proceedings but an appellant elects or moves to use a settled statement;
- Eliminate the option of using a settled statement to provide the record of the documents from the trial court proceeding;
- Encourage self-represented appellants to use the new optional statement-on-appeal form, recommended below, in preparing their proposed statements;
- Add provisions specifying the required contents of proposed statements;
- Add provisions detailing the procedure for the trial court's review of proposed statements; and
- Add a provision clarifying that when the statement is finalized, it must immediately be transmitted to the clerk for filing of the record;

2. Approve new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help appellants prepare their initial proposed statement; and

3. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to reflect the amendments to rule 8.137 and the availability of new form APP-014.

The amended rule and the forms are attached at pages 10–28.

Previous Council Action

The Judicial Council adopted the predecessor to rule 8.137 relating to settled statements effective July 1, 1943, as part of the original Rules on Appeal. As originally adopted, this rule permitted the appellant to elect to proceed by way of settled statement if he or she wished to do so in any civil appeal. Effective July 1, 1988, the council amended this rule to limit the circumstances in which a settled statement could be used to when (1) the appellant is without adequate funds to pay for a transcript and funds are not available from the transcript reimbursement fund; (2) a transcript is unavailable because of the absence of a reporter or the loss or illegibility of the reporter's notes; or (3) the trial court grants a motion on the ground that a substantial saving of cost would be achieved and a statement can be settled without significant burden on the opposing party or on the court.

Effective January 1, 2002, as part of overall revision to the appellate rules, this rule was amended to read as it currently does, including requiring the appellant to file a motion to proceed by way of settled statement regardless of the circumstances. The Judicial Council report that addressed these amendments indicated that this change was intended to fill a perceived gap in the prior

rule, which did not specify a procedure for determining an appellant's right to use a settled statement on the grounds of indigency or unavailability of a transcript.

Rationale for Recommendation

Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and reviewed and approved by the trial court judge who presided over the proceedings. Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule currently reflects a basic presumption that court reporters' transcripts generally will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, if an appellant wishes to use a settled statement, the appellant must file a motion asking to do so.

Because court reporters are no longer present to record the proceedings in many civil cases, reporter's transcripts are unavailable in many civil appeals, and more appellants are now trying to use the settled statements procedure in these cases. Some appellants, particularly those who are self-represented, have difficulty navigating the motion procedure and preparing proposed statements. Proposed statements that are not appropriately prepared create additional burdens for the trial court judges who must attempt to review and certify them. These problems also affect the Courts of Appeal by delaying or resulting in defaults in these cases.

Statements on appeal, which are essentially the same as settled statements, are also used in appeals to the superior court appellate division. The rules for these appeals do not require the appellant to file a motion to get permission to use a statement on appeal. Furthermore, a form is available to assist appellants, particularly self-represented appellants, in preparing proposed statements that contain the necessary information in appeals to the appellate division.

Recommended changes

The committee is recommending amendments to rule 8.137, changes to the form for designating the record on appeal, and a new form for preparing a proposed settled statement that, together, are designed to make it easier for appellants to use the settled statement procedure and for trial courts to review these statements.

Amendments to rule 8.137. The recommended amendments to rule 8.137 are modeled in large part on the rules for statements on appeal in the superior court appellate division, rules 8.837, 8.869, and 8.916. The main substantive changes include the following:

- Permitting an appellant to use the settled statement procedure without having to file a motion if (1) the trial court proceedings were not recorded by a court reporter, or (2) the appellant has received a fee waiver (subdivision (b)(1)). This change is intended to reduce burdens for both appellants and courts in making and reviewing motions in these cases. Instead, in these circumstances, the rule would permit the appellant to elect to use a settled statement in his or

her notice designating the record on appeal. The fact that the designated proceedings were not recorded by a court reporter or that the appellant has received a fee waiver will be in the trial court record.

- Allowing the respondent to pay for a reporter's transcript in cases in which an appellant moves to use a settled statement even though a court reporter recorded the proceedings (subdivisions (b)(2)(B) and (e)(2)(B)). This provision is not currently in the appellate division rules; it is modeled on a provision in rule 8.702(d)(2)(B) relating to expedited appeals in certain California Environmental Quality Act cases. This provision is designed to give respondents the opportunity to avoid the delay and to reduce the burdens on parties and the trial courts associated with preparation of a settled statement by providing a reporter's transcript when one is available.

- Encouraging self-represented appellants to use a proposed statement-on-appeal form, discussed below (subdivision (c)). This provision is intended to help appellants prepare proposed statements and help produce statements that are easier for the trial court judge to review.

- Adding provisions from rule 8.837(c) regarding the contents of proposed statements (subdivision (d)). These provisions should also help appellants prepare proposed statements and help produce statements that are easier for the trial court judge to review.

- Adding provisions from rule 8.837(d) regarding the trial court judge's review of proposed statements (subdivision (f)). These provisions should clarify and simplify the procedure for the trial court judge and bring consistency to the procedures for statements in limited and unlimited civil cases.

- Adding a provision designed to clarify what should happen when the statement is finalized (subdivision (h)(3)). This provision is designed to reduce delays in the transmission of the record to the Court of Appeal.

Revisions to the record designation form. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) is the form that appellants use to tell the trial court what form of the record they want to use in their appeal. This form is revised to reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver. Check boxes are added for the appellant to use to indicate the basis for electing to use a settled statement. In addition, a new section is added where the appellant can designate the trial court proceedings that will be included in a settled statement and whether they were recorded by a court reporter. This information will help the trial court judge in reviewing the statement and the respondents in determining whether to opt to purchase a reporter's transcript, where one is available, in lieu of using the settled statement procedure.

New proposed statement form. New *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is modeled on *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). It is designed to help appellants prepare their initial proposed statement. It includes spaces and prompts to help appellants identify and include all necessary information in their statements. By providing a standardized format and prompting the inclusion of required information, the form is also designed to make these proposed statements easier for the trial judge to review.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal circulated for public comment from February 27 to April 28, 2017, as part of the regular spring 2017 invitation-to-comment cycle. Twelve individuals or organizations submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, six indicated that they agreed with the proposal if modified, and two did not indicate a position on the proposal overall. Many of the comments were extensive, with responses to the questions asked by the committee in the invitation to comment and suggestions for modifying the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 29–54. This chart is divided up by topic area so that all the comments addressing a particular question or issue can be seen together.

Rule 8.137. The majority of the commenters who specifically addressed the proposed amendments to rule 8.137 expressed support for the concept of eliminating the requirement for filing a motion to use a settled statement when the proceedings were not reported by a court reporter or when the appellant has a fee waiver. Three main substantive issues were raised by the commenters.

Option for using settled statement as record of documents. Currently, rule 8.137 permits settled statements to be used not only as the record of the oral proceedings in the trial court, replacing a reporter's transcript, but also, at the appellant's option, as the record of the documents from the trial court proceedings, replacing a clerk's transcript or appendix. The invitation to comment asked for input on the following question:

> Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

Five commenters directly responded to this question. Four of them expressed support for eliminating this option, and one did not support the elimination. Three other commenters separately raised concerns about the complexities caused by the option of using a settled statement as the record of the documents from the trial court proceedings. Based on these comments, the committee recommends amending rule 8.137 to eliminate this option and revising form APP-003 to reflect this change.

Complexity of rule language. Two commenters expressed concern about the complexity of the language used in rule 8.137. Both of these commenters focused, in part, on the complexity caused by the option of having the settled statement serve not only as a record of the oral proceedings, but also, through attachments, as the record of the documents filed in the case. However, these commenters also suggested more broadly that the rule is unnecessarily complicated and should be rewritten in simpler language geared toward self-represented litigants.

As always, the committee's goal in developing proposed rule language is for the rules to be both accurate and easy to understand. In response to the public comments, the committee has revised the proposed rule amendments to eliminate the following:

- The option of using a settled statement as the record of the documents filed in the case;
- The requirement to describe the proceedings to be included in the settled statement; and
- The requirement to summarize the trial court judgment.

These changes reduce the complexity of the rule somewhat. The committee also discussed whether to work on further revisions to make this rule less complex and easier to understand. In thinking about this, the committee considered the following:

- Overall, the California Rules of Court are not currently written with self-represented litigants as the intended target audience. Legal terminology and complex language are commonly used throughout the rules. If just this rule were revised with the goal of gearing the language toward self-represented litigants, it would be inconsistent with the rest of the California Rules of Court. Rather than modifying the rules, the way that the council and its advisory committees have tried to help self-represented litigants navigate procedural requirements is through information sheets, other forms (like *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014)), and resources on the self-help website.

- The proposed amendments to rule 8.137 are based in large part on the existing language of rule 8.837 and the other appellate division rules relating to statements on appeal. This raises the question about whether considering changes to similar provisions in all these rules at the same time would be preferable.

Ultimately, the committee decided not to work on further simplification of rule 8.137 at this time. *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is designed to be used by self-represented litigants and provides detailed guidance to appellants on preparing proposed statements. The committee will consider development of a proposal for further changes to rules 8.137 and the appellate division rules at a later date. In addition, the committee will consider developing an information sheet regarding settled statements in the future as well.

Requirement that self-represented litigants use form APP-014. As circulated for public comment, the proposed amendments to rule 8.137 would have required that a self-represented litigant use

the new *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to file their proposed statement unless the court, for good cause, exempted them from this requirement. Two commenters objected to this requirement. One generally objected to treating self-represented litigants differently from attorneys in this respect and expressed concern about imposing a new burden on self-represented litigants in the form of making a request to the court to be exempted from the requirement to use the form. The other commenter suggested that the form is too complex for self-represented litigants to use and so its use should be optional.

The proposal that self-represented litigants be required to use the form was based on a similar requirement in existing rule 8.837 relating to statements on appeal in limited civil cases.[1] Ultimately, noting that the length and complexity of limited and unlimited civil cases differ, the committee decided to recommend that self-represented appellants in unlimited civil cases be urged, but not required, to use form APP-014. The committee also recommends that courts be authorized to order the use of the form in individual cases.

***Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014)**

Helpfulness of the form. The invitation to comment specifically asked for input on whether new form APP-014 would be helpful to litigants and the courts. Five commenters responded directly to this inquiry and all indicated that the form would be helpful. In addition, two other commenters, while not directly responding to this inquiry, expressed agreement with the proposal as a whole, including this form. Based on this response, the committee recommends approval of this form, with the changes discussed below and in the comment chart.

Summarizing vs. attaching judgment. The invitation to comment asked for input on the following question:

> Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?

Five commenters directly responded to this question. Four of them expressed support for replacing the section asking the appellant to summarize the judgment with a requirement to attach the judgement or order being appealed. Based on these comments, the committee revised the proposed form to require the appellant to attach a copy of the judgment or order being appealed, rather than requiring that this judgment or order be summarized.

Single form vs. separate form for family and probate cases. Several commenters suggested that the proposed form needed to be modified before it could be used in family and probate appeals. Some of the suggested changes, such as changing the reference to "plaintiff" to "plaintiff/petitioner" and "defendant" to "defendant/respondent," have been incorporated into the

[1] Rule 8.380 has a similar requirement that self-represented petitioners use the Judicial Council form when filing a petition for a writ of habeas corpus. The requirement in rule 8.837 was modeled on rule 8.830.

recommended version of the form attached to this report. Other changes, such as eliminating the reference to a trial, seemed like they could produce confusion in general civil cases.

The committee consulted with the Family and Juvenile Law Advisory Committee about these suggestions and whether to develop a separate form for family law proceedings or try to modify proposed form APP-014 to make it more workable in all unlimited civil appeals. That committee supported the idea of developing a separate form for family law proceedings but preferred that the Appellate Advisory Committee delay recommending adoption of APP-014 so that both forms could be considered for adoption at the same time.

The Appellate Advisory Committee agrees with the idea of working with the Family and Juvenile Law Advisory Committee to develop a separate form geared to family law appeals and also working with the Probate and Mental Health Advisory Committee to determine if a separate form should be developed for probate appeals. However, the committee thought it was important to move forward with form APP-014 at this time, rather than waiting to recommend all of the forms at the same time. The committee believes that form APP-014 will be helpful to litigants who are currently struggling to prepare proposed statements and to trial courts that are having to review proposed statements that do not contain the necessary information. If during the development of separate family law or probate forms, potential improvements in the form language are identified that could be incorporated into form APP-014, the committee can recommend those improvements at the same time as it recommends approval of the new family law or probate forms.

Plain language review. One commenter recommended that proposed form APP-014 be reviewed by a professional plain-language translator. With the committee's approval, this input is being obtained. The committee plans to use this input both in considering possible improvements to form APP-014 and in working with the Family and Juvenile Law Advisory Committee on developing the separate form for family law appeals.

Internal comments

The recommended amendments to rule 8.137 require that the appellant designate the oral proceedings to be included in the settled statement. However, as circulated for public comment, the revisions to form APP-003 did not include adding a place for the appellant to make this designation. To reflect this proposed rule provision, the committee revised its proposal to add to form APP-003 new item 6 that provides a table for designating proceedings to be included in a settled statement. The committee viewed this as a technical change to the form, bringing it into conformity with the proposed language of the rule, and thus not a change that would need to be circulated for public comment.

Alternatives

In addition to the alternatives considered in response to the public comments, the committee considered recommending only the clarification to the rule about what happens once a statement

has been finalized. The committee concluded, however, that additional changes to the procedure would be helpful in reducing barriers for litigants and burdens on the courts.

Implementation Requirements, Costs, and Operational Impacts

The committee's intent in making this proposal is to reduce burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. No appreciable implementation requirements, costs, or operational impacts are anticipated. Three courts and the Joint Rules Subcommittee of the Trial Court Presiding Judges and the Court Executives Advisory Committees provided input on the potential implementation requirements in their comments. Two courts indicated that implementation requirements would be minimal and the third identified some training requirements, as did the subcommittee.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed form revisions support Judicial Council strategic Goal III, Modernization of Management and Administration (Goal III.B.2), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Cal. Rules of Court, rule 8.137, at pages 10–16
2. Forms APP-03 and APP-014, at pages 17–28
3. Chart of comments, at pages 29–54

Rule 8.137 of the California Rules of Court is amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.137. Settled statement

(a) Description

A settled statement is a summary of the superior court proceedings approved by the superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a settled statement as the record of the oral proceedings in the superior court, instead of a reporter's transcript.

~~(a)~~(b) ~~Motion to use~~ When a settled statement may be used

(1) An appellant may elect in his or her notice designating the record on appeal under rule 8.121 to use a settled statement as the record of the oral proceedings in the superior court without filing a motion under (2) if:

(A) The designated oral proceedings in the superior court were not reported by a court reporter; or

(B) The appellant has an order waiving his or her court fees and costs.

~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed in (1) must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript ~~or both a reporter's and clerk's transcripts~~.

~~(2)~~(A) The motion must be supported by a showing that:

~~(A)~~(i) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

~~(B)~~(ii) The designated oral proceedings ~~were not reported or~~ cannot be transcribed; or

~~(C)~~(iii) Although the appellant does not have a fee waiver, he or she is unable to pay for a reporter's transcript and funds are not available from the

Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding in forma pauperis is deemed unable to pay for a transcript.~~

~~(3)~~(B) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk sends, or a party serves, the order of denial.

(3) An appellant's notice under (1) or motion under (2) must:

(A) Specify the date of each oral proceeding to be included in the settled statement;

(B) Identify whether each proceeding designated under (A) was reported by a court reporter and if so, for each such proceeding:

(i) Provide the name of the court reporter, if known; and

(ii) Identify whether a certified transcript has previously been prepared by checking the appropriate box on *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) or if that form is not used, placing an asterisk before that proceeding in the notice.

(4) If the designated oral proceedings in the superior court were reported by a court reporter:

(A) Within 10 days after the appellant serves either a notice under (1) or a motion under (2), the respondent may serve and file a notice indicating that he or she is electing to provide a reporter's transcript in lieu of proceeding with a settled statement. The respondent must also either:

(i) Deposit a certified transcript of all of the proceedings designated by the appellant under (3) and any additional proceedings designated by the respondent under rule 8.130(b)(3)(C); or

(ii) Serve and file a notice that the respondent is requesting preparation, at the respondent's expense, of a reporter's transcript of all proceedings designated by the appellant under (3) and any additional proceedings designated by the respondent. This notice must be accompanied by either the required deposit for the reporter's transcript under rule 8.130(b)(1) or the reporter's written waiver of the deposit in lieu of all or a portion of the deposit under rule 8.130(b)(3)(A).

(B) If the respondent timely deposits the certified transcript as required under (i), the appellant's motion to use a settled statement will be dismissed. If the

respondent timely files the notice and makes the deposit or files the waiver as provided under (ii), the appellant's motion to use a settled statement will be dismissed and the clerk must promptly send the reporter notice of the designation and of the deposit, waiver, or both—and notice to prepare the transcript—as provided under rule 8.130(d).

~~(b)~~(c) Time to file~~; contents of~~ proposed statement

(1) ~~Within 30 days after the superior court clerk sends, or a party serves, an order granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A) electing to provide a reporter's transcript in lieu of proceeding with a settled statement, the appellant must serve and file a proposed statement in superior court within 30 days after filing its notice under (b)(1) or within 30 days after the superior court clerk sends, or a party serves, an order granting a motion under (b)(2) ~~a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer~~.

(2) Appellants who are not represented by an attorney are encouraged to file their proposed statement on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). The court may order an appellant to use form APP-014.

(d) Contents of proposed statement

The proposed statement must:

~~(2)~~(1) Contain a statement of the points the appellant is raising on appeal. If the condensed narrative under (2) covers only a portion of the oral proceedings, ~~describes less than all the testimony, the appellant must state the points to be raised on appeal;~~ the appeal is then limited to ~~those~~ the points identified in the statement unless the reviewing court determines that the record permits the full consideration of another point or, on motion, the reviewing court permits otherwise.

(2) Contain a condensed narrative of the oral proceedings that the appellant specified under (b)(3).

(A) The condensed narrative must include a concise factual summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (1) are being raised on appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.

(B) If one of the points that the appellant states will be raised on appeal is a challenge to the giving, refusal, or modification of a jury instruction, the condensed narrative must include any instructions submitted orally and not in writing and must identify the party that requested the instruction and any modification.

(3) ~~An appellant intending to use a settled statement instead of both reporter's and clerk's transcripts must accompany the condensed narrative with copies of all items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2).~~ Have attached to it a copy of the judgment or order being appealed.

(e) Respondent's response to proposed statement

~~(4)~~Within 20 days after the appellant serves the ~~condensed narrative~~ proposed statement, the respondent may serve and file either:

(1) Proposed amendments to the proposed statement; or

(2) A notice indicating that he or she is electing to provide a reporter's transcript in lieu of proceeding with a settled statement. The respondent must also either:

(A) Deposit a certified transcript of all the proceedings specified by the appellant under (b)(3) and any additional proceedings designated by the respondent under rule 8.130(b)(3)(C); or

(B) Serve and file a notice that the respondent is requesting preparation, at the respondent's expense, of a reporter's transcript of all proceedings specified by the appellant under (b)(3) and any additional proceedings designated by the respondent. This notice must be accompanied by either the required deposit for the reporter's transcript under rule 8.130(b)(1) or the reporter's written waiver of the deposit in lieu of all or a portion of the deposit under rule 8.130(b)(3)(A).

~~(5) The proposed statement and proposed amendments may be accompanied by copies of any document includable in the clerk's transcript under rule 8.122(b)(3) and (4).~~

~~(c)~~(f) ~~Settlement, preparation, and certification~~ Review of appellant's proposed statement

(1) ~~The clerk must set a date for a settlement hearing by the trial judge that is~~ No later than 10 days after the respondent files proposed amendments or the time to do so expires, whichever is earlier, ~~and must give the parties at least five days' notice of the hearing date~~ a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the

judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceedings.

~~(2) At the hearing, the judge must settle the statement and fix the times within which the appellant must prepare, serve, and file it.~~

(2) The trial court judge may order that a transcript be prepared as the record of the oral proceedings instead of correcting a proposed statement on appeal if the trial court proceedings were reported by a court reporter, the trial court judge determines that doing so would save court time and resources, and the court has a local rule permitting such an order. The court will pay for any transcript ordered under this subdivision.

(3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments filed by the respondent and take one of the following actions:

(A) If the proposed statement does not contain material required under (d), the trial court judge may order the appellant to prepare a new proposed statement. The order must identify the additional material that must be included in the statement to comply with (d) and the date by which the new proposed statement must be served and filed. If the appellant does not serve and file a new proposed statement as directed, the appellant will be deemed to be in default, and rule 8.140 will apply.

(B) If the trial court judge does not issue an order under (A), the judge must either:

(i) Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (d)(1) are being raised on appeal; or

(ii) Identify the necessary corrections and modifications, and order the appellant to prepare a statement incorporating these corrections and modifications.

(4) If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date. No later than 10 days after the hearing, the trial court judge must either:

(A) Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and the testimony of each

witness relevant to the points that the appellant states under (d)(1) are being raised on appeal; or

(B) Identify the necessary corrections and modifications and order the appellant to prepare a statement incorporating these corrections and modifications.

(5) The trial court judge must not eliminate the appellant's specification of grounds of appeal from the proposed statement.

(g) Review of the corrected statement

(1) If the trial court judge makes any corrections or modifications to the proposed statement under (f), the clerk must serve copies of the corrected or modified statement on the parties. If under (f) the trial court judge orders the appellant to prepare a statement incorporating corrections and modifications, the appellant must serve and file the corrected or modified statement within the time ordered by the court. If the appellant does not serve and file a corrected or modified statement as directed, the appellant will be deemed to be in default, and rule 8.140 will apply.

(2) Within 10 days after the corrected or modified statement is served on the parties, any party may serve and file proposed modifications or objections to the statement.

(3) ~~If the respondent does not object to the prepared statement within five days after it is filed, it will be deemed properly prepared and the clerk must present it to the judge for certification.~~ Within 10 days after the time for filing proposed modifications or objections under (2) has expired, the trial court judge must review the corrected or modified statement and any proposed modifications or objections to the statement filed by the parties. The procedures in (2) or in (f)(3) apply if the trial court judge determines that further corrections or modifications are necessary to ensure that the statement is an accurate summary of the evidence and the testimony of each witness relevant to the points that the appellant states under (d)(1) are being raised on appeal.

(h) Certification of the statement on appeal

(1) If the trial court judge does not order the preparation of a transcript under (f)(2) in lieu of correcting the proposed statement or order any corrections or modifications to the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify the statement.

~~(4)~~(2) The parties~~'~~ may serve and file a stipulation that the statement as originally served under (c) or as ~~prepared~~ corrected or modified under (f)(3), (f)(4), or (g)(3) is correct. Such a stipulation is equivalent to the judge's certification of the statement.

(3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the certified statement must immediately be transmitted to the clerk for filing of the record under rule 8.150.

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, or d, 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, and Fourth 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).)*

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed *(you must check a. or b. below):*

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, 2018]

APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (Unlimited Civil Case)

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 *(you must check (1), (2), or (3) below)*:

(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 check (a), (b), or (c) below.)*

(a) ☐ The oral proceedings in the superior court were not reported by a court reporter.

(b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.

(c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(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)		

☐ Additional documents are listed on Attachment 4b beginning with number (13).

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)			

☐ Additional exhibits are listed on Attachment 4c beginning with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in 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—*and *the name of the court reporter who recorded the proceedings [if known], 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

☐ Additional proceedings are listed on Attachment 5b beginning with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. *(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— and, if applicable, the name of the court reporter who recorded the proceedings [if known], 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

☐ Additional proceedings are listed on Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☐ include ☐ do not include all of the testimony in the superior court.

b. 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)*.

Points are set forth: ☐ Below ☐ On Attachment 7.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF APPELLANT OR ATTORNEY)

APP-014 Proposed Statement on Appeal (Unlimited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case.**
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If your proposed statement is not attached to that notice, it must be filed **no later than 30 days after you file that notice, or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. If you have chosen to prepare a settled statement and do not file your proposed statement on time, the court may dismiss your appeal.**
- Fill out this form and attach a copy of the judgment or order you are appealing. Make a copy of the completed form and attachment for your records and for each of the other parties.
- Serve a copy of the completed form and attachment 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 *Information Sheet for Proof of Service* (form APP-009-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, attachment, 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 Court of Appeal case number (if you know it):

Court of Appeal 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 or P.O. Box*) _____ (*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: _____

Firm Name: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street or P.O. Box*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

Fax: _____

2 Information About Your Appeal

a. On *(fill in the date):* _____, I filed a notice of appeal in the trial court case identified in the box on page 1 of this form. A copy of the judgment or order I am appealing is attached.

b. On *(fill in the date):* _____

☐ I filed a notice designating the record on appeal, electing to use a settled statement.

☐ The Court sent me ☐ The other party served me with an order granting my motion to use a settled statement.

Proposed Statement

3 Reasons for Your Appeal

Please note that, in an appeal, the Court of Appeal can review a case only for whether certain kinds of legal errors were made, as follows:

- 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 Court of Appeal

- 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 attached judgment or order that I am appealing in this case. *(Explain why you think the judgment or order was not supported by substantial evidence):*

_____

_____

_____

_____

☐ *Check here if you need more space and attach a separate page or pages describing the lack of substantial evidence. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 3.a."*

b. ☐ The following error or errors about either the law or court procedure was/were made that caused substantial harm to me. *(Describe each error and how you were harmed by that error.)*

(1) *Describe the error:* _____

_____

_____

_____

Describe how you were harmed by the error: _____

_____

_____

_____

3 b. (2) *Describe the error:* _____

Describe how you were harmed by the error: _____

(3) *Describe the error:* _____

Describe how you were 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 3.b."*

4 The Dispute

a. In the trial court, I was the *(check one):*

☐ Plaintiff/Petitioner (the party who filed the complaint/petition in the case).

☐ Defendant/Respondent (the party against whom the complaint/petition was filed).

b. The plaintiff's/petitioner's complaint/petition in this case was about *(briefly describe what was claimed in the complaint/petition filed with the trial court):* _____

c. The defendant's/respondent's response to this complaint/petition was *(briefly describe how the defendant/respondent 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014,item 4."*

5 Summary of Any Motions and the Court's Order on the Motion

a. Are you appealing an order by the trial court on a motion (request for the trial court to issue an order) made by you or another party in this case?

☐ Yes *(fill out (1)-(5) below)* ☐ No *(skip to b.)*

(1) *Describe the motion that resulted in the order you are appealing:* _____

(2) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on *(date)*: _____.

(3) 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: _____

(4) The trial court ☐ granted this motion ☐ denied this motion.

(5) ☐ 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5a."*

b. Were any motions (requests for the trial court to issue an order) made in this case, other than a motion described in a., that are relevant to the reasons you gave in 3 for this appeal?

☐ Yes *(fill out c.)* ☐ No *(skip to 6)*

c. *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) First motion

(a) *Describe the motion:* _____

(b) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on (*date):* _____.

5 c. (1) (c) 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: _____

(d) The trial court ☐ granted ☐ denied this motion.

(e) ☐ 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, Item 5c(1)."*

(2) Second motion

(a) *Describe the motion:* _____

(b) The motion was filed by the ☐ plaintiff/petitioner ☐ defendant/respondent on *(date):* _____.

(c) 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: _____

(d) The trial court ☐ granted ☐ denied this motion.

(e) ☐ 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5c(2)."*

5 c. (3) ☐ *Check here if any other motions were filed that are relevant to the reasons you gave in 3 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 5c(3)."*

6 Summary of Testimony and Other Evidence

a. Was there a trial in your case?

☐ No *(skip to item 7)*

☐ Yes *(check (1) or (2) and complete items b., c., d., and e.)*

(1) ☐ Jury trial

(2) ☐ Trial by judge only

b. Did you testify at the trial?

☐ No

☐ Yes *(Write a complete and accurate summary of the testimony you gave that is relevant to the reasons you gave in 3 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 testimony or any exhibits you asked to present and whether these objections were sustained.):*

_____

_____

_____

_____

_____

_____

_____

_____

☐ *Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 6b."*

c. Were there any other witnesses at the trial whose testimony is relevant to the reasons you gave in 3 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/petitioner ☐ defendant/respondent

6 c. (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 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 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 6c."*

d. ☐ *Check here if any 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 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 3 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-014, item 6d."*

e. *Summarize the evidence, other than 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 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 6e."*

7 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. You can use form MC-025 for this attachment. At the top of each page, write "APP-014, item 7."*

Remember to attach a copy of the judgment or order you are appealing.

Date: _____

Type or print your name

Signature of appellant or attorney

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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.	The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	AM	The Advisory Committee on Providing Access and Fairness (PAF) is committed to addressing issues of access to the courts and fairness in the court system. An important aspect of PAF's work is making court processes more fair, understandable, and accessible to those without attorneys. SPR17-01 attempts to make the settled statements procedure less burdensome for litigants in unlimited civil cases. PAF will support SPR17-01 if it is modified to better address the needs of self-represented litigants. PAF would like to work closely with the Appellate Advisory Committee to address the concerns and recommendations outlined below. *See additional comments below.* Thank you for considering these recommendations. PAF looks forward to the opportunity to work with the Appellate Advisory Committee on these recommendations	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	A	*Does the proposal appropriately address the stated purpose?* Yes. By including settled statement as part of the designation, eliminating the need to motion the trial court to proceed by way of settled statement, and revising/creating forms for litigants, the whole process is being simplified to reduce delays. *See additional comments below.*	

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

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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**
3.	Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	NI	*See additional comments below.*	
4.	Family Violence Appellate Project by Erin Smith San Francisco	AM	*Does the proposal appropriately address the stated purpose?* Yes *See additional comments below.*	
5.	Orange County Bar Association by Michael L. Baroni	A	*No specific comment*	The committee notes the commentator's support for the proposal; no response required.
6.	San Diego County Bar Association By Michael Pulos	NI	The Appellate Practice Section of the San Diego County Bar Association lauds the efforts of the Appellate Advisory Committee in amending rule 8.137 to simplify the process for obtaining a Settled Statement on Appeal. The Section offers the following observations: *See additional comments below.*	
7.	State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	A	Q: Does the proposal appropriately address the stated purpose? A: Yes *See additional comments below.*	
8.	State Bar of California Standing Committee on the Delivery	AM	*Does the proposal appropriately address the stated purpose?*	

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

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**
	of Legal Services by Sharon Djemal		Yes. *See additional comments below.*	
9.	Superior Court of Los Angeles County	AM	*Does the proposal appropriately address the stated purpose?* Yes. The proposal appropriately addresses the stated purpose. See additional comments below.	
10.	Superior Court of San Diego By Mike Roddy	A	*No specific comment*	The committee notes the commentator's support for the proposal; no response required.
11.	Superior Court of Orange County by Civil and Probate Operations Managers	AM	*See additional comments below.*	
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	*See additional comments below.*	

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

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 – General		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	California Rule of Court 8.137 should be written in Plain Language (also known as "Plain English"). As currently written, the rule of court contains complicated legal terminology that would be difficult for the average non-attorney to understand. Self-represented litigants are expected to understand and be bound by this rule of court. The rule, therefore, should be written in a way that the average person could easily understand.	The committee's revised proposal would reduce the complexity of rule 8.137 by eliminating the following: • The option of using a settled statement as the record of the documents filed in the case; • The requirement to describe the proceedings to be included in the settled statement, and • The requirement to summarize the trial court judgment. While the committee supports the goal of making the rules as clear and simple as possible, the committee declined to attempt to re-write this rule in "Plain Language." Overall, the California Rules of Court are not written in that way. Legal terminology is commonly used throughout the rules. Re-writing this rule to be in "Plain Language" would result in this rule being inconsistent with the remainder of the Rules of Court. Rather than modifying the rule text as suggested by the commentator, the committee will consider whether to develop an information sheet to assist self-represented litigants in preparing proposed settled statements.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	The Clerks Association agrees with amending rule 8.137. It will make the procedure of obtaining a settled statement easier for self-represented litigants, will reduce delay and provide the court with a more adequate record to review.	The committee notes the commentator's support for the proposal; no response required.
Family Violence Appellate Project by Erin Smith San Francisco	Recommendation: FVAP supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator's support for the proposal; no response required.

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 – General		
Commentator	**Comment**	**Committee Response**
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is also a concern that proposed rule 8.137 is unnecessarily complicated. As an illustration, consider subdivision (b)(3)(B) ["Describe the proceedings specified under (A)"]. Once the date of the proceeding has been identified, and it has been ascertained that it was reported, there is no need to "describe" what happened. A self-represented litigant is bound to be baffled by this requirement which any two lawyers are likely to interpret differently.	Based on this comment, the committee has revised the proposal to eliminate proposed subdivision (b)(3)(B) from the amendments to rule 8.137. Please note, however, that this same information is currently requested on form APP-003 when designating a reporter's transcript and, under the committee's revised proposal, this information would be requested on the new portion of form APP-003 to be used for designating the proceedings to be included in a settled statement. The form includes examples of what type of description is being requested.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Our Recommendation: The Committee on Appellate Courts supports the proposed rule change, which aims to make the settled statements procedure in unlimited civil cases less burdensome.	The committee notes the commentator's support for the proposal; no response required.

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	**Requiring That Self-Represented Litigants Use Form APP-014.** Under SPR17-01, self-represented litigants would be required to use proposed form APP-014. Use of the form would be optional, however, for litigants with attorneys. This appears to unfairly discriminate against self-represented litigants. PAF understands that self-represented litigants are more likely to have a difficult time drafting legally sufficient proposed statements on appeal. PAF also understands that APP-014 is designed to make it easier for litigants to draft these important	Based on this and the comments of the Court of Appeal, Second Appellate District, the committee revised the proposal to eliminate the requirement that self-represented litigants use form APP-014. Instead, the rule would encourage these appellants to use this form and authorize courts to order its use in specific cases.

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

Rule 8.137 – Requirement that self-represented litigants use APP-014		
Commentator	**Comment**	**Committee Response**
	statements. PAF does not, however, see sufficient reason for denying self-represented litigants the same flexibility afforded to litigants with attorneys. Finally, the proposal suggests that for good cause, the court may permit a self-represented litigant to file a proposed statement of appeal that is not on form APP-014. It is unclear, however, what this process would look like. Would the self-represented litigant make a specific motion to the court? Would the court determine good cause on its own motion? What factors would the court use in determining good cause? Neither Rule 8.137 nor APP-014 explain how this process would operate. This may unintentionally create a new and burdensome process for self-represented litigants. Litigants who have attorneys would not face the same burden. For all of the reasons stated above, PAF would prefer that APP-014 be either a required form for all litigants or an optional form for all litigants.	
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	There is a concern that Form APP-104 is far too complicated for a self-represented litigant. For that reason, use of this form by a self-represented litigant should be only at the option of such a litigant. This would require an amendment of subdivision (c)(2).	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	**Combining Complicated Processes** Under SPR17-01, the clerk's transcript and the appellant's appendix processes are combined into the settled statement process. Combining these processes makes California Rule of Court 8.137 long, complex, and intimidating to read. Proposed form APP-014 has also become a very long form as a result of combining these processes. Lengthy, complex, or intimidating rules or forms are particularly problematic for self-represented litigants. PAF asks that the Appellate Advisory Committee explore whether there is an alternative to combining the above-mentioned processes. If the Committee determines that the processes must be combined, then PAF asks that the Committee explore how to revise Rule 8.137 and form APP-014 so that they are shorter and simpler to understand.	Based on this and other comments, the committee has revised its proposal to include amendments to rule 8.137 and revisions to form APP-003 and proposed form APP-014 eliminating the option to use the settled statement as a record of the documents filed in the case.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	Yes. The option to attach documents to the settled statement should be eliminated as these documents should be included in an appendix under CRC, Rule 8.124.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Court of Appeal, 2nd Appellate District By Thomas Kalay Managing Attorney	Unfortunately, proposed rule 8.137 also departs more than occasionally from plain English. As an illustration, it takes a trained appellate specialist and several readings to parse out all that is required by subdivision (b)(4). It would be more comprehensible if the rule would simply list the documents that are otherwise required in the clerk's transcript by subdivision (b)(1) of rule 8.122. Subdivision (b)(4) states that these documents must "accompany" the condensed narrative, leaving it open just what "accompany" means, rather than stating in	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

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

Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	**Comment**	**Committee Response**
	simple English that these documents must be submitted.	
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
Superior Court of Orange County by Civil and Probate Operations Managers	Furthermore, we support eliminating the option that allows an appellant to use a settled statement as the record of the documents filed in the trial court by attaching copies of the required documents to the statement given that appellants can use an appendix for the same purpose and because this option is rarely used by appellants.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it adds additional work that may not be necessary due to the use of the appendix.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	No.	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.
San Diego County Bar Association By Michael Pulos	**Proposed Settled Statements; rule 8.137(a), (b)(2), and (d)(4) - When a settled statement may be used.** Amended rule 8.137(b)(2) provides that an appellant who intends to proceed under this rule for reasons other than those listed in (1) must serve and file in the superior court with its notice designating the record on appeal under rule 8.121 a	Please see the response to the comments of the Advisory Committee on Providing Access and Fairness above.

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Rule 8.137 - Should the option to use the settled statement to provide a record of the documents in the case be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?		
Commentator	**Comment**	**Committee Response**
	motion to use a settled statement instead of a reporter's transcript or both a reporter's and clerk's transcripts. We have two comments: (a) The proposed rules would permit the use of a settled statement of superior court proceedings in place of not just the oral proceedings in a reporter's transcript but also of the written documents that normally would appear in a clerk's transcript. We suggest permitting the use of settled statements as a substitute for the clerk's transcript or appendix only in cases of lost or otherwise unavailable documents. This is because the use of a settled statement in place of clerk's transcripts would be, in many cases, inadequate—especially where the actual written document is otherwise available. For example, in an appeal that challenges a judgment on the pleadings or a dismissal without leave to amend following the sustaining of a demurrer, a mere summary of the complaint—in lieu of the complaint itself—would be a poor substitute. Simply put, the rules should not permit for the use of a settled statement in the absence of some showing that the document is unavailable. Accordingly, we recommend adding to the rule a provision that would narrow the use of settled statements as substitutes for the clerk's transcripts and appendices. It is particularly important that the rule include any limitation on such use of settled statements in order to assist courts in ruling on motions to use settled statements as records on appeal. . .	

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Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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Rule 8.137 – Other suggested changes		
Commentator	**Comment**	**Committee Response**
Family Violence Appellate Project by Erin Smith San Francisco	[M]any family law and probate matters that result in appealable orders do not have "judgments" issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)'s use of the phrase "judgment or order appealed from," and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: "A summary of the trial court's order and/or judgment." Similarly, we would suggest amending APP-014, question 9 to be titled, "The Trial Court's Final Judgment or Order; The trial court issued the following final judgment or order in this case."	Based on other comments received, the committee has revised the proposal to eliminate the requirement that the appellant summarize the judgment or order being appealed and replaced it with a requirement that a copy of the judgment or order be attached to the appellant's proposed statement.
San Diego County Bar Association By Michael Pulos	**Proposed Settled Statements; rule 8.137(f) – Review of appellant's proposed statement.** In rule 8.137(f)(3)(A), litigants who appeal are informed that if the proposed statement omits required material, the trial judge may order appellant to prepare a new proposed statement, identifying the additional material to be included and the date by which the new proposed statement must be served and filed. It goes on to state that if appellant does not serve and file a new proposed statement as directed, rule 8.140 applies. The APS recommends inserting a phrase in the last sentence of that subparagraph, explaining that "appellant will be deemed to be in default and," after the word "directed," and before "rule 8.140 applies." The amended last sentence would read, "If the appellant does not serve and file a new proposed statement as directed, appellant will be deemed to be in default and rule 8.140 applies." This suggestion is offered because many self-represented litigants may have difficulty navigating the rules of	The committee has revised the proposal to include the language suggested by the commentator in both subdivisions (f)(3)(A) and (g)(1) of rule 8.137.

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

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Rule 8.137 – Other suggested changes		
Commentator	**Comment**	**Committee Response**
	court and may not immediately appreciate the dire consequences of failing to submit an amended settled statement.	
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	[M]any family law and Probate matters that result in appealable orders do not have "judgments" issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)'s use of the phrase "judgment or order appealed from," and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). Accordingly, we would suggest amending the language in proposed Rule of Court 8.137(d)(2) as follows: "A summary of the trial court's order and/or judgment."	Please see the response to the comments of the Family Violence Project above.

Form APP-003		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	• PAF's understanding is that litigants, including those who are self-represented, will file proposed form APP-014 along with revised form APP-003. Presently, form APP-003 and its revisions include complicated legal terminology and appears to be written at a high-grade level. PAF recommends that form APP-003 be put onto the Judicial Council's Plain Language template and receive professional Plain Language translation. Again, these steps will improve the likelihood that the average person can understand the form. • PAF understands that revised form APP-003 and proposed form APP-014 would be used by self-represented litigants	The commentator is correct that form APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

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Form APP-003		
Commentator	**Comment**	**Committee Response**
	as well as lawyers. PAF agrees that it is important that the forms be understandable and user-friendly for both self-represented litigants as well as lawyers. PAF would recommend, however, that the Judicial Council prioritize the self-represented litigant's ability to understand and successfully use these forms. This ensures that everyone, from the inexperienced layperson to the sophisticated attorney, has adequate opportunity to understand and successfully complete the forms.	
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	Revisions to form APP-003 should include the following: • In section 1 c delete the Fifth Appellate District as it has repealed its local rule permitting the use of the superior court file. (see enclosed) • In section 2b (3)(a) correct the spelling of "proceedings" (see enclosed). • In section 5b add the words "or settled statement" to the first sentence. (see enclosed)	The committee has revised the proposal to incorporate this suggested change. The committee has revised the proposal to incorporate this suggested change. Based on other comments, the committee has revised its proposal to include amendments to rule 8.137 to eliminate the option of using a settled statements in lieu of a clerk's transcript or appendix. The committee therefore declines to recommend this suggested change.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Suggestions to Improve form APP-003 • Page 1, item 2. (Record of Oral Proceedings in Superior Court)" - add "(You must check a. or b. below)" after "I elect to proceed:" • Page 2, item 2.b. - after the prompt add: "(You must check (1), (2), or (3) below.") • Make proposed form APP-003 (Appellant's Notice	The committee has revised the proposal to incorporate this suggested change. The committee has revised the proposal to incorporate this suggested change. Please see the response to the comments of the Advisory

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Form APP-003		
Commentator	**Comment**	**Committee Response**
	Designating Record on Appeal (Unlimited Civil Case)) look more akin to proposed form APP-103 (Appellant's Notice Designating Record on Appeal (Limited Civil Case). Proposed form APP-103, from SPR-17-04, is much easier to read and formatting is more clear.	Committee on Providing Access and Fairness above. APP-003 is not currently in plain language format. Revising the form to be in that format is beyond the scope of this proposal. The committee will treat this as a new suggestion and will consider it when it develops its annual agenda for the next committee year.

Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	Yes. A standardized Judicial Council form would be helpful to both litigants and the trial courts. A standardized form will be easier for the trial courts to review and hopefully help to keep pro se litigants on point.	The committee appreciates this input.
Family Violence Appellate Project by Erin Smith San Francisco	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the process through the trial court. We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	The committee appreciates this input.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	Yes, it would focus litigants on the requirements of a settled statement and provide guidance to self-represented litigants. The use of the settled statement is difficult for self-represented litigants to navigate and the form would assist moving the	The committee appreciates this input.

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Form APP-014 - Would proposed form APP-014 be helpful to litigants and/or trial courts?		
Commentator	**Comment**	**Committee Response**
	process through the trial court. We believe the form would overall be helpful to self-represented litigants in navigating the settled statement process	
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Yes, the Proposed Statement on Appeal would be helpful to both litigants and the courts. Rather than creating an entirely separate form for family law cases, there are suggestions below to adjust the form to meet the needs of a family law case.	The committee appreciates this input.
Superior Court of Los Angeles County	Form APP-014 would be extremely helpful to litigants and the trial courts.	The committee appreciates this input.

Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	It is not helpful for the appellant to summarize the final judgment as they will do so from their viewpoint. Attach a copy of the judgment.	Based on the weight of the comments received, the committee has revised proposed form APP-014 and its proposed amendments to rule 8.137 to replace the requirement that the appellant summarize the final judgment with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of California Appellate Court Clerks Association above. The committee believes that item 4 on the form provides the appellant with the opportuntity to identify the issue(s) on appeal.

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Form APP-014 - Should APP-014 include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment?		
Commentator	**Comment**	**Committee Response**
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	The form should include a summary of the final judgment to focus the litigant and the trial court on the disputed issues.	Please see the response to the comments of Family Violence Appellate Project above.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	It may be more efficient and easier for the court to read the actual judgment instead of a self-represented litigant's recitation of what he or she thinks the judgment says.	Please see the response to the comments of California Appellate Court Clerks Association above.
Superior Court of Los Angeles County	Require a copy of the judgment in lieu of the summary on the last page.	Please see the response to the comments of California Appellate Court Clerks Association above.

Form APP-014 – Additional items or additional space		
Commentator	**Comment**	**Committee Response**
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	*What additional items, if any, need to be included on the form?* None. *Should the form include additional space for the summary of any of the items?* No. *Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?*	The committee appreciates this input.

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Form APP-014 – Additional items or additional space		
Commentator	**Comment**	**Committee Response**
	No.	
Family Violence Appellate Project by Erin Smith San Francisco	*What additional items, if any, need to be included on the form?* No additional items recommended *Should the form include additional space for the summary of any of the items?* No additional items recommended *Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?* Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.	The committee appreciates this input. The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.
State Bar of California, Litigation Section Committee on Appellate Courts by Paula Mitchell	*What additional items, if any, need to be included on the form?* No additional items recommended *Should the form include additional space for the summary of any of the items?* No additional items recommended *Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?* Number 7- the Summary of the testimony may be too long to fit in the required space and should be done via attachment.	The committee appreciates this input. The committee appreciates this input. Because item 7 includes may subparts, the committee decided it would be best to keep the current format which provides for separate attachments if the responses to any of these subparts is too long to fit in the space on the form.
State Bar of California Standing Committee on the Delivery of Legal Services	*What additional items, if any, need to be included on the form?* The following items are suggestions to adapt form APP-014 to family law cases instead of using a one-size-fits-all form:	

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Form APP-014 – Additional items or additional space		
Commentator	**Comment**	**Committee Response**
by Sharon Djemal	• Page 3, item 5.a. – Plaintiff/Petitioner; Defendant/Respondent • Item 5 – add a new subpart c (current c would become subpart d). New subpart c would read: "The petitioner requested in the petition the following (briefly describe the orders requested in the petition filed with the trial court):" • Page 3, item 5. – add a new subpart e. New subpart e would read: "The respondent requested in the response the following (briefly describe the orders requested in the response filed with the trial court):" • Page 4, item 6.b.(1) – The motion was filed by the . . . plaintiff/petitioner; defendant/respondent • Item 6.b.(2) – same changes as 6.b.(1). • Page 5, item 7.c.(2) – The witness testified on behalf of the . . . plaintiff/petitioner; defendant/respondent *Should the form include additional space for the summary of any of the items?* It may be helpful to make the spacing 1.5 lines between the lines. It would also be helpful if the form is available in a fillable pdf format. *Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?* The length of a summary is very case-specific. It is better to keep the prompts and have litigants fill out the form to the best of their ability and include attachments if necessary.	The committee has revised the form to incorporate this suggested change. The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals. The committee will propose this project for its next annual agenda. The committee has revised the form to incorporate this suggested change. The committee has revised the form to incorporate this suggested change. All Judicial Council plain language forms use 14 point spacing for lines and are available in fillable PDF on the California Courts website, once adopted. The committee appreciates this input.

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

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Form APP-014 – Additional items or additional space		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	*Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?* We suggest using form MC-020, Additional Page, if additional space is needed.	The committee has modified its proposal in response to this comment. Because the form refers to attaching a page in lieu of writing the summary on the form, rather than using an additional page, the committee has revised the proposal to refer to Attachment (form MC-025).

Form APP-014 –Other suggested changes		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	PAF appreciates the Appellate Advisory Committee's use of the Plain Language template for proposed form APP-014. PAF recommends that form APP-014 also be professionally translated into Plain Language and written at a lower-grade level. These steps will improve the likelihood that the average person, who is likely to read at or below a 7th grade reading level, can understand the form.	With the committee's approval, this input is being obtained. The committee plans to use this input both in considering possible improvements to form APP-014 and in working with the FJLAC on developing the separate form for family law appeals.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	New form APP-014 should be adopted with the following changes: • Add date fields in the following sections: 6b (l), 6b(2), 7a(l), 7a(2), 7b and 7c(2). (see enclosed)	The committee has revised the proposal to add spaces for the appellant to indicate the date that a motion was filed because this is likely to be helpful in identifying the relevant motion. The committee decided against adding spaces to indicate the date that the motion was granted or denied or the date of the trial, because it concluded that these dates are less likely to be necessary for the judge reviewing the proposed statement and increase the difficulty for the appellant in completing the

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Form APP-014 –Other suggested changes		
Commentator	**Comment**	**Committee Response**
	• In section 9, change the heading to read "The Trial Court's Final Judgment or Order Being Appealed" and in the first sentence under the aforementioned heading to include"...or order". (see enclosed)	form. Based on the comments received, the committee has revised proposed form APP-014 to delete this section and replace it with a requirement that the judgment or order being appealed be attached to the form.
Family Violence Appellate Project by Erin Smith San Francisco	• We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, "Was there a trial in your case?" Many family law and probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional "trial," but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code § 825 [no right to jury trial in most probate proceedings]; § 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: "Did the court consider evidence and/or testimony?" We believe this would provide greater clarity for self-represented individuals.	The committee concluded that, rather than trying to modify proposed APP-014 as suggested, it would be preferable to work with the Family and Juvenile Law Advisory Committee to develop a proposed form specifically for family law appeals and similarly work with the Probate and Mental Health Advisory Committee. The committee will propose this project for it next annual agenda.

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Form APP-014 –Other suggested changes		
Commentator	**Comment**	**Committee Response**
	• In addition, for the same reason, many family law and probate matters that result in appealable orders do not have "judgments" issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)'s use of the phrase "judgment or order appealed from," and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . . Similarly, we would suggest amending APP-014, question 9 to be titled, "The Trial Court's Final Judgment or Order; The trial court issued the following final judgment or order in this case."	Based on the comments received, the committee has revised proposed form APP-014 to delete section 9 and replace it with a requirement that the judgment or order being appealed be attached to the form.
	• We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, "electing to use a statement on appeal," we believe it is intended to state, "electing to use a settled statement."	The committee has revised proposed form APP-014 to incorporate this suggested change.
	• In APP-014, because family law, probate, and likely other types of cases do not have "plaintiffs" or "defendants," but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly.	The committee has revised proposed form APP-014 to incorporate this suggested change.
	• Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have "complaints," but rather "petitions" or "requests for order," we recommend that "complaint" be changed to "initial document."	The committee has revised proposed form APP-014 to refer to a complaint/petition.
State Bar of California, Litigation Section Committee on Appellate Courts	• We would encourage the Judicial Council to reconsider the wording in question 7(a). Currently the question asks, "Was there a trial in your case?" Many family law and	Please see the response to the comments of the Family Violence Appellate Project above.

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Form APP-014 –Other suggested changes		
Commentator	**Comment**	**Committee Response**
by Paula Mitchell	Probate matters are decided on the law-and-motion calendar and thus may not be considered a traditional "trial," but still result in appealable orders. Family Code section 217 and California Rule of Court, Rule 5.113 require that at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing. At many family law hearings, the court does not set the matter for trial and receives evidence including testimony at the short-cause hearing. Similar procedures govern probate matters (see, e.g., Probate Code section 825 [no right to jury trial in most probate proceedings]; and section 1200 [notice procedures for probate hearings]). In the current APP-014 form, self-represented litigants may not think question 7 is applicable, thus omitting testimony that may support their case on appeal. We would suggest that question 7(a) of APP-014 be amended to ask: Did the court consider evidence and/or testimony? We believe this would provide greater clarity for self-represented individuals. • In addition, for the same reason, many family law and Probate matters that result in appealable orders do not have "judgments" issued by the trial court. This is acknowledged by proposed Rule 8.137(d)(3)(A)'s use of the phrase "judgment or order appealed from," and in several places on proposed APP-014. See also Probate Code section 1300 et seq. (listing numerous Probate Court orders that are immediately appealable). . . .Similarly, we would suggest amending APP-014, question 9 to be titled, "The Trial Court's Final Judgment or Order; The trial court	

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Form APP-014 –Other suggested changes		
Commentator	**Comment**	**Committee Response**
	issued the following final judgment or order in this case." • We believe there is a typographical error on proposed APP-014, question 3. Where the first option states, "electing to use a statement on appeal," we believe it is intended to state, "electing to use a settled statement." • In APP-014, because family law, probate, and likely other types of cases do not have "plaintiffs" or "defendants," but rather petitioners and respondents, we recommend that the language of questions 5(a), 6(b), and 7(c) be amended accordingly. • Similarly, in question 5(a), 5(b) and 5(c), because family law and probate cases, and possibly other types of cases as well, do not typically have "complaints," but rather "petitions" or "requests for order," we recommend that "complaint" be changed to "initial document."	

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Other comments/suggestions		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness (PAF) By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon	**Discretion in Timely Filed Settled Statements** The invitation to comment includes a misstatement that, although minor, is worth correcting as it could lead to a misinterpretation of current law regarding timely filed settled statements. The ITC states that a revised Rule 8.137 would "[permit] an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter…." (ITC SPR17-01, Page 2, bullet 1. Emphasis added). This language incorrectly assumes that granting the motion is discretionary. The current rules, however, require that a trial court judge grant a timely filed motion for a settled statement when there is no reporter's transcript.	The committee will use different language to address this issue in its report to the Judicial Council.
San Diego County Bar Association By Michael Pulos	We believe the Appellate Advisory Committee should seek to develop a form motion, similar to the proposed form for the Proposed Settled Statement, APP-014. Because the motion procedure is more complicated than the procedure to be utilized under 8.137(b)(1), some additional guidance should be provided to avoid unnecessary procedural defaults.	The committee will consider this suggestion when it develops its annual agenda for next year.
State Bar of California Standing Committee on the Delivery of Legal Services by Sharon Djemal	Develop an information sheet for APP-103, similar to proposed form APP-101-INFO that is attached to SPR-17-04 (Information on Appeal Procedures for Limited Civil Cases). Overall, it would be helpful for self-represented litigants if the appellate procedure forms and information sheets for both limited and unlimited civil cases are standardized	Current Judicial Council form *Information on Appeal Procedures for Unlimited Civil Cases* (APP-001) does provide basic information about the appellate process, but it does not currently address options other than a reporter's transcript for preparing a record of the oral proceedings in the superior court. The committee will consider this suggestion when it develops its annual agenda for next year.

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

ITC SPR17-01
Title of proposal (Appellate Procedure: Settled Statements in Unlimited Civil Cases)

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

Implementation requirements for courts		
Commentator	**Comment**	**Committee Response**
The Advisory Committee on Providing Access and Fairness By Hon. Kathleen E. O'Leary and Hon. Laurie D. Zelon, Co-chairs	**Implementation Requirements** In the request for comments section of the proposal, courts are asked what their implementation requirements would be if this proposal were to go into effect. The question seems to presume that the proposed revisions to Rule 8.137 would require more involvement by trial court judges. We think that this presumption is incorrect. We would note that revised Rule 8.137 does not change the current mandate to the trial court to grant a properly filed request for settled statement when there is no reporter's transcript and agree that that duty should not be changed. We also note that the involvement of the trial court will continue to be significant in ensuring the accuracy and completeness of the statement before it is settled.	The inclusion of this question on the invitation to comment was not intended to create any implications about the impact of this proposal on the trial courts. This is a standard question included on all invitations to comment for rule changes.
California Appellate Court Clerks Association by Daniel P. Potter, President San Jose,CA	*What would be implementation requirements be for courts?* Minimal. We would need to update the section of the Self-Help Manual and add the new form. Possible creation of a "fi led settled statement" docket code, if anyone was interested in tracking these for statistical purposes. More significant change for the Appellate Division and trial court judges since their process will change. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	The committee appreciates this input.
Superior Court of Los Angeles County	*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*	The committee appreciates this input.

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

Implementation requirements for courts		
Commentator	**Comment**	**Committee Response**
	systems, or modifying case management systems? This proposal would require minimal staff training and minimal CMS changes (addition of the same docket code used in limited civil). *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. The three month effective date is sufficient for implementation.	
Superior Court of Orange County by Civil and Probate Operations Managers	Implementation would require training staff (two legal processing specialists; 15 minutes), revising process and procedures to update appeal worksheet and procedure and possibly update or create a new local form, and no case management system changes. Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.	The committee appreciates this input.
TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	The JRS notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources – The proposal will create the need for new and/or revised procedures and possible alterations to case management systems. Staff training, and possibly judicial training, will be required. • Increases court staff workload – In each instance where a Judicial Officer is required to review a filing, court staff	The committee appreciates this input.

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

Implementation requirements for courts		
Commentator	**Comment**	**Committee Response**
	will be required to perform ministerial tasks associated with the processing of filings and orders related to the settlement of the record. • Cost savings – The proposed changes will result in cost savings for self-represented litigants because they will no longer be required to file in person a motion to use a settled statement instead of a reporter's transcript or both a reporter's and a clerk's transcripts.	

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Appellate Procedure: Verification of Writ Petitions

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 17, 2017

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

To clarify that, under statute, all petitions for writs of mandate, certiorari, prohibition, and habeas corpus must be verified, the Appellate Advisory Committee recommends adding a provision indicating verification is required to all of the rules in title 8 of the California Rules of Court relating to such writ petitions that do not already include such a provision.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 to add provisions indicating that writ petitions must be verified.

The amended rules are attached at pages 5–7.

Previous Council Action

The Judicial Council adopted rule 56, the predecessor to current rules 8.485 through 8.493, relating to writs of mandate, certiorari, and prohibition in the Supreme Court and Court of

Appeal, effective July 1, 1943, as part of a comprehensive set of new Rules on Appeal that included rules on original proceedings. As adopted, rule 56 required that petitions seeking these writs be verified. The council has amended and renumbered this rule several times since its adoption, but the provision regarding verification of these writ petitions has remained substantively unchanged.

The 1943 Rules on Appeal also included the predecessors to rules 8.495 and 8.496 relating to writ proceedings to review cases from the Workers' Compensation Appeals Board and the Public Utilities Commission, respectively. These rules did not include provisions addressing verification. Rule 8.495 has remained unchanged in this respect, but effective July 1, 1981, the Judicial Council amended the predecessor to rule 8.496 to include, among other things, a provision indicating that a petition seeking review of a Public Utilities Commission decision must be verified. The report to the council indicates that this amendment was intended to clarify the "somewhat obscure" statutory requirement that these petitions be verified.

The Judicial Council adopted rule 56.5, the predecessor to current rules 8.380 through 8.387 relating to habeas corpus proceedings, effective January 1, 1966. This rule generally required that such petitions be filed on a form approved by the Judicial Council. Although the rule did not refer to verification of the petition, the petition form approved by the Judicial Council has always indicated that verification is required.[1] Similarly, the Judicial Council approved petition forms for use in termination of parental rights cases, small claims cases, and misdemeanor, infraction, or limited civil cases—all of which include a verification, even though the verification requirement is not mentioned in the relevant rules.[2]

Rationale for Recommendation

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.[3] Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, as noted above, rule 8.486—the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal—provides in subdivision (a)(4) that "[t]he petition must be verified."[4] However, there are some rules relating to writ petitions that do not specifically refer

[1] The relevant Judicial Council form is *Petition for Writ of Habeas Corpus* (form MC-275).

[2] For rules 8.452 and 8.456, the relevant Judicial Council form is *Petition for Extraordinary Writ* (form JV-825). For rule 8.931, the relevant Judicial Council form is *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For rule 8.972, the relevant Judicial Council form is *Petition for Writ (Small Claims)* (form SC-300).

[3] See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

[4] For example, see rules 8.496 (relating to review of Public Utilities Commission cases), 8.498 (relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases), and 8.703 (relating to review of California Environmental Quality Act cases under Pub. Resources Code §§ 21168.6.6, 21178–21189.3, and 21189.50–21189.57).

to a verification requirement. For example, rule 8.495, relating to review of Workers' Compensation Appeals Board cases, does not specifically refer to verification of the petition.

In *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, 1237, the petitioner contended that it did not have to file a verified petition challenging the Workers' Compensation Appeals Board decision. The Court of Appeal in that case addressed whether the absence of a verification requirement in rule 8.495 implied an intent to override the statutory requirement for verifying the petition. The court concluded, given that the Judicial Council's authority to adopt rules is limited to rules that are not inconsistent with statute,

> to the extent rule 8.495 does not require verification for petitions for writs of review addressing Appeals Board decisions, that rule would be inconsistent with Code of Civil Procedure section 1069 and Labor Code section 5954 and therefore not controlling.

To clarify the statutory requirement for verification of these writ petitions and eliminate any question about the intent of the applicable rules of court, the committee is recommending that any rule in title 8 pertaining to these writs that does not already reflect the verification requirement be amended to do so.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring 2017 invitation-to-comment cycle. Eight individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal, two did not indicate a position on the proposal but provided comments, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 8–15.

The commentator who indicated that he did not agree with the proposal did not actually comment on the content of the proposed rule amendments. His comment focuses on concern about whether petitioners in habeas proceedings receive appropriate notice of court action on their petitions. Since the issue raised is outside the scope of the proposal, the committee will treat this as a new suggestion to be considered when the committee reviews proposals for the 2017–2018 committee annual agenda.

One of the commentators who did not state a position on the proposal indicated that the proposal would have no impact on court operations and that three months from Judicial Council approval of this proposal until its effective date would be sufficient time for implementation. These comments were similar to those from other commentators who indicated that they agreed with the proposal.

The second commentator who did not state a position on the proposal indicated some concern that there may be a conflict between Penal Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if "party" in section 1474(3) is read to be limited to the defendant/petitioner. Section 1474(3), relating to petitions for writs of habeas corpus, states that "[t]he petition must be verified by the oath or affirmation of the party making the application." At least one court has dismissed without prejudice a petition for habeas corpus verified by an attorney in which the critical allegations were made based on the attorney's belief, concluding that such allegations were hearsay that could not support a prima facie case for relief (see *People v. McCarthy* (1986) 176 Cal.App.3d 593). However, in *In re Robbins* (1998) 18 Cal.4th 770, 783, footnote 5, the Supreme Court declined to dismiss a habeas petition simply because it was verified by an attorney, stating, "Because counsel may apply for habeas corpus relief on behalf of his or her client, it follows that when appointed counsel does so, verification by counsel satisfies the statute." Based on this, the committee concluded that there is no conflict between section 1474(3) and the proposed rule amendments.

Alternatives

The committee considered not recommending any changes to these rules, but concluded that it would be helpful if all the rules relating to writ petitions consistently alert petitioners to the verification requirement. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated. The two court representatives who provided input on the potential implementation requirements indicated in their comments that the impacts would be minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Amended Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972, at pages 5–7
2. Chart of comments, at pages 8–15

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court are amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 4. Habeas Corpus Appeals and Writs

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a) Required Judicial Council form

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

(b)–(c) * * *

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275) but must contain the information requested in that form and must be verified. All petitions filed by attorneys, whether or not on form MC-275, must be either typewritten or produced on a computer, and must comply with this rule and rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

(2)–(3) * * *

(b)–(d) * * *

Chapter 5. Juvenile Appeals and Writs

Article 3. Writs

Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Petition

(1) * * *

(2) The petition must be verified.

~~(2)~~ (3) * * *

(b)–(i) * * *

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) Petition

(1) * * *

(2) The petition must be verified.

~~(2)~~ (3) * * *

(b)–(i) * * *

Chapter 8. Miscellaneous Writs

Rule 8.495. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1)–(2) * * *

(3) The petition must be verified.

~~(3)~~ (4) * * *

(b)–(c) * * *

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 6. Writ Proceedings

Rule 8.931. Petitions filed by persons not represented by an attorney

(a) Petitions

A person who is not represented by an attorney and who petitions the appellate division for a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit an unrepresented party to file a petition that is not on form APP-151, but the petition must be verified.

(b)–(d) * * *

Division 3. Rules Relating to Appeals and Writs in Small Claims Cases

Chapter 2. Writ Petitions

Rule 8.972. Petitions filed by persons not represented by an attorney

(a) Petitions

(1) A person who is not represented by an attorney and who requests a writ under this chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300). For good cause the court may permit an unrepresented party to file a petition that is not on that form, but the petition must be verified.

(2)–(3) * * *

(b)–(d) * * *

ITC SPR17-03
Title of proposal (Appellate Procedure: Verification of Writ Petitions)

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

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks' Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending these rules as proposed. Adopting a standardized provision requiring all writ petitions to have a verification would bring consistency to the California Rules of Court and would require very little on the part of the Judicial Branch to implement.	The committee notes the commentator's support for the proposal; no response required.
2.	Court of Appeal Second Appellate District by Thomas Kallay, Managing Attorney	NI	There is some concern that there may be a conflict between Pen. Code section 1474(3) and the proposed provision requiring verification by the attorney under subdivision (a)(1) of rule 8.384, if "party" in 1474(3) is read to be limited to the defendant/petitioner.	The committee's understanding, based on discussion in *In re Robbins* (1998) 18 Cal.4th 770, is that an attorney may verify a petition for a writ of habeas corpus on behalf of his or her client.
3.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team - Criminal Operations Orange County, CA	NI	No impact to operations. Will require communication to Judges and Legal Research. This would clarify that the requirement for verification is applicable to ALL petitions for writs of mandate, certiorari, prohibition, and habeas corpus. Per PC 1474 – The petition must be verified by the oath or affirmation of the party making the application. • 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	The committee appreciates the commentator's input on these implementation questions; no response required.

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

	Commentator	Position	Comment	Committee Response
			management systems? **Response: None** • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Response: Yes.**	
4.	Curt Harris San Diego, CA	N	Concerning the notification procedure of the Sacramento County Superior Court (and possibly other state lower courts), no written notification of a decision reached in, specifically, a writ of habeas corpus is is required to be sent by the Court to the petitioner. An oversight of that magnitude can cause a petition to be denied for, possibly, invalid reasons due to lack of timely appeal. As habeas corpus deals solely with confinement issues, its requirement that the petitioner and, in theory, any other involved party must exercise due diligence on his or her own part to determine what the Court has decided in that case, the instructions that said party must either follow the writ's progress online or must physically enter the courthouse to access court records is impossible to comply with. Since habeas corpus deals with a confined person, a prisoner, and even when that person is not physically confined in any penal institute but released on probation or parole, and since that,	This comment raises issues that are beyond the scope of the amendments proposed in the invitation to comment. The committee will treat this as a suggestion for future consideration by the committee.

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

	Commentator	Position	Comment	Committee Response
			post-confinement punishment is still considered as actual confinement, habeas corpus is an appropriate avenue for redress. However, just as the prisoner who remains in custody, a parolee or probationer may still be unable to determine what progress the Court has made on his or her petition as that person may be unable to physically enter the Sacramento Superior Court, or, due to the type of conviction, may be barred from using the Internet entirely (a PC §290 registrant, for example); the failure of the Sacramento County Superior Court to afford a habeas corpus petitioner from the timely resolution of his or her writ due solely to the lack of any timely notification procedure not only impedes the prompt resolution of that specific matter, but does indeed thwart due process itself. Any untimely appeal to any state appellate court could be subject to misinterpretation due to confusion over the lower court's policies, and, if the appellate court has similar directives and policies, may further this injustice. Thus, any requirement by any California State court, be it Superior or Appellate, the requirement that a habeas corpus petitioner physically enter a courthouse, or access a court's website, or have unrestricted access to a telephone as the sole means of seeking information on a writ of habeas corpus handling, is inoperable. Any attempt by a state Appellate Court to modify	

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

	Commentator	Position	Comment	Committee Response
			any of the procedures it used to handle writs without first attending to a lower court's notification procedures, is simply folly. The State must first offer unhindered and unimpeded access to its courts for those who file the actual petitions in them. Without that, there can be no improvement to any judicial procedure(s) and any of the state's courts. And, the method that the Court uses to inform the petitioner of its outcome must be unambiguous. At the moment the Sacramento Superior Court, at least, does not meet that standard. The following emails illustrate that fairly well. If a court officer did attempt to mail the results of a specific petition out via traditional postal service, in this instance it did not reach the intended recipient. It would appear that some attention needs be directed at the policies governing how a state court notifies writ petitioners of a writ's outcome. Email excerpts, Sacramento County Superior Court website: Sacramento Superior Court case #16HC00347 On Tuesday, February 14, 2017, Chiamparino, Contessa <ChiampC@saccourt.ca.gov> wrote: We do not send outcomes for writs via mail or email. It is the responsibility of the petitioner to	

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

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

	Commentator	Position	Comment	Committee Response
			check the website for the outcome. The information on the website is obtained from the same system that electronically reports the outcome to the Department of Justice, and is very reliable. You will not be able to print documents from criminal cases from the website. In order to receive copies of documents from criminal cases you would need to either request to review the file in person at the criminal records front counter located at the address listed below (there are pay per use copy machines available in the lobby where you can copy the documents), or you can mail your request, along with a check addressed to the Sacramento Superior Court. If the documents need to be certified, that will cost $25. Copies are .50 per page. Tess Chiamparino Operations Manager, Criminal Division Sacramento Superior Court 720 9th Street Sacramento, CA 95814 Visit us on the web at www.saccourt.ca.gov On Friday, February 10, 2017, McKee, Leslie <MckeeL@saccourt.ca.gov<mailto:MckeeL@saccourt.ca.gov wrote: Good Morning, This matter was not on the record so there is no	

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

	Commentator	Position	Comment	Committee Response
			transcript to prepare. I'm not familiar with the process of writs so I can't even direct you to the right person. My apologies for not being more helpful. Leslie A. McKee, CSR 12810 Court Reporter, Dept. 13 Sacramento Superior Court x916 874 7263 Good morning, Mr. Harris, Ms. McKee forwarded your request to me. I am the clerk for Judge Arguelles. This matter was "not on the record" meaning there was no live court proceeding and therefore no transcript to be prepared. Judge Arguelles made an order based on the filings and that order was mailed to you on October 26, 2016. Apparently, you did not receive this order so I have attached a copy. Thank you, Suzanne. Suzanne M. Slort Courtroom Clerk, Department 13 Sacramento Superior Court (916) 874-7786	
5.	Orange County Bar Association by: Michael L. Baroni, President	A	No Comment	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court Los Angeles	A	What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

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

	Commentator	Position	Comment	Committee Response
			(please describe), changing docket codes in case management systems, or modifying case management systems. Minimal staff training would be required. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, the three month effective date is sufficient for implementation.	
7.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator's support for the proposal; no response required.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	The advisory committee seeks comments from *courts* on the following cost and implementation matters: • What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal implementation – if writ petition is not properly verified, the clerk would have to issue a deficiency notice and the petition could only be considered if the	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

ITC SPR17-03
Title of proposal (Appellate Procedure: Verification of Writ Petitions)

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

	Commentator	Position	Comment	Committee Response
			defect was cured. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Appellate Procedure: Designation of the Record in Limited Civil Cases

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-101-INFO and APP-103

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 14, 2017

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising the form that appellants in limited civil cases may use to designate the record on appeal. The revisions are intended to (1) clarify the consequences for an appellant of choosing not to designate a record of the oral proceedings in the trial court, (2) make it easier for the appellant to identify what portions of an electronic recording the appellant wants transcribed, and (3) provide spaces where the appellant can indicate that he or she has chosen one of the permissible alternatives to a deposit for a court reporter's transcript. The committee also recommends making nonsubstantive revisions to the information sheet about limited civil appeals to reflect these changes.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Revise *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to:

a. Reorder the provisions on the form so that the provisions addressing designation of the record of the oral proceedings comes first;
b. Revise the cautionary language about not designating a record of the oral proceedings to clarify that certain bases for appeal will not be available without this record (see paragraph below "Record of Oral Proceedings in Trial Court" heading);
c. Add information to the section about reporter's transcripts about the fee for depositing funds with the court for a transcript (see item 4.a.(4)(a));
d. Add places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript (see items 4.a.(3) and 4.a.(4));
e. Add a place where appellants can designate what portions of an official electronic recording they are requesting be transcribed (see item 4.b.); and
f. Add information about the options for calculating the cost of a transcript made from an official electronic recording (see item 4.b.(1)).

2. Revise *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect these changes to form APP-103.

The revised forms are attached at pages 5–25.

Previous Council Action

The Judicial Council adopted *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) effective January 1, 2009, as part of a comprehensive set of new rules and forms for appellate division proceedings. The council revised these forms effective July 1, 2009, to reflect changes in the law relating to fee waivers. Form APP-103 was further revised effective July 1, 2010, to include additional spaces for information that is required or may be provided in a record designation. Most recently, as part of a proposal to modernize the appellate rules and forms, the Judicial Council, effective January 1, 2017, revised APP-101-INFO to include information about electronic service and revised APP-103 to request an appellant's e-mail address.

Rationale for Recommendation

Form APP-103 is the Judicial Council form that appellants in limited civil appeals can use to designate the record on appeal. This form currently addresses the designation of the record of the documents first, and then the designation of the record of the oral proceedings in the trial court. Because some of the options for the record of the oral proceedings can also be used to provide a record of the documents, the current form has internal cross-references. A superior court has reported that these cross-references are confusing to some appellants and result in record designation errors. To reduce these errors, the committee recommends reorganizing the form so

that the designation of the record of the oral proceedings comes first. This will eliminate the internal cross-references that were confusing to some appellants.

The portion of form APP-103 that addresses designation of the record of the oral proceedings includes language cautioning appellants about the potential consequences if they choose not to designate such a record. A superior court has suggested that this language does not sufficiently alert appellants that they may not be able to appeal on certain grounds, such as sufficiency of the evidence, if they do not designate a record of the oral proceedings. To address this, the committee recommends revising this cautionary language to clarify that appellants will need to provide a record of the oral proceedings if they wish to make a claim that there was not evidence to support the judgment being appealed.

Under the rules relating to reporters' transcripts, if an appellant deposits funds with the clerk to pay for a reporter's transcript, the appellant must also pay a fee to the court for holding these funds in trust. Currently, however, form APP-103 does not include any notice of this deposit fee. In addition, under these same rules, instead of depositing the estimated cost of a reporter's transcript that the appellant has designated, the appellant can instead deposit certified transcripts of the designated proceedings or a copy of an application the appellant has filed with the Transcript Reimbursement Fund. Currently, however, form APP-103 does not have a space that appellants can use to indicate that they are using one of these alternatives. To address these gaps, the committee recommends revising form APP-103 to add information about the fee for depositing funds with the court for a reporter's transcript and to add places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript. (See form APP-103, item 4.a.)

Under the rules relating to transcripts prepared from official electronic recordings, the procedures in rule 8.130 of the California Rules of Court are to be followed in designating the proceedings to be transcribed from such a recording. These procedures include specifying the date of each proceeding to be included in the transcript and identifying any proceeding for which a certified transcript has previously been prepared. Currently, however, form APP-103 does not have a space that appellants can use to comply with these requirements. To remedy this, the committee recommends revising form APP-103 to add a place where appellants can appropriately designate the proceeding from an official electronic recording that they are requesting be transcribed. (See form APP-103, item 4.b.)

The committee also proposes nonsubstantive changes in *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect the changes to form APP-103.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal circulated for public comment from February 27 to April 28 as part of the regular spring 2017 invitation-to-comment cycle. Four individuals or organizations submitted comments on this proposal. Three commenters agreed with the proposed changes and one agreed with the

proposed changes if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 26–28.

The commenter who agreed with the proposal if amended pointed out that form APP-103 presumes that a deposit for a transcript of an electronic recording will be based on a clerk's estimate of the cost of preparing this transcript. The commenter noted that, under the relevant rules, this deposit may be based on the amounts set by rule 8.130 for full- and half-day hearings. Based on this comment, the committee revised its proposal to include a revision to form APP-103 to reflect this deposit option.

Alternatives considered

The committee considered not proposing changes to these forms. The committee concluded, however, that making these changes would clarify appellants' options and obligations as well as the consequences of designation choices they might make, and would assist courts by reducing errors in the record designation process. The committee therefore concluded that it was appropriate to recommend these changes for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated. The two courts that provided input on the potential implementation requirements in their comments indicated that they would be minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed form revisions support strategic Goal III, Modernization of Management and Administration (Goal III.B) and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Form APP-103, at pages 5–11
2. Form APP-101-INFO, at pages 12–25
3. Chart of comments, at pages 26–28

APP-103

Appellant's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the Judicial Council

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: _____

Trial Court Case Name: _____ Trial Court Case Number:

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 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 want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, you will need to provide the appellate division with a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, you will need to provide a record of the oral proceedings.

(3) 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 (4); go to item (5)*). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order, or decision I am appealing.
(Write initials here): _____

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item (4) 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)*: _____

(4) 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 to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 4a."*

4 a. (continued)

(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 a 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 4a(2)."*

(3) ☐ **Certified transcripts.** I have attached to this Appellant's Notice Designating Record on Appeal an original certified transcript of *all the proceedings I have designated* in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834, no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a) ☐ I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

☐ Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of $50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this requirement, my appeal may be dismissed.

☐ File with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this, my appeal may be dismissed.

(b) ☐ I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcipt. Within 10 days of receipt of the court reporter's estimate of the costs for this transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbusement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the transcript in:

(a) ☐ Paper format only.

(b) ☐ Electronic format only.

(c) ☐ Both paper and electronic 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. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:*

	Date	Department	Description	Electronic Monitor's Name
(a)				
(b)				
(c)				

☐ *Check here if you need more space to describe any proceeding or to list more proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."*

4 b. (continued)

Check and complete (1) or (2).

(1) ☐ I will pay the trial court clerk for this transcript myself. I understand that if I do not pay for the transcript, my appeal may be dismissed.

(a) ☐ With this notice designating the record on appeal, I have deposited with the trial court clerk the approximate cost of transcribing the proceedings I designated above, calculated as provided in rule 8.130(b)(1)(B).

(b) ☐ Within 10 days of receipt of the clerks estimate of the cost of the transcript, I will deposit that amount with the trial court clerk.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(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 cost 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 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(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

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, and if I do not, the court may dismiss my appeal.

4 (continued)

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.

Record of the Documents Filed in the Trial Court

5 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	

5 a. (continued)

(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 to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 5a(2)."*

(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 to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 5a(3)."*

5 a. (continued)

(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 and 8.818(d).

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(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.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you 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 5a(1) above and in rule 8.832 of the California Rules of Court.)*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant or attorney*

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.htm* 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.legislature.ca.gov/faces /codes.xhtml*). 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 *Appellant's 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.
- Bring 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 record of what was said in the trial court (this is called the "oral proceedings")
- A record of the documents filed in the trial court (other than exhibits)
- 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 what was said in the trial court (the "oral proceedings")

The first 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 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 *Appellant's 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:

- 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."
- 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.
- You can use an agreed statement.
- 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 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—*Appellant's 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.

Contents: If you elect to use a transcript of an official electronic recording, you must identify by date (this is called "designating") what proceedings you want included in the transcript. You can use the same form you used to tell the court you wanted to use a transcript of an official electronic recording —*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

Cost: The appellant is responsible for paying the court for the cost of either (a) preparing a transcript *or* (b) making a copy of the official electronic recording.

(a) If you elect to use a transcript of an official electronic recording, you will need to deposit the estimated cost of preparing the transcript with the trial court clerk and pay the trial court a $50 fee. There are two ways to determine the estimated cost of the transcript:

- You can use the amounts listed in rule 8.130(b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the $50 fee with the trial court clerk when you file your notice designating the record on appeal.
- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in you notice designating the record on appeal. You must deposit this amount and the $50 fee with the trial court within 10 days of receiving the estimate from the clerk.

(b) If the court has a local rule permitting the use of a copy of the electronic recording itself, rather than a transcript, and you have attached your agreement with the other parties to do this ("stipulation") to the notice designating the record on appeal that you filed with the court, the trial court clerk will provide you with an estimate of the costs for this copy of the recording. You must pay this amount to the trial court.

If you cannot afford to pay the cost of preparing the transcript, the $50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. 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.

b. Record of the documents filed in the trial court

The second 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:

- *A clerk's transcript*
- The original *trial court file* or
- 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 *Appellant's 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

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and 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.

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. *Appellant's 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) 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 w*ww.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.

(b) 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.

(c) 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*.

(d) 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.

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.

SPR17-04
Title of proposal (Appellate Procedure: Designation of the Record in Limited Civil Cases)

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

	Commentator	Position	Comment	Committee Response
1.	Civil and Probate Managers for the Superior Court of Orange County	AM	Item 4b(1) on proposed form APP-103 presumes the estimate process in rule 8.834 applies to transcripts of electronic recordings (ToER) but this does not appear to be the case. When a ToER is designated, rule 8.835(b) specifies "[w]ritten transcripts of official electronic recordings may be prepared under rule 2.952." Rule 2.952(j) states: In the absence of a stipulation and approval under (1), the appellant must, within 10 days after filing a notice of appeal in a civil case, serve and file with the clerk directions indicating the portions of the oral proceedings to be transcribed and must, at the same time, deposit with the clerk the approximate cost computed as specified in rule 8.130. Other steps necessary to complete preparation of the record on appeal must be taken following, as nearly as possible, the procedures in rules 8.120 and 8.130. Even in a limited civil case, it appears the ToER deposit scheme is based on the fixed amounts listed in rule 8.130 and not on a notice of estimated costs as if the appellant designated a reporter's transcript. Implementation would not require training staff, revising process and procedures, and changes to case management system. Three months from Judicial Council approval of this proposal until	The commentator is correct that, under rule 2.952, the appellant must, within 10 days after filing a notice of appeal in a civil case, serve and file with the clerk directions indicating the portions of the oral proceedings to be transcribed and must, at the same time, deposit with the clerk the approximate cost computed as specified in rule 8.130. Under rule 8.130, however, the deposit for the transcript may be made based either upon an estimate from the court reporter or upon the fixed amounts specified in rule 8.130. The committee has therefore revised the form to reflect that both of these options are available. The committee appreciates the commentator's input on these implementation questions; no response required.

SPR17-04
Title of proposal (Appellate Procedure: Designation of the Record in Limited Civil Cases)

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

	Commentator	Position	Comment	Committee Response
			its effective date would provide sufficient time for implementation.	
2.	Orange County Bar Association by Michael L. Baroni, President	A		The committee notes the commentator's support for the proposal; no response required.
3.	Superior Court of Los Angeles County	A	*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.* Minimal staff training would be required. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. The three month effective date is sufficient for implementation.	The committee appreciates the commentator's input on these implementation questions; no response required.
4.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	*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.* There would be minimal training. These changes improve the form and makes it similar to the unlimited form so it should require less explanation to the litigants.	The committee appreciates the commentator's input on these implementation questions; no response required.

SPR17-04
Title of proposal (Appellate Procedure: Designation of the Record in Limited Civil Cases)

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

	Commentator	Position	Comment	Committee Response
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Appellate Procedure: Service of Briefs in Misdemeanor Cases

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.882

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 11, 2017

Contact
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Executive Summary

To ensure that defendants in misdemeanor appeals are kept apprised of the arguments being made in their cases, the Appellate Advisory Committee recommends amending the rule regarding service of briefs in misdemeanor appeals. The rule would be amended to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief and requiring the People to serve an extra copy of their briefs on defendant's appellate counsel.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rule 8.882 to:

1. Add a provision requiring that defendant's appellate counsel send a copy of each brief to the defendant personally unless the defendant requests otherwise;
2. Add a provision requiring that the People serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal; and
3. Correct cross-references in subdivisions (e)(1) and (e)(4).

The amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 8.882 effective January 1, 2009, as part of a comprehensive set of new rules and forms for superior court appellate division proceedings. The council has amended this rule several times since its adoption, but the provisions regarding service of briefs have remained substantively unchanged.

Rationale for Recommendation

California Rules of Court, rule 8.360(d) addresses service of briefs in felony appeals. This rule contains special requirements for defendant's appellate counsel to send to the defendant a copy of each brief for the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant's appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

In addition to this substantive issue, there are some incorrect cross-references in subdivisions (e)(1) and (e)(4) of the rule. These subdivisions currently refer to rules 8.25 and 8.29, respectively, each of which addresses service and filing in the Supreme Court and Courts of Appeal, rather than to rule 8.817, which addresses service and filing in the superior court appellate division.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment from February 27 to April 28, 2017, as part of the regular spring 2017 invitation-to-comment cycle. Seven individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal, one agreed with the proposal if modified, and two 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 5–9.

The one commentator who agreed with the proposal if amended expressed concern that the requirement for serving a misdemeanor defendant could potentially interfere with an attorney's ability to timely file a notice of appeal if he or she were not able to locate his or her client. However, the committee is only proposing an amendment to the rule that addresses the service of briefs, and thus the proposal will not impact service of the notice of appeal. The remaining

comments either expressed support for the proposal or provided input on implementation requirements for courts. Based on these comments, the committee is recommending adoption of the proposed amendment as circulated for public comment.

Alternatives

The committee considered not proposing amendments to rule 8.882. The committee concluded, however, that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases. The committee therefore concluded that it was appropriate to recommend these amendments for adoption.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated. The three court representatives who provided input on the potential implementation requirements indicated in their comments that the impacts would be moderate to minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan, to develop and implement effective trial and appellate case management practices,

Attachments and Links

1. Amended Cal. Rules of Court, rule 8.882, at page 4
2. Chart of comments, at pages 5–9

Rule 8.882 of the California Rules of Court is amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals

Rule 8.882. Briefs by parties and amici curiae

(a)–(d) * * *

(e) Service and filing

(1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.

(2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.

(3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.

(4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.

(5) In misdemeanor appeals:

(A) Defendant's appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.

(B) The proof of service under (A) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.

(C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.

ITC SPR17-05
Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

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

	Commentator	Position	Comment	Committee Response
1.	California Public Defenders Association by Charles Denton, President Sacramento, CA	AM	The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators is concerned that precluding defendant's appeal may be a possible unintended consequence of the proposal that appellate counsel be required to send a copy of all briefs to the defendant unless the defendant requests otherwise. In our experience many defendants convicted of misdemeanors are out of custody and transient. Consequently, while the defendant's former trial counsel may be able to contact the defendant on appointed court dates, there is often no dependable way to locate a defendant in order to send him a copy of all of his briefs as this rule requires. When combined with the short time limits, for filing a misdemeanor appeal, this proposal could have the unintended consequence of precluding defendant's appellate counsel from filing an appeal even when the defendant has requested the appeal be filed. However, we would support this proposal if the proposal were amended to allow defendant's appellate counsel to file the appeal, even if he is unable to locate the defendant, with a declaration stating that appellate council was unable to send the defendant a copy of the appeal because he was unable to locate the defendant.	This proposal would only amend the rule regarding service of briefs, it would not impact service of the notice of appeal.

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

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

	Commentator	Position	Comment	Committee Response
			Thank you for the opportunity to comment on this proposal. Please contact me at chuck.denton@acgov.org or 510-272-6600 if you have any questions.	
2.	Albert DeLaIsla Principal Administrative Analyst IMPACT Team Criminal Operations Orange County, CA	NI	Currently the requirement of service to the defendant of the briefs filed by Appellate Counsel and the People are only required on Felony Appeals. The proposal is to make it required on Misdemeanor Appeals as well. Current felony procedures do not require a POS to be filed stamped, the brief is automatically forwarded to the trial Judge for review. If we follow this process, there would be no impact to Operations. If it is decided that a POS should be included and filed with the Court on a Misdemeanor case, then procedures would have to be modified. *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?* Minimal if any, potentially a new docket code and updating of procedures. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*	The committee appreciates the commentator's input on these implementation questions; no response required.

ITC SPR17-05
Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

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

	Commentator	Position	Comment	Committee Response
			Yes.	
3.	Orange County Bar Association by: Michael L. Baroni, President	A	Rule 8.369(d) of the California Rules of Court addresses the service of briefs in felony appeals and requires appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs, so that one copy can be sent to the defendant by his counsel. Rule 8.882, which governs the service of briefs in misdemeanor cases currently does not include these provisions. The proposal is to amend rule 8.882 to conform to 8.369(d) with respect to these requirements. This is a good idea. The appellant in a misdemeanor appeal should be just as informed as the appellant in a felony appeal.	The committee notes the commentator's support for the proposal; no response required.
4.	State Bar of California's Standing Committee on the Delivery of Legal Services By: Sharon Djemal, Chair	NI	*Does the proposal appropriately address the stated purpose?* Yes. The proposal is an improvement because defendants in felony and misdemeanor appeals will be treated similarly with respect to being sent copies of briefs in their cases by their appellate counsel. Under the rule, counsel will be required to keep defendants apprised of arguments that are being made on their behalf.	The committee appreciates the commentator's input on this question.
5.	Superior Court Los Angeles County	A	*What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and*	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

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

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

	Commentator	Position	Comment	Committee Response
			procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Minimal staff training would be required. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. The three-month effective date is sufficient for implementation.	
6.	Superior Court Orange County Appellate Division by Michael Porter	A	Great proposal.	The committee notes the commentator's support for the proposal; no response required.
7.	Superior Court of California County of San Diego by Mike Roddy Executive Officer	A	The advisory committee seeks comments from *courts* on the following cost and implementation matters: *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* Moderate implementation – if defendant's appellate counsel or the People fail to properly serve the briefs, the clerk would have to issue a deficiency notice and follow-up to ensure receipt of amended proof of service. The rules do not specify what happens if the briefs are not properly served on defendant.	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

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

ITC SPR17-05
Title of proposal (Appellate Procedure: Service of Briefs in Misdemeanor Cases)

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

	Commentator	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Appellate Procedure: Payment for Partially Prepared Reporters' Transcripts

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.866 and 8.919

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 17, 2017

Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the rules regarding the preparation of reporters' transcripts in misdemeanor and infraction appeals to add language providing for payment of court reporters for portions of transcripts prepared at the point appeals are abandoned or dismissed out of funds deposited by appellants.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2018, amend California Rules of Court, rules 8.866 and 8.919, to provide that if the appellant in a misdemeanor or infraction appeal deposited funds with the court for a reporter's transcript and the appeal is abandoned or dismissed, the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

The text of the proposed amendments to the rules is attached at page 4.

Previous Council Action

The Judicial Council adopted rules 8.866 and 8.919 effective January 1, 2009, as part of a comprehensive set of new rules and forms for appellate division proceedings. The council has amended these rules several times since their adoption, but the provisions regarding deposit of the estimated cost of preparing a reporter's transcript have remained substantively unchanged.

Rationale for Recommendation

In appeals in civil cases and some misdemeanor and infraction cases, an appellant who wishes to use a reporter's transcript as the record of the oral proceedings in the trial court is required to pay for the transcript. One of the ways that an appellant can pay for a reporter's transcript in these cases is to deposit with the trial court the estimated cost of preparing the transcript. The rules relating to reporters' transcripts in civil appeals in both the Court of Appeal and the superior court appellate division address what happens to this deposit if the appeal is abandoned or dismissed. Subdivision (f) of rule 8.130 and subdivision (d) of rule 8.834 both provide that the funds deposited by the appellant must be used to pay court reporters for any portions of transcripts that were already completed at the point an appeal is abandoned or dismissed and that any remaining funds must be refunded to the appellant.

Currently, rules 8.866 and 8.919, which address the preparation of reporters' transcripts in misdemeanor and infraction appeals, respectively, do not contain provisions addressing what happens to a deposit for a reporter's transcript if the appeal is abandoned or dismissed. To fill this gap, the committee is proposing amendments to these rules to add language similar to that in rules 8.130 and 8.834 providing that the clerk will pay the court reporter out of these deposited funds for any portion of the transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal circulated for public comment from February 27 to April 28, 2017, as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commenters agreed with the proposed changes, one agreed with the proposed changes if modified, and one did not indicate a position on the proposed changes. A chart with the full text of the comments received and the committee's responses is attached at pages 5–7.

The commenter that agreed with the proposed changes if modified suggested that the rules should include language to require the reporter to provide the appellant with any portion of the transcript that was prepared at the time the appeal was abandoned or dismissed. Because this requirement is not currently in rule 8.130, upon which this proposal is based, and would be a substantive change that was not circulated for public comment, the committee declined to recommend the change at this time but will instead consider this suggestion when it develops its annual agenda for the next committee year.

Alternatives

In addition to the provision considered in connection with the comments received, the committee considered not proposing amendments to rules 8.866 and 8.919. The committee concluded, however, that it would be appropriate for these rules to treat deposits for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed consistently with the way these deposits are treated in civil appeals. The committee therefore concluded that recommending these amendments for adoption was appropriate.

Implementation Requirements, Costs, and Operational Impacts

No appreciable implementation requirements, costs, or operational impacts are anticipated. The two courts that provided input on implementation requirements indicated that the requirements would be minimal. The representative of one court requested six months to implement this proposal in order to make changes to the court's case management system, but two others indicated that three months would be adequate. Based on these comments, the committee is recommending that these rule amendments take effect on January 1, 2018, three and one-half months after the Judicial Council's September 15 meeting.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support objective III.B.5 of the Judicial Council operational plan related to Goal III, Modernization of Management and Administration, to develop and implement effective trial and appellate case management practices.

Attachments and Links

1. Cal. Rules of Court, rules 8.866 and 8.919, at page 4-5
2. Chart of comments, at pages 6–8

Rules 8.866 and 8.919 of the California Rules of Court are amended, effective January 1, 2018, to read:

Title 8. Appellate Rules

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 3. Appeals and Records in Misdemeanor Cases

Article 2. Record in Misdemeanor Appeals

Rule 8.866. Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1)–(2) * * *

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

(e)–(f) * * *

Chapter 5. Appeals in Infraction Cases

Article 2. Record in Infraction Appeals

Rule 8.919 Preparation of reporter's transcript

(a)–(c) * * *

(d) When preparation must be completed

(1)–(2) * * *

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

(e)–(f) * * *

ITC SPR17-06
Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla IMPACT Team – Criminal Operations Orange County Superior Court	NI	The current procedures for accepting payments on transcripts is missing from the Infraction/Misdemeanor Appeals procedure. A working group consisting of representatives from Criminal, Fiscal and CRIS was formed in 2015 to address this however the project was never completed. Sherry Clifford and Sheila Le are looking into forming this working group again to start looking into the process. If implemented, the procedures would have to be modified, potential new docket codes created, and a new fee distribution created by accounting to use specifically when accepting payment for a transcript. *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?* Development of procedures, potential new docket codes and training of courtroom clerk staff. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* No, the court would request 6 months to implement the process on Felony / Misdemeanor appeals.	The committee appreciates the commentator's input on these implementation questions. Based on the input from other courts, however, the committee is recommending that the proposed amendments become effective January 1, 2018.

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

ITC SPR17-06
Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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

	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association by Michael L. Baroni, President	A	No specific comment.	The committee notes the commentator's support for the proposal; no response required.
3.	Superior Court of Los Angeles County	AM	**Suggested modification:** These rules should include language to require the reporter to provide the appellant with any portion of the transcript prepared and to declare the same when providing the invoice to the clerk for payment. **Request for Specific Comments:** *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.* Minimal staff training would be required.	Rule 8.130, which also addresses the handling of deposits for reporter's transcripts when an appeal is abandoned or dismissed, does not currently include a requirement that the court reporter provide the appellant with the partially completed transcript. The committee's view it would be best to consider whether to add such a requirement to all of the relevant rules at the same time. The proposal that was circulated did not contain any proposed amendments to rule 8.130, so this would be a substantive change to the proposal. This new requirement would also be a substantive change to the two rules addressed in the proposal. Under rule 10.22, substantive changes to the rules must be circulated for public comment before they are recommended for adoption by the Judicial Council. The committee will therefore consider this suggestion when it develops its annual agenda for the next committee year. The committee appreciates the commentator's input on these implementation questions; no response required.

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

ITC SPR17-06
Title of proposal (Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts)

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

	Commentator	Position	Comment	Committee Response
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. The three month effective date is sufficient for implementation	
4.	Superior Court of Orange County, Appellate Division by Michael Porter	A	Looks good.	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of Riverside 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 by Michael Roddy, Court Executive Officer	A	**Request for Specific Comments** *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?* Minimal training and changes – this is currently our procedure for unlimited civil and the majority of the clerks are already trained on this process. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes	The committee notes the commentator's support for the proposal and appreciates the commentator's input on these implementation questions; no response required.

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Civil Practice and Procedure: Request for Entry of Default

Rules, Forms, Standards, or Statutes Affected
Amend Cal Rules of Court, rule 3.1800; adopt form CIV-105; revise form CIV-100

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 11, 2017

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends adopting a new mandatory form for requesting entry of default and default judgment in cases subject to the Fair Debt Buying Practices Act, which imposes a number of requirements that debt buyers who purchase charged-off consumer debt must meet in order to pursue collection efforts and seek a default judgment against the debtor. The committee also recommends revising the current form for requesting entry of default and default judgment in all other civil cases, and amending the rule regarding default judgment to include references to the new form. The new form will assist litigants and courts by listing the extensive statutory requirements for a default judgment under the act. Both forms also include a revised declaration of nonmilitary service.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Amend California Rules of Court, rule 3.1800, which currently provides that form CIV-100 must be submitted in support of a default judgment on declarations, to authorize and require the use of new form CIV-105 in actions subject to the Fair Debt Buying Practices Act;

2. Adopt *Request for Entry of Default (Fair Debt Buying Practices Act)* (form CIV-105) to provide a form for requesting a default judgment in cases subject to the Fair Debt Buying Practices Act; and

3. Revise *Request for Entry of Default (Application to Enter Default)* (form CIV-100) to provide notice that the form is not for use in actions subject to the Fair Debt Buying Practices Act, and to clarify the declaration of nonmilitary service by revising the language of the declaration and including the state law definition of military service.

The text of the amended rule and the new and revised forms are attached at pages 10-15.

Previous Council Action

The Judicial Council adopted rule 3.1800 of the California Rules of Court in July 2000. In 2005, the rule was amended to authorize, in unlawful detainer cases, the use of a specific optional form in addition to mandatory form CIV-100. In 2007, the rule was reorganized and renumbered.

The Judicial Council adopted the precursor to form CIV-100 on July 1, 1971. In 2005, the form was revised to state that the memorandum of costs (item 7) must be completed if a money judgment is requested, and to reflect federal legislation renaming the law on which the declaration of nonmilitary service (item 8) is based. The form was renumbered in 2007.

Rationale for Recommendation

Background

The Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq., which took effect January 1, 2014, imposes a number of requirements on debt buyers pursuing collection efforts including that no default judgment may be entered against a debtor defendant unless the debt buyer plaintiff submits certain documents, authenticated through a sworn declaration, to establish specified facts. (Civ. Code, § 1788.60(a), (b).) If the debt buyer has not complied with the act's requirements, the court cannot enter a default judgment for the debt buyer. (§ 1788.60(c).) Last year, the Attorney General expressed concern about a large number of default judgments being entered across the state for plaintiffs who had not complied with the act. To address this, the Attorney General suggested revising *Request for Entry of Default (Application to Enter Default)* (form CIV-100) to add an item to alert the court and parties seeking a default that compliance with the act may be required.

A proposal with a revised version of form CIV-100 that included an item regarding the act circulated for public comment in 2016. The majority of comments received on that proposal expressed the strong sentiment that the revisions to form CIV-100 did not do enough to ensure that all statutory requirements under the act would be met before a default judgment was entered. The committee substantially revised the proposal based on the comments received in 2016, and recirculated the revised proposal in spring 2017.

New form for default judgment under the Fair Debt Buying Practices Act

The committee is now recommending a new mandatory form specifically for requesting a default judgment in cases subject to the Fair Debt Buying Practices Act. The proposed new *Request for Entry of Default (Fair Debt Buying Practices Act)* (form CIV-105) is modeled on form CIV-100, but, in addition to containing all of the general civil default judgment requirements, it also includes new items 3, 4, and 5, which specify the statutory requirements for a default judgment under Civil Code section 1788.60. Item 3 requires the party seeking a default judgment to state that the action is not barred by the statute of limitations (Civ. Code, § 1788.56). Item 4 lists the required allegations of the complaint, all of which must in fact have been alleged for a debt buyer plaintiff to obtain a default judgment (§§ 1788.58, 1788.60). Item 5 lists the documentation requirements for a default judgment, all of which documents must be submitted with the request for default judgment (§ 1788.60).

Revised form CIV-100

To reflect the proposed adoption of new form CIV-105, form CIV-100 would be revised to provide notice that it is not for use in actions subject to the Fair Debt Buying Practices Act.

In addition, the declaration of nonmilitary service on form CIV-100 would also be revised. (See form CIV-100 at item 8.) The current version of this declaration contains the confusing phrase "entitled to the benefits of," referring to the federal law that provides protection for military servicemembers who are sued in a civil action. The Attorney General suggested revising this language to (1) remove the "entitled to the benefits" phrase, which does not appear in the statute and has created confusion about whether such entitlement is an element a servicemember has to prove; and (2) include the state law definition of military service. The revised language in CIV-100 addresses these concerns. In addition, the revision to this item reflects a recent renumbering of the federal law. This updated declaration language has also been incorporated into proposed form CIV-105. (See form CIV-105 at item 9.)

Amended rule 3.1800

Rule 3.1800 currently provides that a party seeking a default judgment on declarations must use mandatory form CIV-100. The proposed amendment of rule 3.1800 authorizes an exception for actions subject to the act, in which case the party must use mandatory form CIV-105.

Comments, Alternatives Considered, and Policy Implications

External comments

The new proposal circulated for public comment between February 27 and April 28 as part of the regular spring 2017 invitation-to-comment cycle. Nine individuals or organizations submitted comments. Two agreed with the proposal, and seven agreed if the proposal is amended. Commenters included three superior courts, one judicial officer, the Attorney General's office, a state bar committee, a county bar association, two public interest organizations, and one law firm (which submitted a joint comment with one of the public interest organizations). A chart with the full text of the comments received and the committee's responses is attached at pages 16–66.

Based on these comments, the committee has further modified the proposal that was circulated. The main comments and the modifications made by the committee are discussed below.

Comments on adding declarations to form CIV-105

The invitation to comment specifically asked whether the statement at item 3 on proposed new form CIV-105—"This action is not barred by the applicable statute of limitations (Civ. Code, § 1788.56)"—should be in the form of a declaration under penalty of perjury. Five commenters answered affirmatively: the Attorney General, two superior courts (Riverside County and San Diego County), the judicial officer, and the joint public interest organization/law firm. Two commenters said no: the bar association and the State Bar committee. Of those in favor of making item 3 on form CIV-105 a declaration under penalty of perjury, three commenters suggested that items 4 and 5 detailing the statutory requirements for a default judgment under the act also be made under penalty of perjury. Two commenters made the further request that a declaration be added to form CIV-100 to require the plaintiff to state under penalty of perjury that the action does not arise under the act (and thus that the plaintiff is using the correct form for requesting entry of default/default judgment).

The commenters who favor adding declarations to the forms contend that this will facilitate compliance with the act and provide a basis for both public and private enforcement in the event of noncompliance. Conversely, the two commenters who oppose making item 3 a declaration point out that the act does not require declaring under penalty of perjury that the statute of limitations has not expired, and there is no authority in the act as currently written for imposing such a requirement on the plaintiff.

The committee considered the comments but ultimately decided not to modify the forms to place further items under penalty of perjury. The committee is concerned about adding any sworn declarations that are not mandated by statute. The act explicitly requires a sworn declaration in only two instances, both of which pertain to authentication of documents. Civil Code section 1788.60 provides that no default judgment may be entered against a debtor (1) "unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish" specified facts; and (2) "unless a copy of the contract or other document [evidencing the debtor's agreement to the debt], authenticated through a sworn declaration, has

been submitted by the debt buyer to the court." (See § 1788.60(a), (b); items 2 and 5 on form CIV-105.)

Similarly, Code of Civil Procedure sections 585 and 585.5, which govern general civil defaults, specify the facts that must be supported by a declaration under penalty of perjury. Code of Civil Procedure section 585(d) provides that the court has discretion to permit affidavits in lieu of personal testimony as to all or any part of the evidence or proof required or permitted in cases referred to under subdivisions (b) and (c).[1] Code of Civil Procedure section 585.5 requires that every application to enter default under section 585(a) include an affidavit stating facts showing that the action is not subject to certain specified statutes. (See item 7 on form CIV-105 and item 5 on form CIV-100.)

Other declarations on forms CIV-100 and CIV-105 are also statutorily mandated. The declaration regarding a legal document assistant or unlawful detainer assistant is required by Business and Professions Code section 6400 et seq. (see item 4 on form CIV-100; item 6 on form CIV-105). The declaration of mailing is required by Code of Civil Procedure section 587 (see item 6 on form CIV-100; item 8 on form CIV-105). The declaration of nonmilitary status is required by Military and Veterans Code section 402 (see item 8 on form CIV-100; item 9 on form CIV-105).

In the absence of statutory language requiring a declaration, the committee presumed that the omission was intentional and is, therefore, disinclined to recommend augmenting the statutory scheme by adding such a requirement by way of a Judicial Council form. If the proponents are so inclined, they may pursue their concerns through the legislative process.

Comments on whether a clerk may enter a default judgment under the act

As circulated for public comment, proposed new form CIV-105 retained the boxes found on current form CIV-100 that allow the filing party to request either a court default judgment or a clerk's default judgment. The issue of whether clerks should be permitted to enter default judgments under the act first came to light in comments on the 2016 proposal, and was the subject of considerable comment in both 2016 and the current circulation.

In 2016, 10 of the 15 commenters opined that the act requires a judicial officer to review the application and determine whether to enter a default judgment, and precludes a clerk from doing so. The commenters urged the committee to decide the issue and modify the proposal to make clear on the form that only judicial officers may enter default judgments under the act.

[1] Code of Civil Procedure section 585(b) sets forth the procedure for obtaining a default judgment in actions other than those arising upon contract or judgment for the recovery of money or damages only (which are addressed in subdivision (a)). Code of Civil Procedure section 585(c) sets forth the default judgment procedure for all actions where the service of the summons was by publication.

In drafting proposed new form CIV-105, the committee considered this issue and the concerns expressed in the 2016 comments. The committee noted that the act does not expressly exempt defaults from being handled by clerks and specifically states that the general statutory framework for defaults applies, except as provided in the act. (See Civ. Code, § 1788.60(d).) Under the general statutory framework for defaults, depending on the case and the supporting evidence, civil default judgments may be entered by either the clerk or the court. (Code Civ. Proc., § 585.) Clerks are authorized expressly to enter judgments in actions arising on contracts or judgments for recovery of money only. (Code Civ. Proc., § 585(a).) The committee also found it significant that different courts across the state handle requests for default judgments under the act differently: some require a judicial officer's review; others allow clerks to enter default judgments. Ultimately, the committee concluded that deciding this issue and incorporating that decision into the new form was beyond its purview.

The 2017 invitation to comment acknowledged that the act is silent on this point and stated that proposed new form CIV-105 does not attempt to resolve this question. In response to this new proposal, the committee received comments on the clerk's judgment/court judgment question from commenters on both sides of the issue.

The Attorney General and both public interest organizations contend that only a judge is able to evaluate the evidence, determine whether the declaration properly authenticates business records, and determine whether the claim is barred by the statute of limitations. In their view, such review far exceeds the ministerial tasks a clerk may perform. In their comment, Public Counsel/Alston & Bird LLP opine that allowing the courts to handle these cases differently leads to inconsistent results.[2]

On the other side of the issue, the judicial officer, who handles a large volume of these cases in one of the collections hubs in the Superior Court of Los Angeles County, contends that form CIV-105 should explicitly permit clerks' review of default applications. His court processes an average of 800 defaults per month, the vast majority of which are subject to the act. As to these cases, the commenter stated, "[T]he court ordinarily does not need to assess the evidence, but rather can take judicial notice that records obtained from such a lender and authenticated either by the lender itself or by the purchaser are business records that establish a prima facie case supporting a default judgment. [Citations.]" In this commenter's view, the review of the evidence is within the scope of evaluations court clerks already perform. He acknowledges that in cases that are more complicated, court review may be required. The commenter indicates that he "has seen no evidence to support the belief that [fraudulent debts leading to consumer hardship are] common."

[2] The commenter cites the example of two very similar cases—one in San Diego County and one in Alameda County—filed by the same debt buyer plaintiff, containing similar documentation and declarations but reaching opposite results (default judgment entered by the clerk in San Diego; rejected by a judge in Alameda). (See summary of exhibits provided by the commenters at the end of the comment chart.)

The Superior Court of Riverside County comments that the clerk's judgment/court judgment "is an issue that needs to be resolved," and illustrates the difference using the statute of limitations as an example: a clerk can verify that the plaintiff asserts the statute has not expired; only a judicial officer can make the determination that, in fact, it has not expired.

The committee reviewed these new comments and discussed at length the evidentiary determinations required by the act for default judgments. As before, the committee also considered that the act (1) does not expressly exempt such defaults from being handled by clerks; and (2) states that the general statutory framework for defaults applies, except as provided in the act. (See Civ. Code, § 1788.60(d).) Once again, the committee concluded that deciding whether clerks may enter default judgments under the act is a legislative policy issue beyond its purview. In light of this conclusion, the committee made other revisions to the form to ensure that the form is neutral on this issue.

Other comments regarding proposed new form CIV-105

Item 1(d) parenthetical. The bar association suggested adding a reference to Code of Civil Procedure section 585(d) to the parenthetical, to conform to CIV-100. The judicial officer objected to the parenthetical on the ground that it implies a court judgment. The committee concluded that the reference to the court entering judgment on an affidavit is not necessary on form CIV-105. Consistent with removing references to court judgments and clerks' judgments, this language has been deleted from the item 1d parenthetical.

Item 3 dates. A court suggested adding space for the date of accrual and the date of filing of the original complaint to facilitate consideration of the statute of limitations requirement. The committee declined to make this revision on the basis that this information is already provided: the date the complaint was filed is required in item 1 and the date the cause of action accrued will be stated in the complaint and contained in the attached documentation.

The language of items 4 and 5. Two commenters suggested that the committee conform the language in items 4 and 5 to the statutory language. The committee agreed and these items were revised.

Item 4: copy of the contract. One commenter suggested that item 4 include a statement that a copy of the contract (or other document evidencing the debt) is attached to the complaint, which is required by the act. The committee agreed and this statement was added as item 4b.

Trace the chain of title. The judicial officer suggested that, consistent with the practice in his court, form CIV-105 require the plaintiff to trace the full chain of title of the debt with documents authenticated through a declaration. The committee declined to modify the form in this way because the form already requires this information (the names and addresses of all persons or entities that purchased the debt after charge-off) and documentation (business records, authenticated through a sworn declaration, to establish these facts).

Documenting a revolving credit account. The judicial officer suggested revising item 5a to identify, for revolving credit accounts, the particular documents the plaintiff can submit as evidence of the debt, rather than citing to Civil Code section 1788.52(b), the code section that describes those documents. The committee agreed with calling attention to the alternative documentation that is appropriate for a debt based on a revolving credit account. Accordingly, the committee revised item 5a to refer to revolving credit accounts, but retained the reference to section 1788.52(b) because that section is not limited to revolving credit accounts.

Authentication of business records. The judicial officer suggested an alternative approach to authenticating business records. He cited several cases for the proposition that courts can take judicial notice that a bank's records are business records. He suggested that CIV-105 be revised to indicate that the documents submitted in support of a default judgment must be shown to be admissible *either* by establishing that they are records of a bank *or* through a sworn declaration from someone with personal knowledge as to how the records were prepared that satisfies the requirements of Evidence Code section 1271. However, by its terms the act requires authentication through a sworn declaration. The committee concluded that the form should follow the provisions of the act and so declined to modify this section.

Other comments regarding form CIV-100 and proposed new form CIV-105

Separate forms. The Superior Court of San Diego County requested separate forms for entry of default and for default judgment to reduce confusion and make clear the requirements for each. This suggestion is beyond the scope of the proposal and will be retained for future consideration by the committee, as time and resources permit.

Internal comments

When the committee was reviewing the proposal after the public comment period, it realized that rule 3.1800 currently requires the use of CIV-100 and would need to be amended to allow for the use of proposed new CIV-105 in appropriate cases. Because the need for this amendment was raised within the committee after the public comment period, it did not circulate for public comment with the rest of the proposal. However, amending the rule to include the new mandatory form constitutes a technical amendment and need not be circulated. See California Rules of Court, rule 10.22(d)(2).

Alternatives considered

The committee originally considered not making any changes to form CIV-100, but decided that some form revision was needed to reflect the different default requirements for cases brought under the act.

Following the comments received on the 2016 proposal, the committee considered further revising form CIV-100 to include a new section summarizing the statutory requirements for a default judgment under the act. The committee decided not to pursue this option because the new

section would require adding a third page to the form and would only apply to one particular case type, whereas the rest of the form is generally applicable to all civil cases. Moreover, the committee felt that setting forth all of the requirements contained in the act would be more helpful than including a summarized version of those requirements.

The committee also considered creating an attachment to form CIV-100 in the form of a checklist that would contain all of the statutory requirements for a default judgment. This option had the benefit of setting forth all of the statutory requirements, but attachments are easily overlooked. The committee concluded that a new form for use only in actions subject to the act would best accomplish the goals of bringing these cases and their particular requirements to the attention of courts and litigants and facilitating compliance with the act.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to train staff to recognize and understand the new form, and to distinguish it from form CIV-100. Courts may also need to update case management systems. In addition, efforts should be made to publicize the new form to attorneys and the public. Once training is complete and the form is in use, the committee expects that litigants will better understand the requirements for default judgment and courts will have an easier time processing and issuing decisions on applications for default judgment under the act.

Attachments and Links

1. Cal. Rules of Court, rule 3.1800, at page 10
2. Form CIV-100, at pages 11–12
3. Form CIV-105, at pages 13–15
4. Chart of comments, at pages 16–66
5. Senate bill 233 (Stats. 2013, ch. 64), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB233

Rule 3.1800 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 3. Civil Rules

Division 18. Judgments

Rule 3.1800. Default judgments

(a) Documents to be submitted

A party seeking a default judgment on declarations must use mandatory *Request for Entry of Default (Application to Enter Default)* (form CIV-100), unless the action is subject to the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq., in which case the party must use mandatory *Request for Entry of Default (Fair Debt Buying Practices Act)* (form CIV-105). In an unlawful detainer case, a party may, in addition, use optional *Declaration for Default Judgment by Court* (form UD-116) when seeking a court judgment based on declarations. The following must be included in the documents filed with the clerk:

(1)–(9) * * *

(b) * * *

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** **07.10.17**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR (Application) ☐ **Entry of Default** ☐ **Clerk's Judgment** ☐ **Court Judgment**	CASE NUMBER:

Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.) *(see CIV-105)*

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date):*
   b. by *(name):*
   c. ☐ Enter default of defendant *(names):*

   d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names):*

   (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. ☐ Enter clerk's judgment
      (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
         ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) ☐ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) ☐ for default previously entered on *(date):*

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$	$	$
b. Statement of damages*			
(1) Special	$	$	$
(2) General	$	$	$
c. Interest	$	$	$
d. Costs *(see reverse)*	$	$	$
e. Attorney fees	$	$	$
f. **TOTALS**	$	$	$

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date):*

   (Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*

3. ☐ *(Check if filed in an unlawful detainer case.)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4).*

Date:

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

FOR COURT USE ONLY

(1) ☐ Default entered as requested on *(date):*
(2) ☐ Default NOT entered as requested *(state reason):*

Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-100 [Rev. January 1, 2018]

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

Code of Civil Procedure, §§ 585–587, 1169
www.courts.ca.gov

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☐ did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date):*

5. ☐ **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a)).* This action
   a. ☐ is ☐ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. ☐ is ☐ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. ☐ is ☐ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. ☐ **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names):*
   b. ☐ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date):*
      (2) To *(specify names and addresses shown on the envelopes):*

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date:

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

7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees . . . . . $
   b. Process server's fees . . . . . $
   c. Other *(specify):* $
   d. $
   e. **TOTAL** . . . . . $ _____
   f. ☐ Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

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)

8. **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code section 400(b).

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

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

ATTORNEY 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** **07.03.17**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR (Application) ☐ **Entry of Default** ☐ **Judgment**	CASE NUMBER:

For use only in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.)

1. On the complaint or cross-complaint filed
   a. on *(date):*
   b. by *(name):*
   c. ☐ Enter default of defendant *(names):*
   d. ☐ I request a judgment under Civil Code section 1788.60 and Code of Civil Procedure section 585 against defendant *(names):*

   _____

   (Testimony may be required. Check with the clerk regarding whether a hearing date is needed.)
   e. ☐ Default was previously entered on *(date):*

2. **Judgment to be entered.**

		Amount	Credits acknowledged	Balance
a.	Demand of complaint*	$	$	$
b.	Interest	$	$	$
c.	Costs *(see page 3)*	$	$	$
d.	Attorney fees	$	$	$
e.	**TOTALS**	$	$	$

(Must be established by business records, authenticated through a sworn declaration, submitted with this application. (Civ. Code, §§ 1788.58(a)(4), 1788.60(a).))*

3. This action is not barred by the applicable statute of limitations (Civ. Code, § 1788.56).
4. **Requirements for the complaint**.
   a. The complaint alleges ALL of the following (Civ. Code, §§ 1788.58, 1788.60):
      (1) That the plaintiff is a debt buyer;
      (2) A short, plain statement regarding the nature of the underlying debt and the consumer transaction from which it is derived;
      (3) That the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
      (4) The debt balance at charge-off and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt;
      (5) The date of the default OR the date of the last payment;
      (6) The name and address of the charge-off creditor at the time of charge-off in sufficient form so as to reasonably identify the charge-off creditor, and the charge-off creditor's account number associated with the debt;

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

4. a. (7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt;

   (8) The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer, in sufficient form so as to reasonably identify each such purchaser; and

   (9) That the plaintiff has complied with Civil Code section 1788.52.

   b. A copy of the contract or other document described in Civil Code section 1788.52(b) is attached to the complaint.

5. **Documentation requirements for default judgment**. ALL of the following documents are submitted with this request for default judgment (Civ. Code, § 1788.60(a)–(c)):

   a. A copy of the contract or other document evidencing the debtor's agreement to the debt, authenticated through a sworn declaration. See Civil Code section 1788.52(b) regarding documentation, including for revolving credit accounts.

   b. Business records, authenticated through a sworn declaration, to establish:

      (1) That the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;

      (2) The debt balance at charge-off, and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt;

      (3) The date of the default OR the date of the last payment;

      (4) The name and address of the charge-off creditor at the time of charge-off in sufficient form so as to reasonably identify the charge-off creditor, and the charge-off creditor's account number associated with the debt;

      (5) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt; and

      (6) The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer, in sufficient form so as to reasonably identify each such purchaser.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY

(1) ☐ Default entered as requested on *(date):*

(2) ☐ Default NOT entered as requested *(state reason):*

Clerk, by _____, Deputy

6. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☐ did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:

   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date):*

7. ☐ **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a)).* This action

   a. ☐ is ☐ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).

   b. ☐ is ☐ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).

   c. ☐ is ☐ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

8. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

   a. ☐ **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names):*

   b. ☐ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

      (1) Mailed on *(date):*

      (2) To *(specify names and addresses shown on the envelopes):*

I declare under penalty of perjury under the laws of the State of California that the foregoing items 6, 7, and 8 are true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

9. **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code section 400(b).

10. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

    a. Clerk's filing fees ..... $

    b. Process server's fees ..... $

    c. Other *(specify):* $

    d. $

    e. **TOTAL** ..... $

    f. ☐ Costs and disbursements are waived.

    g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing items 9 and 10 are true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

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

	Commenter	Position	Comment	Committee Response
1.	Alston & Bird LLP and Public Counsel by Ward Benshoof and Andrea Warren for Alston & Bird LLP; by Anne Richardson, Directing Attorney, and Stephanie Carroll, Senior Staff Attorney, Consumer Law Project, for Public Counsel	AM	Public Counsel and Alston & Bird have been working together for several years on consumer debt collection issues, including the new substantive and procedural requirements for entry of default judgments on consumer debt mandated by California's Fair Debt Buying Practices Act, Civil Code Sections 1788.50-1788.64 (the "Act"). We had the opportunity last year to comment on the proposal which the Committee made then to revise CIV-100, and appreciate the opportunity now to comment on your Committee's further proposal which arises from those efforts: to Revise Form CIV-100, and adopt Form CIV-105 ("Proposal"). At the outset we would like to commend the Committee for proposing a separate form for debt buyer cases that explicitly lays out the Act's requirements. However, while we understand that some may consider that a clerk can adequately ensure that the requirements are met, we strongly believe that, in view of settled California law on limitations of clerk functions to "ministerial tasks," the Act's new evidentiary requirements necessarily require judicial scrutiny of default judgment requests from debt buyers, and accordingly propose amendments such that the new form would	The committee notes the commenters' general support for the proposal if modified, and appreciates the detailed comments. See below for responses to specific comments. The committee understands and appreciates the commenter's position on this issue. However, as discussed in more detail in the report to the council, the committee concluded that deciding whether or not clerks may enter default judgments under the Act is a legislative policy issue beyond the committee's purview.

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	Commenter	Position	Comment	Committee Response
			address the issue directly. Our position is supported by recent developments in case law. Further, our research demonstrates that this approach will both 1) create consistency that is currently lacking at the moment and 2) reduce the burden on our over-burdened court system. 1. Recent Case Law As the Judicial Council's Proposal recognizes, the Act now requires that requests for default judgments on consumer debts be supported by "business records, authenticated through a sworn declaration" to establish details of the debt and the alleged default. (Civil Code §§ 1788.58(a)(2)-(a)(8), 1788.60.) Evidence Code Section 1271 specifies four separate foundational requirements that must be established by a party attempting to offer writings into evidence as "business records." Recent case law shows what a complex task it can be to (a) determine whether a witness has addressed each required element for each record sought to be admitted; and (b) whether that witness in fact has the personal knowledge to do so. The task is not only complex, but California law declares that the evaluation of such	The committee appreciates the commenters' discussion of recent cases addressing the authentication of business records as part of an application for default judgment under the Act. However, to the extent these are cited to support the council's adopting a rule requiring that default judgments in these cases are beyond the scope of clerk's judgments, note the response above.

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	Commenter	Position	Comment	Committee Response
			evidence is not the sort of "ministerial task" that clerks may perform. (See, e.g., Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267, 287.) Rather, determining whether an application for default judgment under the Act is supported by competent evidence is a quintessential judicial responsibility. At first glance, it might appear that a clerk could determine whether a request for a default judgment on a debt collection includes the requisite authenticated business records. Yet there is no case that considers evidentiary authentication as something a clerk may determine. As the California Supreme Court has explained: "Authentication is to be determined by the trial court as a preliminary fact (§ 403, subd. (a)(3)) and is statutorily defined as the 'introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is.' (§ 1400)." (People v. Goldsmith (2014) 59 Cal.4th 258, 266.) Four recent decisions have explored authentication of business records in debt buyer cases: one from the Sixth District Court of Appeal, and three from Appellate Divisions in the Riverside, Ventura, and Orange County Superior Courts. Each of	

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	Commenter	Position	Comment	Committee Response
			these cases demonstrates why judicial scrutiny is so important: to assure that the requirements of proper business record authentication in the collection litigation are followed. Debt buyers often acquire whatever records of the original creditor that exist when the debt is purchased and routinely utilize declarations of their employees – who are without personal knowledge of the original creditor's record keeping procedures – to meet the authentication requirements of the Act. As the cases hold, such declarations do not satisfy the new authentication requirements of the Act and Evidence Code Section 1271. Perhaps the most thorough review is found in the Sixth District's opinion in National Collegiate Student Loan Trusts v. Macias, (Cal.Ct.App., May 12, 2016, No. H040905) 2016 WL2864858 (not certified for publication) (Macias).) The debt buyer in that case purchased unpaid student loans from Bank of America and JPMorgan Chase. Id., at *1. At trial, the only witness offered by the debt buyer to authenticate the banks' records regarding the allegedly unpaid student loans was its own employee. No witness from either bank appeared. Id. The trial judge allowed the	

	Commenter	Position	Comment	Committee Response
			debt buyer's employee to authenticate the banks records and entered judgment for the debt buyer. The Court of Appeals reversed, finding that the debt buyer's witness – even if the custodian of the debt buyer's records purchased from the banks – still could not meet any of the four separate foundational requirements mandated for authentication of the banks' "business records." (Id., at *4-*7.) In reaching this result, the Macias court expressly endorsed the similar reasoning of the Appellate Division of the Ventura County Superior Court reported in Sierra Managed Asset Plan, LLC v. Hale (2015) 240 Cal.App.4th Supp. 1 (Sierra). (Id., at *6.) As in Macias, the trial court in Sierra had entered judgment for the debt buyer. However, the appellate court again reversed, concluding that since the only witness offered by the debt buyer to authenticate the bank's records was its own employee, that witness could not lay a proper foundation under Evidence Code 1271. (Sierra, supra, 240 Cal.App.4th Supp. at 9.) The Sierra court's reasoning was straightforward: the debt buyer employee had no knowledge about the account or the charges in question "other than what he	

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	Commenter	Position	Comment	Committee Response
			knows as a result of acquiring the documents from Citibank" and that did not make him a "qualified witness to lay the business records foundation required by Evidence Code 1271. . . ." (Id., at 8-9.) In September 2016, the Appellate Division of the Orange County Superior Court relied upon the reasoning of Sierra to reach the same result: reversing judgment in favor of a debt buyer entered by a trial judge who allowed the debt buyer's employee to authenticate the credit card debt records purchased from Credit One Bank. (Midland Funding LLC v. Romero (2016) 5 Cal.App.5th Supp.1.) The only case to the contrary – decided on a very distinctive set of facts – is a decision of the Appellate Division of the Riverside County Superior Court, which affirmed a trial court judgment where the debt buyer representative's testimony purported to authenticate the original creditor bank's business records. (Unifund CCR, LLC v. Dear (2015) 243 Cal.App.4th Supp 1 (Unifund).) As recognized by the opinion in Macias, the Unifund decision is limited to its own facts and was a case where the consumer had testified to all the particulars	

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			of his credit card debt and default, and thus could not claim prejudice from any evidentiary error in the debt buyer's improper authentication. (Macias, supra, see 2016 WL2864858, *7, fn 3.) Beyond that, the Unifund court, itself demonstrated how its decision – rendered after a full trial – could not be applied to a default judgment request. The Court acknowledged one of the problems at the heart of this type of litigation by stating "mistakes are often made on bank statements" and explained that "such matters may be developed on cross-examination and should not affect the admissibility of the statement itself." (Unifund, supra, 243 Cal.App.4th Supp. at 7-8 (quoting People v. Dorsey (1974) 43 Cal.App.3d, 953, 961).) Of course, on a debt buyer's application for a default judgment no cross examination is possible so those mistakes cannot be tested or ameliorated. That is why judicial scrutiny of the evidence offered to support a debt buyer's default application is so critical. 2. California Counties Are Applying the Law Inconsistently We have looked at examples of the	The committee reviewed these materials with

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	Commenter	Position	Comment	Committee Response
			implementation of the Act from consumer collection case files in the Superior Courts of San Diego, Alameda and Los Angeles counties. These counties follow two separate procedures: Los Angeles and Alameda counties require default requests under the Act to go before a judicial officer. San Diego County continues to allow default requests to be processed by clerks. To aid the Judicial Council in understanding the practical consequences of allowing the evidence required by the Act to be evaluated by clerks, we attach as examples requests filed by Midland Funding LLC in two different Superior Courts on the same day, seeking default judgment on debts subject to the Act. [Committee Note: the exhibits are summarized at the end of this chart.] The requests were supported by essentially the same declaration: one reviewed by a judge was rejected, whereas the one reviewed by the clerk's office was granted. (Compare Midland Funding LLC v. Christian Namoca, San Diego Superior Court Case No. 37-2016-0000744-CL-CL-CTL, (Exhibit 1), with Midland Funding LLC v. Karnail Singh, Alameda Superior Court Case No. HG16808705, (Exhibit 2).)	great interest, and thanks the commenters for providing them. [Note: the 85 pages of exhibits are summarized at the end of this chart.] As noted, however, requiring courts to have all defaults in consumer collections cases be handled by judicial officers is a matter of legislative policy beyond the scope of this proposal.

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			In both requests, declarations of Midland employees were the only evidence proffered to authenticate the business records required under the Act. Neither Midland employee claimed to have any personal knowledge of the practices of the original creditors but both declared, "The records are trustworthy and relied upon because the original creditor was required to keep careful records of the account at issue in this case as required by law and/or suffer business loss." Midland's request in Alameda County went before Judge Wynne Carvill who rejected it, finding the declaration failed to properly authenticate the business records as required. (See, "Request Re: Default and Default Court Judgment (CCP 585) Rejected," (Exhibit 3).) After receiving this rejection, Midland dismissed its Alameda action. (See, "Request for Dismissal," (Exhibit 4.) However, Midland's request for default in San Diego, on the same flawed evidence, was accepted by the clerk's office. See "Judgment by Default" (Exhibit 5).) As we understand it, one of the important roles of the Judicial Council is to assure consistency amongst California's courts in	The committee notes that council forms and rules must comply with statute, and it has concluded, as discussed in the report, that

	Commenter	Position	Comment	Committee Response
			their application of the law. The above examples demonstrate that such consistency cannot be assured unless the Judicial Council joins counties such as Alameda and Los Angeles in recognizing that the business record evidence required by the Act to substantiate the underlying consumer debt and default be evaluated by a judicial officer. Differential handling of the actions could result in forum shopping by debt collectors and unfair results toward consumers who happen to live in different counties. 3. Evidence Suggests that California Counties Adopting a Judicial Scrutiny Approach Have Seen Default Filings Decrease Finally, we are aware that the Judicial Council has been appropriately concerned as to whether requiring judicial oversight of consumer collection case default judgment requests would impose an untoward burden on our court system. While it is too early to reach firm conclusions,[fn 1] our research indicates that total filings in counties that subject default applications to judicial scrutiny have substantially declined. Comparing debt buyer collection cases in	statute does not preclude clerks from handling defaults in consumer collection cases. The committee appreciates the commenters' efforts in gathering this information. However, the committee did not look to the potential burden on the courts in reaching its conclusion that the Act does not mandate that defaults in consumer collections cases be handled only by judicial officers.

	Commenter	Position	Comment	Committee Response
			2013 and 2016, both Los Angeles and Alameda counties, where default requests under the Act are subject to judicial scrutiny, saw declines in new filings of between 30% and 40%.[fn 2] FN 1. Debts subject to the Act (sold or re-sold since January 1, 2014) have only recently been entering the collection case litigation stream in numbers (approximately the past year and a half according to our case file review). FN 2. Los Angeles County reported to us in 2014 that, for the 11 months from April 2013 through February 2014, there were a total of 65,170 collection cases filed in Los Angeles County – roughly 6,000 new filings per month. The court has recently reported to us that 2016 collection case filings were down over 40%. (Communication from Ms. Sylvia White-Irby, LASC Administrative Records, to Alston & Bird, 3/27/17. Total collection case filings in 2016 were reported at 42,429.) Alameda County reported to us in 2014 that there were 5,814 collection case filings in calendar year 2013. For calendar year 2016, Alameda County reports 3,926 new filings – a decline of over 30%. (Communication from Mr. Adam	

	Commenter	Position	Comment	Committee Response
			Byer, ASC Office of Planning, Research and Outreach, to Alston & Bird, 4/5/2017.) Both communications are attached hereto collectively as Exhibit 8. One sees a similar declining trend when examining the filings of individual high volume debt buyers. For this exercise, we looked at debt collection filings by Midland Funding LLC, which describes itself as "one of the nation's largest buyers of unpaid debt"[fn 3] as a useful barometer. A search of Alameda County's online database shows that, in 2013, Midland Funding filed a total 1,112 collection actions in Alameda County Superior Court. (Exhibit 6.) By 2016, Midland's filings in Alameda were reduced to just 200 new cases for that entire year – over an 80% reduction. (Exhibit 7.)[fn 4] FN 3. https://www.midlandfunding.com/faqs/. FN 4. Factors other than active judicial involvement may also have been at work to reduce filings in Alameda and Los Angeles counties over the period examined. However, we do know that in 2013 consumer debt default applications were	

	Commenter	Position	Comment	Committee Response
			being processed by clerks in both counties and in 2016 they were not. It is thus reasonable to conclude that at least some of the reduction may very well be due to that difference. This experience in Alameda County can be contrasted with San Diego County, which continues to allow clerk entry of default judgments for debt subject to the Act. We searched the San Diego County online database for new cases filed by Midland in 2014 and 2016, and found that Midland's new filings actually increased between those two years by approximately 14%.[fn.5] FN 5. We counted 1,355 new collection case filings by Midland in San Diego County Superior Court in 2014, and 1,545 new filings in 2016. San Diego's online search function allows search by party name, but does not total the results. The totals we arrived at were based upon hand counting of the results of 95 data pages and should therefore be regarded as approximately accurate. As instructive as we believe these comparisons are, in the final analysis we do	

	Commenter	Position	Comment	Committee Response
			not recommend that CIV-105 require default requests under the Act to be submitted to a judicial officer simply because that process may lead to a significant reduction of burdens on our court system. We do so because we believe such judicial review is required by law as essential to proper implementation of the Act. 4. Specific Recommendations on CIV-100 and CIV-105 Forms Consistent with the analysis above, we ask that CIV-105 be revised to require that a judicial officer be the ultimate arbiter as to whether a debt buyer's default judgment application meets the new evidentiary requirements of the Act. This will mean removing the option of "Clerk's Judgment" from the heading box and changing paragraph 1 to state "to the Court" as opposed to "to the Clerk." In addition to this substantial change, we support the recommendations made by the Attorney General in its comment letter of April 14, 2017, to add penalty of perjury statements to both CIV-100 and CIV-105. We concur with the Attorney General that such statements will both facilitate	The committee agrees with removing distinctions between court judgments and clerk's judgments on the form, and has combined the checkboxes in the caption to one simply titled, "Judgment." The text "TO THE CLERK" in item 1 and the reference to the court entering judgment on an affidavit in the parenthetical to item1d have been removed. The committee notes the commenters' support for these recommendations of the Attorney General. Upon further consideration of the comments and policy concerns, the committee declines to add declarations under penalty of perjury because they are not statutorily required.

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	Commenter	Position	Comment	Committee Response
			compliance with the Act as well as provide the basis for both public and private enforcement in the event of non-compliance.[fn. 6] FN 6. In addition, we note a typo in paragraph 5 of CIV-105: that paragraph should reference Civ. Code 1788.60 (and not 788.60). We commend the Committee for the progress made this far, but strongly urge that the Judicial Council recognize explicitly that clerk-entered default judgments for consumer debt subject to the Act are no longer permitted. We thank you for considering our comments. We would be happy to discuss any aspect of our views on this subject at your convenience.	The committee thanks the commenters for identifying this typo. The error has been corrected.
2.	Attorney General of the State of California by Tina Charoenpong, Deputy Attorney General, Consumer Law Section	AM	On behalf of the Attorney General of the State of California, I write to comment on the proposal made by the Civil and Small Claims Advisory Committee of the Judicial Council of California to revise the form used to request entry of a default judgment in a civil case (Form CIV-100) and to adopt a new form to be used to request entry of a default judgment in a civil case that is subject to the Fair Debt Buying Practices	The committee notes the commenter's support for the proposal if modified, and appreciates the detailed comments. See below for responses to specific comments.

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			Act, Civil Code sections 1788.50 et seq. (Form CIV-105). As stated in my May 26, 2016 comment to the Committee's previously circulated proposal to revise Form CIV-100, the Attorney General strongly supports the proposal to revise the declaration of non-military status and its efforts to incorporate the requirements of California's Military and Veterans Code (Mil. & Vet. Code, § 400 et seq.). The Military and Veterans Code sets forth important consumer protections for members of the military against abusive default judgment practices, and revisions to Form CIV-100 will help ensure that our servicemembers receive the benefit of those protections. The Attorney General also supports the Committee's efforts to facilitate compliance with the statutory requirements for default judgments in cases subject to the Fair Debt Buying Practices Act. The Attorney General believes, however, that the Committee should revise its proposal to more effectively achieve this stated purpose. The Attorney General believes that the Act requires a judicial officer to review default applications and to determine whether to	

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	Commenter	Position	Comment	Committee Response
			enter default judgments in consumer debt collection actions subject to the Act. Therefore, the Attorney General encourages the Committee to provide for referral of default applications to judicial officers in actions subject to the Act. The Attorney General also urges the Committee to add certain declarations to Form CIV-100 and proposed Form CIV-105, as discussed below, to effectuate the Committee's purpose of facilitating compliance with the Act. Declaration of Non-Military Status The Attorney General strongly supports the Committee's proposal to revise the declaration of non-military status in Form CIV-100. Both California's Military and Veterans Code and the federal Servicemembers Civil Relief Act (SCRA) provide certain protections for active-duty servicemembers who face default judgments and require plaintiffs seeking entry of default to file sworn declarations regarding the military status of each defendant. The Committee's proposal to revise the language of the declaration will help ensure that declarations conform to state and federal law and will clarify plaintiffs' obligations under the law.	The committee notes the commenter's support for the proposed revisions to the declaration of nonmilitary status.

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	Commenter	Position	Comment	Committee Response
			Fair Debt Buying Practices Act The Attorney General supports the Committee's efforts to facilitate compliance with the statutory requirements for a default judgment in cases subject to the Fair Debt Buying Practices Act. The Attorney General encourages the Committee to provide for the referral of default applications to judicial officers, rather than to clerks, in cases subject to the Act. To effectuate the Committee's purpose of facilitating compliance with the Act's statutory requirements for default judgments, the Attorney General also urges the Committee to (1) require all plaintiffs seeking default judgment in any civil case to state, under penalty of perjury, whether the action is a consumer debt collection action subject to the Act; and (2) require all plaintiffs seeking default judgment in cases subject to the Act to state, under penalty of perjury, that they have complied with each of the Act's applicable requirements. Review by Judicial Officers Because of the factual findings that must be made under the Act before a default judgment may be entered, it continues to be the Attorney General's position that judicial	The committee understands and appreciates the commenter's position on this issue. However, as discussed in more detail in the report to the council, the committee concluded that deciding whether or not clerks may enter default judgments under the Act is a legislative policy issue beyond the committee's purview. The lack of statutory authority for requiring that certain statements be made under penalty of perjury prevents the committee from recommending these changes. Prohibiting clerks from entering default judgments under the Act is a legislative policy issue beyond the committee's purview. See the response above, and the report to the

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	Commenter	Position	Comment	Committee Response
			officers must review default applications and enter default judgments in actions subject to the Act. The Attorney General therefore asks the Committee to modify its proposal to provide for referral of such default applications only to judicial officers. The level of review necessary to ensure that default applications comply with the Act—and to effectuate the Act's purpose of protecting debtors from debt-buyer abuse—is well beyond the ministerial functions that clerks may perform. Specifically, the Act prohibits the entry of default judgment unless a debt buyer plaintiff has, among other things: (1) alleged specified facts in the complaint, including the nature of the underlying debt and the consumer transactions from which it derived; (2) attached to the complaint a copy of the contract or other document demonstrating that the debt was incurred by the debtor; (3) submitted to the court a copy of the contract, authenticated through a sworn declaration, that evidences the debtor's agreement to the debt; and (4) submitted to the court certain business records, authenticated through a sworn declaration, that are sufficient to establish specified facts, including the debt balance at charge off and that the debt buyer is the sole owner	council for a more detailed discussion.

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			of the debt or has authority to assert the rights of all owners. (Civ. Code, §§ 1788.60, 1788.58, 1788.52.) The Act also prohibits plaintiffs from bringing an action on a time-barred claim (Civ. Code, § 1788.56); no default judgment may be entered if the applicable statute of limitations on a claim has expired. Should the Committee decide not to modify its proposal to provide for referral only to judicial officers in cases subject to the Act, the Attorney General requests that, at a minimum, it remain neutral for the present time and not sanction review by clerks of default applications subject to the Act. Form CIV-100 Declaration The Attorney General strongly urges the Committee to add to Form CIV-100 an item that requires plaintiffs to state, under penalty of perjury, that the action is not subject to the Act. The item should advise that this declaration is required and that plaintiffs who cannot so declare must file their default application using Form CIV-105. The Attorney General recommends adding this item as a new Item 7, below existing Item 6. This addition would add only minimal content to Form CIV-100 and	The committee agrees with removing distinctions between court judgments and clerk's judgments on the form. Accordingly, the committee has modified the checkboxes in the caption and portions of the text in item 1. Upon consideration of the comments and policy concerns, the committee declines to add declarations under penalty of perjury because they are not statutorily required.

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			would serve a critical function in facilitating compliance with the Act. The declaration would provide guidance to litigants and their counsel who may otherwise inadvertently use the wrong form to request a default judgment. Without this declaration, debtors protected by the Act may not be identified to the court and therefore would not receive the protections to which they are entitled. Unfortunately, default judgments are often entered without any involvement by the defendant or the defendant's counsel; as such, there likely would be no one to identify the error to the court if a plaintiff incorrectly uses Form CIV-100 to request a default judgment in an action subject to the Act. Requiring plaintiffs who use Form CIV-100 to state under penalty of perjury that the action is not subject to the Act would provide an incentive for plaintiffs to ensure that they submit the proper form to the court, thereby facilitating compliance with the Act. Additionally, this declaration would provide the Attorney General and other prosecutors with an enforcement tool in case a plaintiff intentionally files the wrong form, and thus would greatly facilitate prosecutors' ability to enforce compliance with the Act.	

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			Form CIV-105 Declarations For similar reasons, the Attorney General urges the Committee to require the statement regarding the statute of limitations in Item 3 of CIV-105 to be made under penalty of perjury, and to likewise revise Items 4 and 5 of CIV-105 to be statements that plaintiffs must make under penalty of perjury. The Attorney General further encourages the Committee to conform the language of Items 4 and 5 to the language used in the Act in order to reduce confusion, and to state all the requirements of the Act. The Attorney General believes that there is value to requiring plaintiffs to state, under penalty of perjury, that the action is not barred by the applicable statute of limitations. The Act prohibits debt buyers from bringing an action that is time-barred, and requiring plaintiffs seeking default judgment to certify that they have met this requirement would aid compliance with the Act and help achieve the Act's purpose of eliminating abuses common in the debt-buying industry. Requiring the statement in Item 3 to be made under penalty of perjury would also assist the efforts of the Attorney General and other prosecutors to enforce the	As with the suggestion that a declaration be added to form CIV-100, above, the committee declines to add such requirements to items 3, 4, and 5 on form CIV-105 because the Act does not require that the statements be made under penalty of perjury and there is no authority in the Act as currently written to impose such requirement.

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	Commenter	Position	Comment	Committee Response
			Act. Items 4 and 5 state that the court shall not enter a default judgment unless certain requirements of the Act are met. The Attorney General supports the Committee's inclusion of the Act's requirements to assist both courts and litigants in complying with the Act. The Attorney General believes that the Committee could better address its stated purpose of facilitating compliance with the Act if it modified these items to require plaintiffs to state, under penalty of perjury, that they have met these requirements. Specifically, the Attorney General urges the Committee to modify Item 4 to state, "Declaration regarding complaint (required for a judgment). The complaint contains ALL of the following allegations (Civ. Code, §§ 1788.58, 1788.60) . . . ." Likewise, the Attorney General urges the Committee to modify Item 5 to state, "Declaration regarding documentation (required for a judgment). ALL of the following documents are submitted with this request for default judgment (Civ. Code, § 788.60(a)-(c)) . . . ." Requiring plaintiffs to certify that they have met the Act's requirements would facilitate compliance with the Act, provide an	

	Commenter	Position	Comment	Committee Response
			incentive for plaintiffs to ensure that they submit the proper information and documentation to the court, and facilitate enforcement of the Act. The Attorney General also encourages the Committee to use the Act's language in drafting the required declarations to reduce confusion. For example, Form CIV-105 states that the complaint must allege, and that authenticated business records must be submitted to establish, "the name and last known address of the debtor at the time of the sale of the debt." The Act, however, requires "the name and last known address of the debtor prior to the sale of the debt." (Civ. Code, §§ 1788.58, subd. (a)(7), 1788.60, subd. (a) [emphasis added].) The Attorney General believes that Form CIV-105 should conform to the language in the Act—specifically, to the language used in section 1788.58, subdivisions (a)(1)-(9), of the Civil Code. Finally, the Attorney General encourages the Committee to require plaintiffs seeking default judgment to state under penalty of perjury that a copy of the contract or other document described in Civil Code section 1788.52, subdivision (b), was attached to	The committee agrees with tracking the statutory language more closely, and has made the suggested revisions to the form. The committee agrees that this statutory requirement should be included on form CIV-105, although not as a statement under penalty of perjury. The committee has added it as item 4b.

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	Commenter	Position	Comment	Committee Response
			the complaint, as required by Civil Code section 1788.58, subdivision (b). The proposed Form CIV-105 omits this requirement. No default judgment may be entered if the plaintiff did not comply with this requirement or the Act's other requirements. (Civ. Code, § 1788.60, subd. (c).) The Attorney General thanks the Committee for its efforts to protect servicemembers and other consumers against abuses of legal process, and appreciates this opportunity to comment and share his thoughts with the Committee. Thank you for considering these views.	
3.	East Bay Community Law Center, Consumer Justice Clinic by Sharon Djemal, Director, Ted Mermin, Pro Bono Counsel, and Robin Wetherill, Student Advocate	AM	The East Bay Community Law Center (EBCLC) appreciates the opportunity to comment on the Civil and Small Claims Advisory Council's proposal to implement a new form, CIV-105, and revise an existing form, CIV-100. We fully support the Council's efforts to bring judicial practice into compliance with the Fair Debt Buying Practices Act (FDBPA) of 2013. While, overall, implementation of CIV-105 would further that goal, EBCLC urges the Council to revise the proposed form to reflect the requirement that all applications	The committee notes the commenter's general support of the proposal if modified and appreciates the detailed comments. Responses to specific comments are below.

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	Commenter	Position	Comment	Committee Response
			for default judgment that are subject to the FDBPA must be reviewed by a judge. Our comments will focus on three reasons for making this change. First, assessment of an application for default judgment under the FDBPA is not a ministerial duty, and as such may not be performed by a clerk. Second, explicitly requiring review by a judge would better serve the purposes of the FDBPA because it would better protect vulnerable defendants. Finally, though we recognize that the Council has thus far stated an intent not to take a position on the question whether a clerk may enter a default judgment under the FDBPA, the inclusion of the "clerk" option on the CIV-105 form is not neutral but rather could be read as condoning clerks' performance of the task. As we noted in our comments regarding the Council's previous proposal to revise CIV-100, EBCLC, as a co-sponsor of the FDBPA, is intimately familiar with the purposes of the Act. One principal reason that we conceived and supported the FDBPA is that we serve many clients who do not learn of default judgments entered	

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			against them until years after the fact. Our work with low-income residents of the East Bay convinces us that our clients and other vulnerable people across California will be best protected if the form contains an explicit statement that judicial review is required for the entry of a default judgment in a case subject to the FDBPA. I. **Review of CIV-105 is not a ministerial duty which may be performed by a clerk.** Only judges may approve applications for the entry of a default judgment under the FDBPA because that approval is not a ministerial duty, but rather requires the exercise of discretion. Since the FDBPA requires that all applications made using Form CIV-105 will require judicial review, the Council should eliminate the option on the form to request a "Clerk's Judgment." Clerks' duties must be limited to the ministerial; any task requiring subjective judgment must be performed by the court. The California Supreme Court has held that clerks may enter default judgments only where such a duty would be purely ministerial and would not require the consideration of evidence. *Lynch v. Bencini* (1941) 17 Cal.2d 521, 525-26. The requirements for the entry of a default	The committee understands and appreciates the commenter's position on this issue. However, as discussed in more detail in the report to the council, the committee concluded that deciding whether or not clerks may enter default judgments under the Act is a legislative policy issue beyond the committee's purview. In order to make the form neutral on this point, the committee has removed references to court judgments and clerk's judgments on form CIV-105.

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	Commenter	Position	Comment	Committee Response
			judgment under the FDBPA are far more than ministerial. Accordingly, as the Alameda County Superior Court held in *Portfolio Recovery Associates v. Esmeralda Castellanos*, entry of default judgment under the FDBPA is a duty reserved for judges, not for clerks. (Super. Ct. Alameda County, May 24, 2016, No. RG15-796408 [p. 2].) That is, the court held that plaintiff Portfolio's motion for default judgment could not be made under California Code of Civil Procedure § 585(a), concerning default judgments entered by the clerk, but rather must be considered under § 585(b) or (c), which relate to judgments entered by the court (*Ibid.*). The court reached this conclusion because "Portfolio's motion concern[ed] the application of the phrase 'authenticated through a sworn declaration' and [California Code of Civil Procedure §] 585(a) does not permit the clerk to consider declarations or any other evidence." (*Ibid.*, quoting the FDBPA, Cal. Civ. Code § 1788.60(a), (b)). Evaluating an application for entry of default judgment in a case subject to the FDBPA requires the exercise of judicial discretion. Under the Fair Debt Buying Practices Act, in an action initiated by a debt buyer, default judgment may not be	

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			entered against a debtor unless the debt buyer submits evidence supported by "business records, authenticated through a sworn declaration" to "establish" required facts. Assessments of a submitted Form CIV-105 will therefore always require the consideration of evidence. Determining whether the documents submitted are sufficient to "establish" the necessary facts requires the court to make a subjective judgment. Therefore, entry of default judgment under the FDBPA will always fall outside the ministerial duties which may be performed by a clerk. II. **The purpose of the FDBPA will be best served by the elimination of the option to choose a clerk's judgment.** The purpose of the FDBPA is to protect unsophisticated consumers with limited access to legal advice or representation from the entry, without adequate documentation, of default judgments in collection suits brought by debt buyers. The bill analysis for S.B. 233, which enacted the FDBPA, cited a joint report by EBCLC and Consumers Union for its finding that "debt buyers frequently buy portfolios of individual consumer debts with inadequate information, and frequently sue without any	The committee recommends that, if so inclined, the commenter pursue amendment of the statutory scheme to clarify whether clerks may enter default judgments. Upon clarification, the committee could address conforming form CIV-105 to the Act.

	Commenter	Position	Comment	Committee Response
			proof that they own the debts or that the consumer owes them money." (Cal. Asm. Floor. Bill Rep., analysis of Sen. Bill No. 233 (2013-2014 Reg. Sess.) June 26, 2013, p. 4.) The same Report notes that proponents of the FDBPA "contend, quite reasonably, that . . . the consumer should not have a default judgment entered against him simply because he is unsophisticated or could not afford legal representation. This bill seeks to end that basic unfairness in collection cases where the debt buyer does not substantiate or support his claim with adequate information." (*Ibid*.) The unsophisticated parties whom the FDBPA is intended to protect are in a particularly poor position to identify and correct errors made in the review of debt buyers' applications for default judgments. By the very nature of default judgments, the consumer is unlikely to be involved in this stage of the process. Many of EBCLC's clients – as a result of debt buyers' dubious record-keeping, improper identification of defendants, and numerous other departures from reasonable business practices that compelled the passage of the FDBPA – are unaware of lawsuits against them at the time that default judgments are entered. Even assuming that consumers know they are	

	Commenter	Position	Comment	Committee Response
			being sued, few have the kind of specialized knowledge needed to determine that a particular case was reviewed by the clerk but should have been reviewed by a judge, or that the clerk incorrectly assessed the validity and adequacy of documentary evidence. The purpose of the FDBPA is best served by unambiguously indicating that CIV-105 must always be reviewed by a judge, not by a clerk. The entry of default judgment in cases subject to the FDBPA necessarily concerns the rights of parties who are unable to participate or object. Those parties are often unsophisticated, low-income, or otherwise vulnerable. A failure to require adequate documentation for the entry of default judgment could result in the erroneous seizure of consumers' income or assets and could have life-changing consequences including eviction, the repossession of a vehicle, or the inability to meet basic needs. The seriousness of entering a default judgment, in the context of the debt buying industry's history of collecting debts without adequate proof, mandates judicial—not clerical—review of CIV-105 applications. III. **Allowing debt buyers to choose**	

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	Commenter	Position	Comment	Committee Response
			between a Clerk's Judgment and a Court Judgment is not neutral; rather, it lends support to an erroneous interpretation of the law. We believe, as noted, that the FDBPA leaves no room for entry of default by a clerk. But even if the Council wishes to remain neutral on the issue, certain changes to CIV-105 are necessary. In its "Invitation to Comment," the Committee states that "the Act does not specify whether a default judgment should be entered by the clerk or the court, and the proposed form does not attempt to resolve this question." Contrary to this intention, however, the inclusion of a check box allowing debt buyers to choose a "Clerk's Judgment" rather than a "Court Judgment" gives weight to the position that debt buyers have the option of clerical review. If Form CIV-105 suggests that clerical review is available, debt buyers may rely on the form as persuasive authority to argue that the entry of Clerk's Judgments in FDBPA cases has been given the imprimatur of the Judicial Council. Where the language of a statute is ambiguous, courts may look to extrinsic sources for clarification, including "contemporaneous administrative construction." (*People v.*	The committee agrees with the commenter and has removed the checkboxes for Court Judgment and Clerk's Judgment. Form CIV-105 now has a single checkbox for Judgment.

	Commenter	Position	Comment	Committee Response
			Woodhead (1987) 43 Cal.3d 1002, 1008.) Like the Committee in its Invitation, at least one superior court has determined that the FDBPA is ambiguous as to the question whether clerical review is permitted. *See Portfolio v. Castellanos*, *supra*, pp. 4-9 (discussing the Act's legislative history, and therefore impliedly determining that the statute's language is ambiguous). Given the ambiguity of the statutory language, it is reasonable to expect that courts presented with the question whether clerical review is acceptable may consider Form CIV-105 as an administrative or quasi-administrative interpretation of the Act. Rather than allowing courts to resolve any ambiguity in the statute, therefore, the Committee risks putting its thumb on the scale in favor of the availability of a clerk's judgment. – i.e., part of the problem that the FDBPA was enacted to resolve. The neutrality of the Council could be easily preserved by the elimination of the option to choose either a Clerk's or Court Judgment. Both the checkbox indicating a preference for a clerk's judgment and the box indicating preference or need for a court judgment could simply be removed. By eliminating both boxes, the Council would allow courts to determine how Form	

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			CIV-105 should properly be processed free from unintended influence by the Council. In conclusion, EBCLC wishes to reiterate our appreciation for the Civil and Small Claims Advisory Committee's efforts to implement the FDBPA. We are grateful for the committee's work, for its investment of time and effort in this issue of immediate importance to our low-income clients, and for its invitation to comment on the proposed forms. We are confident that the Committee's efforts will substantially improve the lives of thousands of Californians every year.	
4.	Hon. Thomas D. Long, Judge, Los Angeles Superior Court	AM	These are my comments on the invitation to comment described above. Please let me know if there is anywhere else I need to submit them. **These comments are only my own personal point of view** since I have not had time to vet them with the court as a whole. For background, I am one of four judicial officers assigned to the two limited civil departments (in Chatsworth and Norwalk) that handle all limited civil collections cases in Los Angeles County. As we discussed, we have a docket of tens of thousands of cases. We process currently a monthly average of 800 or more defaults	The committee notes the commenter's agreement with the proposal if modified, and appreciates the input and insight into how these cases are handled in Los Angeles County.

	Commenter	Position	Comment	Committee Response
			in Norwalk alone. The vast majority of the defaults are subject to the Fair Debt Buying Practices Act ("FDBPA") and most FDBPA defaults involve debts that originated through credit cards issued by federally-regulated depository institutions (banks). I have been in the Norwalk assignment since I took the bench on January 22, 2016. I am currently the judicial officer with the longest tenure in this assignment in Los Angeles County. **Responses to Request for Specific Comments:** **Does the proposal appropriately address the stated purpose?** Yes. Both the revisions to form CIV-100 and the proposed CIV-105 will make the processing of defaults under the FDBPA more consistent. The form will also serve as an effective means to communicate the requirements of the statute to attorneys and parties. **Should the statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury?** Yes. The Act requires documentation of the last payment or transaction and an accounting as to the	The committee thanks the commenter for responding to specific questions presented in the invitation to comment, and appreciates this feedback.. Based on the lack of statutory authority for requiring that this statement be made under penalty of perjury, the committee has not

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	Commenter	Position	Comment	Committee Response
			balance due. One of the major purposes of the FDBPA is to eliminate stale claims. Thus plaintiff's attorney and/or plaintiff should be analyzing whether or not the claim is barred by the statute of limitations and should be able to so state under penalty of perjury. In collections cases the analysis usually is simply whether or not the last transaction shown on the account records occurred within 4 years of the filing of the complaint. In this sense, the statement is really more factual than legal in most cases. If the situation is more complicated—e.g. defendant waived the statute of limitations or there is tolling—a declaration will need to address the issue and court review may be required. **Would the proposal provide cost savings**? Likely yes. The proposed form CIV-105 would make it easier to transfer review of these default judgment applications to clerks. Currently Norwalk Dept. B is using 7 full days of research attorney help and likely 2 days of judicial officer help and an unknown amount of clerical help to process about 200 defaults weekly, all as court judgments. I estimate research attorney time could be reduced to 2 days per week and judicial officer time to 1	made this revision to the form. The committee appreciates this input.

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	Commenter	Position	Comment	Committee Response
			day per week if most of the default applications led to clerk's judgments. This would likely be partially offset by additional clerical time that would be required. **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?** Staff would have to answer this. We would also want to publicize the new form with attorneys and parties. **Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Staff would have to answer this. I would encourage the Council to make the form CIV-100 available as optional without delay. The form would help process defaults even if they remain subject to court review. Judicial officers, research attorneys and private attorneys practicing in the area would need only minimal training to use the form.	The committee agrees that communication about the new form will be important. The committee notes the suggestion, but the Judicial Council's process for forms proposals, which allows for external and internal review, is only subject to modification in urgent circumstances. The committee declines to recommend an earlier effective date.

SPR17-07
Civil Practice and Procedure: Request for Entry of Default (proposed form CIV-105, proposed revisions to form CIV-100)

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	Commenter	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? I can only opine that it would work well in Los Angeles. **Additional Comments on proposed form CIV-105:**	No response required.
			1. It is our practice in LASC to require that the FDBPA plaintiff trace the full chain of title by providing copies of assignments and/or bills of sale showing the transfer of the debt from the original creditor to the plaintiff. These documents are authenticated in the declaration submitted with the application. Without this additional information, it is not possible to fulfill the purpose of the FDBPA that the plaintiff prove its ownership of the debt. Proposed form CIV-105 should be revised to take this into account.	The committee appreciates the suggestion but has decided not to add this requirement to the form because the documentation showing all transfers of the debt must be included with the application.
			2. The vast majority of these debts are on revolving credit card accounts. For such accounts the FDBPA provides that "the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient" to satisfy the requirement of CCP 1788.52(b). I would consider revising 5(a)	The committee agrees with the commenter's suggestion to call attention to revolving credit accounts, but concluded that it is necessary to retain the citation to Code of Civil Procedure section 1788.52(b). The committee has revised item 5(a) to include a reference to revolving credit accounts in item 5(a).

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	Commenter	Position	Comment	Committee Response
			of proposed form CIV-105 to read: "A copy of the contract , or for revolving credit accounts a copy of the last monthly statement containing a purchase transaction, last payment, or balance transfer, shall be authenticated by a sworn declaration." 3. A debt buyer's authentication of the original lender's records does not (at least in my view) establish the applicability of the business records exception to the Hearsay Rule in section 1271 of the Evidence Code. Debt buyer employees do not know how the original lender prepared and maintained the records. BUT where the original lender is a federally-regulated depository institution (a bank) the court can take judicial notice that its account records are business records and are sufficiently reliable to overcome the Hearsay Rule. See *People v. Dorsey* (1974) 43 Cal. App. 3d 953, 960-61; *People v. Lugashi* (1988) 205 Cal. App. 3d 632; and *Sun N' Sand, Inc. v. United California Bank* (1978) 21 Cal. App. 3d 671, 679. As explained in *Lugashi*, "bank statements prepared in the regular course of banking business and in accordance with banking regulations are in a different category than the ordinary business and financial records of a private enterprise." 205 Cal. App. 3d at	The committee appreciates the commenter's discussion of this evidentiary issue.

SPR17-07
Civil Practice and Procedure: Request for Entry of Default (proposed form CIV-105, proposed revisions to form CIV-100)

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			642. Since banks are required by law to maintain orderly and accurate account records, it is presumed they are accurate in part because of the maxim of jurisprudence that "[t]he law has been obeyed." Civ. Code § 3548. Proposed form CIV-105 should be revised to indicate that the records must be shown as admissible either by establishing that they are records of a bank OR with testimony from someone with personal knowledge (see Evidence Code section 702) as to how the records were prepared who provides a sworn declaration satisfying the requirements of section 1271 of the Evidence Code.	By its terms, the Act requires authentication through a sworn declaration. Prescribing alternative evidentiary standards is beyond the committee's purview.
			4. The parenthetical comment in 1(d) of proposed form CIV-105 implies that any judgment will necessarily be a court judgment. It should read "whether the court *or clerk*" will enter the judgment to be consistent with other aspects of the form and with the Invitation to Comment.	The committee agrees with this comment and has revised the parenthetical comment in item 1(d) to delete the reference to the court entering judgment.
			Via second email: I would like to add to my comments below as follows: **(Again, these comments are merely my own personal views.)**	The committee thanks the commenter for providing additional input.

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			(5) The new form CIV-105 should be adopted as drafted (except with the changes I suggest above) and should explicitly permit clerk's review of default applications. Over 90% of the applications subject to section 1788.60 submitted to LASC are based on credit card debt originated by a federally-regulated bank. In such cases, the court ordinarily does not need to assess the evidence, but rather can take judicial notice that records obtained from such a lender and authenticated either by the lender itself or by the purchaser are business records that establish a prima facie case supporting a default judgment. See *Unifund CCR, LLC v. Dear* (2015) 243 Cal. App. 4th Supp. 1, 7 and *Portfolio Recovery Associates LLC v. Wong* (LASC App. Div. unpublished, October 27, 2015), slip. Op. at 5 citing *Jazayeri v. Mao* (2009) 174 Cal. App. 4th 301, 322. Once the bank records and final credit card statement are authenticated, they can be accepted for the truth of their contents as bank records. The rationale for this conclusion is discussed in *People v. Dorsey* (1974) 43 Cal. App. 3d 953, 960-61; *People v. Lugashi* (1988) 205 Cal. App. 3d 632; and *Sun N' Sand, Inc. v. United California Bank* (1978) 21 Cal. App. 3d 671, 679. As explained in *Lugashi*,	The committee understands and appreciates the commenter's position on this issue. However, this is a legislative policy determination that is beyond the committee's purview.

	Commenter	Position	Comment	Committee Response
			"bank statements prepared in the regular course of banking business and in accordance with banking regulations are in a different category than the ordinary business and financial records of a private enterprise." 205 Cal. App. 3d at 642. Those commenting on the form in 2016 provided anecdotes of fraudulent debts leading to consumer hardship. This commenter has seen no evidence to support the belief that such fraud is common. The evidence needed to prove fraud is typically not in the hands of the plaintiff at all and so will not be before the court on a default since the defendant is not appearing. The review of a declaration under section 1788.60 is like the review of other documents which the clerk must review in order to determine whether or not to enter a default judgment. Among other things, the clerk must verify that the proof of service documents proper service on the defendant. The clerk must determine the reasonableness and recoverability of costs identified in the memorandum of costs declaration. The clerk must determine whether there is proper foundation for the plaintiff's declaration of the defendant's "nonmilitary status." The clerk also has	

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			discretion to "require copies of the bills or invoices, and a declaration negating the existence of any written agreement with the defendant." Rutter Group, Civil Procedure Before Trial, Chapter 5, Section 5:167. In the author's experience with LASC both clerks and judicial officers often require copies of invoices and clarification of whether there is or is not a written contract to support a default application. Each of these items supporting a default application requires the clerk to assess evidence in deciding whether or not to enter a default judgment. But not all assessments of evidence are a judicial function. The review of default applications for bank credit card debt is a clerical function that almost never involves evaluating evidence beyond the type of evaluations court clerks already do. The court has no practical ability to assess the accuracy of any of the information provided to it in a default application. If the application provides information that appears to be complete and consistent, there is no basis to withhold entry of judgment. The evidence of fraud would usually need to be provided by the defendant and the defendant is not present on a default application.	

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SPR17-07
Civil Practice and Procedure: Request for Entry of Default (proposed form CIV-105, proposed revisions to form CIV-100)

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	Commenter	Position	Comment	Committee Response
5.	Orange County Bar Association by Michael L. Baroni, President	AM	As to the proposed new form CIV-105, the following modifications are suggested. At item 1d, within the parenthesis where the possible use of an affidavit is addressed, the reference to Code of Civil Procedure section 585(d) should be included, as it is currently at the similar item on form CIV-100. This would provide the authority for, and guide the content of, the contemplated affidavit. At item 4, the allegations of the complaint required pursuant to section 1788.58 have, in some instances, been paraphrased. While the need to conserve space on these forms is understood, this paraphrasing should not be to the degree that it appears as an interpretation of rather precise statutory language, resulting in confusion as to the necessary content of allegations or the implication that statutorily required content has been relaxed. Accordingly, consider the following, expanded language. At item 4b, "A short, plain statement of the nature of the underlying debt and the	The committee notes the commenter's general support for the proposal if modified, and appreciates the input. The committee has revised this parenthetical instruction to delete reference to the court entering judgment on an affidavit to avoid distinctions between court judgments and clerk's judgments on the form. Reference to Code of Civil Procedure section 585(d), which applies to court judgments under subdivisions (b) and (c) of section 585, is not necessary because the Act sets forth with specificity the evidentiary requirements for a default judgment. The committee agrees with the comment and has revised the language in item 4 to more closely track the language of the statute.

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	Commenter	Position	Comment	Committee Response
			consumer transaction(s) from which it derived." At item 4d, "A statement of the debt balance at charge-off and an explanation of the amount, nature, and reason for any and all post-charge-off interest and fees, which explanation shall identify separately the charge-off balance, the total of post-charge-off interest, and the total of post-charge-off fees." At item 4f, "The name and address in a form sufficient to reasonably identify the charge-off creditor at the time of the charge-off and the charge-off creditor's account number associated with the debt." At item 4h,"The names and addresses in a form sufficient to reasonably identify all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer; and." At item 5, the citation within the parenthesis should be corrected to read, "Civ. Code §1788.60(a)-(c)." At item 5b, points (1)-(6) to be established by declaration should mirror the language of the relevant allegations set forth at item 4. As to the revised form CIV-100 and	The committee thanks the commenter and has corrected this typographical error. The committee agrees and has conformed the language of item 5 to that of item 4, both of which have been revised to more closely track the statutory language.

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	Commenter	Position	Comment	Committee Response
			proposed new form CIV-105, the following modification is suggested. At item 8 and item 9, respectively, and concerning the "Declaration of nonmilitary status," while it is understood that all references are to California law unless otherwise noted, in that both a federal and a state law are referenced here, it might be facilitative to include "California" before the reference to Military and Veterans Code section 400(b). **Request for Specific Comments:** Does the proposal appropriately address the stated purpose? Yes, however, it is believed it would do so more effectively were the suggestions set forth above incorporated into the final form/s. Should the statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury? No, absent an amendment to the statute underlying form CIV-105. Currently, there appears to be no authority for imposing such a requirement on the plaintiff and to attempt to do so by way of a	The committee agrees and has made the suggested change. The committee appreciates the commenter's responses to the questions presented in the invitation to comment. No response required. The committee agrees with the commenter and has not made this change to the form.

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	Commenter	Position	Comment	Committee Response
			mandatory form would likely prove problematic.	
6.	State Bar of California, Standing Committee on the Delivery of Legal Services by Sharon Djemal, Chair	A	**Specific Comments** Does the proposal appropriately address the stated purpose? Yes. Should the statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury? No, the law does not require that the statement regarding the statute of limitations in item 3 be made under penalty of perjury. **Additional Comments** In response to proposal SPR16-07 (Civil Practice and Procedure: Request for Entry of Default) that was circulated for public comment last year, SCDLS requested that the Judicial Council list all the statutory requirements of the Fair Debt Buying Practices Act (FDBPA) in the body of CIV-100 in hopes that it would decrease the large amount of default judgments being entered without the Plaintiff having satisfied these requirements. SCDLS strongly supports the Judicial Council's decision to create a	The committee notes the commenter's agreement with the proposal and appreciates the comments and responses to specific questions raised in the invitation to comment. The committee agrees with the commenter and has not modified item 3. The committee appreciates the commenter's input and support of the proposal.

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	Commenter	Position	Comment	Committee Response
			separate form to be used only in cases brought pursuant to the FDBPA, which clearly sets forth all these statutory requirements. *Please also note that there is a typo in Section 5, which cites to Civil Code section 788.60 instead of 1788.60.*	The committee thanks the commenter for pointing out this typographical error; it has been corrected.
7.	Superior Court of Los Angeles County	A		The committee notes the commenter's agreement with the proposal, with thanks for submitting the comment.
8.	Superior Court of Riverside County by Susan D. Ryan, Chief Deputy of Legal Services	AM	CIV-105: Whether a default judgment is entered by a clerk or a judicial officer is an issue that needs to be resolved. The clerk can only verify whether the plaintiff is asserting that the statute of limitations has not expired; only a judicial officer may make the determination that it has, in fact, not expired. It is recommended that the statute of limitations statement be under penalty of perjury. It is also recommended that line 3 on CIV-105 be rewritten to state the date of accrual of the cause of action and the date of the filing of the original complaint so that it can	The committee notes the commenter's general support for the proposal if modified, and agrees that clarity on this point would be helpful. Upon further consideration of the comments and policy concerns, the committee declines to add declarations under penalty of perjury because they are not statutorily required. The committee declines to make the suggested revisions because the date of the filing of the complaint is required in item 1, and the accrual date is alleged in the

SPR17-07
Civil Practice and Procedure: Request for Entry of Default (proposed form CIV-105, proposed revisions to form CIV-100)

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

	Commenter	Position	Comment	Committee Response
			be determined whether the limitations period has expired.	complaint and contained in documentation attached to the application for default judgment.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Should the statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury? Yes. The form should also require that the party confirm that the requirements listed in items 4 & 5 of the CIV-105 are also made under penalty of perjury. Modify the language listed in item 4 to read, "The complaint contains ALL of the following allegations…" Similarly, modify item 5 to read, "ALL of the following documents are submitted with this request for default judgment…" Q: Would the proposal provide cost savings? If so, please quantify. No. Q: 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),	The committee notes the commenter's support for the proposal if modified and appreciates the responses to the specific questions asked in the invitation to comment. Upon further consideration of the comments and policy concerns, the committee declines to add declarations under penalty of perjury because they are not statutorily required. The committee agrees with the suggested modifications to the language of the form and has made the changes. No response is required.

SPR17-07
Civil Practice and Procedure: Request for Entry of Default (proposed form CIV-105, proposed revisions to form CIV-100)

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

	Commenter	Position	Comment	Committee Response
			changing docket codes in case management systems, or modifying case management systems? Updating training materials, case management system, judgment checklists, and notifying staff. Q: Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. **General comments from our court:** Our court requests that separate forms be created for the request for entry of default and application for judgment. This will avoid confusion by the users of the form as to what items must be completed when requesting a default be entered versus the items that must be completed in the case of requesting entry of judgment.	The committee appreciates this information. No response is required. The committee notes the request and will retain the suggestion for consideration in the future, as time and resources permit.

Summary of exhibits to comment submitted by Public Counsel/Alston & Bird LLP

Exhibits 1-5: To illustrate their point that superior courts are applying the Fair Debt Buying Practices Act inconsistently, the commenters attached two requests for default judgment filed by the same debt buyer plaintiff, Midland Funding LLC (Midland), on the same day in two different superior courts. (*Midland Funding LLC v. Christian Namoca*, San Diego Superior Court case no. 37-2016-0000744-CL-CL-CTL (Exhibit 1); *Midland Funding LLC v. Karnail Singh*, Alameda Superior Court case no. HG16808705 (Exhibit 2).)

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

The requests were supported by nearly identical declarations in support of the judgment. Only the declarants and the factual details regarding the debts and the debtors were different. Both declarants were officers for the plaintiff and employed with Midland Credit Management Inc., servicer of the credit accounts. Both declarants stated that plaintiff became the successor in interest to the accounts, acquired and incorporated the former owner's account records into its own business records, relied upon the accuracy of those records, and that the records were trustworthy because the original creditor was required to keep careful account records. (Exhibits 1 and 2, paragraphs 4 and 5.)

The Superior Court of Alameda County requires a judge to review default judgment applications under the Act. The judge rejected the request in the *Singh* case for several reasons, including that the declarant was not a custodian of records as to the records of the original creditor and therefore could not authenticate that creditor's business records. (Exhibit 3.) A week later, the plaintiff filed a request for dismissal of the case. (Exhibit 4.)

The Superior Court of San Diego County allows the clerk to review requests for default judgment under Code of Civil Procedure section 585(a) (an action arising upon a contract for the recovery of money). The clerk entered judgment in the *Namoca* case for the plaintiff. (Exhibit 5.)

Exhibits 6-8: In support of their contention that default filings have declined in counties that require judicial review, the commenters attached documents from the Superior Court of Alameda County and the Superior Court of Los Angeles County. Two Alameda County DomainWeb printouts show that Midland filed 1,112 actions in 2013 (Exhibit 6), and 200 actions in 2016 (Exhibit 7).

A letter from the Superior Court of Los Angeles County regarding collections cases states that 58,264 cases were filed in 2014; 38,522 cases were filed in 2015; and 42,429 cases were filed in 2016. (Exhibit 8.) The commenters refer to the number of collections cases filed in 2013, but the letter does not contain data for 2013.

A letter from the Superior Court of Alameda County regarding collections cases contains data regarding the number of cases filed and the number of requests for default judgment filed from June 2014 through March 2017. (Exhibit 8.) The commenters refer to the number of collections cases filed in 2013, but the letter does not contain data for 2013.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title
Civil Practice and Procedure: Writ of Execution Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms EJ-130 and MC-012; approve form MC-013-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 14, 2017

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revisions to two forms and approval of a new information sheet to facilitate use of the *Writ of Execution* (form EJ-130). The committee's recommendation responds to suggestions received over several years, including suggestions made in response to proposed revisions to form EJ-130 that were circulated for comment in 2016.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective January 1, 2018:

1. Approve the new form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).

2. Revise *Writ of Execution* (form EJ-130), and *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012).

The new and revised forms are attached at pages 9–15.

Previous Council Action

The Judicial Council first approved the *Writ of Execution* (form EJ-130) for optional use in January 1978. It has been revised several times, most recently in 2011 to implement new legislation that required a writ of execution, possession, or sale to specify certain additional information. (See Code Civ. Proc., § 699.520.)

Rationale for Recommendation

Most writs of execution are prepared by parties on the Judicial Council's *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. Although the use of the form is not mandated, the form is the most frequently used format in which such writs are presented to the court. Over the years, the committee has received a number of suggestions for revising this form from court administrators, levying officers, private practitioners, and legal aid offices.

The committee initially circulated a proposal with revisions to form EJ-130 for public comment in 2016. The form was revised in three areas: (1) the boxes under the case number on the front, for identifying cases as limited or unlimited; (2) the reorganization of the monetary items (items 11 through 20); and (3) revision of item 24a regarding the possession of real property. Comments were received on all three sets of revisions from a variety of commentators.

In particular, the committee received multiple comments suggesting additional revisions be made, or new forms developed, to address the calculation of credits to interest and principal when partial payments are made over time, and also suggesting revisions to form MC-012. The committee concluded that further revisions and/or new forms would be necessary for the EJ-130 form to be completed correctly, especially if used by self-represented parties. The committee decided to recirculate a second proposal, with all revisions to form EJ-130 together with a proposed revisions to *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), as well as a new information sheet it developed in response to comments received in 2016.

The committee's recommendation for the new optional *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO), similarly responds to concerns raised by comments received on the proposal circulated in 2016 that the monetary computation of interest and credits on form EJ-130 is confusing, particularly for self-represented litigants and where partial payments are made at different times.

Revise form EJ-130, *Writ of Execution*

Several sets of revisions are recommended for this form: some minor changes to the beginning of the forms; some textual changes to the items in which the amount to be executed on is set out; and revisions to the sections regarding writs of possession, to address issues relating to unlawful detainers due to property foreclosures. The revisions are discussed below.

Minor changes to first page

Identifier for limited versus unlimited case, check boxes at the top of the form. Form EJ-130 was amended a few years ago to implement a bill that required that a writ of execution, possession, or sale to specify, among other things, whether the case is a "limited or unlimited" civil action. (Code Civ. Proc., § 699.520.) The intent of this latter designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) to the underlying case. In an effort to make the form easier for self-represented litigants to use, and based on comments received on proposed form changes, check boxes were added to the form, next to the title, to indicate the type of case: limited, unlimited, small claims, or other (with a blank space to fill in what kind, such as family or probate).

The committee has been informed that some sheriff's offices refuse to accept a form that has the "small claims" box checked even though, by law, a small claims case is a limited civil action; or one that has "other" checked with "family" written in, even though all family law cases are unlimited. The proposal circulated in 2016 included a revision to these check boxes, eliminating the separate check box for small claims cases and revising the check box for limited civil cases to state "limited cases (including small claims)." The proposed revision also eliminated the "other" check box. This proposed revision was well received by commentators in 2016, and is incorporated into the recommended form. A further minor revision was made to the "unlimited civil case" check box to indicate that it includes "family and probate cases." This should help self-represented litigants determine the correct box to check.

"Attorney For." The caption on form EJ-130 currently has the required "ATTORNEY FOR *(name)*" line. Unlike on other forms, there is currently a check box next to this item in the caption. The purpose of the check box is unclear and may be creating confusion. The committee therefore recommends deleting the check box next to "ATTORNEY FOR *(name)*" in the caption.

Item 3, identifying judgment creditor or assignee of record. One of the comments the committee received in response to the proposal circulated in 2016 was that assignees of record are confused about how to fill out item 3 of the form, which currently asks the filer to indicate if he or she is a judgment creditor or an assignee of record. The assignees of record consider themselves to have become the "judgment creditor" by acquiring all rights to an interest in the judgment. Therefore, some of the assignees check both boxes, as judgment creditor and assignee of record, which can cause confusion in the clerk's office. To address this concern, the committee recommends adding the word "original" in front of "judgment creditor" both in item 3 and in the attorney box at the top of the form. This is intended to clarify that assignees should check only the assignee box.

Item 4, identifying type of legal entity. Another comment received in 2016 suggested that confusion arises because item 4 (and corresponding items 21 and 23b) requires a party to identify—for judgment debtors not a natural person—the type of legal entity "stated in judgment." That information, while typically listed in the complaint, is not always included in the judgment itself. The statute that led to the addition of this item on the form, Code of Civil

Procedure section 699.510(c), does not require that the information regarding type of business entity be found in the judgment. The committee therefore recommends removing the reference to "stated in judgment" from the form.

Calculation of monetary items

Items 11–20, calculations of amount on which to execute

A central problem with this section of the current EJ-130 form is that it instructs the levying officer to add ongoing daily interest at the legal rate (item 19a) on a "subtotal" (item 13) that includes the total judgment amount minus *all* credits (item 14) for payments received. That calculation does not take expressly require consideration of whether some of the payments received should be applied to accrued interest rather than to principal. (See Code Civ. Proc., §§ 680.633 and 695.220(c) and (d)). The recommendation for revisions to form EJ-130 respond to this problem by clarifying the terms and computation of the amounts enforced by the levying officer.

The committee recommends the following revisions to this section of form EJ-130 to make it easier to understand and complete:

- Above item 11, add the following heading: "For Items 11–17, see form MC-012 and form MC-013-INFO," to advise parties of other forms that contain information to be used in completing this form.
- Item 11: add a clarifying parenthetical so the item reads "Total judgment (*as entered or renewed).*"
- Item 12: add a statutory reference following "Costs after judgment" to the code section that provides what costs may be added and how (Code Civ. Proc., § 685.090*).*
- Item 14: add text and a parenthetical, so the item reads "Credits to principal *(after credit to interest),*" clarifying that credit from partial payments should be applied first to interest and only then to principal. The recommended information sheet helps explain how to calculate this amount, and the amount for item 16.
- Item 15: revise "Subtotal *(subtract 14 from 13)*" to "Principal Remaining Due *(subtract 14 from 13),*" to clarify what the subtotal represents.
- Item 16: revise from "Interest after judgment" to "Accrued interest remaining due" to clarify that the item does not include all interest, even if partial payments have already been made that have been credited against the interest accrued.

Writ of possession or sale of real property

Item 24, unlawful detainer resulting from foreclosure sale

This section has been revised to clarify the rights of an occupant of rental housing that has been in a foreclosure sale to resist eviction, and to advise the levying officer that such a tenant may raise a claim for a right of possession up to the time of the enforcement of the writ. (See Code Civ. Proc., § 1174.3(a)(2).) The following text has been added as new item 24a(3), to be checked in foreclosure cases:

The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect an eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) (See Code Civ. Proc., § 415.46 and 1174.3(a)(2).)

Instructions have also been added to make the items regarding daily rental value and hearing on objections to enforcement of the judgment applicable to such cases, as well as to cases in which the Prejudgment Claim of Right to Possession was not served in compliance with Code of Civil Procedure section 415.46.

"Notice to Person Served," page 3

Information about the rights of tenants in properties that have been foreclosed on has also been added to the "Notice to Person Served" that currently appears at the bottom of page 2 of form EJ-130 and will be on the new third page of the revised form. This notice currently focuses on the negative consequences if one fails to vacate real property. In response to the proposal circulated in 2016, several commentators, noted that, without any mention of a right to remain in foreclosed property, the "person (tenant) served" will not be informed of some important rights to resist immediate eviction, including the potential right to remain in possession under Code of Civil Procedure section 1161b, or to object to eviction if he or she was not named in the judgment up to the time of the actual eviction. (See Code Civ. Proc., §§ 415.46, 1174.3(a)(2).)

Revise form MC-012, *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest*

Commenters to 2016 circulation of revisions to form EJ-130 noted that current form MC-012 (often filed in conjunction with EJ-130) is also confusing because it includes an acknowledgment of "credit" for the *total* amount of payments received by the judgment creditor without providing any breakdown of payments credited to accrued interest and principal. The committee's recommended revisions to form MC-012 are intended to show the calculation and breakdown of payments credited towards interest and then towards principal. The revisions further assist parties to comply with the statutory requirement of providing this information to the court in a declaration signed under penalty of perjury. (See also Code Civ. Proc., § 695.220(c) and (d).) Other revisions to form MC-012 make the language on the form less confusing and more consistent with information requested on form EJ-130.

The committee recommends the following revisions to form MC-012:

- Item 2: adding an acknowledgment showing how the payments received are being credited first towards *interest* and then to *principal* with a breakdown of these amounts. Currently, this item, "Acknowledgment of Credit," does not indicate how the "credit" for payments received must be calculated. The computation of the amount of "credit" claimed (i.e., *credit* for payments that reduce the judgment *principal* after crediting interest) is required on item 14 of form EJ-130. (See Code Civ. Proc., § 695.220(c), (d).)

- Item 2: adding a new item, "Principal remaining due." This amount is defined by statute as the "principal amount of the judgment" (including costs after credits) and the computation is required on item 15 of form EJ-130. (See Code Civ. Proc., § 680.300.) By requiring inclusion of this information on form MC-012, which is mandatory, the calculation of the principal balance remaining due is provided by the declarant under penalty of perjury.
- Item 3 (formerly 5): revising this item to clarify that the declaration of "accrued interest" means the amount that has accrued but remains *unpaid and due* at the present date (i.e., after credits for partial satisfactions and other credits). (See Code Civ. Proc., §§ 685.010–685.050, 695.220(c).)
- Reorganizing the form, in response to comments received in 2017, into three discrete sections: (1) "Post judgment costs," (2) "Credits to interest and principle," and (3) "Accrued interest remaining due," with check boxes in front of each section. This revision will expressly allow litigants to choose among the items for which they are using the form at any point in time. The committee has also added a cross-reference to this form on form EJ-130.

Approve form MC-013-INFO, *Information Sheet for Calculating Interest and Amount Owed on a Judgment*

The committee's recommendation for the new information sheet, form MC-013-INFO, similarly responds to concerns raised by comments received on the proposal circulated in 2016, that the monetary computation of interest and credits on form EJ-130 is confusing, particularly for self-represented litigants and where partial payments are made at different times. This new form provides information regarding the amounts that can be recovered by the judgment creditor under the law. It also describes how to credit payments received from the debtor towards interest, costs, and judgment principal, and refers the creditor to form MC-012 to request that interest and costs be included in the enforceable amount. The form also explains how accrued interest on a judgment is calculated with various formulas and examples, including the steps for crediting partial payments.

Comments, Alternatives Considered, and Policy Implications

Comments: spring 2016

Three bar groups and two of the four courts (the Superior Courts of Los Angeles and Riverside Counties) that provided comments on the original revisions to form EJ-130 agreed that the proposed revisions to the monetary computation items on the *Writ of Execution* would be helpful. However, two other courts (the Superior Court of San Diego County, and the Family and Juvenile Court Managers of the Superior Court of Orange County) did not agree, and commented that the reorganized items would be just as confusing, if not more so, than the current format.

The California Association of Judgment Professionals (CAJP) also provided a detailed comment opposing the reorganization of the items, the breakdown of the credit item, and the inclusion of

any reference on form EJ-130 to form MC-012. CAJP requested that form MC-012 no longer be mandatory.

The Superior Court of San Diego pointed out that form MC-012, from which some of the figures that go on the writ form must be taken, should really be revised and suggested that doing so would be a better solution than the proposed revision of writ of execution. The court pointed out that, for example, the item on form MC-012 regarding acknowledgement of credits should also be broken down into two parts (credit being applied to interest and credits being applied to principal), if that breakdown is being required on the writ of execution form.

After reviewing the history of form MC-012, the committee concluded that the form was indeed intended to be a mandatory form for purposes of claiming interest and as a supporting document for the writ of execution. However, the committee, like both CAJP and the Superior Court of San Diego County, also concluded that current form MC-012 is not sufficient for serving in this way when partial payments are made over time on a judgment. Specifically, the form does not allow a party to show how the calculations are done to account for crediting partial payments, and how the interest is calculated over time in light of partial payments. With the exception of CAJP, the commenters who responded agreed that references should be added to form EJ-130 to expressly refer to mandatory form MC-012.

In light of the comments received, the committee deferred the proposed revisions to form EJ-130 and continued to work on the proposal in the following rules cycle.

Comments: spring 2017

The committee's proposal for further revisions to form EJ-130, new revisions to form MC-012, and new form MC-013-INFO were circulated for comment during the spring 2017 comment period. Comments were received from four superior courts (for the counties of Los Angeles, Orange, San Diego, and Ventura), the California State Sheriff's Association, the Standing Committee on the Delivery of Legal Services of the State Bar, the Orange County Bar Association, the California Association of Judgment Professionals, a professional judgment enforcer, and an attorney with a private law firm.

The commenters were generally in favor of the proposal, with a few suggesting minor modifications to the forms, some of which the committee implemented and others that were outside the scope of the proposal. Specifically, three commenters responded that they agreed with the proposal; four commentators responded that they agreed with the proposal if modified, and three commentators did not indicate any position in response to the proposal.

The commenters who responded to specific questions from the Invitation to Comment all agreed that the proposal appropriately addressed its stated purpose, and that the revisions to forms EJ-130 and MC-012—relating to the computation of accrued interest and credits—would make the forms easier for parties to complete and courts to review. The California State Sheriff's Association strongly opposed specific revisions to the real property items of the EJ-130 form,

which led to the committee making changes on other grounds.[1]

Alternatives considered

The committee considered not taking any action but decided that the revised forms and new optional form, as recommended, will make the forms clearer and easier to use, particularly for self-represented parties. The committee considered recommending adoption of the previously circulated revisions to form EJ-130. However, it determined that additional revisions to the items relating to the computation of interest and credits, and other form proposals received in the comments were important to facilitate use of form EJ-130.

The committee also considered recommending an optional, separate form affidavit and/or worksheet to support the amount of interest and credits listed on the writ of execution. However, it determined that doing so could create further confusion, as form MC-012, adopted for mandatory use, includes a declaration of interest and acknowledgment of credits and is signed under penalty of perjury.

In addition, the recommendation for revisions to the form includes a breakdown of the calculation for partial payments and also reorganizes the form into three discrete parts, so a party can use only those sections that are necessary. The committee determined that a worksheet may be useful in the future but would require additional time to develop to ensure it adequately addresses the various rules for calculating interest on different types of judgments.

Implementation Requirements, Costs, and Operational Impacts

These forms are completed by the parties, but must be reviewed and issued by court clerks. Therefore, court clerks will need training to recognize and understand the revised items. To the extent self-help centers assist parties in completing the forms, they too will need training on the new forms. Should the writ of execution forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those systems.

Attachments and Links

1. Forms EJ-130, MC-012, and MC-013-INFO, at pages 9–15.
2. Chart of comments, at pages 16–36.

[1] A chart containing all the comments received in spring 2017 and the committee's responses to them is attached.

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*): ☐ ORIGINAL JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD	DRAFT 07/11/17 Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	CASE NUMBER:
WRIT OF ☐ **EXECUTION (Money Judgment)** ☐ **POSSESSION OF** ☐ **Personal Property** ☐ **SALE** ☐ **Real Property**	☐ **Limited Civil Case** (including Small Claims) ☐ **Unlimited Civil Case** (including Family and Probate)

1. **To the Sheriff or Marshal of the County of:**
   You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.
3. (Name):
   is the ☐ original judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.
4. **Judgment debtor** *(name, type of legal entity if not a natural person, and last known address):*

   ☐ Additional judgment debtors on next page
5. **Judgment entered** on *(date):*
6. ☐ Judgment renewed on *(dates):*
7. **Notice of sale** under this writ
   a. ☐ has not been requested.
   b. ☐ has been requested *(see next page).*
8. ☐ Joint debtor information on next page.
9. ☐ See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.
10. ☐ This writ is issued on a sister-state judgment.

For Items 11–17, see form MC-012 and form MC-013-INFO

11. Total judgment *(as entered or renewed)*	$
12. Costs after judgment *(CCP 685.090)*	$
13. Subtotal *(add 11 and 12)*	$
14. Credits to principal *(after credit to interest)*	$
15. Principal remaining due *(subtract 14 from 13)*	$
16. Accrued interest remaining due per CCP 685.050(b) *(not on GC 6103.5 fees)*	$
17. Fee for issuance of writ	$
18. **Total** *(add 15, 16, and 17)*	$

19. **Levying officer:**
    a. Add daily interest from date of writ *(at the legal rate on 15) (not on GC 6103.5 fees)* . . . . . $
    b. Pay directly to court costs included in 11 and 17 *(GC 6103.5, 68637; CCP 699.520(i))* . . . . . $
20. ☐ The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

[SEAL]

Issued on *(date):* Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Plaintiff: Defendant:	CASE NUMBER:

21. ☐ Additional judgment debtor *(name, type of legal entity if not a natural person, and last known address):*

22. ☐ Notice of sale has been requested by *(name and address):*

23. ☐ Joint debtor was declared bound by the judgment (CCP 989–994)

a. *on (date):*
b. name, type of legal entity if not a natural person, and last known address of joint debtor:

a. *on (date):*
b. name, type of legal entity if not a natural person, and last known address of joint debtor:

c. ☐ Additional costs against certain joint debtors are itemized: ☐ Below ☐ On Attachment 23c

24. ☐ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

a. ☐ Possession of real property: The complaint was filed on *(date):*
(Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)

(1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) *(See CCP 415.46 and 1174.3(a)(2).)*

(4) If the unlawful detainer resulted from a foreclosure (item 24a(3)), or if the Prejudgment Claim of Right to Possession was not served in compliance with CCP 415.46 (item 24a(2)), answer the following:

(a) The daily rental value on the date the complaint was filed was $

(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates *(specify):*

b. ☐ Possession of personal property.
☐ If delivery cannot be had, then for the value *(itemize in 24e)* specified in the judgment or supplemental order.

c. ☐ Sale of personal property.

d. ☐ Sale of real property.

e. The property is described: ☐ Below ☐ On Attachment 24e

Plaintiff: Defendant:	CASE NUMBER:

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

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 6/29/2017 Not Approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
MEMORANDUM OF COSTS AFTER JUDGMENT, ACKNOWLEDGMENT OF CREDIT, AND DECLARATION OF ACCRUED INTEREST	CASE NUMBER:

1. ☐ **Postjudgment costs**
   a. I claim the following costs after judgment incurred within the last two years *(indicate if there are multiple items in any category):*

	Dates Incurred	Amount
(1) Preparing and issuing abstract of judgment		$
(2) Recording and indexing abstract of judgment		$
(3) Filing notice of judgment lien on personal property		$
(4) Issuing writ of execution, to extent not satisfied by Code Civ. Proc., § 685.050 *(specify county):*		$
(5) Levying officers fees, to extent not satisfied by Code Civ. Proc., § 685.050 or wage garnishment		$
(6) Approved fee on application for order for appearance of judgment debtor, or other approved costs under Code Civ. Proc., § 708.110 et seq.		$
(7) Attorney fees, if allowed by Code Civ. Proc., § 685.040		$
(8) Other: _____ *(Statute authorizing cost):* _____		$
(9) Total of claimed costs for current memorandum of costs *(add items (1)–(8))*		$
b. All previously allowed postjudgment costs		$
c. **Total** of all postjudgment costs *(add items a and b)*		$

2. ☐ **Credits to interest and principal**
   a. I acknowledge total payments to date in the amount of: $ _____ (including returns on levy process and direct payments). The payments received are applied first to the amount of accrued interest, and then to the judgment principal (including postjudgment costs allowed) as follows: credit to accrued interest: $ _____; credit to judgment principal $ _____.
   b. **Principal remaining due:** The amount of judgment principal remaining due is $ _____. (See Code Civ. Proc., § 680.333.)
3. ☐ **Accrued interest remaining due:** I declare interest accruing (at the legal rate) from the date of entry or renewal and on balances from the date of any partial satisfactions (or other credits reducing the principal) remaining due in the amount of $ _____.
4. I am the: ☐ judgment creditor ☐ agent for the judgment creditor ☐ attorney for the judgment creditor.
   I have knowledge of the facts concerning the costs claimed above. To the best of my knowledge and belief, the costs claimed are correct, reasonable, and necessary, and have not been satisfied.

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)

NOTICE TO THE JUDGMENT DEBTOR

If this memorandum of costs is filed at the same time as an application for a writ of execution, any statutory costs, not exceeding $100 in aggregate and not already allowed by the court, may be included in the writ of execution. The fees sought under this memorandum may be disallowed by the court upon a motion to tax filed by the debtor, notwithstanding the fees having been included in the writ of execution. (Code Civ. Proc., § 685.070(e).) A motion to tax costs claimed in this memorandum must be filed within 10 days after service of the memorandum. (Code Civ. Proc., § 685.070(c).)

Short Title:	CASE NUMBER:

PROOF OF SERVICE

☐ **Mail** ☐ **Personal Service**

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 or business address is:

3 ☐ I mailed or personally delivered a copy of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* as follows *(complete either a or b):*

a. ☐ **Mail.** I am a resident of or employed in the county where the mail occurred.
   (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 personally delivered a copy as follows.
   (1) Name of person served:
   (2) Address where delivered:
   (3) Date delivered:
   (4) Time delivered:

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)

INFORMATION SHEET FOR CALCULATING INTEREST AND AMOUNT OWED ON A JUDGMENT

DRAFT
06/29/17
Not Approved by
Judicial Council

What can the judgment creditor recover?

Under California law, the amount recoverable by a judgment creditor includes:

- The total amount of the judgment entered by the court (principal), plus costs;
- Costs after judgment under Code of Civil Procedure section 685.070; and
- Accrued interest on the total amount.

Costs After Judgment

A judgment creditor is entitled to reimbursement for the "reasonable and necessary" costs of enforcing a judgment. These costs must be reported to the court within two years of the date incurred. The judgment amount includes costs ordered by the court after the judgment. (For information on recovering costs and a detailed list of costs that can be recovered see Code of Civil Procedure sections 685.040, 685.050 et seq., 685.070(b), and 685.090; see also "Requesting Costs and Interest" below).

Accrued Interest (*See Code Civ. Proc., §§ 685.010, 685.020(a), and Cal. Const., art. XV, § 1.)*

Interest accrues on an unpaid judgment amount at the legal rate of 10% per year (7% if the judgment debtor is a state or local government entity) generally from the date of entry of the judgment. Interest begins to accrue on the amount of costs added to a judgment from the date ordered by the court or from the date costs are allowed following expiration of the time to object. (Code Civ. Proc., § 685.070(d).) Also, upon renewal of a judgment, interest begins to accrue on the day the renewed judgment is entered. If the judgment is payable in installments, interest accrues from the date each installment is due.

Requesting Costs and Interest

To have costs and interest added to the enforceable amount owed, the judgment creditor must file and serve a *Memorandum of Costs After Judgment* (form MC-012). On this form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments.

Crediting Payments Received

Any payments received by the judgment creditor must be "credited" in a specific order. (Code Civ. Proc., § 695.220.) After specific costs go directly to the levying officer and to the court for fees, the judgment creditor is required to credit payments received first toward *accrued interest* and then toward the *judgment principal* (including costs approved by the court after entry of the judgment).

Calculation of Interest on Judgment and Amount Due

Following are various formulas and examples to assist with the calculation of interest on a judgment using a 10% interest rate:

- **Calculating *Daily Interest* on a Judgment Using 10% Interest Rate**

  Following is the formula for figuring out the amount of interest earned per day on a judgment.

  Formula: Total amount of judgment owed x 10% (or 0.10) = interest earned per year.
  Divide that number by 365 = daily interest earned.

  Example: Judgment debtor owes the judgment creditor $5,000 (the "judgment principal").

  $5,000 x 0.10 = $500
  $500/365 = $1.37 daily interest

  The amount of interest earned will be $1.37 per day as long as the unpaid amount remains $5,000.

  Calculating the *Total Amount Due, Including Interest,* on the date of payment

  Step 1: Calculate the amount of interest owed on the date of payment. This amount will equal the daily interest rate calculated above, multiplied by the number of days since the court entered the final judgment.

  1. Figure out the total number of days that have passed since the court entered the final judgment up to the day of payment.
  2. Multiply the total days by the amount of daily interest. The result is the amount of interest owing on the day of payment.

Form Approved for Optional Use
Judicial Council of California
MC-013-INFO [New January 1, 2018]

Example: Assume a $5,000 judgment was entered on June 1 and paid on September 8; 100 days from the entry of the judgment have passed.

The daily interest is $1.37 (see above calculation).
$1.37 per day x 100 days = $137 interest owed on the date of payment.

The judgment debtor owes $137 in interest on the principal of $5,000 on the date of payment.

Step 2: Add the amount of interest that has accrued to the amount of the judgment.
$5,000 judgment amount + $137 interest = $5,137.
The judgment debtor owes a total of $5,137 on the 100th day after the court entered the judgment.

- **Crediting Partial Payments and Recalculating the Amount Due**

If the judgment debtor does not pay all that is owed at one time, the partial payments the debtor makes are credited to the interest *first* and then to the judgment amount (the principal) owed.

Example: Judgment principal of $5,000.

- **First Payment: After 200 days, the judgment debtor pays $1,000**

Step 1: Calculate the amount of interest owed on the date of payment

Following the above example: $1.37 per day x 200 days. After 200 days, $274 in interest will have accrued on the $5,000 judgment (200 days x $1.37 per day).

Step 2: Apply payment to interest

The debtor paid $1,000, which must first be used to credit the $274 of accrued interest.
That leaves a balance of $726 to be credited toward the $5,000 principal ($1,000 - $274 = $726).

Step 3: Apply remainder to principal

The remaining credit of $726 is applied to the $5,000 judgment principal ($5,000 - $726 = $4,274).
The judgment debtor now owes $4,274 on the judgment principal.

Step 4: Calculate the new daily interest rate

Daily interest would then accrue at a rate of $1.17/day.
$4,274 x 10% = $427.40 interest earned per year.
$427.40/365 = $1.17 interest earned per day.

- **Second Payment: After 100 days, a payment of $500 is made (calculate using steps 1–4)**

1. The amount of interest that accrues in the next 100 days:
   100 days x $1.17 = $117.
2. The payment of $500 must first be credited towards the interest of $117, leaving a balance of $383 to be credited against the principal ($500 - $117 = $383).
3. The credit of $383 is then subtracted from the judgment principal of $4,274, leaving an unpaid balance of $3,891.
4. The new daily interest would then accrue on the principal going forward at a rate of $1.07/day:
   $3,891 x 10% = $389.10/365.

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)

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

	Commentator	Position	Comment	Committee Response
1.	Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	A	I have read the proposed changes and concur with them. See specific comments below.	
2.	California Association of Judgment Professionals by Gretchen D. Lichtenberger, Legislative Chairperson	NI	See specific comments below.	
3.	California State Sheriffs' Association by Cathy Coyne, Deputy Executive Director	AM	See specific comments below.	
4.	Richard Morrison Black Widow Financial Redwood City, CA	NI	See specific comments below.	
5.	Orange County Bar Association Michael L. Baroni, President	AM	See specific comments below.	
6.	Standing Committee on the Delivery of Legal Services, State Bar of California By Sharon Djemal, Chair	A	See specific comments below.	
7.	Superior Court of Los Angeles County	A	No specific comment	The committee notes the commentator's support for the proposal; no response required.
8.	Superior Court of Orange County by Civil and Probate Operations Managers	NI	See specific comments below.	
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	See specific comments below.	
10.	Superior Court of Ventura County by Julie Camacho, Court Manager	AM	See specific comments below.	

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)
All comments are verbatim unless indicated by an asterisk (*).

Does the proposal appropriately address the stated purpose?		
Commentator	**Comment**	**Committee Response**
Superior Court of Ventura County by Julie Camacho, Court Manager	I agree with the changes to the EJ-130 and the MC-012. The proposed new form, MC-013-INFO will be helpful to self-represented litigants in completing the EJ-130.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	**Request for Specific Comments:** Does the proposal appropriately address the stated purpose? Yes, to the degree that the three forms proposed work together to better explain what is, and remains, a complicated process. The proposed new form MC-013-INFO is a much-needed addition to this process.	The committee appreciates this input.
Sharon Djemal, Chair, Standing Committee on the Delivery of Legal Services The State Bar of California	**Specific Comments** • Does the proposal appropriately address the stated purpose? Yes, the revisions to form EJ-130 will make the form easier for self-represented litigants to use. **Additional Comments** The current proposed revisions made in response to comments to last year's proposal SPR16-10 (Civil Practice and Procedure: Writ of Execution) greatly improve the understanding of the eviction process for self-represented litigants, especially tenants in foreclosed properties. Also, the proposal is likely to reduce errors by self-represented litigants. Referencing required form MC-012 will help self-represented litigants properly exercise their rights to post judgment costs and interest.	The committee appreciates this input.
Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	I believe the changes will assist the court, counsel and levying officers in enforcement proceedings.	The committee appreciates this input.

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)
All comments are verbatim unless indicated by an asterisk (*).

Does the proposal appropriately address the stated purpose?		
California State Sheriffs' Association by Cathy Coyne, Deputy Executive Director	**1. Identifier for limited v. unlimited case, check boxes at the top of the form.** a. No opposition – The proposed changes will remove confusion. **2. "Attorney For."** a. No opposition – The proposed changes will remove confusion. **3. Item 3, Identifying judgment creditor or assignee of record. a.** No opposition – The proposed changes will remove confusion. **8. Making the Items regarding daily rental value and hearing on objections to enforcement of the judgement applicable to foreclosed property.** a. No opposition – The proposed changes will remove confusion.	The committee appreciates this input.

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)
All comments are verbatim unless indicated by an asterisk (*).

Will the revisions to items 11–20 on the *Writ of Execution* (form EJ-130) make the form easier for parties to complete and for courts to review?		
Commentator	**Comment**	**Committee Response**
Standing Committee on the Delivery of Legal Services, State Bar of California, By Sharon Djemal, Chair,	Yes, the reorganization of items 11 through 21 will make it significantly easier for self-represented litigants to properly complete the form and to understand how the total judgment has been calculated and how any credits have been applied to the judgment.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	Will the revisions to items 11-20 on the *Writ* (form EJ-130) make the form easier for parties to complete and for courts to review? Yes, in that the revisions to certain items provide explanations or guidance as to the information each seeks. This would seem to make the form easier to complete and review. The problem is, however, that considerations of space on the form, together with the number or complexity of the issues to be addressed work against making the form "easy" to complete or review.	The committee appreciates this input.

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)
All comments are verbatim unless indicated by an asterisk (*).

Will the specific reference on the *Writ of Execution* (form EJ-130), above items 11–20, to the *Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest* (form MC-012) make the EJ-130 form easier to complete?		
Commentator	**Comment**	**Committee Response**
Standing Committee on the Delivery of Legal Services, State Bar of California, By Sharon Djemal, Chair	Yes. There is currently nothing to indicate that in order to claim costs and interest on this form, it must be filed along with form MC-012. Because EJ-130 is also used for small claims cases, there are many self-represented litigants who use this form to try to collect on their judgment and are likely to be unaware of the required form. Therefore, SCDLS supports referencing form MC-012 in a manner that indicates that it must be filed along with EJ-130 in order to claim additional costs and/ or interest after judgment.	The committee appreciates this input.
Orange County Bar Association Michael L. Baroni, President	Will the specific reference to the *Writ* (form EJ-130), above items 11-20, to the *Memorandum* (form MC-012) make the EJ-130 form easier to complete? Yes, as now the parties are informed as to what is meant by the "memo" and "affidavit." This should make each of these documents more responsive, and accordingly, help in the completion of form EC-130. Again, however, it is unfortunate that space does not allow the name of form MC-012 to be set forth, as well as, its number.	The committee appreciates this input.

Will the revisions to items 1 through 6 on the *Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued interest* (form MC-012) make the form easier for parties to complete both forms and easier for courts to review?		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association Michael L. Baroni, President	Yes, as any guidance in form completion would likely lead to more accuracy and so, ease the process for parties and courts, overall.	The committee appreciates this input.

SPR17-08
Civil Practice and Procedure: Writ of Execution (Revise Forms EJ-130 and MC-012; Adopt Form MC-013-INFO)
All comments are verbatim unless indicated by an asterisk (*).

Will the revisions to item 24(a)(1) make it easier to understand which tenants in possession can raise a claim of a right to possession for purposes of Code of Civil Procedure section 1174.3(a)(2)?		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association Michael L. Baroni, President	Yes, however, the whole of item 24 itself remains somewhat confusing. With regard to tenants in possession, the additional language proposed for inclusion in the "Notice to Person Served" section is very helpful in providing additional information in this area.	The committee appreciates this input, and notes that it has further revised this item in an attempt to clarify it further .
Standing Committee on the Delivery of Legal Services, State Bar of California, by Sharon Djemal, Chair,	Yes. There is currently nothing to indicate that tenants in foreclosed properties have a special right to contest the writ of possession when a prejudgment claim form is served. The revisions to item 24(a)(1) and the notice to persons served will help self-represented litigants, court staff, and sheriffs understand these rights.	The committee appreciates this input.

Suggestions?		
Commentator	**Comment**	**Committee Response**
Kathleen Abdallah, Counsel Kroloff, Belcher, Smart, Perry & Christopherson Stockton, CA	I am in the process of enforcing a judgment for a client and came across issues with the Judicial Council form Writ of Execution. I offer the following. The Judicial Council form Writ of Execution requires that the principal amount of the judgment be reduced by any credit given to the judgment (lines 11-15). The interest accrued after judgment is provided on line 16 and the writ does not allow a line to credit the interest before crediting the principal. Daily interest is to be noted on line 19 of the writ of execution. However, Code of Civil Procedure section 695.220 requires that credits to judgments be credited first to certain levy costs, second credit to certain fees, third credit to interest accrued and then any credit leftover be credited to the principal amount of the judgment. Further daily interest continues to accrue often times on the original principal	**EJ-130, Items 11-16** These comments appear addressed to the current EJ-130 form. In this regard, the commentator's suggestions regarding the calculation of credits to interest and principal are similar to those received over the years and precisely what the committee has endeavored to correct and address through the current proposal. As the commentator suggests, the revisions to the EJ-130 form clarify and use the statutory language from CCP 695.220 for purposes of the calculation of credits and interest on the forms.

	amount of the judgment. I attempted to proceed to enforce a money judgment through the Alameda County Sheriff's office and the writ of execution was returned. I spoke with a Deputy Sheriff handling the civil matters and he tells me that if his calculation of daily interest is in excess of 10% of line 15 on the writ of execution (the principal minus credits), they cannot proceed to levy on the writ. This means that the sheriff is calculating interest on a reduced principal amount of judgment when the principal should not be reduced by a credit. It appears that an adjustment should be made to the writ of execution form to comply with section 695.220. Further the Memorandum of Costs After Judgment also is deficient in a similar way because it only requires that the credit be listed on line 4 and there is no indication as to application of the credit. Again, it may be practical if that form complied with section 695.220.	**MC-012, Item 4** The commentator's suggestions appear addressed to item 4 of the current MC-012 form. These comments are similar to those received from other commentators over the years. To facilitate use of the EJ-130 form, the committee has revised the MC-012 form, including the breakdown of the calculation of payments to interest and principal in item 4 consistent with Code of Civil Procedure section 695.220.
California Association of Judgment Professionals by Gretchen D. Lichtenberger, Legislative Chairperson	I did see one thing I would like to comment on regarding the proposed *Writ of Execution* included with this Invitation to Comment. In item 9, there appears to be a typing error. The sentence in item 9 says "*See next page for information on real or personal property to be delivered under a writ of possession* ***on*** *sold under a writ of sale.*" I believe this word "on" between "*possession*" and "*sold*" should be the word "or", as it is in the current *Writ of Execution.* The other Comment I have is this document is called a "*Writ*	**EJ-130, Item 9** The committee thanks the commentator for this suggestion and agrees there is a typographical error at item 9 of the EJ-130 form. The word "on" between the words "possession" and "sold" in the sentence in item 9 has been changed to "or." **EJ-130, Writ of Possession or Sale**

	of Execution" when it can also be used as a *"Writ of Possession"* or a *"Writ of Sale"*. Would it be helpful to possibly title this form as *"Writ of Execution, Possession or Sale"?* Or possibly separate off the *"Writ of Possession or Sale"* into its own form, then each form would be just two pages. I have encountered a few problems with the Sheriff when a "Writ of Execution" for money recovery and a Writ of Possession for real property possession are on the same form. Some Sheriff's Offices think those two distinct processes cannot be done on ONE FORM. I have directed them to CCP §712.040(a). I haven't done many of these however it is something that may need to be reviewed in the future.	The committee thanks the commentator for this suggestion. The title of the form is dependent on which check boxes the judgment creditor chooses in the title box, whether a Writ of Execution, Possession, or Sale. A separate form for Writs of Possession or Sale is beyond the scope of the current proposal, but will be considered by the committee in the future.
California State Sheriffs' Association by Cathy Coyne, Deputy Executive Director	**3. Item 3, Identifying judgment creditor or assignee of record.** a. **Suggestion** – this same language and format should be carried over to the accompanying form(s) e.g. Form MC-012 #7 **4. Item 4, Identifying type of legal entity.** **a. Opposed - CCP 699.510(c)(2) specifically requires the legal entity be on the Writ** a. **CCP 699.510(c)(2)** *The writ of execution shall include the additional name or names, and the type of legal entity, by which the judgment debtor is known, as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution. Prior to the clerk of the court issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the*	**MC-012, Item 7** The committee thanks the commentator for the suggestions. Unfortunately, it is beyond the scope of the current proposal for revisions to the MC-012 form. The committee will consider the suggestion in the future. **EJ-130, Item 4** The proposed revision to item 4 (which was circulated for comment last year) only removes the information on the form requiring a party to identify, for a judgment debtor not a natural person, the type of legal entity "*stated in judgment*." Code of Civil Procedure section 699.510(c)(2) addresses requirements when the type of legal entity is *not* stated in the judgment and must be added pursuant to court order after the filing of an "affidavit of identity." The committee respectfully disagrees with the commentator that the proposed revision somehow conflicts

	judgment debtor, the court shall authorize the issuance of the writ of execution with the additional name or names. **5. Items 11-20, Calculation of amount to enforce judgment.** a. **No Opposition** – Neither the calculations nor the additional forms have a direct effect on the Levying Officer or their duties. The Levying Officer relies on the information contained on the completed Writ. However, the attachment 20 needs to be standardized. b. **Suggestion** – Standardize the attachment 20 throughout the state (Make it a court form) a. CCP 699.520(c) requires the total amount of the money judgement as entered or renewed. Often times the front of the writ is left blank and the amounts owed are documented on an attachment 20, which comes in many different forms and often leaves the levying officer without a total judgment amount. This is especially true when dealing with Joint and Several liability judgments. Often times the liability amounts exceed the total judgement amount which creates issues as the levying officer has no authority to collect beyond the total judgement amount. b. The total amount of the money judgment should be required on the front of the writ pursuant to CCP 699.520(c), Separate from any joint and several liabilities. c. The attachment 20 should break down joint and several liabilities between defendants. d. The attachment 20 should look similar to lines 11-19 on the front of the writ for each listed defendant. (We refer you to the San Diego County attachment 20 as a state wide standard) **6. Possession of Real Property. a. Strongly Opposed – The Sheriff has no legal standing to remove occupants from real property in any action other than an Unlawful Detainer action.**	with the requirements of Code of Civil Procedure section 699.510(c)(2). **EJ-130, Item 20** Developing a standardized attachment 20 is beyond the scope of this proposal, but will be considered by the committee in the future as time and resources permit. **EJ-130, Item 24** The comment concerns the proposed revision to item 24 to add an item in which to indicate whether a writ for possession arises from an

	A court cannot be sued for wrongful eviction. However, the Sheriff may be sued for wrongful eviction if he proceeds knowing the court lacked jurisdiction to issue a writ of possession for real property. *If a court or judge is without jurisdiction of the subject matter, a sheriff may not only refuse to obey court's precept, but will not be protected if he does obey it. > Magnaud v. Traeger (App. 2 Dist. 1924) 66 Cal.App.526, 226 P. 990. Sheriffs And Constables K 98(2). Unless there is a clear absence of jurisdiction on the part of the court or magistrate issuing process, it is sufficient authority for the sheriff to act, if upon its face, it appears to be valid in judgement of ordinarily intelligent and informed layman. > Vallindras v. Massachusetts Bonding & Ins. Co. (1954) 42 Cal.2d 149, 265 P.2d907. Sheriffs And Constables K 98(5).All that is required to make process fair on its face so as to protect the Sheriff from civil liability for action taken thereunder is that it must proceed from a court having jurisdiction of the subject matter and that it contain nothing which ought reasonably to apprise officer that it was issued without authority, and it is not necessary that the process under which sheriff acts should show jurisdiction of person to afford the Sheriff protection and justification for his acts in executing it. > Vallindras v. Massachusetts Bonding & Ins. Co. (1954) 42 Cal.2d 149, 265 P.2d907. Sheriffs And Constables K 98(5). If a writ or order commanding a Sheriff to do or to refrain from doing an act be legal upon its face and show an apparent jurisdiction, and court has jurisdiction of subject matter, officer will be protected, when acting in good faith in obedience to such Writ or order. . > Magnaud v. Traeger (App. 2 Dist. 1924) 66 Cal.App.526, 226 P. 990. Sheriffs And Constables K 98(2).* a. Unlawful Detainer CCP PART 3, TITLE 3, CHAPTER 4. Summary	unlawful detainer action (because, if so, certain other items must be completed). The commentator contends that a court only has subject matter jurisdiction to issue a writ of possession for real property in an unlawful detainer action under the Code of Civil Procedure, sections 1159 to 1179. The committee respectfully disagrees with the commentator regarding the court's jurisdiction to enforce a judgment for possession based on , for example, ejection or quiet title, by writ of possession. However, in light of this comment, the committee has determined that the form may not address the types of notice and/or procedures, if any, required when a writ of possession results from an action other than for unlawful detainer. For that reason, the committee is not recommending the item to indicate whether the underlying claims is an unlawful detainer at this time, but leaving the form as it has been in relation to this point. The committee will continue its work on this point and make further recommendations as appropriate if necessary.

	Proceedings for Obtaining Possession of Real Property in Certain Cases [1159 - 1179a] specifically outlines when the court may issue a writ of possession for real property pursuant to an Unlawful detainer action showing jurisdiction for the court to issue such a writ. b. Quiet Title CCP PART 2, TITLE 10, CHAPTER 4, Quiet Title [760.010-765.60] specifically outlines procedures to obtain a quiet title. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a quiet title action. c. Ejectment Ejectment appears to be a little used action in today's statues. There is no mention of the ejectment process in regards to the recovery of real property in either the civil code or the code of civil procedures. There are no statutes giving the court jurisdiction to issue a writ of possession for real property in an ejectment action nor is there a procedure outlined for the Sheriff to remove any occupant in an ejectment action. d. Probate The Probate code outlines the process for the distribution of assets in a probate action. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a probate action. *1. Administrators of deceased property owner's estate brought petition to enjoin harassment against resident of property owner's dwelling, seeking his eviction from premises. The Superior Court, Santa Clara County, Mark Thomas J., granted permanent injunction, prohibiting harassment and evicting resident from dwelling. Resident appealed final order of eviction. The Court of appeal, Agliano, P.J. held that: (1) Court was not authorized to evict defendant in statutory special proceeding to enjoin*	

	harassment, and (2) court lacked equitable jurisdiction to evict defendant, in view of existing legal remedies. > Marquez v. Marquez, App.6 Dist. 1987) 192 Cal. App. 3d 1513. e. Small Claims CCP PART 1, TITLE 1, CHAPTER 5.5, Small Claims [116.110-116.950] outlines the Small Claims action process. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a small claims action. f. Criminal & Nuisance Abatement CCP PART 2, TITLE 10, CHAPTER 2. Actions for Nuisance, Waste, and Willful Trespass, in Certain Cases, on Real Property [731 - 736] outlines the abatement process by a District Attorney, County Counsel, and/or City Attorney. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in an abatement action. g. Family Law - Divorce The family code outlines procedures for distribution of community property pursuant to dissolution of marriage proceedings. However, it does not give the court jurisdiction to issue a writ of possession for real property nor does it outline procedures for the Sheriff to remove occupants in a dissolution of marriage action. **b. The Sheriff will not knowingly enforce a writ issued by a court lacking jurisdiction to issue such a writ. Therefore, making these changes to the writ will be futile.** **c. Judgements not otherwise enforceable pursuant to title.** a. **CCP 717.010** A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a	

	certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt. 1. In all actions not based on unlawful detainer proceeding in which the court orders a party to be excluded from real property, and that party willfully disobeys the courts orders, the court has the option to punish for contempt. **7. Special Rules for Unlawful Detainers Involving Foreclosed Property. a. Adding item 24a (1)(a) to indicate Foreclosed property** a. **Opposed – the amendments in Section 24 a. (1) (a) do not go far enough.** *1. **CCP 415.46(e)(2)** In any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to Section 1161a, paragraph (1) shall not limit the right of any tenant or subtenant of the property to file a prejudgment claim of right of possession pursuant to subdivision (a) of Section 1174.25 at any time before judgment, or to object to enforcement of a judgment for possession as prescribed in Section 1174.3, regardless of whether the tenant or subtenant was served with a prejudgment claim of right to possession.* **b. Suggestion - Add reference to Rental Housing Unit** a. Either add Rental Housing unit under section 24 a. (1) (a), or b. Add Section 24 a. (1) (b) to indicate this was a rental housing unit at the time of the filing of the unlawful detainer action. **9. Revisions to NOTICE TO PERSON SERVED. a. Opposed – These advisements, as currently written, are vague and ambiguous.** a. **Notice as described in CCP 1161a and 1161b refers to the notice to quit, served on the defendant prior to the unlawful detainer judgement** **not the Sheriffs notice to vacate served after the writ has been issued.**	**EJ-130, Item 24 a.(1)(a)** The commentator is correct that the form should indicate whether the unlawful detainer is resulting from the foreclosure sale of a "rental housing unit."(See 415.46(e)(2).) Specifically, Code of Civil Procedure section 1174.3(a)(2) allows the tenant or subtenant the right to object up until time of enforcement of the judgment. The committee has revised item 24 of the form to include this statutory language and citations. **EJ-130, "Notice to Person Served"** The committee thanks the commentator for the suggestion and agrees that the "notice" language on the form appears ambiguous, in part, as the term "vacate" is used with reference to the "notice to quit" described in Code of Civil Procedure sections 1161a and 1161b. The corm has been revised in light of this comment. The relevant

	1. **CCP 1161a (b)** *In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobile home, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:*	"notice" on page 3 of the form is entitled "EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED." The phrase "notice to vacate" in the second to last sentence of that section has been revised so it now reads: "notice to quit."
	2. **CCP 1161b (a)** *Notwithstanding Section 1161a, a tenant or subtenant in possession of a rental housing unit under a month-to-month lease or periodic tenancy at the time the property is sold in foreclosure shall be given 90 days' written notice to quit pursuant to Section 1162 before the tenant or subtenant may be removed from the property as prescribed in this chapter.* b. Any completed claim of right to possession must be filed with the Levying officer.	The form has been modified to reflect this.
	10. Proposed Revisions to form MC-012. a. No Opposition – the Levying Officer does not use or receive this form. It is for the creditors and courts use only and will have no direct effect on the Levying Officer.	No response required.
	11. New Form MC-130-INFO. a. No Opposition – the Levying Officer does not use or receive this form. It is for the creditors and courts use only and will have no direct effect on the Levying Officer.	No response required.
	12. Alternatives Considered. a. Additional revisions are still needed as documented above.	See specific comments above.
	13. Implementation Requirements, Costs, and Operational Impacts. a. Emphasis needs to be added to the	The committee thanks the commentator for the comments and suggestions.

	Review of the Writ, by the issuing court, prior to the issuance of the writ. b. Instructional training is a great idea if implemented properly.	
Richard Morrison Black Widow Financial Redwood City, CA	As a professional judgment enforcer, and a member of the California Association of Judgment Professionals, the MC-012 is a complicated form, even for the experienced, and I highly commend the instructions prepared by LA County for use in Small Claims: http://file.lacounty.gov/SDSInter/dca/205642_MC012InstructionSheetRevised03.20.13.pdf Perhaps this could be incorporated almost verbatim as an attached instruction. One problem with the MC-012 form is that it is trying to be three documents in one. If used solely as a declaration of accrued interest, I believe it is not required to serve the judgment debtor. Yet, there is nothing that indicates this on the form. Further, in this instance, I believe that a self-generated affidavit alone may be used for the Writ (see C.C.P. 685.050), so I believe the form is misleadingly labeled as "Adopted for Mandatory Use." This issue apparently has come up with clerks on occasion, who will insist that the MC-012 MUST be used even for interest-only declarations, based on comments by my judgment enforcer colleagues. In one forum discussion, one of my colleagues wrote (and I'm certain he wouldn't mind my passing along his comments) regarding the MC-012: "The form DOES NOT have to be used for all three purposes every time the form is filed but can be used for a single or double purpose. And even using the form As Acknowledgment of Credit to tell the Court of any payments made by the Debtor or As Declaration of Accrued Interest, it's not very clear and can easily be messed up. For	**MC-012** The committee thanks the commentator for these comments and suggestions. The suggestion exceeds the scope of the current proposal but will be considered by the committee in the future. The committee has reviewed the structure of the MC-012 form again in light of this comment and made several non-substantive changes (reorganizing into three parts, re-numbering and adding check boxes) so it is clear to litigants they can select the items on the form that are necessary at a given time. The committee has further noted the commentator's suggestion that MC-012 form be revised from a mandatory form to an optional one for future consideration, as the suggestion is beyond the scope of the current proposal.

	example, say you have a $1000 judgment and it is 5 yrs old so there is $500 in interest. If the debtor makes you a $100 payment at the 5th year, where do you record that on the MC-012? You show it to the court by only declaring that the amount of interest now owed is $400! You only show credits on line 4 of the MC-012 when enough payments have been made that have paid all the interest to date and now payments are being credited to the actual amount of the judgment and previously allowed costs. I was having so many issues with clerks and the MC-012 form, I now only use it when adding new costs or credits to the principle J amount. If I am adding just interest, I use a template I got out of a Matthew Bender book. Since doing this, my life has become much easier and my incorrect rejections from clerks have all but stopped! I was even having clerks tell me that service of the MC-012 was required for previously allowed costs on line 2. CRAZY! That MC-012 is nothing but trouble." I apologize for the directness of the above, some of which you have clearly attempted to address in your line 4 revisions, but this may be helpful to you as far as what happens in the real world. The MC-012 is an extremely dense form that suffers from trying to get everything onto one page, with concomitant omissions due to lack of space. I strongly encourage you to consider making this a two-page form with three discrete sections, perhaps with the Declaration of Accrued Interest as a separate page that could be filed independently without the implication of required service on the judgment debtor. The interest calculations could be a separate attachment (or integrated with the suggested separate page for Declaration	As noted above, the form has been organized into three discrete sections in light of this and other comments. The current proposal also includes a new form, MC-013-INFO, which provides information regarding the calculation of interest and principal due when multiple payments have been made over various times by the debtor. The changes to the MC-012 are coordinated with this new form and now allow

	of Accrued Interest), and should be in a consistent format that is easily checked by a clerk, perhaps with a standardized calculator available that is approved by the State. As it stands now, for judgments that have had multiple payments by the debtor, we usually submit our own calculations that may or may not match the clerk's own calculations, leading to potential conflicts, and which certainly takes up far too much time for everyone. *An annotated form MC-012 was attached to the comment, with suggestions that: • Additional space be provided for dollar amounts in item 2a • A spelling error be corrected • Information regarding possible extensions of time be added to the notice to the judgment debtor.	space to input the amounts of interest and credits. The EJ-130 form has also been revised to use similar terms and refer to the MC-012 and MC-013-INFO forms. The spelling error has been corrected, and a small amount of additional space added (all that would fit on the form). Adding further information to the notice is outside the scope of the current proposal, but will be considered in the future, along with moving it to the back of the form to allow for more space.
Orange County Bar Association Michael L. Baroni, President	**Comments:** As to the revised form EJ-130, the following modifications are suggested. At item 12, per the discussion text accompanying the proposed form, the citation within the parenthesis should read, "CCP 685.090(b)." At item 24, for consistency of format, a period should be placed after the item number.	**EJ-130, Item 12** The committee thanks the commentator for making this suggestion. Subdivision (b) to the citation was included in the Invitation to Comment but inadvertently omitted from the form. The citation in the parenthetical on item 12 of the form has been revised to read: "CCP 685.090(b)." **EJ-130, Item 24** The committee thanks the commentator for making this suggestion. A revision has been made to the form to correct the clerical error in item 24, so a period now appears after the item number.
Superior Court of Orange County by Civil and Probate Operations Managers	The EJ-130 form is ambiguous and unclear as to the proper procedure for addressing multiple debtors with different judgment amounts. This has caused confusion for the courts	

	when issuing the writ of execution and for sheriff departments enforcing the writ. Throughout the state, courts and sheriff departments are interpreting the form in different ways and requiring judgment creditors to prepare the writs differently. This has resulted in rejected writs from the sheriff departments and often requires the creditor to seek correction of the writ or to have a new writ issued to comply with sheriff department requirements. The current EJ-130 form addresses different judgment amounts for different debtors on line #20 of the form by referencing "Attachment 20", but is ambiguous as to what to include or not include if utilizing attachment 20. Line 20 states "The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20." The current verbiage results in different interpretations of how the form and attachment should be completed. Since we do not have a Judicial Council form for Attachment 20, several courts have created a local form for use with the EJ-130. Orange County's Attachment 20 local form provides space for (3) Judgment Debtors and includes lines 11-19 for each debtor, matching what is on page 1 of the EJ-130. The current EJ-130 form with "Attachment 20" is often rejected by certain sheriff departments due to confusion on page 1 of the EJ-130 in regards to lines 11-19 of the form. This confusion creates the following questions: If there are multiple debtors with different judgment amounts, what debtors name goes in field 4 on page 1 of the EJ-130? If there are multiple debtors with different judgment amounts, what amounts go in fields 11- 19 on page 1 of the EJ-130? If there are multiple debtors, should fields 11-19 be left blank on page 1 of EJ-130, and all amounts be listed on "Attachment 20" for each debtor?	**EJ-130, Item 20 (attachment)** The committee appreciates this input and thanks the commentator for the suggestions. The suggestion is beyond the scope of the current proposal for revisions to the EJ-130 form. However, the committee will consider these suggestions (including the proposal for a standardized form attachment 20) in the future.

	Suggestions: (1) Changing the verbiage on line 20 of the EJ-130 would give clarity to the creditor, the court, and sheriff department on how the form should be prepared. If item 20 is checked on the form, the proposed verbiage change would make clear that all amounts for 11-19 will be left blank on page 1, and listed for each debtor on the Attachment 20 page. The suggested verbiage at line 20 is: "Items 11 – 19 left blank. The amounts called for are different for each debtor and are stated for each debtor on attachment 20". (2) A Judicial Council approved Attachment 20 form be created in order to provide consistency throughout the state. Writ of executions are issued by each court for multiple counties throughout the state. Having a consistent Attachment 20 would require Sheriff Departments enforcing the writ to only be familiar with one version of the form. (3) Verbiage be added to the form to indicate that the writ may be issued electronically in accordance with GC 68150(F). Writs are often rejected from sheriff departments due to not having the original court seal. GC 61850 (f) states: A copy of a court record created, maintained, preserved, or reproduced according to subdivisions (a) and (c) shall be deemed an original court record and may be certified as a correct copy of the original record.	
Superior Court of San Diego County by Mike Roddy, Executive Officer	**EJ-130** Recommend the following revisions to the proposed changes to EJ-130: #14: Rather than stating "Credit to principal (after crediting interest)" state "Principal reduction", or "Reduction of principal balance", as this is how the credit to principal is listed on the court's judgment calculator. This revision will make it easier for the judgement creditor to recognize the correct money amount to state in number 14.	**EJ-130, Item 14** The committee appreciates the comments and understands the concern raised regarding the potential for confusion to litigants who use the form in conjunction with the court's judgment calculator that employs different language. However, the committee respectfully disagrees with the specific suggestion for revised language to item 14 on the EJ-130 form. The current proposal responds to comments received over the years, and comments in response to the proposed

		revisions circulated last year. The committee believes it is important to clarify that payments received are "credited" to interest first. The proposed language also follows the terms used in the statute and corresponds to the MC-012 form where the calculation of credits is presented. In light of the comment, however, the committee has revised line 15 of the EJ-130 form. The item currently reads "Subtotal (subtract 14 from 13)" This proposal revises the form to read: "Principal Remaining Due (subtract 14 from 13)." The committee believes this change will provide more clarity for all litigants using the form and responds to the comment by showing that line 14 corresponds to the reduction of the principal balance.
	#16: Rather than "accrued interest remaining" it may be less confusing to restate it as "total remaining interest" (per CCP 685.050) (not on GC 6103.5 fees). The judgment calculator lists the correct interest amount that is to be stated on line number 16 as "total interest".	**EJ-130, Item 16** The committee thanks the commentator for this suggestion and, as stated above, understands the concern about potential confusion for litigants using the form in conjunction with a judgment calculator that employs different terms. The committee respectfully disagrees with the commentator's proposal to revise the language in item 16 on the EJ-130 form. The committee believes the proposal, which adopts the statutory terms, clarifies more precisely the information that is requested. The language in this item is also intended to correspond to the terms used on the MC-012 form. However, in light of the comment, the committee has made a minor revision to item

	MC-012 #4: Our court suggests the omission of subdivision (1) and (2), as this information appears unnecessary, and may confuse the judgement creditor.	16 on the EJ-130 form for purposes of making it less confusing. Specifically, item 16 has been revised so the phrase "remaining due" is no longer in a parenthetical, and the full line item now reads: "Accrued Interest Remaining Due (per CCP 685.050)(not on GC 6103.5 fees)" **MC-012, Item 4** The committee has reviewed the structure of the MC-012 form again in light of this comment and made several non-substantive changes (re-numbering and adding check boxes) so it is clear to litigants they can select the information on the form that is necessary.
Superior Court of Ventura County by Julie Camacho, Court Manager	I only make one recommendation for clarification to the MC-013-INFO to clarify the second bullet under "What can the judgment creditor recover?" This second bullet states "Costs approved by the court after judgment". Since most costs after judgment are listed on the MC-012 and automatically added to the EJ-130 once the Motion to Tax Costs period under CCP 685.070(b) has expired and these costs do not require court approval, perhaps this bullet can be rephrased so that litigants are not led to believe that all costs after judgment must be approved by the court.	**MC-013-INFO (Costs)** The committee thanks the commentator for this suggested clarification to the MC-013-INFO form. The MC-013-INFO form has been modified to clarify that recoverable costs added to the judgment (in addition to those approved by the court) includes costs claimed by a creditor that are automatically added once the period for the filing of a Motion to Tax Costs has expired under CCP 685.070(b).

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Civil Protective Orders: Modification and Termination

Rules, Forms, Standards, or Statutes Affected
Adopt forms CH-600, CH-610, CH-620, CH-630, EA-600, EA-610, EA-620, EA-630, SV-600, SV-610, SV-620, SV-630, WV-600, WV-610, WV-620, WV-630

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 5, 2017

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Executive Summary

The Civil and Small Claims Advisory Committee recommends the adoption of 16 new forms for requests and orders for the modification or termination of civil restraining orders. There are four sets of parallel forms to improve access to the courts in proceedings to prevent civil harassment, elder and dependent adult abuse, private postsecondary school violence, and workplace violence.

Recommendation

The Civil and Small Claims Advisory Committee recommends the Judicial Council, effective January 1, 2018, adopt the following new forms:

1. Civil harassment (CH) prevention:
    - *Request to Modify/Terminate Civil Harassment Restraining Order* (form CH-600)
    - *Notice of Hearing to Modify/Terminate Civil Harassment Restraining Order* (form CH-610)

- *Response to Request to Modify/Terminate Civil Harassment Restraining Order* (form CH-620)
- *Order on Request to Modify/Terminate Civil Harassment Restraining Order* (form CH-630)

2. Elder or dependent adult abuse (EA) prevention:
    - *Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (form EA-600)
    - *Notice of Hearing on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (form EA-610)
    - *Response to Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (form EA-620)
    - *Order on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (form EA-630)

3. Private postsecondary school violence (SV) prevention:
    - *Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (form SV-600)
    - *Notice of Hearing on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (form SV-610)
    - *Response to Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (form SV-620)
    - *Order on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (form SV-630)

4. Workplace violence (WV) prevention:
    - *Request to Modify/Terminate Workplace Violence Restraining Order* (form WV-600)
    - *Notice of Hearing on Request to Modify/Terminate Workplace Violence Restraining Order* (form WV-610)
    - *Response to Request to Modify/Terminate Workplace Violence Restraining Order* (form WV-620)
    - *Order on Request to Modify/Terminate Workplace Violence Restraining Order* (form WV-630)

The new forms are attached beginning at page 7.

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 civil harassment, elder and dependent adult abuse, workplace violence, and private postsecondary school violence protective order matters. The council has adopted forms in this area before—for requesting, responding to, and issuing protective or restraining orders to prevent civil harassment, elder and dependent adult abuse,

private postsecondary school violence, and workplace violence—but has not previously been asked to consider forms relating to requests to modify or terminate restraining orders in these areas. All of the forms in this proposal are new.

Rationale for Recommendation

The statutes that govern the legal standards and procedures for the issuance of civil restraining orders (i.e., for orders preventing civil harassment, elder and dependent adult abuse, private postsecondary school violence, and workplace violence) require that the Judicial Council develop forms, instructions, and rules relating to those matters and that the forms be mandatory.[1] The statutes also provide that an order issued after notice and hearing is subject to termination or modification by further order of the court upon the written stipulation or request of a party.[2] While the statutes include some provisions regarding such requests, until now there have been no forms developed for parties to use to request modification or termination of the orders. The Civil and Small Claims Advisory Committee believes that the new forms will make it easier for self-represented parties, especially, to be able to seek modification or termination of civil restraining orders.

Request to modify or terminate restraining order (forms CH-600, EA-600, SV-600, and WV-600)

The forms numbered 600 provide the means by which a party either protected or restrained by an order after hearing can ask the court to modify or terminate the restraining orders. These forms, like the others recommended in this proposal and other forms relating to protective orders, are in plain language and are set up to be filled out by hand, if desired. They will also be available to be filled out online.

The forms provide spaces for the party seeking the modification or termination to identify the original order and to explain what change or changes are wanted and why. There is also an item to allow for a request for attorney's fees, and instructions to the petitioning party to serve the papers on any other parties in the case. As provided by statute, the instructions note that service on the protected party must be in person, but also remind the restrained person that this is not a reason for him or her personally to be in touch with the protected person.

The request forms may be signed by a lawyer but also include a signature line for the party, who must sign under penalty of perjury.

Notice of hearing on request to modify or terminate restraining order (forms CH-610, EA-610, SV-610, and WV-610)

The forms numbered 610 provide the means by which a moving party can provide the other party with notice of the hearing on a request for the court to modify or terminate the

[1] See Code Civ. Proc., §§ 527.6(w), 527.8(v), 527.85(v); Welf. & Inst. Code, § 15657.03(y).

[2] See Code Civ. Proc., §§ 527.6(j), 527.8(k), 527.85(k); Welf. & Inst. Code, § 15657.03(i).

restraining orders. These forms include the date and time of the hearing, further instructions regarding what must be served, and instructions to the other side as to how to make a response, if desired, and how to seek accommodations for any disability at the hearing.

Response to request to modify or terminate restraining order (forms CH-620, EA-620, SV-620, and WV-620)

The forms numbered 620 provide a way for other party to respond to the request for termination or modification, if he or she desires to do so. There are options to agree to all or part of the request or to disagree, and to provide any reasons for disagreeing. There is also an item for seeking attorney's fees and a signature line for a lawyer. There is also a signature line for the party, who must sign under penalty of perjury. There are instructions at the end for serving and filing the form.

Order on request to modify or terminate restraining order (forms CH- 630, EA-630, SV-630, and WV-630)

The forms numbered 630 are forms on which the court issues its ruling after hearing a request to modify or terminate an order. The form provides that the order that the party is requesting be modified or terminated be attached (either the original or a renewed restraining order) and provides options for denying the request or granting it. If a request for modification is granted, there is space for identifying the items in the original order that are being changed and describing the changes.

As on the forms for an original or renewed restraining order, there is also an item for ordering how the new information is to be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). The form ends with an order to serve it (or not, if appropriate, due to the other party attending the hearing) and an item for a clerk's certificate.

Comments, Alternatives Considered, and Policy Implications

Comments received

The revised forms were circulated for comment during the spring 2017 invitation-to-comment period. Eight comments were received from five trial courts (Los Angeles County, Orange County, Riverside County, San Diego County, and Ventura County) as well as from the Orange County Bar Association, the Standing Committee on the Delivery of Legal Services of the State Bar, and the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (TCPJAC/CEAC) Joint Rules Subcommittee.

All but one commenter stated they were generally in favor of the proposed forms, with one commenter not indicating a position, and a few seeking some modifications to the forms. The principal comments are addressed below.[3]

[3] A chart containing all the comments received, and the committee's responses, is attached to this report following the forms.

The State Bar committee noted the usefulness of the new forms:

> The forms are beneficial because it makes the process for modifying or terminating protective orders easier/smoother and makes the court system more accessible to those without an attorney. The forms also will help pro bono attorneys since they will be able to enter the information into forms rather than draft pleadings for these types of cases. By increasing efficiencies for pro bono attorneys, more indigent individuals will be helped.

The Superior Court of Riverside County commented on the added accessibility that the forms will provide, noting that the court may be holding more hearings as a result. That court also suggested that new information sheets for the use of these forms would be helpful. The committee agrees and will consider developing those as time and resources permit.

There were several suggestions relating to the service instructions on the forms:

- The TCPJAC/CEAC Joint Rules Subcommittee suggested:
  - Adding the information that the requirement of personal service of the request on the protected party should not be viewed as a justification for the restrained party to contact the protected party. The committee agreed with that proposal and amended the forms to reflect that.
  - Including instructions in the elder abuse forms to serve papers on conservators of a protected elder person even if he or she was not in the initial case. The committee declines to make this modification to the form because service on a nonparty conservator does not appear to be statutorily required. (See Welf. & Inst. Code, § 15657.03). A form cannot require an act that is not otherwise required by law.
  - Noting that in WV cases, service on the employer should be addressed on the forms. The committee agreed and has modified both the WV and SV forms to include the original petitioner among those who should be served.
- The Superior Court of San Diego County suggested that the service instructions on the order form (e.g., item 7 on form CH-630), be modified to more closely parallel the service provision on form CH-130 (item 13 on that form). The committee notes, however, that on form CH-130 it is assumed that service will be on the restrained person, and so can easily cross-reference to the item in the form identifying who is to be served. In a modification proceeding, on the other hand, it may be either the protected person or the restrained person who is the prevailing party, and who must therefore serve the other with the order. Therefore, an exact duplicate of the service provisions is not appropriate.
- In reviewing the above comments, the committee saw the need for a further modification in the forms numbered 600 to add instructions to a protected person as to how he or she should provide service if seeking modification. (The 600-numbered forms as circulated had provided instructions only to a restrained person seeking modification.)

Several courts and the TCPJAC/CEAC Joint Rules Subcommittee also suggested other minor text changes to make the forms more consistent, most of which have been implemented in the forms recommended here.

The Superior Court of Orange County disagreed with the proposed order forms (the 630 series), asserting that a new order form stating that it is modifying a prior order will create confusion and additional work because law enforcement would have to review two forms, the original or renewed order and the modification order. The commenter suggested that the decision as to the requested modification or termination be recorded in a minute order and then made on an amended form CH-130 (order after hearing). The committee discussed this comment at length and consulted with protective order staff regarding the form at committee members' courts. Ultimately, the committee concluded that the proposed change would itself be confusing. However, the committee will try to monitor this point with law enforcement and consider further modification should the procedures be problematic.

Alternatives considered

The committee considered not taking any action but decided it would be better to develop the new forms to improve access to the courts. The committee also considered including an item on the request forms (the 600 series) in which the moving party could assert that the other side agreed with the proposed modification or termination. Upon further consideration, and in light of comments received from the TCPJAC/CEAC Joint Rules Subcommittee, the committee decided not to include this item in the forms. As noted by the commenter, the item could create confusion and lead to the belief that a restrained person can contact a protected person to achieve such an agreement. A statement of agreement is not necessary on the form, and any formal stipulation can be submitted by lawyers in writing to the court.

Implementation Requirements, Costs, and Operational Impacts

Self-help centers and court staff may need training to be aware of and understand the new forms. The intention of the proposal is that, once initial training is completed, the new forms will assist parties in making requests to modify or terminate protective orders correctly and will ultimately benefit the courts. If the new forms are issued as part of electronic case management systems, the systems may require some modifications to use the new forms.

Attachments and Links

1. Forms CH-600, CH-610, CH-620, CH-630, EA-600, EA-610, EA-620, EA-630, SV-600, SV-610, SV-620, SV-630, WV-600, WV-610, WV-620, WV-630, at pages 7–47
2. Chart of comments, at pages 48–52

CH-600 Request to ☐ Modify ☐ Terminate Civil Harassment Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Modification/Termination

a. Your Full Name: _____

b. ☐ Protected person ☐ Restrained person

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 Current Order

a. The current order is a/an:

☐ *Civil Harassment Restraining Order After Hearing* (form CH-130)

☐ *Order Renewing Civil Harassment Restraining Order* (form CH-730)

b. The current order expires on *(date):* _____

c. ☐ A copy of the current order is attached.

4 ☐ Request to Modify Restraining Order

a. I ask the court to modify the current order as follows *(specify requested changes referring to the item number in order that you want to change or delete):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025,* Attachment.

b. I ask the court to modify the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4b —Reasons for Requested Changes" for a title. You may use form MC-025,* Attachment.

5 ☐ Request to Terminate Restraining Order

I ask the court to terminate the current order because *(give reasons below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 5— Reasons to Terminate Order" for a title. You may use form MC-025,* Attachment.

Case Number:

6 ☐ 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 6—Lawyer's Fees and Costs" for a title.*

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 is true and correct.

Date:

Type or print your name

▶ *Sign your name*

CH-610

Notice of Hearing on Request to ☐ Modify ☐ Terminate Civil Harassment Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved
by the Judicial Council

Party seeking order completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Your Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

Name and address of court if different from above:

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

(4) Service on Other Party

a. Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party:

- CH-600, *Request to Modify/Terminate Civil Harassment Restraining Order;*
- CH-610, *Notice of Hearing on Request to Modify/Terminate Civil Harrassment Restraining Order* (this form);
- CH-620, *Response to Request to Modify/Terminate Civil Harassment Restraining Order* (blank copy).

The forms must be served on the other party _____ days before the hearing.

b. **If you are the restrained person: You must have the protected person personally served with these forms. This requirement of personal service on the protected person is not a justification for you to violate the terms of the civil harassment restraining order.**

c. **If you are the protected person:** The restrained person may be served with these forms by mail.

d. The person who serves the forms must fill out either form CH-200, *Proof of Personal Service,* or form CH-250, *Proof of Service of Response by Mail.* Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form CH-200-INFO, *What Is "Proof of Personal Service"?*.

Date: _____ Clerk, by _____ , Deputy

To the Other Party:

If you wish to make a written response to this request to modify or terminate the current civil harassment restraining order, you may fill out form CH-620, *Response to Request to Modify/Terminate Civil Harassment Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—** mail a copy of it to the other party at the address in (1) at least _____ days before the hearing. Also file form CH-250, *Proof of Service of Response by Mail*, with the court before the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Modify/Terminate Civil Harassment Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

CH-620

Response to Request to
☐ **Modify** ☐ **Terminate**
Civil Harassment Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Use this form to respond to the *Request to Modify or Terminate Civil Harassment Restraining Order* (form CH-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form CH-250, *Proof of Service of Response by Mail.*

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Party Filing Response

a. Your Full Name: _____

b. ☐ Protected person ☐ Restrained person

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form CH-610 item (3) here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Response

a. ☐ I agree to the ☐ Modification ☐ Termination of the order.

b. ☐ I do not agree to the ☐ Modification ☐ Termination
(Specify why you disagree in item (4) on page 2.)

c. ☐ I agree to the following orders *(specify below or in item (4) on page 2):*

_____

_____

_____

_____

_____

_____

Case Number:

4 ☐ Reasons I Do Not Agree to the ☐ Modification ☐ Termination

☐ *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 4—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

5 ☐ 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 5—Lawyer's Fees and Costs" for a title.*

b. ☐ I ask the court to deny the request of the other party that I pay his or her lawyer's fees and costs.

Date:

Lawyer's name, if you have one

Lawyer's signature

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

Date:

Type or print your name

Sign your name

To the Party Filing This Response:

Have someone age 18 or older—**not you**—mail a copy of this completed form CH-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form CH-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the signed original proof-of-service form back to the court clerk or bring it with you to the hearing.

CH-630

Order on Request to ☐ Modify ☐ Terminate Civil Harassment Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

Prevailing party completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Full Name: _____

Lawyer *(if any for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If this party has a lawyer, give the lawyer's information. If the party does not have a lawyer and wants to keep home address private, give a different mailing address instead. Telephone, fax, or e-mail are not required.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

a. ☐ The party seeking ☐ modification ☐ termination

b. ☐ The party opposing ☐ modification ☐ termination

c. ☐ The lawyer for the party seeking ☐ modification ☐ termination *(name):* _____

d. ☐ The lawyer for the party opposing ☐ modification ☐ termination *(name):* _____

(4) Order

☐ The request to ☐ modify ☐ terminate the attached

☐ *Civil Harassment Restraining Order After Hearing* (form CH-130)

☐ *Order Renewing Civil Harassment Restraining Order* (form CH-730)

originally issued on *(date)*: _____ is:

a. ☐ **DENIED**. The order and expiration date remain the same.

This is a Court Order.

b. ☐ **DENIED** without prejudice because the other party was not served on time.

c. ☐ **GRANTED**.

(1) ☐ The order is **TERMINATED** as of the date this Order is signed on page 3.

(2) ☐ The order is **MODIFIED** as stated: ☐ Below ☐ On Attachment 4c(2)

(Specify, referring to item numbers in the original order):

(3) The order now **EXPIRES** on *(date):* _____ at *(time):* _____

5 ☐ 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 5.

6 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 prevailing party 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 6.

This is a Court Order.

Case Number:

To the Prevailing Party:

7 Service of Order

If service is required, someone age 18 or older**—not you—**must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

☐ The other party attended the hearing. **No further service is required.**

☐ **Order Granted—**The other party did not attend the hearing. **Service is required.** This Order:
- ☐ must be personally served on the other party within _____ days of the date of this Order.
- ☐ may be served by mail on the other party within 5 days of the date of this Order.

☐ **Order Denied—**The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

Date: _____

_____
Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Modify/Terminate Civil Harassment 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-600

Request to ☐ Modify ☐ Terminate Elder or Dependent Adult Abuse Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Modification/Termination

a. Your Full Name: _____

b. ☐ Protected person ☐ Restrained person ☐ Conservator/Other

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 Current Order

a. The current order is an:

☐ *Elder or Dependent Adult Abuse Restraining Order After Hearing* (form EA-130)

☐ *Order Renewing Elder or Dependent Adult Abuse Restraining Order* (form EA-730)

b. The current order expires on *(date):* _____

c. ☐ A copy of the current order is attached.

4 ☐ Request to Modify Restraining Order

a. I ask the court to modify the current order as follows *(specify requested changes referring to the item number in order that you want to change or delete):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

_____

b. I ask the court to modify the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4b —Reasons for Requested Changes" for a title. You may use form MC-025,* Attachment.

5 ☐ Request to Terminate Restraining Order

I ask the court to terminate the current order because *(give reasons below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 5— Reasons to Terminate Order" for a title. You may use form MC-025,* Attachment.

Case Number:

6 ☐ 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 6—Lawyer's Fees and Costs" for a title.*

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 is true and correct.

Date:

Type or print your name

▶ *Sign your name*

EA-610

Notice of Hearing on Request to ☐ Modify ☐ Terminate Elder or Dependent Adult Abuse Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by Judicial Council

Party seeking order completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Your Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

Name and address of court if different from above:

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

(4) Service on Other Party

a. Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party or parties:

- EA-600, *Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order;*
- EA-610, *Notice of Hearing on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (this form);
- EA-620, *Response to Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* (blank copy).

The forms must be served on the other party _____ days before the hearing.

b. **If you are the restrained person: You must have the protected person personally served with these forms. This requirement of personal service on the protected person is not a justification for you to violate the terms of the civil harassment restraining order.** If the person who originally requested the restraining order was someone other than the protected person, you must also serve that person. Service on that person may be by mail.

c. **If you are the person who originally requested the order but not the protected person, and you are requesting modification or termination other than at the request of the protected person: You must have the protected person personally served with these forms.** You must also serve the restrained person. Service on the restrained person may be by mail.

d. **If you are the protected person:** The restrained person may be served with these forms by mail.

e. The person who serves the forms must fill out either form EA-200, *Proof of Personal Service*, or form EA-250, *Proof of Service of Response by Mail* (or both). Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form EA-200-INFO, *What Is "Proof of Personal Service"?*.

Date: _____ Clerk, by _____ , Deputy

To the Other Party:

If you wish to make a written response to this request to modify or terminate the current civil harassment restraining order, you may fill out form EA-620, *Response to Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—** mail a copy of it to the other party at the address in (1) at least _____ days before the hearing. Also file form EA-250, *Proof of Service of Response by Mail*, with the court before the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

EA-620

Response to Request to ☐ Modify ☐ Terminate Elder or Dependent Adult Abuse Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Use this form to respond to the *Request to Modify or Terminate Elder or Dependent Adult Abuse Restraining Order* (form EA-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form EA-250, *Proof of Service of Response by Mail.*

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Party Filing Response

a. Your Full Name: _____

b. ☐ Protected person ☐ Restrained person ☐ Conservator/Other

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form EA-610 item (3) here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Response

a. ☐ I agree to the ☐ Modification ☐ Termination of the order.

b. ☐ I do not agree to the ☐ Modification ☐ Termination
(Specify why you disagree in item (4) on page 2.)

c. ☐ I agree to the following orders *(specify below or in item (4) on page 2):*

_____

_____

_____

_____

_____

_____

Case Number:

4 ☐ Reasons I Do Not Agree to the ☐ Modification ☐ Termination

☐ *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 4—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

5 ☐ 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 5—Lawyer's Fees and Costs" for a title.*

b. ☐ I ask the court to deny the request of the other party that I pay his or her lawyer's fees and costs.

Date:

Lawyer's name, if you have one

Lawyer's signature

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

Date:

Type or print your name

Sign your name

To the Party Filing This Response:

Have someone age 18 or older—**not you**—mail a copy of this completed form EA-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form EA-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the signed original proof-of-service form back to the court clerk or bring it with you to the hearing.

EA-630

Order on Request to ☐ Modify ☐ Terminate Elder or Dependent Adult Abuse Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Prevailing party completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Full Name: _____

Lawyer *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If this party has a lawyer, give the lawyer's information. If the party does not have a lawyer and wants to keep home address private, give a different mailing address instead. Telephone, fax, or e-mail are not required.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

a. ☐ The party seeking ☐ modification ☐ termination

b. ☐ The party opposing ☐ modification ☐ termination

c. ☐ The lawyer for the party seeking ☐ modification ☐ termination *(name):* _____

d. ☐ The lawyer for the party opposing ☐ modification ☐ termination *(name):* _____

(4) Order

☐ The request to ☐ modify ☐ terminate the attached

☐ *Elder or Dependent Adult Abuse Restraining Order After Hearing* (form EA-130)

☐ *Order Renewing Elder or Dependent Adult Abuse Restraining Order* (form EA-730)

originally issued on *(date)*: _____ is:

a. ☐ **DENIED**. The order and expiration date remain the same.

This is a Court Order.

b. ☐ **DENIED** without prejudice because the other party was not served on time.

c. ☐ **GRANTED**.

(1) ☐ The order is **TERMINATED** as of the date this Order is signed on page 3.

(2) ☐ The order is **MODIFIED** as stated: ☐ Below ☐ On Attachment 4c(2)

(Specify, referring to item numbers in the original order):

(3) The order now **EXPIRES** on *(date):* _____ at *(time):* _____

5 ☐ 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 5.

6 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 prevailing party 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 6.

This is a Court Order.

Case Number:

To the Prevailing Party:

7 Service of Order

If service is required, someone age 18 or older**—not you—**must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

☐ The other party attended the hearing. **No further service is required.**

☐ **Order Granted—**The other party did not attend the hearing. **Service is required.** This Order:
- ☐ must be personally served on the other party within _____ days of the date of this Order.
- ☐ may be served by mail on the other party within 5 days of the date of this Order.

☐ **Order Denied—**The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

Date: _____ _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Modify/Terminate Elder or Dependent Adult Abuse 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-600

Request to ☐ Modify ☐ Terminate Private Postsecondary School Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Modification/Termination

a. Your Full Name: _____

b. ☐ Petitioner ☐ Respondent

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

d. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Other Party

a. Full Name: _____

b. Address *(if known)*: _____
City: _____ State: _____ Zip: _____

3 Current Order

a. The current order is a/an:

☐ *Private Postsecondary School Violence Restraining Order After Hearing* (form SV-130)

☐ *Order Renewing Private Postsecondary School Violence Restraining Order* (form SV-730)

b. The current order expires on *(date):* _____

c. ☐ A copy of the current order is attached.

4 ☐ Request to Modify Restraining Order

a. I ask the court to modify the current order as follows *(specify requested changes referring to the item number in order that you want to change or delete):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025,* Attachment.

_____
_____
_____
_____
_____

b. I ask the court to modify the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4b —Reasons for Requested Changes" for a title. You may use form MC-025,* Attachment.

5 ☐ Request to Terminate Restraining Order

I ask the court to terminate the current order because *(give reasons below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 5— Reasons to Terminate Order" for a title. You may use form MC-025,* Attachment.

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 is true and correct.

Date: _____

_____
Type or print your name

_____
Sign your name

SV-610

Notice of Hearing on Request to ☐ Modify ☐ Terminate Private Postsecondary School Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by Judicial Council

Party seeking order completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Your Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

(4) Service on Other Party

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party or parties:

- SV-600, *Request to Modify/Terminate Private Postsecondary School Violence Restraining Order;*
- SV-610, *Notice of Hearing on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (this form);
- SV-620, *Response to Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (blank copy).

The forms must be served on the other party _____ days before the hearing.

b. **If you are the Respondent: You must have the protected person personally served with these forms. This requirement of personal service on the protected person is not a justification for you to violate the terms of the restraining order.** You must also serve the Petitioner educational institution officer or employee. Service on the Petitioner may be by mail.

c. **If you are the Petitioner Education Institution Officer or Employee and you are requesting modification or termination other than at the request of the protected person: You must have the protected person personally served with these forms.** You must also serve the Respondent. Service on the Respondent may be by mail.

d **If you are the Protected Person:** The Respondent and Petitioner educational institution officer or employee may be served with these forms by mail.

e. The person who serves the forms must fill out either form SV-200, *Proof of Personal Service*, or form SV-250, *Proof of Service of Response by Mail* (or both). Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form SV-200-INFO, *What Is "Proof of Personal Service"?*.

Date: _____ Clerk, by _____ , Deputy

To the Other Party:

If you wish to make a written response to this request to modify or terminate the current private postsecondary school violence restraining order, you may fill out form SV-620, *Response to Request to Modify/Terminate Private Postsecondary School Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—**mail a copy of it to the other party at the address in (1) at least _____ days before the hearing. Also file form SV-250, *Proof of Service of Response by Mail*, with the court before the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

SV-620

Response to Request to ☐ Modify ☐ Terminate Private Postsecondary School Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Use this form to respond to the *Request to Modify or Terminate Private Postsecondary School Violence Restraining Order* (form SV-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form SV-250, *Proof of Service of Response by Mail.*

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Party Filing Response

a. Your Full Name: _____

b. ☐ Petitioner ☐ Respondent

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-610 item (3) here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Response

a. ☐ I agree to the ☐ Modification ☐ Termination of the order.

b. ☐ I do not agree to the ☐ Modification ☐ Termination
(Specify why you disagree in item (4) on page 2.)

c. ☐ I agree to the following orders *(specify below or in item (4) on page 2):*

_____

_____

_____

_____

_____

Case Number:

4 ☐ Reasons I Do Not Agree to the ☐ Modification ☐ Termination

☐ *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 4—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Date: _____

_____ ▶ _____

Lawyer's name, if you have one *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

To the Party Filing This Response:

Have someone age 18 or older—**not you**—mail a copy of this completed form SV-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form SV-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the signed original proof-of-service form back to the court clerk or bring it with you to the hearing.

SV-630

Order on Request to ☐ Modify ☐ Terminate Private Postsecondary School Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Prevailing party completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Full Name: _____

Lawyer *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If this party has a lawyer, give the lawyer's information. If the party does not have a lawyer and wants to keep home address private, give a different mailing address instead. Telephone, fax, or e-mail are not required.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

a. ☐ The party seeking ☐ modification ☐ termination

b. ☐ The party opposing ☐ modification ☐ termination

c. ☐ The lawyer for the party seeking ☐ modification ☐ termination *(name):* _____

d. ☐ The lawyer for the party opposing ☐ modification ☐ termination *(name):* _____

(4) Order

☐ The request to ☐ modify ☐ terminate the attached

☐ *Private Postsecondary School Violence Restraining Order After Hearing* (form SV-130)

☐ *Order Renewing Private Postsecondary School Violence Restraining Order* (form SV-730)

originally issued on *(date)*: _____ is:

a. ☐ **DENIED**. The order and expiration date remain the same.

This is a Court Order.

b. ☐ **DENIED** without prejudice because the other party was not served on time.

c. ☐ **GRANTED**.

(1) ☐ The order is **TERMINATED** as of the date this Order is signed on page 3.

(2) ☐ The order is **MODIFIED** as stated: ☐ Below ☐ On Attachment 4c(2)

(Specify, referring to item numbers in the original order):

(3) The order now **EXPIRES** on *(date):* _____ at *(time):* _____

5 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 prevailing party 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 5.

This is a Court Order.

Case Number:

To the Prevailing Party:

6 Service of Order

If service is required, someone age 18 or older**—not you—**must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

☐ The other party attended the hearing. **No further service is required.**

☐ **Order Granted—**The other party did not attend the hearing. **Service is required.** This Order

- ☐ must be personally served on the other party within _____ days of the date of this Order.
- ☐ may be served by mail on the other party within 5 days of the date of this Order.

☐ **Order Denied—**The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

Date: _____ _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Modify/Terminate Private Postsecondary School Violence 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-600

Request to ☐ Modify ☐ Terminate Workplace Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Party Seeking Modification/Termination

a. Your Full Name: _____

b. ☐ Petitioner ☐ Respondent

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 Current Order

a. The current order is a/an:

☐ *Workplace Violence Restraining Order After Hearing* (form WV-130)

☐ *Order Renewing Workplace Violence Restraining Order* (form WV-730)

b. The current order expires on *(date):* _____

c. ☐ A copy of the current order is attached.

4 ☐ Request to Modify Restraining Order

a. I ask the court to modify the current order as follows *(specify requested changes referring to the item number in order that you want to change or delete):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

_____

b. I ask the court to modify the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4b —Reasons for Requested Changes" for a title. You may use form MC-025,* Attachment.

5 ☐ Request to Terminate Restraining Order

I ask the court to terminate the current order because *(give reasons below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 5— Reasons to Terminate Order" for a title. You may use form MC-025,* Attachment.

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 is true and correct.

Date: _____

_____
Type or print your name

_____
Sign your name

WV-610

Notice of Hearing on Request to ☐ Modify ☐ Terminate Workplace Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by Judicial Council

Party seeking order completes items (1) and (2).

(1) Party Seeking Modification/Termination

a. Your Full Name: _____

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Other Party

a. Full Name: _____

b. Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect unless terminated by the court.

Name and address of court if different from above:

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

(4) Service on Other Party

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party or parties:

- WV-600, *Request to Modify/Terminate Workplace Violence Restraining Order;*
- WV-610, *Notice of Hearing on Request to Modify/Terminate Workplace Violence Restraining Order* (this form);
- WV-620, *Response to Request to Modify/Terminate Workplace Violence Restraining Order* (blank copy).

The forms must be served on the other party _____ days before the hearing.

b. **If you are the Respondent: You must have the Protected Person personally served with these forms. This requirement of personal service on the Protected Person is not a justification for you to violate the terms of the restraining order.** You must also serve the Petitioner employer. Service on the employer may be by mail.

c. **If you are the Petitioner employer and you are requesting modification or termination other than at the request of the Protected Person: You must have the Protected Person personally served with these forms.** You must also serve the Respondent. Service on the Respondent may be by mail.

d **If you are the Protected Person:** The Respondent and Petitioner employer may be served with these forms by mail.

e. The person who serves the forms must fill out either form WV-200, *Proof of Personal Service*, or form WV-250, *Proof of Service of Response by Mail* (or both). Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form WV-200-INFO, *What Is "Proof of Personal Service"?*.

Date: _____ Clerk, by _____ , Deputy

To the Other Party:

If you wish to make a written response to this request to modify or terminate the current workplace violence restraining order, you may fill out form WV-620, *Response to Request to Modify/Terminate Workplace Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older**—not you—** mail a copy of it to the other party at the address in (1) at least _____ days before the hearing. Also file form WV-250, *Proof of Service of Response by Mail*, with the court before the hearing.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Hearing on Request to Modify/Terminate Workplace Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

WV-620

Response to Request to ☐ Modify ☐ Terminate Workplace Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the Judicial Council

Use this form to respond to the *Request to Modify or Terminate Workplace Violence Restraining Order* (form WV-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form WV-250, *Proof of Service of Response by Mail.*

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Party Filing Response

a. Your Full Name: _____

b. ☐ Petitioner ☐ Respondent

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

Name: _____ State Bar No.: _____

Firm Name: _____

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

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-610 item (3) here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Response

a. ☐ I agree to the ☐ Modification ☐ Termination of the order.

b. ☐ I do not agree to the ☐ Modification ☐ Termination
(Specify why you disagree in item (4) on page 2.)

c. ☐ I agree to the following orders *(specify below or in item (4) on page 2):*

_____

_____

_____

_____

_____

_____

4 ☐ Reasons I Do Not Agree to the ☐ Modification ☐ Termination

☐ *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 4—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Date: _____

_____ ▶ _____

Lawyer's name, if you have one *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

To the Party Filing This Response:

Have someone age 18 or older—**not you**—mail a copy of this completed form WV-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form WV-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the signed original proof-of-service form back to the court clerk or bring it with you to the hearing.

WV-630

Order on Request to
☐ **Modify** ☐ **Terminate**
Workplace Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not Approved by the
Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

Prevailing party completes items (1) *and* (2).

(1) Party Seeking Modification/Termination

a. Full Name: _____

Lawyer *(if any for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If this party has a lawyer, give the lawyer's information. If the party does not have a lawyer and wants to keep home address private, give a different mailing address instead. Telephone, fax, or e-mail are not required.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

(2) Other Party

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail Address: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____

(Name of judicial officer): _____ made the orders at the hearing.

These people were at the hearing:

a. ☐ The party seeking ☐ modification ☐ termination
b. ☐ The party opposing ☐ modification ☐ termination
c. ☐ The lawyer for the party seeking ☐ modification ☐ termination *(name):* _____
d. ☐ The lawyer for the party opposing ☐ modification ☐ termination *(name):* _____

(4) Order

☐ The request to ☐ modify ☐ terminate the attached

☐ *Workplace Violence Restraining Order After Hearing* (form WV-130)

☐ *Order Renewing Workplace Violence Restraining Order* (form WV-730)

originally issued on *(date)*: _____ is:

a. ☐ **DENIED**. The order and expiration date remain the same.

This is a Court Order.

b. ☐ **DENIED** without prejudice because the other party was not served on time.

c. ☐ **GRANTED**.

(1) ☐ The order is **TERMINATED** as of the date this Order is signed on page 3.

(2) ☐ The order is **MODIFIED** as stated: ☐ Below ☐ On Attachment 4c(2)

(Specify, referring to item numbers in the original order):

(3) The order now **EXPIRES** on *(date):* _____ at *(time):* _____

5 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 prevailing party 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 5.

This is a Court Order.

Case Number:

To the Prevailing Party:

6 Service of Order

If service is required, someone age 18 or older**—not you—**must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

☐ The other party attended the hearing. **No further service is required.**

☐ **Order Granted—**The other party did not attend the hearing. **Service is required.** This Order:
- ☐ must be personally served on the other party within _____ days of the date of this Order.
- ☐ may be served by mail on the other party within 5 days of the date of this Order.

☐ **Order Denied—**The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

Date: _____ _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Modify/Terminate Workplace Violence 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.

ITC SPR17-22
Title of proposal (Protective Orders: Modification and Termination)

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

	Commentator	Position	Comment	DRAFT Committee Response
1.	Orange County Bar Associaiton, By Michael Baroni, President	A	In response to the specific question: Yes, these forms accomplish the purpose for which they are intended.	The committee acknowledges the commuter's agreement with the proposal.
2.	Standing Committee on the Delivery of Legal Services, State Bar of California by Sharon Djemal	A	Agree with proposal in its entirety Specific Comments • Does this proposal appropriately address the stated purpose? Yes. Additional Comments The proposal provides forms to use where there were no forms previously to modify or terminate an order in the context of civil harassment, elder and dependent adult abuse, private post-secondary school violence, and workplace violence. The forms are beneficial because it makes the process for modifying or terminating protective orders easier/smoother and makes the court system more accessible to those without an attorney. The forms also will help pro bono attorneys since they will be able to enter the information into forms rather than draft pleadings for these types of cases. By increasing efficiencies for pro bono attorneys, more indigent individuals will be helped.	The committee acknowledges the commuter's agreement with the proposal, and appreciates the recognition of how much standard forms improve access to justice.
3.	Superior Court of Los Angeles County	A	No comment submitted	The committee acknowledges the commuter's agreement with the proposal.

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

ITC SPR17-22
Title of proposal (Protective Orders: Modification and Termination)

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

	Commentator	Position	Comment	DRAFT Committee Response
4.	Superior Court of Orange County By Civil and Probate Operations Managers	N	The proposed order form granting or denying the request (CH-630) creates confusion and additional work that is not necessary. The proposed change would require law enforcement to review form CH-630 to see what changes were made to the original order. This would require reviewing two forms. We suggest that there not be an order form, and any modifications or terminations be made within the minute order and any changes be made on an amended CH-130 form.	The committee considered this comment but concluded, based on information received from courts of committee members, that the separate order form for modifying or terminating an original order after hearing was appropriate. The committee will continue to seek input from law enforcement on this question.
5.	Superior Court of Riverside County By Susan D. Ryan	AM	Position on Proposal: Agree with the proposal with the following input and proposed changes: Form EA 620 Response to Request… - Reference to CH-600 should be changed to EA-600. Reference to CH-250 should be changed to EA-250 Form WV 620 Response to Request… - Reference to SV-600 should be changed to WV-600. Reference to SV-250 should be changed to WV-250 Developing EA/CH/WV/SV 600 INFO sheets would be helpful to inform the public on the process and how to use the forms. Does the proposal appropriately address the stated purpose? Yes.	The committee acknowledges the commuter's general agreement with the proposal and addresses the concerns stated below. These corrections have been made. This correction has been made. This proposal is outside the scope of the current proposal, but will be considered by the committee as time and resources allow. The committee appreciates the responses to the specific questions included in the Invitation to Comment.

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

	Commentator	Position	Comment	DRAFT Committee Response
			Would the proposal provide cost savings? No. There may be a cost increase as a higher number termination and modification hearings are requested because of the added accessibility that these forms provide. What would the implementation requirements be for courts? Updating desk procedures and integration into case management is required.	The committee acknowledges that the increased access provided by the forms may result in increased hearings.
6.	Superior Court of San Diego By Mike Roddy	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Q: Would the proposal provide cost savings? If so, please quantify. No. Q: What would the implementation requirements be for courts? Updating training materials, forms packets, and notifying staff. General Comments: 600 Forms: Our court proposes the signature section be modified to include a place for attorney's signature (See item 17 of current CH-100). 620 Forms:	The committee acknowledges the commenter's agreement with the proposal, and appreciates the responses to the specific questions asked re costs and implementation requirements. The more specific comments are addressed below. The committee agrees and the form has been modified in light of this comment.

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

	Commentator	Position	Comment	DRAFT Committee Response
			Our court proposes the signature section be modified to use consistent language across harassment forms. Proposed form includes "Lawyer's name, if you have one" should be changed to "Lawyer's name (if any)." (See signature section of current CH-100). 630 Forms: Item 3 Hearing: Our court proposes the section be modified to mirror item 5 of CH-130 or item 5 of DV-400. It seems unnecessary to restate whether the party and attorney were seeking modification or termination of the order. Item 7 Service of Order: Our court proposes the section be modified to indicate party responsible for service similar to item 13 of CH-130. Forms: •Item 1a of CH-600,610, and 630 lists "Full Name" while item 1a of CH-620 lists "Your	The forms have been modified in light of this comment, to be made consistent. The committee considered this proposal, but declines to adopt it, concluding that the item as circulated is appropriate. The proposal is to use "The person in (1)" and "The person in (2)." The committee prefers referring to modification and termination here. Note that with document assembly programs, one picks modification or termination just once, and all the applicable boxes get checked accordingly. The committee declines to adopt this proposal. The items are different in the different forms because an original civil harassment order after hearing is always sought by the party seeking protection and must be served on the restrained party, while the modification order may be sought by either side. If modification or termination is granted, the must be served by the prevailing party, whether that is the restrained party or the protected party. The committee agrees. "Your Full Name" will be used in the 600 petitions, the 610 notices, and the

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

	Commentator	Position	Comment	DRAFT Committee Response
			Full Name." Our court proposes that Item 1 have the same format for 600, 610, 620, and 630 (e.g. 1a-d).	620 responses. The 630 orders do not use "Your."
7.	Superior Court of Ventura County By Julie Camacho	A	Currently this initiating party/protected party is permitted to file a Request for Dismissal of their action at any time in the proceedings, both prior to and after the hearing on the request for a restraining order and after the Order After Hearing has been issued. Is it the intent that the new forms to request termination of a restraining order will replace the party's ability to file a Request for Dismissal in these proceedings? I agree with the proposed changes but seek clarification on this issue.	The committee acknowledges the commuter's agreement with the proposal. The committee believes that the new form terminating a protective order should always be used for that purpose. A Request for Dismissal should be accompanied by a 630 order of termination.
8.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee .	AM	The new forms will result in retraining of court staff. However, this operational impact should be minimal. Suggested Modifications: • Forms CH-600 (page 3) and EA-600 (page 3) – The Joint Rules Subcommittee (JRS) recommends the following language be added to the end "Notice to the Restrained Person - This requirement of personal service of the protected person is not a justification for the restrained person to violate the terms of the civil harassment restraining order." • Forms EA-610, EA-620, and EA-630 – The JRS recommends that service of Forms EA-	The committee acknowledges the commuter's agreement with the proposal, and addresses the specific points raised below. The forms have been further modified to include the proposed language. It will be added to the SV and WV 600 forms also. The committee declines to make this modification to the form, because service on a nonparty

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

	Commentator	Position	Comment	DRAFT Committee Response
			610, EA-620, EA-630 should also be required to conservators of the protected elder person and conservators of the protected elder person's estate in the event they are not the party who requested the original restraining order.	conservator is does not appear to be statutorily required. (See Welf. & Inst. Code, § 15657.03). A form cannot require an act that is not otherwise required by law. This comment should perhaps be directed to the Legislature.
			• Form EA-620 – There is a typo on page 2 in the footer that erroneously identifies the form as Form CH-620, instead of as Form EA-620.	The form has been corrected.
			• Forms WV-600, WV-610, WV-620, WV-630 – The JRS recommends that service of Forms WV-600, WV-610, WV-620, and WV-630 should also be required to the employer.	The committee agrees with this comment. The employer is the actual petitioner and must be served when service is required. The same applies to the SV forms also. The petitioning school must be served
			• Other – The JRS recommends the removal of the phrase: "the other person agrees to this modification/termination request." on all forms where it appears. There is concern that this phrase will create confusion and lead to the belief by the restrained person that he/she can contact the protected person to achieve such an agreement. The phrase is unnecessary in that the protected person will be served a response form. Further, if attorneys reach such a stipulation they will put it in writing for the court.	Upon further consideration, the committee agrees and has removed this item from the forms.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Civil Protective Orders: Response and Firearms Relinquishment Exemption

Rules, Forms, Standards, or Statutes Affected
Revise forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 11, 2017

Contact
Bruce Greenlee, 415-865-7698
bruce.greenlee@jud.ca.gov
Anne M. Ronan, 415-865-8933,
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising civil restraining order forms to allow the court the discretion to make exceptions to the statutory firearms relinquishment order if a firearm is required by the respondent's employment. The committee also proposes revisions to the response forms to requests for restraining orders to provide space on the forms so that if a responding party disagrees with an order requested by the petitioner, he or she may provide an explanation. The existing forms may be misleading in proceedings governed by statutes that specifically provide that the responding party may file a response with an explanation. This explanatory information would also be helpful to the judicial officer.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2018, revise the civil restraining order forms as follows:

1. Revise the following forms to include items in which the responding party may make, or the court may act on, a request under Code of Civil Procedure section 527.9(f) to grant an exception to the statutory firearm relinquishment order:
   - *Response to Request for Civil Harassment Restraining Orders* (form CH-120, , item 6;
   - *Civil Harassment Restraining Order After Hearing* (form CH-130, item 8);
   - *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*,(form EA-120, item 7);
   - *Elder or Dependent Adult Abuse Restraining Order After Hearing*, (form EA-130, item 9);
   - *Response to Petition for Private Postsecondary School Violence Restraining Orders*, (form SV-120, item 7;
   - *Private Postsecondary School Violence Restraining Order After Hearing* (form SV-130, item 9;
   - *Response to Petition for Workplace Violence Restraining Orders*, (form WV-120, item 7); and
   - *Workplace Violence Restraining Order After Hearing* (form WV-130, item 9); and

2. Revise all the civil restraining order response forms, listed below, to include additional space so that if a responding party disagrees with the request, he or she may provide an explanation why directly on the form:
   - *Response to Request for Civil Harassment Restraining Orders* (form CH-120, item 1;
   - *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-120, item 12);
   - *Response to Petition for Firearms Restraining Order* (form GV-120, item 3);
   - , *Response to Petition for Private Postsecondary School Violence Restraining Orders* (form SV-120item 11); and
   - , *Response to Petition for Workplace Violence Restraining Orders* (form WV-120item 11).

The revised forms are attached at pages 6–47.

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 civil harassment, elder and dependent adult abuse, workplace violence, and private postsecondary school violence protective order matters. The Penal Code similarly mandates Judicial Council forms in gun violence restraining order matters. The forms have been revised when changes to the law required revisions and in response to suggestions from the public, judicial officers, and court professionals. The workplace violence and private postsecondary school violence response forms in this proposal were last revised in 2014. The gun violence prevention response form was adopted in 2016 and has not since been revised. All the other forms were most recently revised effective January 1, 2017.

Rationale for Recommendation

Firearms relinquishment exemption

The Legislature has mandated that the Judicial Council prescribe the forms and rules relating to matters covered by the statutes that govern proceedings concerning restraining orders.[1] Code of Civil Procedure section 527.9(f) provides that "[t]he court may, as part of the [firearms] relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that [the] firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary." The statute covers civil harassment (CH), elder or dependent adult abuse (EA), private postsecondary school violence (SV), and workplace violence (WV) proceedings. (See Code Civ. Proc., § 527.9(a).) The revised response forms in each of these types of proceedings will allow the responding party to request an exemption and explain why.

The statute includes specific findings that are to be provided in the order after hearing to support this exemption. (See Code Civ. Proc. § 527.9(f).) The domestic violence restraining order forms include for firearms relinquishment an item that expressly addresses the exemption and contains the statutory language. The recommended revisions to the civil protective order after hearing forms for CH, EA, SV, and WV proceedings do the same.[2]

Response forms

Currently, the forms to respond to a request for a protective order in all five case types (to prevent civil harassment, elder and dependent adult abuse, private postsecondary school violence, workplace violence, and gun violence) provide for three check box options: (a) agree; (b) do not agree; or (c) agree to certain specified orders that have been requested in each proceeding (see, e.g., form CH-120 at items 3, 4, and 7). No space is provided on any of the current forms for the responding party to include an explanation if he or she does not agree with the request. These forms may be misleading in proceedings governed by statutes that specifically provide that the responding party may file a response with an explanation. For example, in response to a petition for a civil harassment restraining order, a respondent "may file a response that *explains, excuses, justifies*, or denies the alleged [harassment]."[3]

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[1] See Code Civ. Proc., §§ 527.6(w)(1) (civil harassment), 527.85(v)(1) (private postsecondary school violence), 527.8(v)(1) (workplace violence); Pen. Code, § 18105 (gun violence); and Welf. & Inst. Code, § 15657.03(x-y) (elder abuse).

[2] The revisions are highlighted at item 6b on response form CH-120 and item 8d on order form CH-130; at item 7b on response forms EA-120, SV-120, and WV-120; and at item 9d on order forms EA-130, SV-130, and WV-130.

[3] Code Civ. Proc., § 527.6(h)(italics added); Code Civ. Proc., § 527.85(i) (identical statutory language for SV cases); Code Civ. Proc., § 527.8(i) (identical statutory language for WV cases); Welf. & Inst. Code, § 15657.03(g) (similar language for EA cases: may file a response that "explains or denies the alleged abuse"); Pen. Code, § 18100 et seq. (no specific mention of response in GV statutes).

The revised response forms each include a new item, "Reasons I Do Not Agree to the Orders Requested," in which a party may provide an explanation or may indicate that an additional page is attached with such information. Cross-references to that item appear at each item identifying a specifically requested order.[4]

Comments, Alternatives Considered, and Policy Implications

Comments received

The revised forms were circulated for comment during the spring 2017 comment period. Comments were received from four courts (Superior Courts of Los Angeles, Riverside, San Diego, and Ventura Counties), the Orange County Bar Association, and the Standing Committee on the Delivery of Legal Services of the State Bar.

All commenters were generally in favor of the proposed revisions, with a few seeking minor modifications of the revisions relating to firearms.[5] Two of the courts asked that additional space be provided on the order forms for courts to more completely identify any firearms that are being exempted from relinquishment. That modification has been made, and some other minor points were addressed to assure internal consistency in the forms.

The State Bar committee asked for further modification of the firearm exemption items to address the further requirements that may come into play should a peace officer be the responding party and desire a further exemption to allow for carrying a gun off duty. The committee consulted with the Family and Juvenile Law Advisory Committee staff to determine how this point is handled in forms for domestic violence cases, in which the same statutory exemption applies. The committee was informed that the situation rarely arises, and because the statutory requirements and findings are not easily expressed in plain language, the Domestic Violence forms just cite to the statute without replicating any of its language. The committee here is providing the basic information about the exemption on the form, concluding, as a plain-language principle, that users should not have to read a statute to understand how to fill out the form.

Alternatives

The committee considered not taking any action but decided that to revise the forms as proposed would be better.

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[4] See, for example, new item 11 on form CH-120 and cross-references at revised items 3, 4, 7, and 8; new item 12 on form EA-120 and cross-references at revised items 3, 4, 5, 8, and 9; form GV-120, revised item 3; and new item 11 on forms SV-120 and WV-120 and cross-references at revised items 4, 5, and 8. The numbering of other items on the forms has been changed as needed to accommodate the new items.

[5] A chart containing all the comments received and the committee's responses thereto is attached at pages 47–51. No modifications were requested relating to the additional space provided on the forms for further explanations or justifications by the responding parties.

Implementation Requirements, Costs, and Operational Impacts

Self-help centers and court staff may need training to recognize and understand the revised items. The intent of the revisions is that, once initial training is complete, the revised forms will assist parties in completing the forms correctly and will benefit the courts. If the protective order forms are used as part of electronic case management systems, those systems may require some modifications to use the forms.

Attachments and Links

1. Judicial Council forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130, at pages 6–47
2. Chart of comments, at pages 48–52

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

Full 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. *(Specify why you disagree in item (11) on page 3.)*
c. ☐ I agree to the following orders *(Specify below or in item (11) on page 3.)*

_____
_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (11) on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item (11) on page 3):*

_____
_____

(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 ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(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 6b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ 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. *(Specify why you disagree in item 11 on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

8 ☐ Other Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

9 ☐ Denial

I did not do anything described in item 7 of form CH-100. *(Skip to 11 .)*

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.

11 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *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—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

12 ☐ 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.)*

13 ☐ 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 and write "Attachment 13—Lawyer's Fees and Costs" for a title. You may use or form MC-025,* Attachment.

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.

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on 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.

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 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):*

_____

_____

_____

_____

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. 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.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):* _____

_____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

9 ☐ Lawyer's Fees and Costs

The person in ___ must pay to the person in ___ the following amounts for

☐ lawyer's fees ☐ 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 ❷:

You Cannot Have Guns or Firearms

Unless item 8d is checked, 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-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. *(Specify why you disagree in item (12) on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item (12) on page 4):*

_____
_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (12) on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item (12) on page 4):*

_____
_____

Case Number:

5 ☐ Move-Out Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 12 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 12 on page 4):*

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 ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ 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. *(Specify why you disagree in item 12 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 12 on page 4):*

Case Number:

9 ☐ Other Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 12 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 12 on page 4):*

10 ☐ Denial

I did not do anything described in item 10 of form EA-100. *(Skip to 12.)*

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.

Case Number:

12 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *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 12—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

13 ☐ 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 and write "Attachment 13—Lawyer's Fees and Costs" for a title. You may use form MC-025,* Attachment.

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.

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on 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.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____

_____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

10 **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 ☐ lawyer's fees ☐ 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 (unless item 9d is checked), 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.

GV-120 Response to Petition for Firearms Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Use this form to respond to the *Petition* (form GV-100)

- Read *How Can I Respond to a Petition for Firearms Restraining Order?* (form GV-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to his or her lawyer. *(Use form GV-250,* Proof of Service by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

See Petition for case number and fill in:

Case Number:

1 Petitioner

Name of person seeking order *(see form GV-100, item 1):*

2 Respondent

a. Your Name: _____

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

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

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-mail Address: _____

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from form GV-109 item 3 here:

Hearing Date ➔ Date: _____ Time: _____
Dept.: _____ Room: _____

If a Temporary Firearms Restraining Order was issued, you must obey it until the hearing. At the hearing, the court may make an order against you for one year.

3 Firearms Restraining Order

☐ I do not agree to the order requested in the Petition because:

☐ *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 3—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

4 ☐ Denial

I did not do anything described in item 6 of form GV-100.

5 ☐ Justification or Excuse

If I did some or all of the things that the Petitioner has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5–Justification or Excuse" as a title. You may use form MC-025,* Attachment.

6 Surrender of Firearms and Ammunition

If a *Temporary Firearms Restraining Order* (form GV-110) was issued, you cannot own or possess any guns, other firearms, or ammunition. (See item 5 of form GV-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns, other firearms, and ammunition in your immediate possession or control within 24 hours of being served with form GV-110. You must file a receipt with the court. You may use form GV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

a. ☐ I do not own or control any guns, other firearms, or ammunition.
b. ☐ I have turned in my guns, other firearms, and ammunition to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
   ☐ is attached. ☐ has already been filed with the court.

7 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

SV-120

Response to Petition for Private Postsecondary School Violence 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

Fill in case number:

Case Number:

Use this form to respond to the *Petition* (Form SV-100)

- Read *How Can I Respond to a Petition for Private Postsecondary School Violence Restraining Orders?* (form SV-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 petitioner or the petitioner's lawyer by mail with a copy of this form and any attached pages. *(Use form SV-250,* Proof of Service of Response by Mail.*)*

1 Petitioner (Educational Institution Officer or Employee)

Name: _____

2 Student Seeking Protection

Full Name: _____

3 Respondent (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 *(You may give a mailing address if you want to keep your street address private; skip this if you have a lawyer.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-109, item 4 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 three years.

4 ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

_____

_____

5 ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

_____

_____

Case Number:

6 ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item 4 of the Petition may be protected by the order requested.

b. ☐ I do not agree that the persons listed in item 4 of the Petition may be protected by the order requested.

7 Firearms Prohibition and Relinquishment

If you were served with form SV-110, *Temporary Restraining Order,* you cannot own or possess any guns, other firearms, or ammunition. 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 SV-110. (See item 8 of form SV-110.) You must file a receipt with the court. You may use form SV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

a. ☐ I do not own or control any guns or other firearms.

b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ 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 ☐ Other Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

9 ☐ Denial

I did not do anything described in item 8 of form SV-100. *(Skip to 11 .)*

10 ☐ Justification or Excuse

If I did some or all of the things that the petitioner has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use form MC-025,* Attachment.

11 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *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—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

12 ☐ No Fee for Filing

a. ☐ I ask the court to waive the filing fee because the petitioner claims in form SV-100 item 14 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.)*

13 ☐ Costs

a. ☐ I ask the court to order the petitioner to pay my 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 and write "Attachment 13—Costs" for a title. You may use form MC-025,* Attachment.

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.

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

SV-130

Private Postsecondary School Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

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 Orders

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.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the respondent is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):* _____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the respondent may be subject to federal prosecution for possessing or controlling 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.

This is a Court Order.

11 ☐ **Other Orders** *(specify):*

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

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**

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: _____

Date: _____

▶ _____

Judicial Officer

This is a Court Order.

Warning and Notice to the Respondent:

You Cannot Have Guns or Firearms

Unless item 9d is checked, 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-120 Response to Petition for Workplace Violence 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

Fill in case number:

Case Number:

Use this form to respond to the *Petition* (form WV-100)

- Read *How Can I Respond to a Petition for Workplace Violence Restraining Orders?* (form WV-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 petitioner or the petitioner's lawyer by mail with a copy of this form and any attached pages. *(Use form WV-250,* Proof of Service of Response by Mail.*)*

1 Petitioner (Employer)

Name: _____

2 Employee Seeking Protection

Full Name: _____

3 Respondent (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 *(You may give a mailing address if you want to keep your street address private; skip this if you have a lawyer.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form WV-109, item 4 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 three years.

4 ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

_____

_____

5 ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

_____

_____

Case Number:

6 ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item 4 of the Petition may be protected by the order requested.

b. ☐ I do not agree that the persons listed in item 4 of the Petition may be protected by the order requested.

7 Firearms Prohibition and Relinquishment

If you were served with form WV-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. 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 WV-110. (See item 8 of form WV-110.) You must file a receipt with the court. You may use form WV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

a. ☐ I do not own or control any guns or other firearms.

b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ 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 ☐ Other Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*

c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

9 ☐ Denial

I did not do anything described in item 8 of form SV-100. *(Skip to 11.)*

10 ☐ Justification or Excuse

If I did some or all of the things that the petitioner has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use form MC-025,* Attachment.

11 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *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—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

12 ☐ No Fee for Filing

a. ☐ I ask the court to waive the filing fee because the petitioner claims in form WV-100 item 14 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.)*

13 ☐ Costs

a. ☐ I ask the court to order the petitioner to pay my 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 and write "Attachment 13—Costs" for a title. You may use form MC-025,* Attachment.

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.

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

WV-130 Workplace Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner (Employer)

a. Name: _____

Lawyer for Petitioner *(if any, for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

2 Employee (Protected Person)

Full Name: _____

3 Respondent (Restrained Person)

Full Name: _____

Description

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Employee: _____

4 ☐ Additional Protected Persons

In addition to the 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 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 *(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 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 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 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 Orders

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.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the respondent is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):* _____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the respondent may be subject to federal prosecution for possessing or controlling 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.

This is a Court Order.

11 ☐ **Other Orders** *(specify):*

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

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 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

Unless item 9d is checked, 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.

SPR17-23
Protective Orders: Response and Firearms Relinquishment Exemption (revise forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130 CIV-100)

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

	Commentator	Position	Comment	DRAFT Committee Response
1.	Orange County Bar Association, Michael L. Baroni, President	A	The proposed changes adequately address the stated purpose.	The committee acknowledges the comment agreeing with the proposal.
2.	Standing Committee on the Delivery of Legal Services, State Bar of California, Sharon Djemal, Chair,	AM	• Does the proposal appropriately address the stated purpose? Yes with respect to the creation of additional space on protective order response forms. The proposed revisions to the response forms offer adequate space for the responding party who disagrees with a request to provide an explanation. No with respect to the revisions to the forms so that the court may exercise its discretion to grant an exception to the statutory firearm relinquishment order to a responding party who makes the request under CCP section 527.9(f). The proposed language regarding the court's discretion to make exceptions to the statutory firearms relinquishment order if a firearm is required by the respondent's employment cites only part of the statute. As a result, the language understates the high threshold needed to maintain a firearm for employment. It is not clear why all of the requirements of the statute are not included in the language. Moreover, it is unclear why the language used on these forms is not consistent with	The committee acknowledges the general agreement with the proposal. The committee does not believe that the rest of the statute need be replicated on the form. The language not included says: In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace

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

	Commentator	Position	Comment	DRAFT Committee Response
			the language used in the family law domestic violence form since the statutes are identical (Code of Civil Procedure section 527.9(f) and Family Code section 6389(h)). The language used on the family law domestic violence form is easy to understand, and does not include select parts of the statute. As a result, it does not understate the high threshold needed to maintain a firearm for employment. SCDLS recommends that the language include all requirements in the statute to ensure that the respondent is fully aware of the high burden of proof and the process involved with obtaining the exemption, or, the language be made consistent with the language already used on the family law domestic violence form: "I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9 because *(specify)*: _____"	officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. The situation rarely arises and is not easily expressed in plain language. The Domestic Violence forms just cite to the statute without replicating any of its language. But the committee here prefers providing the basic information about the exemption on the form. The committee concludes that, as a plain-language principle, users should not have to read a statute to understand how to fill out the form.
3.	Superior Court of Los Angeles County	A		The committee acknowledges the comment agreeing with the proposal.
4.	Superior Court of Riverside County, Susan D. Ryan, Chief Deputy of Legal Services	AM	**Position on Proposal:** Agree with the proposal with the following input and proposed changes:	The committee acknowledges the comment generally agreeing with the proposal. The additional space and underscoring suggested by the commenter has been added. This

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

	Commentator	Position	Comment	DRAFT Committee Response
			Orders After Hearing - No Guns or Other Firearms and Ammunition; CH-130 #8d, EA-130 #9d; WV-130 #9d, SV-130 #9d - Add underline after "(*specify make, model, and serial number of firearm*)" with sufficient room for the bench officer to include required info. Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so please quantify. No. What would the implementation requirements be for courts? Courts would need to provide brief training on the new additional language on the forms. The period for implementation is minimal.	revision required taking a line from the field to identify animals. The committee thanks the commenter for answering the specific questions from the Invitation to Comment.
5.	Superior Court of County of San Diego, Mike Roddy, Executive Officer	AM	**Comments on specific questions:** Q: Does the proposal appropriately address the stated purpose? Yes Q: Would the proposal provide cost	The committee acknowledges the comment generally agreeing with the proposal, and thanks the commenter from answering the specific questions from the Invitation to Comment.

	Commentator	Position	Comment	DRAFT Committee Response
			savings? If so, please quantify. No. Q: What would the implementation requirements be for courts? Updating training materials, forms packets, and notifying staff **General Comments:** **120 Forms:** **Item 6b (CH) & 7b (EA/SV/WV):** Our court suggests the lines provided for explaining why the firearm is necessary be moved above the checkbox "Check here if there is not enough space…" **Item 1a & 2a:** Our court proposes "Full Name" for consistency among harassment forms.	Previous feedback from courts and users has led to a plain-language standard that overflow checkboxes should precede the text field. The reason is that self-represented litigants may start to write without thinking about whether there is enough space. The user should look at the available space first and decide whether there is enough for their answer. If not, then s/he should do an attachment. Our information is that judges do not want half of the text on the form and half on an attachment. But there was a spacing error here. There should not have been any space below "Explain." This has been fixed. The committee agreed with the comment and has used "Full Name" on all party items of all

SPR17-23
Protective Orders: Response and Firearms Relinquishment Exemption (revise forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130 CIV-100)

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

	Commentator	Position	Comment	DRAFT Committee Response
			130 Forms: **Item 8d (CH) & 9d (EA/SV/WV):** Our court suggests a line be added in the space provided to specify the firearm to make it more visible.	forms. This was a drafting error. The underscore has been added.
6.	Superior Court of Ventura County, Julie Camacho, Court Manager	AM	I agree with the changes as proposed but would note that this proposal does not address this issue when the temporary restraining order is issued by the court. It seems the exception to the statutory firearms relinquishment order should be addressed on the Temporary Restraining Order forms as well to provide a respondent an opportunity to address this issue at the time of the TRO.	The committee acknowledges the comment generally agreeing with the proposal. The committee sees the issue relating to the temporary restraining order (TRO); the respondent may be entitled to the exemption and should not have to surrender his or her guns for a TRO. But since the TRO is usually issued ex parte and often without notice, there is no procedural vehicle for the respondent to assert the exemption before a TRO is issued. All s/he can do is file a response asserting the exemption and try to get his or her gun back after the hearing when the exemption is memorialized on form 130.

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

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: September 14–15, 2017

Title
Civil Protective Orders: Requests for Immediate Orders

Rules, Forms, Standards, or Statutes Affected
Revise forms CH-100, EA-100, GV-100, SV-100, and WV-100

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 11, 2017

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee proposes revisions to all civil protective order request forms to clarify that any "immediate order" being sought on those forms is a temporary restraining order (TRO) and to allow parties requesting TROs to indicate whether the request is being made "with notice" to the other party.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise the civil protective order request forms, effective January 1, 2018, as follows:

1. Revise forms CH-100, item 11; EA-100, item 15; GV-100, item 9; SV-100, item 12; and WV-100, item 12, so the petitioner may indicate affirmatively if he or she is requesting a temporary order "with notice"; and

2. Revise the titles of the items in recommendation 1—"Immediate Orders" on the CH and EA forms, "Request for Immediate Temporary Order" on the GV form, and "Request for Immediate Orders Without Notice" on the SV and WV forms—to read "Temporary Restraining Order."

The revised forms are attached at pages 5–34.

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 civil harassment (CH), elder and dependent adult abuse (EA), private postsecondary school violence (SV), and workplace violence (WV) protective order matters. The forms have been revised when changes to the law required revisions and in response to suggestions from the public, judicial officers, and court professionals. The CH and EA protective order forms contained in this proposal were revised last year. The WV and SV violence forms were last revised in 2014.

Rationale for Recommendation

The statutes governing the various protective order proceedings provide that a temporary restraining order may be issued with or without notice. (See, e.g., Code Civ. Proc., §§ 527(c) and 527.6(d).) Currently, however, the Judicial Council forms for requesting a TRO may be confusing on this point. For example, the *Request for Civil Harassment Restraining Orders* (form CH-100) at item 11 currently asks petitioners to check a box to respond either "Yes" or "No" as to whether they are requesting that "Immediate Orders" be made *without* notice. However, nowhere on the form can the petitioner affirmatively indicate that he or she is requesting "Immediate Orders" *with* notice. The *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100 at item 15) has the identical issue. Likewise, the petitions for restraining orders to prevent private postsecondary school violence and workplace violence (forms SV-100 and WV-100, at item 12) also ask the petitioner to check a box "Yes" or "No" if requesting "Immediate Orders Without Notice." Similarly, the *Petition for Firearms Restraining Order* (form GV-100, item 9) asks the petitioner to check a box "Yes" or "No" answering whether he or she is requesting an "Immediate Temporary Order" without notice.

A judge from San Bernardino County reported that in her court, if "no" was checked, the clerk was requiring the petitioner to give notice and return the next day. In other words, a "no" answer was construed as "no" to "without notice," meaning that a TRO would be sought "with notice." But that is not what a "no" answer is supposed to indicate. A "no" answer simply means that no temporary restraining order is sought.[1]

[1] While is it rare to not have a TRO in a domestic violence proceeding, it is not so rare in civil proceedings such as civil harassment. Often, there is no need for immediacy to address imminent potential violence.

The advisory committee recommends that all the forms be revised to address this confusion and to be consistent with each other. First, there should be a preliminary checkbox at the item level which is to be checked only if the petitioner is seeking a TRO. If no TRO is sought, then there is no need to consider the question of notice to the respondent and the petitioner proceeds to the next item on the form. If a TRO is sought, then a question seeking a yes or no answer is asked: "Has the [respondent] been told that you were going to go to court to seek a TRO against him/her?" If the answer is "no," the petitioner is to provide an explanation of why no notice was provided.

All the revised request (-100) forms would now use the phrase *Temporary Restraining Order* in the item title instead of *Immediate Order* or *Immediate Temporary Order*. The reason for using the word *immediate* in the first place, instead of *temporary,* was to address concerns about plain language. In reviewing these forms, the committee has reconsidered the language and noted that domestic violence forms use the term *temporary orders*. It is also the term used in the statutes governing civil harassment, elder abuse, school violence, and work violence cases. (See, e.g., Code Civ. Proc., § 527.6(b)(6).) The committee has concluded that the change in language in the forms will clear up the confusion that currently exists.

Comments, Alternatives Considered, and Policy Implications

The revised forms were circulated for comment during the spring 2017 comment period. Comments were received from four courts (the Superior Courts of Los Angeles, Orange, Riverside, and San Diego Counties), the Orange County Bar Association, and the Standing Committee on the Delivery of Legal Services of the State Bar.

All commenters were generally in favor of the proposed revisions, with a few seeking minor modifications to the language, most of which were implemented by the committee.[2] One commenter also requested that the item requesting a TRO be moved up in the form and made automatic. The committee considered the comment but declined to act on it. Although TROs might be requested in all domestic violence cases, the same is not true in all civil matters, and the committee concluded that the request should not be made automatic in such cases, but rather left to the discretion of the moving party.

The State Bar committee pointed out that "[t]hese revisions will make the process easier, especially for low and moderate-income clients, self-represented litigants, limited and non-English speakers and other underrepresented and vulnerable individuals" as well as helping "pro bono attorneys who are new to this area of law." The committee agrees.

[2] A chart containing all the comments received and the committee's responses thereto is attached at pages 35–38.

As an alternative to revising the forms, the committee considered taking no action but decided instead to revise the forms as recommended, believing that the revisions will make the forms clearer, particularly for self-represented parties.

Implementation Requirements, Costs, and Operational Impacts

Self-help centers and clerks may need training to recognize and understand the revised forms. The hope is that, once initial training is complete, the revised forms will be helpful for parties and clerks and ultimately benefit the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those systems.

Attachments and Links

1. Forms CH-100, EA-100, GV-100, SV-100, and WV-100, at pages 5–34
2. Chart of comments, at pages 35–38

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.

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: _____

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 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.

7 a. (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):*

☐ Me ☐ The person in (2) ☐ 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.

Case Number:

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 ☐ Temporary Restraining Order

I request that a Temporary Restraining Order (TRO) be issued against the person in (2) to last until the hearing. I am presenting form CH-110, *Temporary Restraining Order,* for the court's signature together with this *Request.*

Has the person in (2) been told that you were going to go to court to seek a TRO against him/her?

☐ Yes ☐ No *(If you answered no, 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—Temporary Restraining Order" for a title.*

12 ☐ Request to Give Less Than Five Days' Notice of Hearing

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 ☐ 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 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.

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.

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 in Need of Protection

Full Name: _____

Sex: ☐ M ☐ F Age: _____

2 Person From Whom Protection Is Sought

Full Name: _____

Address *(if known):* _____

City: _____ State: ____ Zip: _____

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.*)*

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

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 5b—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.

10 b. (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):*

☐ the person in (1) ☐ the person in (2) ☐ 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.

Case Number:

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 13b—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 ☐ Temporary Restraining Order

I request that a Temporary Restraining Order (TRO) be issued against the person in (2) to last until the hearing. I am presenting form EA-110, *Temporary Restraining Order*, for the court's signature together with this *Request*.

Has the person in (2) been told that you were going to go to court to seek a TRO against him/her?

☐ Yes ☐ No *(If you answered no, 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—Temporary Restraining Order" for a title.*

16 ☐ Request to Give Less Than Five-Days' Notice of Hearing

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 on the next page:

This is not a Court Order.

16 ☐ *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.*

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 ☐ 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 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.

GV-100 Petition for Firearms Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
02.07.2017

Read *Can a Firearms Restraining Order Help Me?* (form GV-100-INFO) before completing this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner

a. Your Full Name:

_____

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by (*name of law enforcement agency*):

_____

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

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

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

2 Respondent

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: ____ Zip: _____

3 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The Respondent lives in this county.
b. ☐ Other *(specify):* _____

4 Other Court Cases

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

☐ Yes ☐ No *If yes, on the next page, check each kind of case and give as much information as you know as to where and when each was filed:*

This is not a Court Order.

4

Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1) ☐ Civil Harassment			
(2) ☐ Domestic Violence			
(3) ☐ Divorce, Nullity, Legal Separation			
(4) ☐ Paternity, Parentage, Child Custody			
(5) ☐ Elder or Dependent Adult Abuse			
(6) ☐ Eviction			
(7) ☐ Workplace Violence			
(8) ☐ Criminal			
(9) ☐ Other *(specify):*			

b. Are there now any protective or restraining orders in effect relating to Respondent?
☐ Yes ☐ No ☐ I don't know *If yes, attach a copy if you have one.*

5 Description of Respondent's Firearms

If you have reason to believe that the respondent is in possession of firearms, answer (a) or check (b).

a. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms and ammunition. *(Describe the number, types, and locations of any firearms and ammunition that you believe that the Respondent currently possesses or controls)*:

b. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls firearms and ammunition, but I have no further specific information as to the number, types, and locations of those firearms and and ammunition.

6 Grounds for Issuance of a Firearms Restraining Order

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

This is not a Court Order.

6 b. A firearms restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

c. The facts supporting the above statements are set forth:

☐ Below

☐ On the attached form MC-031, *Attached Declaration*

7 Request for Firearms and Ammunition Restraining Order

I request that the court issue an order prohibiting Respondent from having in his or her custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a firearm or ammunition. I further request that Respondent be ordered to immediately surrender all firearms and ammunition currently in his or her possession to a law enforcement officer or to sell the firearms and ammunition to or store them with a licensed gun dealer.

8 Request for Hearing

I request that the court set a hearing in this matter for the purpose of issuing a firearms restraining order that will last for one year.

9 ☐ Temporary Restraining Order

I request that a Temporary Firearms Restraining Order (TRO) be issued against the Respondent to last until the hearing. I am presenting form GV-110, *Temporary Restraining Order,* for the court's signature together with this Petition.

Has the Respondent been told that you were going to court to seek a TRO against him/her?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ Reasons stated in Attachment 9.

This is not a Court Order.

Case Number:

10 ☐ **Request to Give Less Than Five Days' Notice of Hearing**

You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (Form GV-200-INFO explains What Is "Proof of Personal Service"? *Form GV-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ Reasons stated in Attachment 10.

11 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

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

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

SV-100 Petition for Private Postsecondary School Violence Restraining Orders

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
02.07.2017

Read *How do I Get a Private Postsecondary School Violence Restraining Order?*(form SV-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 Petitioner (Educational Institution Officer or Employee)

a. Name: _____ is

☐ the chief administrative officer

☐ an officer or employee designated by the chief administrative officer to maintain order on the campus or facility of *(name of private postsecondary educational institution):*

_____

and is filing this petition on behalf of the student in 2.

b. Lawyer for Petitioner *(if any for this case)*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Petitioner's Address *(If the petitioner has a lawyer, give the lawyer's information.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Student in Need of Protection

Full Name: _____
Sex: ☐ M ☐ F Age: _____

3 Respondent (Person From Whom Protection Is Sought)

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

4 Additional Protected Persons

a. Are you asking for protection for any family or household members or any other students at the campus or facility who are similarly in need of protection? ☐ Yes ☐ No *(If yes, list them):*

Full Name	Sex	Age	Household Member?	Relationship to Student
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Additional protected persons are listed in Attachment 4a.*

This is not a Court Order.

Case Number:

4 b. Why do these people need protection? *(Explain):* ☐ Response is stated in Attachment 4b.

5 Relationship of Student and Respondent

a. How does the student know the respondent? *(Describe):* ☐ Response is stated in Attachment 5a.

b. Respondent ☐ is ☐ is not a current student of petitioner's institution. *(Explain any decision to retain, expel, or otherwise discipline the respondent):* ☐ Response is stated in Attachment 5b.

6 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The respondent lives in this county.
b. ☐ The respondent has caused physical or emotional injury to the student in this county.
c. ☐ Other *(specify):*

7 Other Court Cases

a. Has the student or any of the persons named in 4 been involved in another court case with the respondent?

☐ No ☐ Yes *(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) ☐ Postsecondary School Violence			
(2) ☐ Civil Harassment			
(3) ☐ Domestic Violence			
(4) ☐ Divorce, Nullity, Legal Separation			
(5) ☐ Paternity, Parentage, Child Support			
(6) ☐ Elder or Dependent Adult Abuse			
(7) ☐ Eviction			
(8) ☐ Guardianship			
(9) ☐ Workplace Violence			
(10) ☐ Small Claims			
(11) ☐ Criminal			
(12) ☐ Other *(specify):*			

b. Are any restraining orders or criminal protective orders now in effect relating to the student or any of the persons in 4 and the respondent? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

This is not a Court Order.

8 Description of Respondent's Conduct

a. Respondent has *(check one or more):*

(1) ☐ Assaulted, battered, or stalked the student.

(2) ☐ Made a credible threat of violence against the student by making knowing or willful statements or engaging in a course of conduct that served no legitimate purpose and that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family.

b. One or more of these acts were made off the school campus or facility and can reasonably be understood *(check either or both):*

(1) ☐ To have been carried out at the school campus or facility.

(2) ☐ To be carried out in the future at the school campus or facility.

Address of campus or facility: _____

_____

c. Describe what happened. *(Provide details; include the dates of all incidents beginning with the most recent; tell who did what to whom; identify any witnesses):*

☐ Response is stated in Attachment 8c.

d. Was the student harmed or injured? ☐ Yes ☐ No *(If yes, describe harm or injuries):*

☐ Response is stated in Attachment 8d.

e. Did the respondent use or threaten to use a gun or any other weapon? ☐ Yes ☐ No *(If yes, describe):*

☐ Response is stated in Attachment 8e.

This is not a Court Order.

8 f. For any of the incidents described above, did the police come? ☐ Yes ☐ No ☐ I don't know

If yes, did the student or the respondent receive an Emergency Protective Order?

☐ Yes ☐ No ☐ I don't know

If yes, the order protects *(check all that apply):*

☐ the student. ☐ the respondent. ☐ one or more of the persons in 4.

(Attach a copy of the order if you have one.)

Check the orders you want. ☑

9 Personal Conduct Orders

I ask the court to order the respondent **not** to do any of the following things to the student or to any person to be protected listed in 4:

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. ☐ Make threats of violence against the person.

c. ☐ Follow or stalk the person during school hours or to or from the school campus or facility.

d. ☐ Contact the person, either directly or indirectly, by **any** means, 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.

e. ☐ Enter the person's school campus or facility.

f. ☐ Other *(specify):*

☐ As stated in Attachment 9f.

_____

_____

_____

_____

The respondent 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.

10 Stay-Away Order

a. I ask the court to order the respondent to stay at least _____ yards away from *(check all that apply):*

(1) ☐ The student.

(2) ☐ The other persons listed in 4.

(3) ☐ The school.

(4) ☐ The student's home.

(5) ☐ The student's job or workplace.

(6) ☐ The school of the student's children.

(7) ☐ The place of child care of the student's children.

(8) ☐ The student's vehicle.

(9) ☐ Other *(specify):*

_____

_____

_____

_____

This is not a Court Order.

10 b. If the court orders the respondent 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):*

☐ Response is stated on Attachment 10b.

11 **Guns or Other Firearms and Ammunition**

Does the respondent own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

If the judge grants a protective order, the respondent 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 respondent 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.

12 ☐ **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the Respondent to last until the hearing. I am presenting form SV-110, *Temporary Restraining Order,* for the court's signature together with this Petition.

Has the Respondent been told that you were going to go to court to seek a TRO against him/her?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ Reasons are stated in Attachment 12.

13 ☐ **Request for Less Than Five Days' Notice of Hearing**

You must have your papers personally served on the respondent at least five days before the hearing, unless the court orders a shorter time for service. (Form SV-200-INFO explains what is proof of personal service. Form SV-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:

☐ Reasons are stated in Attachment 13.

14 ☐ **No Fee for Filing**

I ask that there be no filing fee because the respondent has threatened violence against the student, or stalked the student, or acted or spoken in a manner that has placed the student in reasonable fear of violence.

This is not a Court Order.

Case Number:

15 ☐ No Fee to Serve Orders

I ask the court to order the sheriff or marshal to serve the respondent with the others for free because this request for orders is based on a credible threat of violence or stalking.

16 ☐ Court Costs

I ask the court to order the respondent to pay my court costs.

17 ☐ Additional Orders Requested

I ask the court to make the following additional orders *(specify)*:

☐ Additional orders requested are stated in Attachment 17.

18 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: _____

_____ ▶ _____

Name of petitioner *Signature*

_____

Title

I consent to the filing of the Petition.

Date: _____

_____ ▶ _____

Name of student *Signature*

This is not a Court Order.

WV-100 Petition for Workplace Violence Restraining Orders

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Read *How Do I Get an Order to Prohibit Workplace Violence* (form WV-100-INFO) before completing this form. **NOTE: Petitioner must be an employer with standing to bring this action under Code of Civil Procedure section 527.8.** 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 Petitioner (Employer)

a. Name: _____

is a ☐ corporation ☐ sole proprietorship

☐ *(specify):*

and is filing this suit on behalf of the employee identified in item 2.

b. Lawyer for Petitioner *(if any for this case)*
Name: _____ State Bar No.: _____
Firm Name: _____

Petitioner's Address *(If the petitioner has a lawyer, give the lawyer's information.)*

c. Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Employee in Need of Protection

Full Name: _____

Sex: ☐ M ☐ F Age: _____

3 Respondent (Person From Whom Protection Is Sought)

Full Name: _____ Age: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

4 Additional Protected Persons

a. Are you asking for protection for any family or household members of the employee or for any other employees at the employee's workplace or at other workplaces of the petitioner?

☐ Yes ☐ No *(If yes, list them):*

Full Name	Sex	Age	Household Member?	Relationship to Employee
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ Additional protected persons are listed in Attachment 4a.

This is not a Court Order.

4 b. Why do these people need protection? *(Explain):*
☐ Response is stated in Attachment 4b.

5 Relationship of Employee and Respondent

a. How does the employee know the respondent? *(Describe):* ☐ Response is stated in Attachment 5a.

b. Respondent ☐ is ☐ is not a current employee of petitioner. *(Explain any decision to retain, terminate, or otherwise discipline the respondent):* ☐ Response is stated in Attachment 5b.

6 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The respondent lives in this county.

b. ☐ The respondent has caused physical or emotional injury to the petitioner's employee in this county.

c. ☐ Other *(specify):*

7 Other Court Cases

a. Has the employee or any of the persons named in 4 been involved in another court case with the respondent?

☐ No ☐ Yes *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) ☐ Workplace Violence			
(2) ☐ Civil Harassment			
(3) ☐ Domestic Violence			
(4) ☐ Divorce, Nullity, Legal Separation			
(5) ☐ Paternity, Parentage, Child Support			
(6) ☐ Eviction			
(7) ☐ Guardianship			
(8) ☐ Small Claims			
(9) ☐ Postsecondary School Violence			
(10) ☐ Criminal			
(11) ☐ Other *(specify):*			

b. Are any restraining orders or criminal protective orders now in effect relating to the employee or any of the persons in 4 and the respondent? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

This is not a Court Order.

8 Description of Respondent's Conduct

a. Respondent has *(check one or more):*

(1) ☐ Assaulted, battered, or stalked the employee

(2) ☐ Made a credible threat of violence against the employee by making knowing or willful statements or engaging in a course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family.

b. One or more of these acts *(check either or both):*

(1) ☐ Took place at the employee's workplace

(2) ☐ Can reasonably be construed to be carried out in the future at the employee's workplace

Address of workplace: _____

c. Describe what happened. *(Provide details; include the dates of all incidents beginning with the most recent; tell who did what to whom; identify any witnesses):*

☐ Response is stated in Attachment 8c.

d. Was the employee harmed or injured? ☐ Yes ☐ No *(If yes, describe harm or injuries):*

☐ Response is stated in Attachment 8d.

e. Did the respondent use or threaten to use a gun or any other weapon? ☐ Yes ☐ No *(If yes, describe):*

☐ Response is stated in Attachment 8e.

This is not a Court Order.

8 f. For any of the incidents described above, did the police come? ☐ Yes ☐ No ☐ I don't know

If yes, did the employee or the respondent receive an Emergency Protective Order?
☐ Yes ☐ No ☐ I don't know

If yes, the order protects *(check all that apply):*
☐ the employee ☐ the respondent ☐ one or more of the persons in 4.

(Attach a copy of the order if you have one.)

Check the orders you want ☑

9 ☐ Personal Conduct Orders

I ask the court to order the respondent **not** to do any of the following things to the employee or to any person to be protected listed in 4:

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. ☐ Commit acts of unlawful violence on or make threats of violence to the person.
c. ☐ Follow or stalk the person during work hours or to or from the place of work.
d. ☐ Contact the person, either directly or indirectly, by **any** means, 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.
e. ☐ Enter the person's workplace.
f. ☐ Other *(specify):*
☐ As stated in Attachment 9f.

_____
_____
_____
_____

The respondent 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.

10 Stay-Away Order

a. I ask the court to order the respondent to stay at least _____ yards away from *(check all that apply):*

(1) ☐ The employee.
(2) ☐ The other persons listed in 4.
(3) ☐ The employee's workplace.
(4) ☐ The employee's home.
(5) ☐ The employee's school.
(6) ☐ The school of the employee's children.
(7) ☐ The place of child care of the employee's children.
(8) ☐ The employee's vehicle.
(9) ☐ Other *(specify):*

_____
_____
_____
_____

This is not a Court Order.

(10) b. If the court orders the respondent 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):*

☐ Response is stated on Attachment 10b.

(11) **Guns or Other Firearms and Ammunition**

Does the respondent own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

If the judge grants a protective order, the respondent 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 respondent 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.

(12) ☐ **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the Respondent to last until the hearing. I am presenting form WV-110, *Temporary Restraining Order*, for the court's signature together with this Petition.

Has the Respondent been told that you were going to go to court to seek a TRO against him/her?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ Reasons are stated in Attachment 12.

(13) ☐ **Request for Less Than Five Days' Notice of Hearing**

You must have your papers personally served on the respondent at least five days before the hearing, unless the court orders a shorter time for service. (Form WV-200-INFO explains what is proof of personal service. Form WV-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:

☐ Reasons are stated in Attachment 13.

(14) ☐ **No Fee for Filing**

I ask that there be no filing fee because the respondent has threatened violence against the employee, or stalked the employee, or acted or spoken in a manner that has placed the employee in reasonable fear of violence.

This is not a Court Order.

15 ☐ **No Fee to Serve Orders**

I ask the court to order the sheriff or marshal to serve the respondent with the others for free because this request for orders is based on a credible threat of violence or stalking.

16 ☐ **Court Costs**

I ask the court to order the respondent to pay my court costs.

17 ☐ **Additional Orders Requested**

I ask the court to make the following additional orders *(specify)*:

☐ Additional orders requested are stated in Attachment 17.

18 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: _____

_____ ▶ _____

Name of petitioner *Signature*

_____

Title

This is not a Court Order.

ITC SPR17-24
Title of proposal (Protective Orders: Requests for Immediate Orders)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael L. Baroni, President	A	In response to the specific question: Yes, these forms accomplish the purpose for which they are intended.	The committee acknowledges the commenter's agreement with the proposal.
2.	State Bar of California, Standing Committee on the Delivery of Legal Services by Sharon Djemal, Chair	A	**Specific Comments** • Does the proposal appropriately address the stated purpose? Yes. **Additional Comments** Regarding the revision to forms so the petitioner may indicate affirmatively if he or she is requesting a temporary order "with notice," SCDLS agrees with the proposal because the way it is currently written is confusing. The revision simply takes away the confusion. Regarding the revision to the forms to read "Temporary Restraining Order" instead of the following, SCDLS supports it since it will take away confusion that exists with the way the current forms are written: "Immediate Orders" on the CH and EA forms, "Request for Immediate Orders Without Notice" on the SV and WV forms, and "Request for Immediate Temporary Order" on the GV form. These revisions will make the process easier, especially for low and moderate-income clients, self-represented litigants, limited and non-	The committee acknowledges the commenter's agreement with the proposal. The committee is glad to receive confirmation that there is a need for this form revision.

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

	Commentator	Position	Comment	Committee Response
			English speakers and other underrepresented and vulnerable individuals, because the forms as they are now written are confusing. Also, simplifying the forms will help pro bono attorneys who are new to this area of law as the new forms will be clearer and easier to understand. The better experience pro bono attorneys have, the more likely they are to take more pro bono cases. The easier it is for pro bono attorneys to understand the forms and fill in the forms, more indigent individuals will be helped by pro bono attorneys.	
3.	Superior Court of Los Angeles County	A	No Comment	The committee acknowledges the commenter's agreement with the proposal.
4.	Superior Court of Orange County Civil and Probate Operations by: Civil and Probate Operations Managers	NI	While the change to the term temporary seems appropriate, the former language regarding that the temporary orders "will last until the hearing" should not be removed. It clarifies how temporary the TRO will be.	The committee agrees with the comment and will add this language back to the form.
5.	Superior Court of Riverside County by Susan D. Ryan Chief Deputy of Legal Services	AM	**Position on Proposal:** Agree with the proposal with the following input and proposed changes: The proposed amendments are unnecessarily confusing. Several of them insert a section requesting that the TRO be issued without notice and then have in the next section a request that the TRO be given with less than 5 days' notice. These can be easily combined.	The committee notes the general agreement, and addresses the individual points as follows. The commentator is confusing two different notices. The notice involved in the Item to be renamed Temporary Restraining Orders is the notice that the petitioner might or might not give to the respondent that s/he is going to court to seek the temporary restraining order. Request to Give Less Than Five-Days' Notice is a plain-

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

	Commentator	Position	Comment	Committee Response
			Have the person filling out the form pick from one of three options: I have given five days' notice, I request that the order be made on less than five days' notice, I request that the order be made without notice. If you have selected either the second or third of these, explain why in the space below.	language translation of Order Shortening Time, which is a request to reduce the time between service and the hearing to be held on a more permanent order. Also, see the committee's response to the comment of the Superior Court of San Diego below, which proposes a revision that should be clearer.
			Given that temporary restraining orders are critical to the concept or restraining orders as a whole, the affirmative request for a Temporary Order should be moved up to page 2 before #8 or #10.	If the TRO item is moved to page 2, it would precede item 7, which is the recitation of facts. The committee does not believe that is the best organization of the form. Items 8 and 10 (and Item 9) are the specific orders requested. The committee also does not believe that putting the TRO before the specific orders being sought is the best organization.
			In addition, the TRO request should not be a check off box but an automatic request on the petition.	The committee suspects that the commentator is really thinking about Domestic Violence, for which a TRO is nearly always sought because there is nearly always a need for immediate intervention. But even for DV, taking off the checkbox would indicate that a TRO is always required, which is not the law. For civil proceedings, there are many scenarios for which immediacy is not a need.
			<u>Does the proposal appropriately address the stated purpose</u>? Yes.	The committee acknowledges and appreciates the responses to the specific questions asked on the Invitation to Comment.

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

	Commentator	Position	Comment	Committee Response
			Would the proposal provide cost savings? If so please quantify. No. What would the implementation requirements be for courts? Training for court staff on how to explain what notice and without notice means to the self-represented litigant.	
6.	Superior Court of San Diego County by Mike Roddy Executive Officer San Diego, CA 92101	AM	Q: Does the proposal appropriately address the stated purpose? Yes. Our court requests the question following the request for temporary orders be reworded for clarity to the following: "Was notice provided to the person in 2? The way it is currently worded would lead a party who had provided notice to select "no", which may cause confusion to the petitioning party. Q: Would the proposal provide cost savings? If so, please quantify. No Q: What would the implementation requirements be for courts? Updating training materials, forms packets, and notifying staff	The committee notes the general agreement, and addresses the individual points as follows. The committee agrees that it is better to frame the question in terms of what the petitioner has done, not what the petitioner wants the court to do. The committee has revised this item to read: *Has (the respondent) been told that you were going to go to court to seek a TRO against him/her? [ ] Yes [ ] No (If you answered no, explain why below)"* The committee acknowledges and appreciates the responses to the specific questions asked in the Invitation to Comment.

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 September 14–15, 2017

Title
Criminal Procedure: Use of Risk/Needs Assessments at Sentencing

Rules, Forms, Standards, or Statutes Affected
Approve standard 4.35 of the California Standards of Judicial Administration

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
June 28, 2017

Contact
Tara Lundstrom, 415-865-7995
tara.lundstrom@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends approval of a new standard of judicial administration. The new standard provides guidance to judges on the appropriate uses of the results of risk/needs assessments at criminal sentencing.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council approve new standard 4.35 of the California Standards of Judicial Administration, effective January 1, 2018, to:

1. State the purposes for using the results of risk/needs assessments at sentencing;

2. Identify proper and improper uses of the results of risk/needs assessments at sentencing;

3. Recommend the validation of risk/needs assessment instruments;

4. Provide guidance on the use of the results of a risk/needs assessment in evaluating a defendant's amenability to or suitability for supervision; and

5. Recommend education on risk/needs assessments.

The text of the proposed new standard is attached at pages 9–13.

Previous Council Action

Effective January 1, 2015, the Judicial Council added several provisions related to risk/needs assessments to the criminal sentencing rules of court. It adopted rule 4.415, which provided, inter alia, that courts may consider "[t]he defendant's specific needs and risk factors identified by a validated risk/needs assessment, if available," in selecting the appropriate period and conditions of mandatory supervision. (Cal. Rules of Court, rule 4.415(c)(8).) The council also amended rule 4.411.5(a)(8) to require that presentence investigation reports include "[a]ny available, reliable risk/needs assessment information."

The Criminal Law Advisory Committee is concurrently proposing amendments related to risk/needs assessments in rules 4.405, 4.411.5, 4.413, and 4.415.

Rationale for Recommendation

Background

As part of the realignment of California's criminal sentencing procedures, the Legislature declared that correctional practices should use "a data-driven approach" to reduce corrections and related criminal justice spending through evidence-based strategies "that increase public safety while holding offenders accountable." (Pen. Code, § 17.5(a)(7).) Many probation departments in California now employ a variety of risk/needs assessment instruments to conduct such assessments. They use the results of these assessments to establish an appropriate program of supervision and services for an offender and to prioritize limited probation resources.

The results of risk/needs assessments may also provide valuable information that can enhance the quality of judges' sentencing decisions for those offenders eligible for community supervision. A core component of evidence-based sentencing is an actuarial assessment of the individual's "risk" of recidivism and treatment "needs." Evidence-based sentencing involves identifying offender risk factors, matching risk factors to supervision level, and providing proven treatment services and programs that are tailored to an individual defendant's specific characteristics.

A substantial body of scientific research demonstrates that the actuarial assessment of recidivism risk is more accurate and reliable than unstructured clinical judgment. (See, e.g., J.C. Oleson et al., *Training to See Risk: Measuring the Accuracy of Clinical and Actuarial Risk Assessment Among Federal Probation Officers* (Sept. 2011) 75 Fed. Prob. 52–56.) Actuarial risk/needs assessments generally use a combination of "static risk factors"—offender characteristics positively associated with recidivism that cannot be changed through corrections programming—

and "dynamic risk factors"—offender characteristics positively associated with recidivism that can be changed through appropriate intervention. Actuarial risk assessment involves the comparison of the subject individual offender to a database of other offenders who had similar risk factors and known subsequent criminal histories.

Proposed New Standard

The committee recommends a new standard of judicial administration to provide guidance to courts in using risk/needs assessments at sentencing in criminal cases. This use of risk/needs assessments is intended to (1) prevent bias in sentencing; (2) reduce the risk of recidivism by focusing services and resources on medium- and high-risk offenders, who are most likely to reoffend; (3) reduce the risk of future recidivism by targeting a defendant's needs in a supervision plan; and (4) advance the legislative directive to improve public safety outcomes by routing offenders into community-based supervision informed by evidence-based practices.

The proposed standard recommends the validation of risk/needs assessment instruments and education on risk/needs assessments. As discussed in more detail below, it also provides courts with guidance on the proper and improper uses of the results of risk/needs assessments at sentencing, including how these assessments relate to a defendant's amenability to or suitability for supervision. . An advisory committee comment to the standard provides further guidance on the use of the results of risk/needs assessments at sentencing, the limitations of risk/needs assessments, the validation of risk/needs assessment instruments, and the need for training and ongoing education on risk/needs assessments.

Proper use of the results of risk/needs assessments at sentencing

This proposed new standard provides the following guidance on the proper use of the results of risk/needs assessments at sentencing:

- The results of a risk/needs assessment should be considered only in context with all other information considered by the court at the time of sentencing, including the probation report, statements in mitigation and aggravation, evidence presented at a sentencing proceeding conducted under Penal Code section 1204, and comments by counsel and any victim.

- The results of a risk/needs assessment should be one of many factors that may be considered and weighed at a sentencing hearing. Information generated by the risk/needs assessment should be used along with all other information presented in connection with the sentencing hearing to inform and facilitate the decision of the court. Risk/needs assessment information should not be used as a substitute for the sound independent judgment of the court.

- Although they may not be determinative, the results of a risk/needs assessment may be considered by the court as a relevant factor in assessing:

    - Whether a defendant who is presumptively ineligible for probation has overcome the statutory limitation on probation;

- Whether an offender can be supervised safely and effectively in the community; and
- The appropriate terms and conditions of supervision and responses to violations of supervision.

- If a court uses the results of a risk/needs assessment, it should consider any limitations of the instrument that have been raised in the probation report or by counsel, including:

    - That the instrument's risk scores are based on group data, such that the instrument is able to identify only groups of high-risk offenders, not a particular high-risk individual;
    - Whether the instrument's proprietary nature has been invoked to prevent the disclosure of information relating to how it weighs static and dynamic risk factors and how it determines risk scores;
    - Whether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity; and
    - Whether the instrument has been validated on a relevant population.

Improper use of the results of risk/needs assessments at sentencing

This proposed new standard provides the following guidance on the improper use of the results of risk/needs assessments at sentencing:

- The results of a risk/needs assessment should not be used to determine (1) whether to incarcerate a defendant, or (2) the severity of the sentence.

- The results of a risk/needs assessment should not be considered by the court for defendants statutorily ineligible for supervision.

Amenability to or suitability for supervision

This proposed new standard provides the following guidance on the use of the results of a risk/needs assessment in evaluating a defendant's amenability or suitability to supervision:

- A court should not interpret the risk score as necessarily indicating that a defendant is not amenable to or suitable for community-based supervision. Community-based supervision may be most effective for defendants with "high" and "medium" risk scores. A "low" risk score often indicates that a defendant is amenable or suitable for community-based supervision, but should not be interpreted as necessarily indicating that a defendant is amenable or suitable for community-based supervision. Risk scores must be interpreted in the context of all relevant sentencing information received by the court.

- Ordinarily a defendant's level of supervision should correspond to his or her level of risk of recidivism. In most cases, a court should order that a low-risk defendant receive less supervision and a high-risk defendant more.

- A court should order services that address the defendant's needs.

Comments, Alternatives Considered, and Policy Implications

External Comments

This proposal circulated for public comment from March 14 until April 28, 2017. Six comments were submitted in response to the invitation to comment; three agreed with the proposal, one agreed with the proposal if modified, and two did not indicate their position. The committee revised the proposed standard in response to the comments. Its specific responses to each comment are available in the attached comment chart at pages 14–27.

Validation of risk/needs assessment instruments

One commenter expressed concern that unvalidated risk/needs assessment instruments may produce unreliable and inaccurate results and that the proposal appeared to allow for the use of such instruments. The commenter strongly discouraged the use of unvalidated risk/needs assessment instruments. Another commenter similarly affirmed that "[a]doption of risk needs assessments should be undertaken in tandem with commencing local validation studies of the accuracy of the risk assessment provided by the instruments."

The committee recognizes the importance of validating risk/needs assessment instruments. As circulated, the standard contemplated, but did not expressly state, that courts should use validated risk/needs assessment instruments at sentencing. The committee has added a new subdivision (c) to make clear that risk/needs assessment instruments should be validated.

The committee also recognizes the importance of validating the instrument on a relevant population. The committee has re-lettered but otherwise retained subdivision (d)(4)(D) as circulated. Subdivision (d)(4)(D) provides that a court should consider any identified limitations of the instrument, including "[w]hether the instrument has been validated on a relevant population." The advisory committee comment to this subdivision provides courts with additional guidance on validation.

Transparency

One commenter expressed concern about using the results of risk/needs assessment instruments if the algorithm used to generate the score has not been disclosed because of its proprietary nature. It explained that without transparency, the legitimacy of these instruments may be called into question and their use may be challenged as contributing to racial and gender bias.

The committee decided against revising the proposed standard to discourage using risk/needs assessment instruments if their underlying algorithms have not been disclosed. It re-lettered but otherwise retained subdivision (d)(4)(A) as circulated, which recognizes that judges should consider any identified limitations of risk/needs assessments, including "[w]hether the instrument's proprietary nature has been invoked to prevent the disclosure of information relating to how it weighs static and dynamic risk factors and how it determines risk scores." The committee determined that this provision was sufficient to address the transparency concerns

raised by the commenter, especially to the extent that risk/needs assessment instruments are validated and the factors used to generate risk scores are disclosed.

Use to incarcerate

One commenter recommended revising the proposal to encourage courts to use the results of risk/needs assessments to incarcerate defendants. The commenter noted their benefit in determining whether defendants can be safely served in the community. He also explained that this determination necessarily results in either incarcerating or releasing a defendant under supervision.

Conversely, another commenter expressed support for the committee's proposal to discourage courts from using the results of risk/needs assessments to incarcerate a defendant that they would otherwise place on probation.

The committee has decided against revising the proposal to endorse using the results of risk/needs assessments to incarcerate defendants. It prefers taking a cautious approach because the use of these results at sentencing is relatively new in science and the law. California courts have yet to approve the use of these results for incarceration, and the Wisconsin Supreme Court expressly prohibits such use. (*State v. Loomis* (2016) 371 Wis.2d 235, 256.) The standard should be reevaluated as more courts address the issue. Accordingly, at this time the committee recommends that risk/needs assessments not be used to determine whether to incarcerate defendants.

Application to low-risk offenders

One commenter questioned how the circulated proposal addressed low-risk offenders. As circulated, the proposal stated that "[a] 'low' risk score should not be interpreted as necessarily indicating that a defendant is amenable or suitable for community-based supervision." While recognizing there are exceptions, the commenter explained that low-risk offenders are, by definition, the best candidates for community supervision. He recommended revising the proposal to provide: "A 'low' risk score often indicates that a defendant is amenable or suitable for community-based supervision, but should not be interpreted as necessarily indicating that a defendant is amenable or suitable for community-based supervision." The committee agreed and revised the standard to recognize that a low-risk score often, but not necessarily, indicates that a defendant is amenable or suitable for community-based supervision.

The commenter also expressed concern that the circulated proposal contemplated ordering services to address the needs of low-risk defendants. As circulated, the proposal provided that (1) a defendant's level of supervision should correspond to his or her level of risk, and (2) a court should order that a low-risk defendant receive less supervision. The commenter explained that the needs of low-risk offenders typically do not result in further criminal behavior and that mixing low-risk offenders with higher-risk offenders in treatment programs tends to increase the risk of recidivism for low-risk offenders. He recommended revising the proposal to provide that a court should order services to address the needs of only medium- and high-risk offenders.

The committee agrees that services may not be appropriate for most low-risk offenders. However, it decided against incorporating the recommended language to the extent that it implies that services should never be ordered for low-risk offenders. Instead, the committee re-lettered and revised subdivision (f)(3) to provide simply that "[a] court should order services that address the defendant's needs." Most often, low-risk offenders will not need services.

Other comments received

One commenter recommended revising subdivision (a) to include, among the standard's purposes: "Reduce the risk of recidivism by focusing services and resources on those offenders who [are] most likely to re-offend." The committee agreed and has revised the proposal to incorporate this recommendation.

The commenter also expressed concern with the circulated proposal's statement that judges should consider any identified limitations of risk/needs assessments, including "[w]hether any studies have raised questions about whether the instrument disproportionately classifies minority offenders as having a higher risk of recidivism." The commenter questioned what the committee intended in using the term "disproportionately" and urged replacing the term "studies" with "scientific research" because scientific research is governed by rigorous standards, including peer review. To address these concerns, the committee has revised the standard: it has re-lettered and revised subdivision (d)(4) to provide that courts should consider any of the instrument's identified limitations, including, in subparagraph (C), "[w]hether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity."

The commenter also recommended several technical, nonsubstantive changes that the committee incorporated into the proposal.

Alternatives

In addition to the alternatives considered in response to the public comments, the committee initially considered recommending a proposal to add a new rule to the California Rules of Court on the use of risk/needs assessments at sentencing. It instead decided to propose a standard of judicial administration for several reasons, including (1) that the use of risk/needs assessments at sentencing is still relatively new, and (2) that published decisions from California appellate courts are absent on this issue. Future proposals may look at converting the standard to a rule of court.

Implementation Requirements, Costs, and Operational Impacts

The proposed standard is nonbinding and does not require that courts use the results of risk/needs assessments at sentencing. It is intended merely to provide guidance to courts that opt to use the assessments at sentencing.

For those courts that elect to use the results of risk/needs assessments at sentencing, county probation departments would incur the costs of validating the risk/needs assessment instruments,

conducting the assessments on the individual defendants, and adding a description of the results of the assessments in presentence reports. These costs would likely be minimal for probation departments that already use risk/needs assessments. Courts would incur the costs of judicial training and continuing education.

Attachments and Links

1. Cal. Standards of Judicial Administration, standard 4.35, at pages 9–13
2. Comment chart, at pages 14–27

Standard 4.35 of the California Standards of Judicial Administration is adopted, effective January 1, 2018, to read:

Standard 4.35. Court use of risk/needs assessments at sentencing

(a) Application and purpose

(1) This standard applies only to the use of the results of risk/needs assessments at sentencing.

(2) The use of the results of risk/needs assessments at sentencing is intended to:

(A) Prevent biases in sentencing;

(B) Reduce the risk of recidivism by focusing services and resources on medium- and high-risk offenders, who are most likely to reoffend;

(C) Reduce a defendant's risk of future recidivism by targeting that defendant's needs with appropriate intervention services through community supervision programs demonstrated to reduce recidivism; and

(D) Advance the legislative directive to improve public safety outcomes by routing offenders into community-based supervision informed by evidence-based practices.

(b) Definitions

(1) "Risk" refers to the likelihood that a person will reoffend, without regard, unless otherwise specified, to the nature of the original offense or the nature of the reoffense.

(2) "Risk factors" refers to the "static" and "dynamic" factors that contribute to the risk score.

(3) "Static risk factors" refers to those risk factors that cannot be changed through treatment or intervention, such as age or prior criminal history.

(4) "Dynamic risk factors," also known as "needs," are factors that can be changed through treatment or intervention.

(5) "Results of a risk/needs assessment" refers to both a risk score and an assessment of a person's needs.

(6) A "risk score" refers to a descriptive evaluation of a person's risk level as a result of conducting an actuarial assessment with a validated risk/needs assessment instrument and may include such terms as "high," "medium," or "low" risk.

(7) "Amenability" or "suitability" refers to the likelihood that the person can be safely and effectively supervised in the community and benefit from supervision services that are informed by evidence-based practices that have been demonstrated to reduce recidivism.

(8) A "validated risk/needs assessment instrument" refers to a risk/needs assessment instrument demonstrated by scientific research to be accurate and reliable in assessing the risks and needs of the specific population on which it was validated.

(9) "Supervision" includes all forms of supervision referenced in Penal Code section 1203.2(a).

(c) Validation

The risk/needs assessment instrument should be validated.

(d) Proper uses of the results of a risk/needs assessment at sentencing

(1) The results of a risk/needs assessment should be considered only in context with all other information considered by the court at the time of sentencing, including the probation report, statements in mitigation and aggravation, evidence presented at a sentencing proceeding conducted under section 1204, and comments by counsel and any victim.

(2) The results of a risk/needs assessment should be one of many factors that may be considered and weighed at a sentencing hearing. Information generated by the risk/needs assessment should be used along with all other information presented in connection with the sentencing hearing to inform and facilitate the decision of the court. Risk/needs assessment information should not be used as a substitute for the sound independent judgment of the court.

(3) Although they may not be determinative, the results of a risk/needs assessment may be considered by the court as a relevant factor in assessing:

(A) Whether a defendant who is presumptively ineligible for probation has overcome the statutory limitation on probation;

(B) Whether an offender can be supervised safely and effectively in the community; and

(C) The appropriate terms and conditions of supervision and responses to violations of supervision.

(4) If a court uses the results of a risk/needs assessment, it should consider any limitations of the instrument that have been raised in the probation report or by counsel, including:

(A) That the instrument's risk scores are based on group data, such that the instrument is able to identify only groups of high-risk offenders, for example, not a particular high-risk individual;

(B) Whether the instrument's proprietary nature has been invoked to prevent the disclosure of information relating to how it weighs static and dynamic risk factors and how it determines risk scores;

(C) Whether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity; and

(D) Whether the instrument has been validated on a relevant population.

(e) Improper uses of the results of a risk/needs assessment at sentencing

(1) The results of a risk/needs assessment should not be used to determine:

(A) Whether to incarcerate a defendant; or

(B) The severity of the sentence.

(2) The results of a risk/needs assessment should not be considered by the court for defendants statutorily ineligible for supervision.

(f) Amenability to or suitability for supervision

(1) A court should not interpret a "high" or "medium" risk score as necessarily indicating that a defendant is not amenable to or suitable for community-based supervision. Community-based supervision may be most effective for defendants with "high" and "medium" risk scores. A "low" risk score often, but not necessarily, indicates that a defendant is amenable to or suitable for

community-based supervision. Risk scores must be interpreted in the context of all relevant sentencing information received by the court.

(2) Ordinarily a defendant's level of supervision should correspond to his or her level of risk of recidivism. In most cases, a court should order that a low-risk defendant receive less supervision and a high-risk defendant more.

(3) A court should order services that address the defendant's needs.

(g) Education regarding the nature, purpose, and limits of risk/needs assessment information is critical to the proper use of such information. Education should include all justice partners.

Advisory Committee Comment

Subdivision (d)(1)–(2). Although the results of risk/needs assessments provide important information for use by the court at sentencing, they are not designed as a substitute for the exercise of judicial discretion and judgment. The information should not be used as the sole basis of the court's decision, but should be considered in the context of all of the information received in a sentencing proceeding. If justified by the circumstances of the case, it is appropriate for the court to impose a disposition not supported by the results of a risk/needs assessment. (See *State v. Loomis* (2016) 371 Wis.2d 235, 266 ["Just as corrections staff should disregard risk scores that are inconsistent with other factors, we expect that . . . courts will exercise discretion when assessing a . . . risk score with respect to each individual defendant"].)

Subdivision (d)(4). Court and justice partners should understand any limitations of the particular instrument used to generate the results of a risk/needs assessment. (See *State v. Loomis*, *supra*, 371 Wis.2d at p. 264 [requiring presentence investigation reports to state the limitations of the instrument used, including the proprietary nature of that instrument, any absence of a cross-validation study for relevant populations, and any questions raised in studies about whether the instrument disproportionately classifies minority offenders as having a higher risk of recidivism].) The Wisconsin court also required that all presentence investigation reports caution that risk/needs assessment tools must be constantly monitored and renormed for accuracy because of changing populations and subpopulations. (*Ibid.*) California courts should similarly consider any such limitations in the accuracy of the particular instrument employed in the case under review. (See *ibid.* ["Providing information to sentencing courts on the limitations and cautions attendant with the use of . . . risk assessments will enable courts to better assess the accuracy of the assessment and the appropriate weight to be given to the risk score"].)

Subdivision (d)(4)(D). Validating a risk/needs assessment instrument will increase its accuracy and reliability. Validation on a relevant population or subpopulation is recommended to account for differences in local policies, implementation practices, and offender populations. Ongoing monitoring and renorming of the instrument may be necessary to reflect changes in a population

or subpopulation. Revalidation of the instrument is also necessary if any of its dynamic or static risk factors are modified.

Subdivision (e). When the court is considering whether to place a person on supervision at an original sentencing proceeding or after a violation of supervision, the results of a risk/needs assessment may assist the court in assessing the person's amenability to supervision and services in the community. But when the person is ineligible for supervision, or the court has otherwise decided not to grant or reinstate probation, the results of a risk/needs assessment should not be used in determining the period of incarceration to be imposed. (See *State v. Loomis, supra,* 371 Wis.2d at p. 256 [holding that risk/needs assessments should not be used to determine the severity of a sentence or whether a defendant is incarcerated]; *Malenchik v. State* (2010) 928 N.E.2d 564, 573 ["It is clear that [risk/needs assessment instruments are neither intended] nor recommended to substitute for the judicial function of determining the length of sentence appropriate for each offender"].)

Subdivision (f). Risk/needs assessment instruments generally produce a numerical or descriptive "risk score" such as "high," "moderate," or "low" risk. It is critical that courts and justice partners understand the meaning and limitations of such designations. First, because risk assessments are based on group data, they are able to identify groups of high-risk offenders, not a particular high-risk individual. Second, in some assessment instruments, "risk" refers only to a generalized risk of committing a new offense, not to the seriousness of the subsequent offense (e.g., violent, sex, drug, or theft). Nor does "high risk" necessarily mean "highly dangerous." A high-risk drug offender, for example, may present a high risk that he or she will use drugs again, but does not necessarily present a high risk to commit a violent felony. Third, scientific research indicates that medium- and high-risk offenders may most benefit from evidence-based supervision and programs that address critical risk factors. Courts and probation departments should also consider how presentence investigation reports present risk assessment information. A report that merely refers to the defendant as "high risk" may incorrectly imply that the defendant presents a great danger to public safety and must therefore be incarcerated. Conversely, "low risk" does not necessarily mean "no risk."

Subdivision (g). An instrument's accuracy and reliability depend on its proper administration. Training and continuing education should be required for anyone who administers the instrument. Judges with sentencing assignments should receive appropriate training on the purpose, use, and limits of risk/needs assessments. (See Guiding Principle 4, Stakeholder Training, in Pamela M. Casey et al., *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts from a National Working Group* (National Center for State Courts, 2011) pp. 21–22.)

SPR17-27
Criminal Procedure: Use of Risk/Needs Assessments at Sentencing
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Public Defenders Association By: Charles Denton President	N/I	The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators supports the Judicial Council's proposal to provide guidance to judges on the appropriate use of risk and needs assessments in criminal sentencings. CPDA offers the following suggestions on how the proposed standard may be strengthened and best utilized to ensure fairness and legitimacy. CPDA agrees that a risk/needs assessments may provide additional information to judges in deciding (1) whether to place someone on probation who may be presumptively ineligible, (2) determining how an individual may be safely supervised in the community and (3) in determining the appropriate conditions of probation for someone who will be supervised in the community. However, a risk assessment should never be used as a substitute for consideration of individualized information about the person being considered for a probationary sentence. CPDA also strongly agrees a risk assessment should never be used in the first instance to decide whether or not to incarcerate an individual and should not be used to determine the severity of a sentence if a person is to be incarcerated. In other words, CPDA agrees overall with how this proposal addresses many of the issues that arise regarding the appropriate use of risk assessments. However, CPDA believes this proposal could be improved. In particular, this proposal appears to	The committee appreciates the input of the California Public Defenders Association. No response required. No response required. The committee agrees and has revised the standard to incorporate the CPDA's recommendation. The circulated standard contemplated, but did not expressly state, that courts should use validated risk/needs

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	Commentator	Position	Comment	Committee Response
			permit the use risk assessment scores from instruments that are not validated. This is problematic because an unvalidated test instrument may produce unreliable results and inaccurate results. Peer review and validation are two of the hallmarks of good science. Neither the criminal justice system nor the public will have confidence in the results of a risk assessment that was produced by an unvalidated test instrument. Accordingly the courts should strongly discourage the use of results risk/needs assessment from instruments that have not been validated.	assessment instruments at sentencing. The committee has added a new subdivision (c) to expressly recognize that risk/assessment instruments should be validated.
			In addition, results obtained from risk assessments where the proprietary nature of the software program has been invoked to prevent an evaluation of how the instrument determines the score should never be used. Transparency is important to the acceptance of risk assessment tools as a legitimate source of information in determining how to best supervise an individual in the community. The legitimacy of the sentencing proceeding is called into question when the risk assessment tool employed is a "black box."[1] The failure to identify what factors are used and how they are used raises issues of bias. This in turn leads to challenges by lawyers regarding issues of gender and racial bias. Indeed, there are risk assessments tools in use that have been criticized for disproportionately classifying minority offenders as being a higher risk of re-offense than Caucasians.[2] CPDA strongly objects to the use of any risk-assessment tool that has been legitimately criticized for being racially biased or for assessing minority offenders as a	The committee has decided against pursuing this recommendation. It has re-lettered but otherwise retained subdivision (d)(4)(iv) as circulated. Subdivision (d)(4)(iv) recognizes that judges should consider any identified limitations of risk/needs assessments, including "[w]hether the instrument's proprietary nature has been invoked to prevent the disclosure of information relating to how it weighs static and dynamic risk factors and how it determines risk scores." The committee determined that this provision was sufficient to address the transparency concerns raised by the CPDA, especially to the extent that risk/assessment instruments are validated and the factors used to generate risk scores are disclosed.

	Commentator	Position	Comment	Committee Response
			higher risk than other similarly situated non-minorities. [1] For a discussion of the issues of "black box algorithms used in risk assessment instruments and bias see "Risk-assessment algorithms challenged in bail, sentencing and parole decisions" ABA Journal, March l, 2017 (http://www.abajournal.com/magazine/article/algorithm bail_sentencing_parole/?utm source=maestro&utm_medium=email&utm_campaign=weekly email last viewed 3/30/17) [2] See Machine Bias" Propublica, May 26, 2016 (https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing last viewed 3/30/17)	
			In 2014, then United States Attorney raised concerns over the use of risk assessments by the criminal justice system. "Although these measures (referring to risk assessments) were crafted with the best of intentions, I am concerned that they inadvertently undermine our efforts to ensure individualized and equal justice," and "they may exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society."	See response above.
			In conclusion, it is CPDA's position that validated, open-source risk assessments that are gender and	See responses above.

	Commentator	Position	Comment	Committee Response
			racially neutral have a place in the criminal justice system. However, measures should never replace individualized judicial sentencing decisions.	
2.	Hon. John T. Lu Chair, Massachusetts Sentencing Commission Associate Justice, Massachusetts Superior Court [In personal capacity, affiliations for identification only]	NI	1. I recommend the adoption of the changes as appropriately fostering the increased use of risk needs assessments in sentencing. 2. I recommend that the changes also highlight that, as the proposed changes state, risk needs assessments may appropriately be used to determine that an individual is eligible for probation, and that the proposed rule does not endorse the court using risk needs assessments to determine that it should incarcerate an individual it would otherwise place on probation. 3. Judges that use risk needs assessments should be mindful that risk needs assessments have been criticized as racially and socio-economically discriminatory. For example, critics allege that individuals that live in poor minority communities with high police patrol penetration attain higher risk scores than individuals from white low police patrol areas with inadequate justification in the individual's increased risk. 4. Adoption of risk needs assessments should be undertaken in tandem with commencing local validation studies of the accuracy of the risk assessment provided by the instruments.	The committee appreciates Justice Lu's input. The committee agrees with this comment. It has re-lettered but otherwise retained subdivision (e)(1)(i) as circulated. Subdivision (e)(1)(i) identifies using a risk/needs assessment "[t]o determine whether to incarcerate a defendant" as an improper use. The committee agrees with this comment. It has re-lettered but otherwise retained subdivision (d)(4)(iii) as circulated. Subdivision (d)(4)(iii) provides that the court should consider any identified limitations of the instrument, including "[w]hether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity." The committee recognizes the importance of validating the risk/needs assessment instrument on a relevant population. In response to this comment, it has added subdivision (c) to provide that the instruments should be validated. The committee has also re-lettered but otherwise retained subdivision

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	Commentator	Position	Comment	Committee Response
				(d)(4)(iv) as circulated. Subdivision (d)(4)(iv) further provides that a court should consider any identified limitations of the instrument, including "[w]hether the instrument has been validated on a relevant population." The advisory committee comment to this subdivision provides courts with additional guidance on validation.
			5. Risk assessment is an evolving field and judges that utilize them should monitor the developing literature for developments that will inform their responsible use. These are my personal opinions and not that of any entity I am affiliated with. Affiliations are included for identification only.	The committee agrees with this comment. It has re-lettered but otherwise retained subdivision (g) and its advisory committee comment as circulated to recognize the importance of education and continuing education for judges.
3.	Orange County Bar Association By: Michael L. Baroni President	A	The Legislature has declared that correctional practices should utilize "a data-driven approach" to reduce corrections and related criminal justice spending through evidence-based strategies "that increase public safety while holding offenders accountable." (Pen. Code, § 17.5(a)(7).) In furtherance, previously enacted Cal. Rules of Court, rule 4.415 and 4.411.5 directed the criminal sentencing court to take into account risk/needs assessments. Proposed adoption of new Cal. Standards of Judicial Administration, standard 4.35 would give guidance to judges on the appropriate uses of the results of risk/needs assessments in criminal sentencing. The standard includes needed definitions, the requirement that such risk/needs assessments must be scientifically validated prior to	The committee appreciates Orange County Bar Association's input.

	Commentator	Position	Comment	Committee Response
			use, mandatory training in the use of such tools and the limitations on the use of such tools. In particular, courts are urged to retain the exercise of their discretion and are admonished not to use such assessments solely to determine whether to incarcerate a defendant or to determine the severity of the sentence. This standard is much needed as it carefully sets forth the many limitations and possible abuses of such assessment tools. While capable of providing guidance under certain circumstances, over reliance on such tools has been more the norm than the exception. This standard goes a long way in attempting to prevent such mistakes. Anyone who has studied the development of the sexually violent predator law in California will recognize the validity of this assertion.	No response required.
4.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano Management Analyst	A	This proposal merely adds an additional tool for the judge to use in a sentencing proceeding. The risk scores must be interpreted in light of all available information. They are not, however, designed as a substitute for the exercise of experienced judicial discretion and judgment.	The committee appreciates the court's input. It agrees that the results of risk/needs assessments should not be determinative. The committee has re-lettered, but otherwise retained subdivision (d)(2) as circulated. Subdivision (d)(2) provides that "[t]he results of a risk/needs assessment should be one of many factors that may be considered and weighed at a sentencing hearing. Information generated by the risk/needs assessment should be used along with all other information presented in connection with the sentencing hearing to inform and facilitate the decision of the court. Risk/needs assessment information should be used as a substitute for the sound

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	Commentator	Position	Comment	Committee Response
				independent judgment of the court."
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		The committee appreciates the court's support.
6.	Hon. Roger K. Warren President Emeritus National Center for State Courts	AM	My colleagues and I at the National Center for State Courts (NCSC) have published and conducted numerous judicial education events across the country on this topic since the Conference of Chief Justices in 2011 adopted the following resolution supporting the use of risk needs assessment (RNA) information in state sentencing proceedings as recommended by a National Working Group of experts convened earlier by NCSC: Support the National Working Group's recommendation that offender risk and needs assessment information be available to inform judicial decisions regarding effective management and reduction of the risk of offender recidivism; and Endorse the Guiding Principles described in the National Working Group's report as a valuable tool for state courts in crafting policies and practices to incorporate offender risk and needs assessment information in the sentencing process; and Encourage state and local courts to review the Guiding Principles and work with their justice system partners to incorporate risk and needs assessment information into the sentencing process." (The National Working Group's "Guiding	The committee appreciates Judge Warren's input. No response required. No response required. No response required.

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	Commentator	Position	Comment	Committee Response
			Principles" report, referred to in the Resolution, is also referenced in the Criminal Law Advisory Committee's Comment to the proposed Standard.) Risk Needs Assessment (RNA) information is now included in felony pre-sentence reports in some or all jurisdictions in over 20 states. I compliment the Criminal Law Advisory Committee (CLAC) for its work on this Proposed Standard. It accurately reflects best practices for the use of RNA at sentencing in state courts across the country. I offer below a few proposed changes (and explanatory comments) intended only to further strengthen the Proposed Standard. Except for my final comment below, my comments address only the language of the Proposed Standard itself, not the related language of the CLAC's commentary which would need to be modified accordingly to the extent the proposed changes are adopted. The views expressed here are my own, and do not necessarily represent the views of the NCSC. 1. Section (a) (2): The Proposed Standard describes three purposes for the use of RNA at sentencing. There is a fourth well-recognized purpose, i.e. The Risk Principle: that in order to reduce recidivism interventions should focus on medium and high-risk offenders and avoid interventions, unless for compelling reasons, with low-risk offenders. The Proposed Standard does not capture that purpose. I propose, therefore, that a new sub-paragraph ii. be added (and the current sub-paragraphs ii & iii be moved	No response required. The committee agrees. In response to this comment, it has added subdivision (a)(2)(ii), which provides that risk/needs assessments are intended to "[r]educe the risk of recidivism by focusing services and resources on medium-and high-risk offenders, who are most likely to offend."

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	Commentator	Position	Comment	Committee Response
			down) providing: "Reduce the risk of recidivism by focusing services and resources on those offenders most likely to re-offend, i.e. medium and high risk offenders."	
			2. Section (b) (8): I think it would be more accurate and potentially less confusing to say that a validated RNA instrument is one demonstrated to be accurate in "assessing the risks and needs of the specific population on which it was validated." I don't believe the change would require any other changes in the Proposed Standard.	The committee agrees and has incorporated this recommendation into the standard.
			3. Section (c) (4) (ii): I propose that the first word be changed to "That." All actuarial risk assessments are based on group data. That's the nature of an actuarial assessment. It's perfectly appropriate to point out that this is group data, not individual data, but it's not a question of "whether" its group data. I also propose that the provision be modified to read: "… only groups of high-risk offenders, for example, not a particular high-risk individual;" The point being made is equally applicable to low-risk and medium-risk offenders.	The committee agrees and has incorporated this recommendation into the standard.
			4. Section (c) (4) (iii): I have three concerns with this language. The first is that the primary burden to demonstrate the tool's accuracy and fairness should be on the developer or researcher who conducts the	To address the concerns raised by Judge Warren, the committee has revised the standard. It has re-lettered and revised subdivision (d)(4)(iii) to provide that courts should consider any identified limitations of

	Commentator	Position	Comment	Committee Response
			tool's validation, not on some third party to demonstrate that the tool is not valid. Second, the word "disproportionately" is ambiguous. Disproportionate to what? African American offenders, for example, tend to have modestly higher average risk scores on properly validated instruments (those having predictive and differential validity) than whites, not because the tools are inaccurate or unfair but primarily because most tools heavily weight prior criminal history and, as a direct and indirect result of historical racial discrimination, African-American defendants tend to have more serious criminal histories. African-American defendants will therefore tend to have "disproportionately" high risk scores compared to whites, but on properly validated tools high-risk black defendants will have scores similar to the scores of high-risk white defendants, that is scores not "disproportionate" to the scores of high-risk white defendants. Third, I propose that the word "studies" be changed to "scientific research." As correctly stated in section (b)(8) of the Proposed Standard a "validated" instrument is one demonstrated by "scientific research" to be accurate. Scientific research is governed by rigorous standards, including peer review. There is no logical reason to allow a purported "study" that does not meet the standards of scientific research to challenge the accuracy of an instrument that is supported by	the instrument, including "[w]hether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity."

	Commentator	Position	Comment	Committee Response
			scientific research. To redress these three concerns I propose substitute language along these lines: "Whether the instrument has been demonstrated to have "differential validity", i.e. to be accurate across offender sub-groups, e.g., by gender, race, and ethnicity, or any scientific research has raised questions about whether the instrument accurately and fairly classifies minority offenders."	
			5. Section (d) (1) (i): It is accurate, and important to point out, that RNA tools were not developed and should not be used to determine what the proper punishment or penalty should be, or to determine the severity of a sentence. But it is also widely acknowledged that RNA can be very helpful in making the corrections determination whether the defendant can be best served in the community, i.e. to determine amenability for probation supervision. Using RNA information to determine amenability sometimes leads to confusion because the result of the determination is that the defendant is either incarcerated in prison or placed on probation, but the determination is based on corrections considerations not punitive considerations. Punitive considerations also influence the sentencing decision whether to incarcerate, of course, but those punitive considerations are distinct from amenability considerations. To address this issue, I	The committee has decided against pursuing this recommendation. The committee prefers taking a cautious approach because the use of risk/needs assessments at sentencing is relatively new in science and the law. The use of risk/needs assessments for the decision to incarcerate has not been validated by the courts. The *Loomis* decision, for example, expressly prohibits such use. The standard should be reevaluated as more courts address the issue. Accordingly, at this time the committee recommends that risk/needs assessments not be used to determine whether to incarcerate defendants.

	Commentator	Position	Comment	Committee Response
			propose that section (d) (1) be amended to read: "The results of a risk/needs assessment should not be used: (i) to determine the appropriate penalty or punishment; (ii) to determine the severity of the sentence; or (iii) to determine whether to incarcerate a defendant, except where the determination whether to incarcerate results from a corrections assessment whether the offender can be supervised safely and effectively in the community under section (c) (3) (ii) above."	
			6. Section (e) (1): The statements about "high" and "medium" risk offenders are accurate. But the statement about a "low" risk score is incomplete and misleading. The risk principle of EBP posits that generally speaking the less intervention with "low risk" offenders the better. By definition, "low risk" offenders are the best candidates for community supervision; they are more likely to be compliant and less likely to fail or reoffend. But, of course, it's true that there are exceptions. I propose that the third sentence be modified to read: "A "low" risk score often indicates that a defendant is amenable or suitable for community-based supervision, but should not be interpreted as necessarily indicating that a defendant is amenable or suitable for community-based supervision."	The committee agreed and revised the standard to recognize that a low-risk score often, but not necessarily, indicates that a defendant is amenable or suitable for community-based supervision.
			7. Section (e) (2): The statements here are	The committee agrees and has incorporated

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

	Commentator	Position	Comment	Committee Response
			generally correct, but not always. In many jurisdictions, for example, sex offenders on community supervision are at least initially supervised as a higher risk offender despite being assessed as low risk. I propose amending the two sentences to add the word "ordinarily" or phrase "in most cases" or otherwise convey that there are exceptions to this guidance.	this recommendation into the standard.
			8. Section (e) (3): I think this statement is misleading with respect to most low risk offenders placed on community supervision. With most such low risk offenders the objective is to impose the appropriate sanction, and address restitution, victim, and other issues, but not to order services that address needs. The needs of a low risk offender are not typically such that they are likely to result in further criminal activity; if the defendant has needs that are likely to result in further criminal behavior the defendant is not likely to be assessed as low risk. Further, mixing low-risk offenders with higher-risk offenders in treatment programs tends to increase the risk of recidivism among low-risk offenders. The goal with the low-risk offender is generally to get the offender out of the criminal justice system once other sentencing objectives are satisfied, not taking up a treatment slot that could be filled by a higher risk offender, or further embroiled in it, e.g., for failing to participate in a court-	The committee agrees that services may not be appropriate for most low-risk offenders. It decided against incorporating the recommended language to the extent that it implies that services should never be ordered for low-risk offenders. Instead, the committee re-lettered and revised subdivision (f)(3) to provide simply that "[a] court should order services that address the defendant's needs." Most often, low-risk offenders will not need services.

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

	Commentator	Position	Comment	Committee Response
			ordered program. One way to address this issue would be to limit this provision to medium and high risk offenders, e.g. "A court should order services that address the needs of "medium" and "high" risk offenders."	
			9. My final comment is with respect to the final paragraph of the Invitation to Comment's introductory language on "Implementation Requirements, Costs, and Operational Impacts." I think the paragraph overstates the costs of implementation. RNA information can only be presented to courts in counties where the probation departments already has a validated risk assessment tool and is using it to assess probationers. So those costs are sunk already. Indeed, unless the probation department is already skilled in proper administration of a validated RNA instrument, and is using that assessment information properly in the supervision of its probationers, it probably makes no sense for the courts to obtain RNA information in the first place because the court's use of RNA information will be ineffective if probation staff are not properly trained and skilled in the use of RNA information in properly supervising offenders and steering them to appropriate services.	The report to the Judicial Council accompanying the final recommended proposal reflects that the implementation requirements, costs, and impacts may be relatively minimal for probation departments that are already using validated risk assessment instruments to assess probationers.

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Criminal Law: Felony Sentencing

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
June 26, 2017

Contact
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Executive Summary

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect amendments and updates related to changes in California's Determinate Sentencing Law, indeterminate sentences, and sentencing enhancements; (2) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act; (3) provide guidance to courts on the referral of cases to probation for investigation reports; (5) clarify the use of risk/needs assessments in a probation officer's presentence report; (6) add the reporting requirements of Penal Code section 29810(c)(2) to the contents of a probation officer's presentence report; and (7) make nonsubstantive technical amendments.

Recommendation

The Criminal Law Advisory Committee (CLAC) recommends that the Judicial Council, effective January 1, 2018:

1. Amend rules 4.405, 4.406, 4.408, 4.410, 4.420, 4.421, 4.423, 4.428, and 4.452 or the corresponding advisory committee comments to reflect changes to California's Determinate Sentencing Law (DSL) after the U.S. Supreme Court's decision in *Cunningham v. California* (2007) 549 U.S. 270 and the legislative responses to that decision, and provide further guidance to judges in exercising sentencing discretion under the DSL.

2. Amend the title of division 5 from "Sentencing Determinate" to "Felony Sentencing Law."

3. Amend rules 4.403, 4.405, and 4.451 and/or the corresponding advisory comments to expand the application of the rules to certain indeterminate sentences.

4. Add subdivision (b) to rule 4.428 to clarify the court's authority to strike an enhancement or the punishment for an enhancement under section 1385(a) and (c), and to identify factors a court may consider in determining whether to strike the entire enhancement or only the punishment for the enhancement.

5. Add subdivision (b) to rule 4.447 to provide guidance to courts for when a defendant is convicted of multiple enhancements of the same type.

6. Amend rule 4.447's advisory committee comment to provide that a court may stay an enhancement if section 654 applies.

7. Amend rules 4.405, 4.411.5, 4.412, 4.435, and 4.451 and/or the corresponding advisory committee comments to incorporate terms relevant to the Criminal Justice Realignment Act (mandatory supervision, postrelease community supervision, term of imprisonment, and supervision).

8. Further amend rule 4.435 to (1) provide that in determining whether to permanently revoke supervision, a judge may consider the nature of the violation and the defendant's past performance on supervision; and (2) amend the advisory committee comment to explain that the holding in *People v. Griffith* (1984) 153 Cal.App.3d 796 refers only to probation, but likely applies to any form of supervision.

9. Amend rule 4.411 to (1) identify when a court must refer to probation for investigations and reports, and (2) rephrase the statement in subdivision (d) addressing the purpose of presentence investigation reports and move it to the advisory committee comment. Upon further review post-circulation, the chairs recommend amending the Advisory Committee Comment around uses of probation officer reports to also include "the probation department in supervising the defendant."

10. Further amend rule 4.411 to (1) strike the statement in subdivision (a) that reads, "Waivers of the presentence report should not be accepted except in unusual circumstances"; (2) strike the statement in the advisory committee comment discouraging waivers; (3) state how

parties may waive the report; (4) identify criteria a court should consider in deciding whether to consent to a waiver; and (5) clarify that a waiver does not affect the requirement under section 1203c that probation create a report whenever the court commits a person to state prison.

11. Amend subdivision (a)(5) of rule 4.111.5 to provide that the presentence investigation report must include information about "[a]ny physical or psychological injuries suffered by the victim" and to clarify that the amount of a victim's loss refers to monetary losses.

12. Further amend rule 4.411.5 to include reporting requirements under Penal Code section 29810(c)(2).

13. Amend rules 4.405, 4.411.5, 4.413, and 4.415 and/or corresponding advisory committee comments to address risk/needs assessments and their use by courts.

14. Further amend rules 4.405, 4.408, 4.409, 4.410, 4.412, 4.413, 4.420, 4.425, 4.427, 4.428, 4.437, and 4.447 and/or relevant portions of advisory committee comments for technical and nonsubstantive amendments. Upon further review post-circulation, the chairs recommend an additional technical and nonsubstantive amendment to rule 4.420.

The text of the proposed rule amendments is attached at pages 7–27.

Previous Council Action

Sentencing-related amendments

The Judicial Council last amended the California Rules of Court on January 1, 2008, to implement changes to California's DSL resulting from *Cunningham v. California* (2007) 549 U.S. 270 and the legislative responses to that decision.

Realignment-related amendments

The Criminal Law Advisory Committee has undertaken several efforts to update the criminal rules to incorporate changes related to the Realignment Act. Effective January 1, 2015, the Judicial Council adopted rule 4.415 to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5). It also updated rules 4.411 and 4.411.5, which govern the use and contents of presentence probation reports, by adding references to county jail under section 1170(h). Effective January 1, 2017, the council added references in various criminal rules to mandatory supervision under section 1170(h)(5), postrelease community supervision under sections 3450–3464, parole under section 3000.08, and terms of imprisonment in county jail under section 1170(h).

Referrals for and waivers of presentence investigations and reports, rule 4.411

Rule 4.411 was last amended effective January 1, 2015.

Required contents of a probation officer's presentence investigation report, rule 4.411.5

Rule 4.411.5 was last amended effective January 1, 2017.

Risk/needs assessment-related amendments

As part of the rule amendments implementing the Realignment Act that went into effect on January 1, 2015, the Judicial Council also added several provisions related to risk/needs assessments to the criminal rules. In adopting new rule 4.415, the council provided that courts may consider "[t]he defendant's specific needs and risk factors identified by a validated risk/needs assessment, if available," to select the appropriate period and conditions of mandatory supervision. In addition, the council amended rule 4.411.5 to require that presentence investigation reports include "[a]ny available, reliable risk/needs assessment information."

Rationale for Recommendation

Sentencing-related amendments

In *Cunningham v. California* (2007) 549 U.S. 270, the U.S. Supreme Court held that the DSL was unconstitutional because (1) judges, not juries, were making factual findings to increase a sentence beyond the maximum that could be imposed based on findings made by the jury; and (2) the burden of proof for those findings was a preponderance of the evidence, not beyond a reasonable doubt. (*Id.* at p. 288.) To address these constitutional defects, the California Legislature subsequently amended the DSL to delete the presumption that judges impose the middle term and to provide instead that judges have discretion to impose any of the three possible terms. (Pen. Code, § 1170(b).) In addition, rather than finding facts, the legislation provides that judges state reasons in support of their choice of the appropriate term. The Legislature subsequently amended sections 186.22, 186.33, 1170.1, 12021.5, 12022.2, and 12022.4 to eliminate the presumptive middle term for enhancements with sentencing triads. (Sen. Bill 150; Stats. 2009, ch. 171.)

This proposal updates the rules and corresponding advisory committee comments to reflect the changes to the DSL post-*Cunningham*, and also updates the rules addressing indeterminate sentences and sentencing enhancements.

Realignment-related amendments

The Criminal Justice Realignment Act amended several sentencing and supervision provisions to persons convicted of felony offenses and sentenced on or after October 1, 2011. (Assem. Bill 17; Stats. 2011, ch. 12.) Many defendants convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (See Pen. Code, § 1170(h).) In a later amendment to the law, the Legislature mandated that judges suspend execution of a concluding portion of the county jail 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. (*Id.*, § 1170(h)(5)(A).) This term of supervision is referred to as "mandatory supervision." (*Id.*, § 1170(h)(5)(B).)

The Realignment Act also created "postrelease community supervision" (PRCS), whereby certain offenders released from state prison are no longer supervised by the state parole system but are instead supervised by a local county supervision agency. (Pen. Code, §§ 3450–3465.) PRCS 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. (*Id*., § 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 are instead adversarial judicial proceedings conducted in county superior courts. (*Id*., § 1203.2.)

This proposal updates the rules and corresponding advisory committee comments to reflect the current statutory sentencing provisions by incorporating terms relevant to realignment.

Referrals for and waivers of presentence investigations and reports, rule 4.411

The current version of rule 4.411 and its advisory committee comment strongly discourage the waiver of presentence reports. However, the current practice is that waivers occur for a variety of reasons, and the rule neither reflects this nor provides courts with guidance on how to consider a waiver. The proposed amendments strike a balance between acknowledging current practices and providing guidance on criteria a judge should consider when deciding whether to consent to a waiver.

Required contents of a probation officer's presentence investigation report, rule 4.411.5

This proposal updates the rule, in part, by requiring probation officers to provide more detailed information concerning the victims' injuries and monetary losses to the court.

This proposal further updates the rule by adding new statutory reporting requirements by probation to the court within rule 4.411.5. Effective January 1, 2018, Penal Code section 29810(c)(2) requires probation officers to report to the court, prior to final disposition or sentencing, whether a defendant convicted of specified offenses under Penal Code section 29800 or 29805 has complied with firearms relinquishment requirements by relinquishing all firearms and timely submitting a completed Prohibited Persons Relinquishment Form.

Risk/needs assessment–related amendments

This proposal updates current rules relating to risk/needs assessments to provide clarity around the assessments and their proper uses.

Comments, Alternatives Considered, and Policy Implications

The committee circulated the proposal for public comment during the spring 2017 invitation-to-comment cycle. Four comments were received. Comments received from the Superior Courts of San Diego and Los Angeles Counties and the Orange County Bar Association agreed with the

proposal. One commenter did not indicate a position and suggested a technical, nonsubstantive amendment with which the committee agrees.

The committee sought specific comments about whether these new firearm relinquishment reporting requirements should be included in as-required contents of a probation officer's presentence investigation report under rule 4.411.5. The Superior Court of Los Angeles County responded to this question, suggesting that amending the rule to include the new firearm relinquishment reporting requirements would expedite court proceedings. The committee agrees that including this required information within the presentence investigation report would promote efficiency and has revised the proposal to incorporate the reporting requirement into the rule.

Alternatives considered

The committee considered whether to decline to recommend including the reporting requirements of Penal Code section 29810(c)(2) in rule 4.411.5, namely because it would place a reporting requirement within a presentencing report that may be waived. However, the committee decided to include the amendment because it would likely be helpful for counties in which presentence investigations and reports routinely occur in all required cases.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements or operational impacts on courts are likely. The inclusion of the reporting requirements of Penal Code section 29810(c)(2) in rule 4.411.5 will largely impact probation departments.

Attachments and Links

1. Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452 at pages 7–28
2. Chart of comments, at pages 29–31

Rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452 of the California Rules of Court would be amended, effective January 1, 2018, to read as follows:

Title 4. Criminal Rules

Division 5. ~~Sentencing Determinate~~ Felony Sentencing Law

Rule 4.403. Application

These rules apply to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by (1) a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170) and (2) an indeterminate sentence imposed under section 1168(b) only if it is imposed relative to other offenses with determinate terms or enhancements.

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.

Rule 4.405. Definitions

As used in this division, unless the context otherwise requires:

(1) * * *

(2) "Base term" is the determinate term in prison ~~term~~ or county jail under section 1170(h) selected from among the three possible terms prescribed by statute; ~~or~~ the determinate term in prison ~~term~~ or county jail under section 1170(h) prescribed by ~~law~~ statute if a range of three possible terms is not prescribed; or the indeterminate term in prison prescribed by statute.

(3) * * *

(4) "Aggravation," ~~or~~ "circumstances in aggravation," "mitigation," or "circumstances in mitigation" means factors that the court may consider in its broad sentencing discretion ~~in imposing one of the three authorized terms of imprisonment referred to in section 1170(b)~~ authorized by statute and under these rules.

~~(5) "Mitigation" or "circumstances in mitigation" means factors that the court may consider in its broad discretion in imposing one of the three authorized 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)~~(5) "Sentence choice" means the selection of any disposition of the case that does not amount to a dismissal, acquittal, or grant of a new trial.

~~(7)~~(6) "Section" means a section of the Penal Code.

~~(8)~~(7) "Imprisonment" means confinement in a state prison or county jail under section 1170(h).

~~(9)~~(8) "Charged" means charged in the indictment or information.

~~(10)~~(9) "Found" means admitted by the defendant or found to be true by the trier of fact upon trial.

~~(11)~~(10) "Mandatory supervision" means the period of supervision defined in section 1170(h)(5)(A), (B).

~~(12)~~(11) "Postrelease community supervision" means the period of supervision governed by section 3451 et seq.

(12) "Risk/needs assessment" means a standardized, validated evaluation tool designed to measure an offender's actuarial risk factors and specific needs that, if successfully addressed, may reduce the likelihood of future criminal activity.

(13)–(16) * * *

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, the Legislature amended the determinate sentencing law to remove the presumption that the court is to impose the middle term on a sentencing triad, absent aggravating or mitigating circumstances. (See Sen. Bill 40; Stats. 2007, ch. 3.) It subsequently amended sections 186.22, 186.33, 1170.1, 12021.5, 12022.2, and 12022.4 to eliminate the presumptive middle term for an enhancement. (See Sen. Bill 150; Stats. 2009, ch. 171.) Instead of finding facts in support of a sentencing choice, courts are now required to state reasons for the exercise of judicial discretion in sentencing. ~~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) How given

If the sentencing judge is required to give reasons for a sentence choice, the judge must state in simple language the primary factor or factors that support the exercise of discretion ~~or, if applicable, state that the judge has no discretion~~. The statement need not be in the language of the statute or these rules. It must be delivered orally on the record. The court may give a single statement explaining the reason or reasons for imposing a particular sentence or the exercise of judicial discretion, if the statement identifies the sentencing choices where discretion is exercised and there is no impermissible dual use of facts.

(b) When reasons required

Sentence choices that generally require a statement of a reason include, but are not limited to:

(1) Granting probation when the defendant is presumptively ineligible for probation;

(2) ~~Imposing a prison sentence or sentence in county jail under section 1170(h) and thereby denying probation~~ Denying probation when the defendant is presumptively eligible for probation;

(3) Declining to commit an eligible juvenile found amenable to treatment to the Department of Corrections and Rehabilitation, Division of Juvenile Justice ~~an eligible juvenile found amenable to treatment~~;

(4) Selecting one of the three authorized ~~prison~~ terms in prison or county jail under section 1170(h) referred to in section 1170(b) for either ~~an offense~~ a base term or an enhancement;

(5) ~~–~~(6) * * *

~~(7) Striking the punishment for an enhancement;~~

~~(8)~~(7) Waiving a restitution fine;

~~(9) Not committing an eligible defendant to the California Rehabilitation Center;~~

~~(10)~~(8) ~~Striking an enhancement or prior conviction allegation~~ Granting relief under section 1385~~(a)~~; and

~~(11)~~(9) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

Advisory Committee Comment

This rule is not intended to expand the statutory requirements for giving reasons, and is not an independent interpretation of the statutory requirements.

The court is not required to separately state the reasons for making each sentencing choice so long as the record reflects the court understood it had discretion on a particular issue and its reasons for making the particular choice. For example, if the court decides to deny probation and impose the upper term of punishment, the court may simply state: "I am denying probation and imposing the upper term because of the extensive losses to the victim and because the defendant's record is increasing in seriousness." It is not necessary to state a reason after exercising each decision.

The court must be mindful of impermissible dual use of facts in stating reasons for sentencing choices. 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 and 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.)

Whenever relief is *granted* under section 1385, the court's reasons for exercising that discretion must be stated orally on the record and entered in the minutes if requested by a party or if the proceedings are not recorded electronically or reported by a court reporter. (Pen. Code, § 1385(a).) Although no legal authority requires the court to state reasons for *denying* relief, such a statement may be helpful in the appellate review of the exercise of the court's discretion.

Rule 4.408. ~~Criteria~~ Listing of factors not exclusive; sequence not significant

(a) ~~The enumeration in these rules of some criteria for the making of discretionary sentencing decisions does not prohibit the application of additional criteria reasonably related to the decision being made.~~ The listing of factors in these rules for making discretionary sentencing decisions is not exhaustive and does not prohibit a trial judge from using additional criteria reasonably related to the decision being made. Any such additional criteria must be stated on the record by the sentencing judge.

(b) * * *

Advisory Committee Comment

~~Enumerations of criteria in these rules are not exclusive.~~ The variety of circumstances presented in felony cases is so great that no listing of criteria could claim to be all-inclusive. (Cf.~~,~~ Evid. Code, § 351.)

Rule 4.409. Consideration of ~~criteria~~ relevant factors

Relevant ~~criteria~~ factors enumerated in these rules must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise.

Advisory Committee Comment

Relevant ~~criteria~~ factors are those applicable to the facts in the record of the case; not all ~~criteria~~ factors 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~~ factors, 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) *** * ***

(b) Because in some instances these objectives may suggest inconsistent dispositions, the sentencing judge must consider which objectives are of primary importance in the particular case. The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and ~~the~~ any other facts and circumstances ~~of~~ relevant to the case.

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 terms of imprisonment to the seriousness of the offense, and the use of imprisonment as punishment. It also states that "the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice."

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. Presentence investigations and reports

(a) ~~**Eligible defendant**~~ **When required**

~~If the defendant is eligible for probation or a term of imprisonment in county jail under section 1170(h), the court must refer the matter to the probation officer for a presentence investigation and report. Waivers of the presentence report should not be accepted except in unusual circumstances.~~

Except as provided in subdivision (b), the court must refer the case to the probation officer for:

(1) A presentence investigation and report if the defendant:

(A) Is statutorily eligible for probation or a term of imprisonment in county jail under section 1170(h); or

(B) Is not eligible for probation but a report is needed to assist the court with other sentencing issues, including the determination of the proper amount of restitution fine;

(2) A supplemental report if a significant period of time has passed since the original report was prepared.

(b) ~~Ineligible defendant~~ Waiver of the investigation and report

~~Even if the defendant is not eligible for probation or a term of imprisonment in county jail under section 1170(h), the court should refer the matter to the probation officer for a presentence investigation and report.~~

The parties may stipulate to the waiver of the probation officer's investigation and report in writing or in open court and entered in the minutes, and with the consent of the court. In deciding whether to consent to the waiver, the court should consider whether the information in the report would assist in the resolution of any current or future sentencing issues, or would assist in the effective supervision of the person. A waiver under this section does not affect the requirement under section 1203c that a probation report be created when the court commits a person to state prison.

~~(c) Supplemental reports~~

~~The court must order a supplemental probation officer's report in preparation for sentencing proceedings that occur a significant period of time after the original report was prepared.~~

~~(d) Purpose of presentence investigation report~~

~~Probation officers' reports are used by judges in determining the appropriate term of imprisonment in prison or county jail under section 1170(h) and by the Department of Corrections and Rehabilitation, Division of Adult Operations in deciding on the type of facility and program in which to place a defendant. The reports are also used by courts in deciding whether probation is appropriate, whether a period of mandatory supervision should be denied in the interests of justice under section 1170(h)(5)(A), and the appropriate length and conditions of probation and mandatory supervision. Section 1203c requires a probation officer's report on every person sentenced to prison; ordering the report before sentencing in probation-ineligible cases will help ensure a well-prepared report.~~

Advisory Committee Comment

Section 1203 requires a presentence report in every felony case in which the defendant is eligible for probation. Subdivision (a) requires a presentence report in every felony case in which the defendant is eligible for a term of imprisonment in county jail under section 1170(h). ~~Because~~

~~such a probation investigation and report are valuable to the judge and to the jail and prison authorities, waivers of the report and requests for immediate sentencing are discouraged, even when the defendant and counsel have agreed to a prison sentence or a term of imprisonment in county jail under section 1170(h).~~

When considering whether to waive a presentence investigation and report, courts should consider that probation officers' reports are used by: (1) courts in determining the appropriate term of imprisonment in prison or county jail under section 1170(h); (2) courts in deciding whether probation is appropriate, whether a period of mandatory supervision should be denied in the interests of justice under section 1170(h)(5)(A), and the appropriate length and conditions of probation and mandatory supervision; (3) the probation department in supervising the defendant; and (4) the Department of Corrections and Rehabilitation, Division of Adult Operations, in deciding on the type of facility and program in which to place a defendant.

~~Notwithstanding a defendant's statutory ineligibility for probation or term of imprisonment in county jail under section 1170(h), a presentence investigation and report should be ordered to assist the court in deciding the appropriate sentence and to facilitate compliance with section 1203c.~~

~~This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.~~

Subdivision ~~(c)~~ (a)(2) is based on case law that generally requires a supplemental report if the defendant is to be resentenced a significant time after the original sentencing, as, for example, after a remand by an appellate court, or after the apprehension of a defendant who failed to appear at sentencing. The rule is not intended to expand on the requirements of those cases.

The rule does not require a new investigation and report if a recent report is available and can be incorporated by reference and there is no indication of changed circumstances. This is particularly true if a report is needed only for the Department of Corrections and Rehabilitation because the defendant has waived a report and agreed to a prison sentence. If a full report was prepared in another case in the same or another jurisdiction within the preceding six months, during which time the defendant was in custody, and that report is available to the Department of Corrections and Rehabilitation, it is unlikely that a new investigation is needed.

This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.

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)–(4) * * *

(5) Information concerning the victim of the crime, including:

(A) * * *

(B) Any physical or psychological injuries suffered by the victim;

~~(B)~~(C) The amount of the victim's monetary loss, and whether or not it is covered by insurance; and

~~(C)~~(D) Any information required by law.

(6)–(7) * * *

(8) ~~Any available, reliable risk/needs assessment information.~~ The defendant's relevant risk factors and needs as identified by a risk/needs assessment, if such an assessment is performed, and such other information from the assessment as may be requested by the court.

(9)–(12) * * *

(13) Information pursuant to Penal Code section 29810(c):

(A) Whether the defendant has properly complied with Penal Code section 29810 by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and

(B) Whether the defendant has timely submitted a completed Prohibited Persons Relinquishment Form.

(b)–(c) * * *

Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims

(a) Defendant's agreement as reason

It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting attorney has not expressed an objection to it. The agreement and lack of objection must be recited on the record. This section does not authorize a sentence that is not otherwise authorized by law.

(b) Agreement to sentence abandons section 654 claim

By agreeing to a specified term in prison or county jail under section 1170(h) 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.

Advisory Committee Comment

Subdivision (a). This subdivision is intended to relieve the court of an obligation to give reasons if the sentence or other disposition is one that the defendant has accepted and to which the prosecutor expresses no objection. The judge may choose to give reasons for the sentence even though not obligated to do so.

Judges should also be aware that there may be statutory limitations on "plea bargaining" or on the entry of a guilty plea on the condition that no more than a particular sentence will be imposed. ~~At the time this comment was drafted, s~~ Such limitations appear~~ed~~, for example, in sections 1192.5 and 1192.7.

Subdivision (b). This subdivision is based on the fact that a defendant who, with the advice of counsel, expresses agreement to a specified ~~prison~~ term of imprisonment normally is acknowledging that the term is appropriate for his or her total course of conduct. This subdivision applies to both determinate and indeterminate terms.

Rule 4.413. ~~Probation eligibility when probation is limited~~ Grant of probation when defendant is presumptively ineligible for probation

(a) Consideration of eligibility

The court must determine whether the defendant is eligible for probation. In most cases, the defendant is presumptively eligible for probation; in some cases, the defendant is presumptively ineligible; and in some cases, probation is not allowed.

(b) Probation in ~~unusual cases~~ cases when defendant is presumptively ineligible

If the defendant comes under a statutory provision prohibiting probation "except in unusual cases where the interests of justice would best be served," or a substantially equivalent provision, the court should apply the criteria in (c) to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation.

(c) ~~Facts showing unusual case~~ Factors overcoming the presumption of ineligibility

The following ~~facts~~ factors may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate:

(1) ~~Facts~~ Factors relating to basis for limitation on probation

A ~~fact~~ factor or circumstance indicating that the basis for the statutory limitation on probation, although technically present, is not fully applicable to the case, including:

(A) The ~~fact~~ factor or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and

(B) * * *

(2) ~~Facts~~ Factors limiting defendant's culpability

A ~~fact~~ factor or circumstance not amounting to a defense, but reducing the defendant's culpability for the offense, including:

(A)–(C) * * *

(3) Results of risk/needs assessment

Along with all other relevant information in the case, the court may consider the results of a risk/needs assessment of the defendant, if one was performed. The weight of a risk/needs assessment is for the judge to consider in its sentencing discretion.

Advisory Committee Comment

Subdivision (c)(3). Standard 4.35 of the California Standards of Judicial Administration provides courts with additional guidance on using the results of a risk/needs assessment at sentencing.

Rule 4.415. Criteria affecting the imposition of mandatory supervision

(a)–(b) * * *

(c) Criteria affecting conditions and length of mandatory supervision

In exercising discretion to select the appropriate period and conditions of mandatory supervision, factors the court may consider include:

(1)–(7) * * *

(8) The defendant's specific needs and risk factors identified by a validated risk/needs assessment, if available; and

(9) * * *

(d) * * *

Advisory Committee Comment

* * *

Subdivision (a). * * *

Subdivisions (b)(3), (b)(4), and (c)(3). * * *

Subdivision (c)(7). * * *

Subdivision (c)(8). Standard 4.35 of the California Standards of Judicial Administration provides courts with additional guidance on using the results of a risk/needs assessment at sentencing.

Rule 4.420. Selection of term of imprisonment

(a)–(b) * * *

(c) To comply with section 1170(b), a fact charged and found as an enhancement may be used as a reason for imposing ~~the upper~~ a particular term only if the court has discretion to strike the punishment for the enhancement and does so. The use of a fact of an enhancement to impose the upper term of imprisonment is an adequate reason for striking the additional term of imprisonment, regardless of the effect on the total term.

(d) A fact that is an element of the crime upon which punishment is being imposed may not be used to impose a ~~greater~~ particular term.

(e) * * *

Advisory Committee Comment

The determinate sentencing law authorizes the court to select any of the three possible 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 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 footnote 5 ~~on p. 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)).~~ The proper method to calculate a consecutive sentence is to first determine the sentence for each count, including any appropriate enhancements. The principal term will be the count with the longest term selected by the court, or any count if the terms are of the same length. After the selection of the principal term, the court must impose the sentence for any subordinate terms. The sentence for a subordinate term will generally be one-third of the middle term for that count, unless fully consecutive terms are otherwise authorized by statute, such as by section 667.6.

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a)–(b) * * *

(c) Other factors

Any other factors statutorily declared to be circumstances in aggravation or which reasonably relate to the defendant or the circumstances under which the crime was committed.

Advisory Committee Comment

Circumstances in aggravation may justify imposition of the middle or upper of three possible terms of imprisonment. (Section 1170(b).)

The list of circumstances in aggravation includes some facts that, if charged and found, may be used to enhance the sentence. Theis rule does not deal with the dual use of the facts; the statutory prohibition against dual use is included, in part, in the comment to 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 or charged as an enhancement.

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~~ may 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]~~it 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 p. 655~~.) (~~footnote omitted, ~~emphasis~~ italics 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 ex rel. Sullivan 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~~. Some of the cases that had relied on that circumstance in aggravation were 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, 1170.8, 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) * * *

(c) Other factors

Any other factors statutorily declared to be circumstances in mitigation or which reasonably relate to the defendant or the circumstances under which the crime was committed.

Advisory Committee Comment

See comment to rule 4.421.

This rule applies both to mitigation for purposes of ~~motions under~~ section 1170(b) and to circumstances in mitigation justifying the court in striking the additional punishment provided for an enhancement.

Some listed circumstances can never apply to certain enhancements; for example, "the amounts taken were deliberately small" can never apply to an excessive taking under section 12022.6, and "no harm was done" can never apply to infliction of great bodily injury under section 12022.7. In any case, only the facts present may be considered for their possible effect in mitigation.

See also rule 4.409; only relevant criteria need be considered.

Since only the fact of restitution is considered relevant to mitigation, no reference to the defendant's financial ability is needed. The omission of a comparable factor from rule 4.421 as a circumstance in aggravation is deliberate.

Rule 4.425. ~~Criteria~~ Factors affecting concurrent or consecutive sentences

~~Criteria~~ Factors affecting the decision to impose consecutive rather than concurrent sentences include:

(a) ~~Criteria~~ Facts relating to crimes

Facts relating to the crimes, including whether or not:

(1) The crimes and their objectives were predominantly independent of each other;

(2) The crimes involved separate acts of violence or threats of violence; or

(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

(b) Other ~~criteria~~ facts and limitations

Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

(1) A fact used to impose the upper term;

(2) A fact used to otherwise enhance the defendant's sentence in prison or county jail under section 1170(h); and

(3) A fact that is an element of the crime may not be used to impose consecutive sentences.

Advisory Committee Comment * * *

Rule 4.428. ~~Criteria~~ Factors affecting imposition of enhancements

(a) Enhancements punishable by one of three terms

~~If the judge has statutory discretion to strike the additional term for an enhancement in the furtherance of justice under section 1385(c) or based on circumstances in mitigation, the court may consider and apply any of the circumstances in mitigation enumerated in these rules or, under rule 4.408, any other reasonable circumstances in mitigation or in the furtherance of justice.~~

~~The judge should not strike the allegation of the enhancement.~~

If an enhancement is punishable by one of three terms, the court must, in its discretion, impose the term that best serves the interest of justice and state the reasons for its sentence choice on the record at the time of sentencing. In exercising its discretion in selecting the appropriate term, the court may consider factors in mitigation and aggravation as described in these rules or any other factor authorized by rule 4.408.

(b) Striking enhancements under section 1385

If the court has discretion under section 1385(a) to strike an enhancement in the interests of justice, the court also has the authority to strike the punishment for the enhancement under section 1385(c). In determining whether to strike the entire enhancement or only the punishment for the enhancement, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant's criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration.

Rule 4.433. Matters to be considered at time set for sentencing

(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 terms of imprisonment referred to in section 1170(b) or any enhancement, 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 terms of imprisonment referred to in section 1170(b), or any enhancement, 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)–(2) * * *

(3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A) and (B), in addition to any period imprisonment for a violation of mandatory supervision.

Advisory Committee Comment * * *

Rule 4.435. Sentencing on revocation of probation, mandatory supervision, and post-release community supervision

(a) When the defendant violates the terms of probation, mandatory supervision, or post-release community supervision or is otherwise subject to revocation of ~~probation~~ supervision, the sentencing judge may make any disposition of the case authorized by statute. In deciding whether to permanently revoke supervision, the judge may consider the nature of the violation and the defendant's past performance on supervision.

(b) On revocation and termination of ~~probation~~ supervision 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) If the imposition of sentence was previously suspended, the judge must impose judgment and sentence after considering any findings previously made and hearing and determining the matters enumerated in rule 4.433(c).

The length of the sentence must be based on circumstances existing at the time ~~probation~~ supervision was granted, and subsequent events may not be considered in selecting the base term or in deciding whether to strike the additional punishment for enhancements charged and found.

(2) * * *

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~~ supervision under section 1203.2(a), to continue the defendant on ~~probation~~ supervision.

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 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.) While *People v. Griffiths* refers only to probation, this rule likely will apply to any form of supervision.

Rule 4.437. Statements in aggravation and mitigation

(a)–(e) * * *

Advisory Committee Comment

Section 1170(b) states in part:

"At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts."

This provision means that the statement is a document giving notice of intention to dispute evidence in the record or the probation officer's report, or to present additional facts. The statement itself cannot be the medium for presenting new evidence, or for rebutting competent evidence already presented, because the statement is a unilateral presentation by one party or counsel that will not necessarily have any indicia of reliability. To allow its factual assertions to be considered in the absence of corroborating evidence would, therefore, constitute a denial of due process of law in violation of the United States (14th Amend.) and California (art. I, § 7) Constitutions.

~~"[I]t is now clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause. Even though the defendant has no substantive right to a particular sentence within the range authorized by statute, the sentencing is a critical stage of the criminal proceeding at which he is entitled to the effective assistance of counsel . . . . The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence . . . ." Gardner v. Florida (1977) 430 U.S. 349, 358.~~

~~The use of probation officers' reports is permissible because the officers are trained objective investigators. Williams v. New York (1949) 337 U.S. 241. Compare sections 1203 and 1204. People v. Peterson (1973) 9 Cal.3d 717, 727, expressly approved the holding of United States v. Weston (9th Cir. 1971) 448 F.2d 626 that due process is offended by sentencing on the basis of unsubstantiated allegations that were denied by the defendant. Cf., In re Hancock (1977) 67 Cal.App.3d 943, 949.~~

The requirement that the statement include notice of intention to rely on new evidence will enhance fairness to both sides by avoiding surprise and helping to ensure that the time limit on pronouncing sentence is met.

Rule 4.447. ~~Limitations on enhancements~~ Sentencing of enhancements

~~No finding of an enhancement may be stricken or dismissed because imposition of the term either is prohibited by law or exceeds limitations on the imposition of multiple enhancements. The sentencing judge must impose sentence for the aggregate term of imprisonment computed without reference to those prohibitions and limitations, and must thereupon stay execution of so much of the term as is prohibited or exceeds the applicable limit. The stay will become permanent on the defendant's service of the portion of the sentence not stayed.~~

(a) Enhancements resulting in unlawful sentences

A court may not strike or dismiss an enhancement solely because imposition of the term is prohibited by law or exceeds limitations on the imposition of multiple enhancements. Instead, the court must:

(1) Impose a sentence for the aggregate term of imprisonment computed without reference to those prohibitions or limitations; and

(2) Stay execution of the part of the term that is prohibited or exceeds the applicable limitation. The stay will become permanent once the defendant finishes serving the part of the sentence that has not been stayed.

(b) Multiple enhancements

If a defendant is convicted of multiple enhancements of the same type, the court must either sentence each enhancement or, if authorized, strike the enhancement or its punishment. While the court may strike an enhancement, the court may not stay an enhancement except as provided in subdivision (a) or as authorized by section 654.

Advisory Committee Comment

Subdivision (a). Statutory restrictions may prohibit or limit the imposition of an enhancement in certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

Present practice of staying execution is followed to avoid violating a statutory prohibition or exceeding a statutory limitation, while preserving the possibility of imposition of the stayed portion should a reversal on appeal reduce the unstayed portion of the sentence. (See *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1129–1130; *People v. Niles* (1964) 227 Cal.App.2d 749, 756.)

Only the portion of a sentence or component thereof that exceeds a limitation is prohibited, and this rule provides a procedure for that situation. This rule applies to both determinate and indeterminate terms.

Subdivision (b). A court may stay an enhancement if section 654 applies. (See *People v. Bradley* (1998) 64 Cal.App.4th 386; *People v. Haykel* (2002) 96 Cal.App.4th 146, 152.)

Rule 4.451. Sentence consecutive to or concurrent with indeterminate term or ~~to~~ term in other jurisdiction

(a) When a defendant is sentenced under section 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed under section 1168(b) in the same or another proceeding, the judgment must specify the determinate term imposed under section 1170 computed without reference to the indeterminate sentence, must order that the determinate term be served consecutively to or concurrently with the sentence under section 1168(b), and must identify the proceedings in which the indeterminate sentence was imposed. The term under section 1168(b), and the date of its completion or ~~parole~~ date of parole or postrelease community supervision, and the sequence in which the sentences are

deemed or served, will be determined by correctional authorities as provided by law.

(b) When a defendant is sentenced under sections 1168 or 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed by a court of the United States or of another state or territory, the judgment must specify the ~~determinate~~ term imposed under sections 1168(b) or 1170 computed without reference to the sentence imposed by the other jurisdiction, ~~must order that the determinate term be served commencing on the completion of the sentence imposed by the other jurisdiction, and~~ must identify the other jurisdiction and the proceedings in which the other sentence was imposed, and must indicate whether the sentences are imposed concurrently or consecutively. If the term imposed is to be served consecutively to the term imposed by the other jurisdiction, the court must order that the California term be served commencing on the completion of the sentence imposed by the other jurisdiction.

Advisory Committee Comment

The provisions of section 1170.1(a), which use a one-third formula to calculate subordinate consecutive terms, can logically be applied only when all the sentences are imposed under section 1170. Indeterminate sentences are imposed under section 1168(b). Since the duration of the indeterminate term cannot be known to the court, subdivision (a) states the only feasible mode of sentencing. (See *People v. Felix* (2000) 22 Cal.4th 651, 654-657; *People v. McGahuey* (1981) 121 Cal.App.3d 524, 530-532.)

On the authority to sentence consecutively to the sentence of another jurisdiction and the effect of such a sentence, see *In re Helpman* (1968) 267 Cal.App.2d 307 and cases cited at ~~note 3, *id.* at~~ page 310, footnote 3. The mode of sentencing required by subdivision (b) is necessary to avoid the illogical conclusion that the total of the consecutive sentences will depend on whether the other jurisdiction or California is the first to pronounce judgment.

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) The judge in the current case must make a new determination of which count, in the combined cases, represents the principal term, as defined in section 1170.1(a). The principal term is the term with the greatest punishment imposed including conduct enhancements. If two terms of imprisonment have the same punishment, either term may be selected as the principal term.

(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 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. However, if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).

Advisory Committee Comment * * *

SPR17-09
Criminal Law: Felony Sentencing
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Attorney from Appellate Defenders, Inc.	N/I	On page 12, line 43, in the added narrative to the Advisory Committee Comment to Rule 4.406, I believe "as" should be "and," such that the sentence should read, "The court should not use the same reason to impose a consecutive sentence and to impose an upper term of imprisonment. (Citation.)"	The committee accepts the suggestion. The sentence on page 12, line 43 of the Advisory Committee Comment to Rule 4.406 shall read as follows: "The court should not use the same reason to impose a consecutive sentence and to impose an upper term of imprisonment. (Citation.)"
2.	Curtis Harris	N/I	Comments not related to proposal.	No response required.
3.	Orange County Bar Association By: Michael L. Baroni President	A	This proposal by the Criminal Law Advisory Committee contains proposed rule amendments intended to update the California Rules of Court to reflect the changes to California's Determinate Sentencing Law (DSL) in response to Cunningham v. California (2007) 549 U.S. 270, and the passage of the Criminal Justice Realignment Act (Realignment). Other proposed amendments would clarify the application of the rules to certain indeterminate sentences and would provide further guidance to courts on the referral of cases to probation for investigation reports, risk/needs assessments, and sentencing enhancements. The proposed amendments relating to changes in California's DSL and amendments related to statutory changes brought about by Realignment are accurate statements of law and update the rules to conform with these changes. The proposed amendments relating to the use of risk/needs assessments (defined as "a standardized validated evaluation tool designed to to measure an offenders actuarial risk factors and specific needs that, if successfully addressed, may reduce the	The committee appreciates the input from the Orange County Bar Association. No response required. No response required.

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

	Commentator	Position	Comment	Committee Response
			likelihood of future criminal activity") are in line with the Legislature's declaration that correctional practices should utilize a "data driven approach" to corrections and related criminal justice spending through evidence-based strategies "that increase public safety while holding offenders accountable." (Pen. Code, § 17.5, subd. (a)(7).) The use of risks/needs assessments is central to this effort and they are utilized by probation departments state-wide. The proposed amendments related to referrals to probation for investigations and reports are correct statements of law and clarify probation's obligations. The proposed amendments related to sentencing enhancements are correct statements of law and provide guidance to the trial courts on sentencing options with respect to enhancements.	No response required. No response required.
4.	Superior Court of California, County of Los Angeles	A	These proposals bring the rules into conformity with statutory and case law. We support the amendments. **Effective January 1, 2018, Proposition 63 (The Safety for All Act) will require probation officers to investigate whether persons subject to the firearms and ammunition prohibitions in Penal Code sections 29800 and 29805 have relinquished those items. It also requires that probation officers report their findings to the court before sentencing. Should the new firearms and ammunition reporting requirements be included in rule 4.411.5? If so, why?**	The committee appreciates the input from the Superior Court of California, County of Los Angeles. The committee accepts the recommendation to amend rule 4.411.5(a), to include the information that probation officers are required to report to the court under Penal Code section 29810(c). Specifically, the committee recommends adding the following language to rule 4.411.5, as subdivision (a)(13): Information pursuant to Penal Code

	Commentator	Position	Comment	Committee Response
			Rule 4.411.5 should be modified to require the probation officers pre-plea report to include the firearms and ammunition reporting requirements in every probation report to expedite court proceedings. Having the information as soon as possible will assist courts in conducting pretrial events that lead to case disposition. **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.** New CMS codes can be created to document sentencing findings, if necessary, that are ordered by the court. Our current CMS is capable of capturing the proposed revisions to sentencing terms.	section 29810(c): (A) Whether the defendant has properly complied with Penal Code section 29810 by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and (B) Whether the defendant has timely submitted a completed Prohibited Persons Relinquishment Form. No response is required.
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		The committee appreciates the input from Mr. Roddy.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Criminal Procedure: Court-Appointed Expert's Report in Mental Competency Proceeding

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.130

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
June 30, 2017

Contact
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Executive Summary

The Criminal Law Advisory Committee recommends amending rule 4.130 of the California Rules of Court relating to mental competency proceedings in criminal cases to implement recommendations from the Judicial Council's mental health task forces. The proposal amends this rule to identify the information that must be included in a court-appointed expert's report on a criminal defendant's competency to stand trial.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018 amend:

1. Rule 4.130(d)(2) of the California Rules of Court to require that competency evaluations include:

    a. A brief statement of the examiner's relevant training and previous experience;

b. A summary of the examination, including a current diagnosis, if possible, of the defendant's mental disorder and a summary of the defendant's mental status;

c. A detailed analysis of the defendant's competence to stand trial;

d. A summary of an assessment conducted for malingering or feigning symptoms, if clinically indicated;

e. A statement on whether treatment with antipsychotic medication is medically appropriate, or a recommendation that a psychiatrist examine the defendant if the examining psychologist is of the opinion that referral to a psychiatrist is necessary to address medication issues;

f. A list of all sources of information considered by the examiner; and

g. A recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency; and

2. Rule 4.130(a) to clarify that the above amendments apply only to formal competency evaluations, not to brief preliminary evaluations, under certain conditions.

The text of the amended rule is attached at pages 12–13.

Previous Council Action

The Task Force for Criminal Justice Collaboration on Mental Health Issues released its final report in April 2011. Among the task force's recommendations was the suggestion that rule 4.130—which addresses mental competency proceedings under Penal Code section 1367 et seq.—be revised. Specifically, the task force recommended revising rule 4.130(d)(2) to identify what information must be included in the court-appointed expert's report.

The Mental Health Issues Implementation Task Force—the task force convened to review the 2011 recommendations and develop a plan for their implementation—issued a final report in December 2015. This final report also included the recommendation to amend rule 4.130(d)(2).

The council has not amended rule 4.130 since its adoption, effective January 1, 2007.

Rationale for Recommendation

The Criminal Law Advisory Committee circulated for public comment the rule amendments recommended by the task forces. This proposal contains changes that the committee made in response to the comments. In doing so, the committee attempted to strike a balance between enhancing the quality and consistency of reports and minimizing the burden on courts and court-appointed experts.

This proposal amends rule 4.130(d)(2) by adding seven new subparagraphs (A) through (G).

Statement of the examiner's training and previous experience

New subparagraph (A) requires that court-appointed expert reports include "[a] brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report."

Summary of examination

New subparagraph (B) requires that court-appointed expert reports include "[a] summary of the examination conducted by the examiner on the defendant, including a current diagnosis under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* [DSM], if possible, of the defendant's mental disorder and a summary of the defendant's mental status." The language of new subparagraph (B) varies slightly from the circulated proposal and task force recommendations. The committee made two changes in response to comments.

Current diagnosis. Several commenters expressed concern about the feasibility of providing a diagnosis. One explained how the proposal affects court-appointed experts. Without increasing the reimbursement for reports, experts may reach hasty conclusions based on insufficient information. She explained that experts may have only 15 minutes to interview the defendant and might base the diagnosis solely on the defendant's uncorroborated self-reporting. This diagnosis would then follow the defendant and could have significant consequences.

Another similarly explained that a diagnosis would require lengthier evaluation of the defendant because most are not receiving regular mental health care.

Conversely, other commenters affirmed their support of the requirement that reports include a diagnosis. One commenter expressed concern that the absence of a meaningful diagnosis has resulted the arrival at state hospitals of defendants who do not need competency restoration, thereby delaying the admission of defendants who require intensive treatment. This commenter identified the proposal's requirement of a diagnosis as one of the two "most basic and significant reforms contained in this proposed rule." Two others also stated their support for this requirement.

On balance, the committee decided to retain the proposal's requirement of a diagnosis, but revised the requirement to apply only "if possible." The revised proposal instructs experts to include a diagnosis in the report, but provides a safety valve if a diagnosis is not possible in a particular case.

Diagnosis under the current DSM. Another commenter described seeing, in her review of hundreds of competency evaluations, diagnoses that no longer exist in DSM-5, the current version of the DSM. She explained the importance of an accurate diagnosis in facilitating treatment planning for defendants found incompetent.

The committee agreed and revised the proposal to specify that a diagnosis must be "under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*."

Analysis of the defendant's competence to stand trial

New subparagraph (C) requires that court-appointed expert reports include "[a] detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder."

Summary of a malingering assessment

New subparagraph (D) requires that the court-appointed expert reports include "[a] summary of an assessment—conducted for malingering or feigning symptoms, if clinically indicated—which may include, but need not be limited to, psychological testing."

The language of new subparagraph (D) differs from the circulated proposal and the task force recommendations in that it applies only if malingering or feigning symptoms are clinically indicated. The committee made this revision in response to several comments.

One commenter explained that a summary of malingering or feigning might be inappropriate if malingering and feigning were not clinically indicated. Another commenter similarly clarified that it is not necessary to conduct a malingering assessment in every case; the expert would know the signs of possible malingering that warrant further exploration and possible application of a malingering assessment tool. The commenter also expressed concern that a malingering tool might detect exaggeration, resulting in the misidentification of the defendant as malingering and competent.

A third commenter approved of the requirement, stating that the failure to address potential malingering results in sending defendants who do not need competency treatment to state hospitals.

The committee agreed with these comments. Recognizing the importance of addressing malingering, where clinically indicated, the committee has retained this requirement in the proposal.

A fourth commenter recommended revising the proposal to require that malingering determinations address in a detailed statement whether the expert controlled for cultural differences. The committee declined to pursue this recommendation. In evaluating the defendant for malingering, the expert should be aware of how any cultural differences might influence that evaluation. The committee concluded that requiring a detailed statement to this effect would be too onerous.

Treatment with antipsychotic or other medication

New subparagraph (E) requires that the court-appointed expert reports include:

> Under Penal Code section 1369, a statement on whether treatment with antipsychotic or other medication is medically appropriate for the defendant whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic or other medication in the county jail, and whether the defendant has capacity to make decisions regarding antipsychotic or other medication. If an examining psychologist is of the opinion that a referral to a psychiatrist is necessary to address these issues, the psychologist must inform the court of this opinion and his or her recommendation that a psychiatrist should examine the defendant.

(Cal. Rules of Court, rule 4.130(d)(2)(E).)

The language of new subparagraph (E) differs in two ways from the circulated proposal and task force recommendations. The committee made both changes, described below, in response to public comments.

Antipsychotic and other medication. One commenter explained that antipsychotic medication is not the only class of psychotropic medication that may restore a defendant to competency. Although Penal Code section 1369(a) mentions only antipsychotic medication, the committee recognized that antipsychotic medications are a subset of psychotropic medication, a broader category of medication that may be helpful in competency restoration. Accordingly, the committee revised the proposal to encompass medication other than antipsychotic medication.

Application to psychologists. Six commenters expressed concern about requiring that psychologists assess whether medication is appropriate for the defendant. Because prescribing medication is outside the scope of their licenses, psychologists would be disqualified as court-appointed experts if this requirement were to apply to them. Recognizing that psychologists cannot legally prescribe medication (Business and Professions Code section 2904), the committee incorporated the language suggested by a commenter that requires examining psychologists to inform the court if referral to a psychiatrist is necessary to address any medication issues.

List of all sources considered

New subparagraph (F) requires that the court-appointed expert reports include:

> A list of all sources of information considered by the examiner, including legal, medical, school, military, regional center, employment, hospital, and psychiatric

> records; the evaluation of other experts; the results of psychological testing; police reports; criminal history; statement of the defendant; statements of any witnesses to the alleged crime; booking information, mental health screenings, and mental health records following the alleged crime; consultation with the prosecutor and defendant's attorney; and any other collateral sources considered in reaching his or her conclusion.

(Cal. Rules of Ct., rule 4.130(d)(2)(F).)

This language differs from the circulated version and task force recommendations. The committee effectively combined language from three circulated subparagraphs—(G), (H), and (I)—into subparagraph (F). It also included an additional example of a possible source suggested by a commenter.

Separate statement and summary of certain sources. The circulated version and task force recommendations had two additional subparagraphs (G) and (H) requiring the expert to separately state whether he or she had reviewed certain sources—namely, the police reports, criminal history, statement of the defendant, statements of any witness to the alleged crime, booking information, mental health screenings, and mental health records—and to provide a summary of any information from those sources relevant to the expert's opinion of competency.

One commenter questioned why it was necessary to report sources that the expert did not review. The commenter explained that if the report did not list the source, the court should assume that the expert did not review it.

In response to the comment, the committee decided the requirement to list all sources considered was sufficient, allowing the inference that the expert did not consider sources unnamed in the report. The committee also decided against requiring a summary of any information from the sources relevant to the expert's opinion of competency. Explaining what information led to the expert's opinion of competency is implicit in subparagraph (C)'s requirement that the expert provide a detailed analysis of the defendant's competency. The committee expects that experts will summarize relevant information from any source that contributed to the forming of their opinion.

Accordingly, the committee added the sources identified in circulated subparagraphs (G) and (H) to the list of examples in subparagraph (F).

Summary of consultation with prosecutor and defense counsel. The circulated version and task force recommendations would have also required that reports include "[a] summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses."

Five commenters disagreed with this requirement. One explained that the experts should act independently and render an unbiased opinion without consulting either attorney. This requirement would indicate to experts that they should seek input from counsel. The commenter noted that if an expert were to receive input from counsel, it should be disclosed in the report.

Another stated that counsel's impressions of the defendant's competency would not be useful to include in the report. A third indicated that this summary was not necessarily a bad idea, but questioned why it should be required. The commenter recommended that experts identify who referred the defendant and why, but that their findings should rely on document review, the clinical interview, and testing. A fourth indicated that this requirement might increase the time of the evaluation and the cost to the court.

The fifth asked that the report, at most, contain checkboxes to indicate whether the expert had prepared it in consultation with counsel. It viewed including the impressions and substantive comments of defense counsel as inappropriate and unnecessary. Checkboxes would provide notice to the court if the expert consulted with counsel, but would not risk undermining the integrity of the attorney-client relationship.

The committee agreed with the comments and removed from the proposal the requirement that experts summarize their consultation with counsel. However, the committee revised subparagraph (F) to identify "consultation with the prosecutor and defendant's attorney" among the examples of sources that an examiner must list, if considered, in the report.

Regional centers for the developmentally disabled. One commenter suggested adding "regional centers" to the list of examples of sources that an examiner may consider. The committee agreed and incorporated this recommendation into the proposal.

Placement recommendation

New subparagraph (G) requires that the court-appointed expert reports include "[a] recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency."

One commenter expressed concern with overreliance on inpatient and jail-based competency programs. It requested that the proposal require that experts provide a detailed analysis of the appropriate placement for treatment and a summary of the assessment used.

In response to the comment, the committee revised the proposal to require the examiner to make a recommendation, if possible, regarding placement for competency treatment. The court has discretion to determine the placement of defendants found mentally incompetent. (See Pen. Code, §§ 1370(a)(1)(B)(i), 1370.1(a)(1).) To the extent that the expert can make a recommendation in a particular case as to whether the defendant is clinically suitable for inpatient or outpatient treatment, that recommendation may help courts make placement decisions.

Application of rule amendments

The proposal also amends rule 4.130(a) by adding new paragraphs (2) and (3) to clarify the application of the rule amendments in subdivision (d). New paragraph (2) provides that the new requirements for court-appointed expert reports apply only to formal competency evaluations ordered by the court under Penal Code section 1369(a). New paragraph (3) clarifies that they do not apply to brief preliminary evaluations of a defendant's competency subject to two conditions: (1) parties stipulate to a brief evaluation; and (2) the court orders the evaluation in accordance with a local rule of court that specifies the content of the evaluation and the procedure for its preparation and submission to the court.

The committee decided that this clarification was needed based on the comment submitted by the Superior Court of Los Angeles County. The court explained that applying the rule amendments to short reports would have a substantial impact on the court, including significant costs. To address its burgeoning caseload of defendants found incompetent to stand trial, the court uses two evaluation types: a "full report" and a "short report." Often, the latter is sufficient for the parties and the court and avoids the additional expense and delay required to prepare a "full report." Defendants benefit from this system; those who are clearly incompetent will have a shorter wait for competency treatment.

The committee regarded the court's "short reports" as outside the intended application of the rule amendments, which are meant to apply only to full competency evaluations, not brief preliminary reports stipulated to by the parties. Accordingly, it revised the proposal to clarify its intended application to only full competency evaluations.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment from March 14 until April 28, 2017. Nineteen comments were submitted in response to the invitation to comment; 4 agreed with the proposal, 6 agreed with the proposal if modified, 8 did not indicate their position, and 1 disagreed. The committee revised the rule amendments in response to the comments. This report addresses many of the comments and the committee's responses above in the rationale section of the proposal; it addresses others immediately below and in the section on implementation requirements, costs, and operational impacts. The committee's specific responses to each comment are available in the attached comments chart at pages 14–53.

Statement of the examiner's training and previous experience

Two commenters view as unnecessary the requirement that reports include a statement of the examiner's training and previous experience. One explained that including a statement on experience and training in every report would be redundant for superior courts that draw from the same pool of examiners. It also noted that examiners would need to testify to their training and experience if called into court. The other commenter indicated that this statement is not in accord with other assessments performed by psychiatrists and psychologists and reasoned that admission to the panel is sufficient to indicate the examiner's qualifications.

The committee declined to revise the proposal to omit this requirement. Once prepared, examiners can readily copy and paste this statement into new reports. Including the statement in every report will ensure that it becomes part of the record, regardless of whether the examiner is called to testify.

Effect of bias and the defendant's individual characteristics on the evaluation

One commenter recommended revising the proposal to require a detailed statement explaining how individual characteristics of the defendant may influence the expert's assessment and findings. The commenter identified the following as examples of individual characteristics that may affect an evaluation: (1) distrust of psychologists; (2) auditory, linguistic, or cultural barriers to communication; and (3) educational, socioeconomic, sexual, and racial biases or differences. The commenter cited to studies addressing how bias results in the misinterpretation of behavior and inequity in access to mental health care.

The committee declined to pursue this recommendation. In evaluating the defendant, the expert should be aware of and take into account how any individual characteristics of the defendant might influence that evaluation. The committee concluded that requiring a detailed statement to this effect would be too onerous.

Developmental disabilities

One commenter recommended revising the proposal to require a diagnosis of the defendant's developmental disability. He explained that defendants may be found incompetent not only for a mental disorder, but also for a developmental disability.

The committee declined to pursue this recommendation. Although a defendant may be mentally incompetent "as a result of mental disorder *or* developmental disability," Penal Code section 1369(a) requires only that the expert "evaluate the nature of the defendant's mental disorder," not the developmental disability. (Pen. Code, §§ 1367(a), 1369(a), italics added.) The committee also recognized that a court would appoint a regional center if it suspected a developmental disability and that the regional center would necessarily evaluate the defendant for a developmental disability. (See *id.*, § 1369(a); Welf. & Inst. Code, § 4643; Cal. Code Regs., tit. 17, § 54010; *People v. Leonard* (2007) 40 Cal.4th 1370, 1387–1391.) The committee reasoned that adding this requirement to the rule appears to be unnecessary, may prove confusing where a developmental disability is not indicated, and may be outside the scope of the rules proposal as circulated.

Implementation Requirements, Costs, and Operational Impacts

This proposal may require that a court-appointed expert conduct a more extensive evaluation of the defendant and provide greater detail in the expert report. Accordingly, it may result in increased costs to the courts depending on how they compensate court-appointed experts and whether their experts currently provide the information required by the rule amendments in their reports.

One court explained that the rule amendments would require updating their case management system, revising procedures, and notifying staff, judges, and justice partners of the new requirements.

Other comments—including the comment from the Superior Court of Los Angeles County discussed above—detailed how the proposal would burden the courts. One court explained that its costs would increase if the rule amendments were to require a diagnosis, a summary of mental status, a summary of consultation with counsel, separate statements regarding whether the examiner had consulted certain sources, and summaries of relevant information from those sources. Requiring medication recommendations of all experts would also increase court costs by excluding psychologists from the pool of qualified experts.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee similarly expressed concern for the proposal's fiscal impact on the courts. It recommended that the rule amendments be optional guidelines instead of requirements.

In response to these comments, the committee revised the proposal significantly in an effort to alleviate its burden on the courts. In doing so, it attempted to strike a balance between enhancing the quality and consistency of reports and minimizing the burden on courts and experts.

First, the committee clarified that the intended application of the proposal is only to formal evaluations conducted under Penal Code section 1369(a). The committee does not intend the proposal to apply to brief preliminary evaluations so long as (1) the parties stipulate to a brief evaluation, and (2) the court orders the evaluation under a local rule specifying the content of the evaluation and the procedure for its preparation and submission to the court. As discussed above, the committee expects that this clarification will reduce the proposal's impact on the Superior Court of Los Angeles County.

Second, the committee revised various requirements to lessen their burden on the courts. It revised the proposal to require a diagnosis only "if possible" and a malingering assessment only "if clinically indicated." It clarified that psychologists could continue conducting evaluations by providing that they need not make medication recommendations, but only inform the court if they determine that a psychiatrist should examine the defendant for treatment with medication. Lastly, the committee removed the requirements that experts provide separate statements regarding whether they had reviewed certain sources and summaries of relevant information from those sources.

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 12–13
2. Comments chart, at pages 14–53
3. *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (April 2011), *http://www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf*

4. *Mental Health Issues Implementation Task Force: Final Report* (December 2015), *http://www.courts.ca.gov/documents/MHIITF-Final-Report.pdf*

Rule 4.130 of the California Rules of Court is amended, effective January 1, 2018, to read:

Rule 4.130. Mental competency proceedings

(a) Application

(1) This rule applies to proceedings in the superior court under Penal Code section 1367 et seq. to determine the mental competency of a criminal defendant.

(2) The requirements of subdivision (d)(2) apply only to a formal competency evaluation ordered by the court under Penal Code section 1369(a).

(3) The requirements of subdivision (d)(2) do not apply to a brief preliminary evaluation of the defendant's competency if:

(A) The parties stipulate to a brief preliminary evaluation; and

(B) The court orders the evaluation in accordance with a local rule of court that specifies the content of the evaluation and the procedure for its preparation and submission to the court.

(b)–(c) * * *

(d) Examination of defendant after initiation of mental competency proceedings

(1) * * *

(2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:

(A) A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report;

(B) A summary of the examination conducted by the examiner on the defendant, including a current diagnosis under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, if possible, of the defendant's mental disorder and a summary of the defendant's mental status;

(C) A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's

ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder;

(D) A summary of an assessment—conducted for malingering or feigning symptoms, if clinically indicated—which may include, but need not be limited to, psychological testing;

(E) Under Penal Code section 1369, a statement on whether treatment with antipsychotic or other medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic or other medication in the county jail, and whether the defendant has capacity to make decisions regarding antipsychotic or other medication. If an examining psychologist is of the opinion that a referral to a psychiatrist is necessary to address these issues, the psychologist must inform the court of this opinion and his or her recommendation that a psychiatrist should examine the defendant;

(F) A list of all sources of information considered by the examiner, including legal, medical, school, military, regional center, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; police reports; criminal history; statement of the defendant; statements of any witnesses to the alleged crime; booking information, mental health screenings, and mental health records following the alleged crime; consultation with the prosecutor and defendant's attorney; and any other collateral sources considered in reaching his or her conclusion; and

(G) A recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency.

(3) * * *

(e)–(f) * * *

SPR17-10

Criminal Procedure Court-Appointed Expert's Report in Mental Competency Proceedings

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 Board of Psychology By: Antonette Sorrick Executive Officer Dr. Stephen Phillips President	AM	The Board of Psychology ("Board") has received the invitation from Judicial Council of California (Council) to comment on the proposed guidelines for professionals regarding mental competency determinations. The Board is in support of the efforts of the Council to draft the guidelines and approves of the proposed language. See comments on specific provisions below	The committee appreciates the input of the Board of Psychology. See responses to comments below.
2.	California Psychological Association By: Elizabeth Winkelman Director of Professional Affairs	AM	The California Psychological Association wishes to comment on the proposed amendments to the California Rule of Court relating to mental competency proceedings in criminal cases. Our association has almost 4,000 members and represents the interests of approximately 20,000 licensed psychologists in the state, including psychologists who perform competency evaluations in criminal cases. See comments on specific provision below.	The committee appreciates the input of the California Psychological Association. See responses to comments below.
3.	Yok Choi, Psy.D., Ll.B (Hons)	N/I	I am a psychologist working with PC 1370 patients at a forensic facility in California. My job duties currently include writing periodic reports to the court on the status of PC 1370 patients sent to my facility. In the course of my work, I have come across innumerable evaluations done by court-appointed evaluators that have led to the commitment of defendants as incompetent to stand trial. I have read the Proposal of the Task Force for Criminal Justice Collaboration of Mental Health Issues, and specifically, the proposal for	The committee appreciates the input of Dr. Choi.

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			amendments to rule 4.130(d)(2) which addresses mental competence proceedings under PC 1367. My interaction with the proposal stems from my involvement as a representative of AFSCME Local 2620 at the Stakeholders Meeting for AB 1962 of 2016. I would like to submit my comments on the said proposal in my personal capacity. The views set out herein are mine, and mine alone, and do not represent the views of any organization of which I may be a part. I applaud the Task Force for its thoughtful work, and specifically on its recommendations for specific information to be included in court-appointed experts' reports. See comments on specific provisions below.	See responses to comments below.
4.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	N/I	Thank you for the opportunity to comment on the Judicial Council of California's proposed amendments to the California Rule of Court relating to mental competency proceedings. The County Behavioral Health Directors Association of California (CBHDA), which represents the public mental health and substance use disorder program authorities in counties throughout California, would like to offer the following comments on the proposed changes to the California Rule of Court. See comments on specific provisions below.	The committee appreciates the input of the County Behavioral Health Directors Association of California. See responses to comments below.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
5.	Albert De La Isla Principal Administrative Analyst Orange County Superior Court	N/I	See comments on specific provisions below.	The committee appreciates the input of Mr. De La Isla. See responses to comments below.
6.	Department of State Hospitals By: Pam Ahlin Director	N/I	The Department of State Hospitals (DSH) is a critical stakeholder in the Incompetent to Stand Trial process. DSH provides restoration of competency services for felony defendants who are committed by the courts based on varying degrees of information currently provided in court appointed competency evaluations. DSH fully supports the Judicial Council's proposed amendment to the California Rules of Court rule 4.130, as DSH believes this would be a significant positive change in the Incompetent to Stand Trial process. See comments on specific provisions below.	The committee appreciates the input of the Department of State Hospitals. See responses to comments below.
7.	Disability Rights California, California's Protection & Advocacy System By: Tifanei Ressi-Moyer Legal Fellow Sacramento Regional Office	N/I	Respectfully, DRC submits two recommendations for requirements that may assist the courts in making individual competency determinations. See comments on specific provisions below.	The committee appreciates the input of Disability Rights California. See responses to comments below.
8.	ENRIGHT & OCHELTREE, LLP By: Noelle Bensussen	N/I	This firm represents many Regional Centers and the Association of Regional Center Agencies (ARCA) in various matters. ARCA asked if we would like to comment on the proposed changes to Rule 4.130(d)(2)) suggested by the Criminal Law Advisory Committee. We are not making these comments on behalf of any particular client but as a law firm that has represented various Regional Centers in cases in which a defendant was suspected of having a developmental disability and also	The committee appreciates the input of Enright & Ocheltree, LLP.

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			suspected of being incompetent to stand trial; we have also represented various Regional Centers after the determination has been made that a defendant is incompetent and has a developmental disability and a placement recommendation must be made. (See Penal Code § 1370.1.) See comments on specific provisions below.	See responses to comments below.
9.	Carlos Flores Executive Director San Diego Regional Center	N/I	In general the proposal appropriately addresses the stated purpose for persons with mental illness. See comments on specific provisions below.	The committee appreciates the input of Carlos Flores. See responses to comments below.
10.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	AM	See comments on specific provisions below.	The committee appreciates the Harbor Regional Center's input. See responses to comments below.
11.	Hon. Suzanne N. Kingsbury Presiding Judge El Dorado Superior Court	A	This guidance provided by the proposed rule is necessary to provide courts with the information needed to appropriately handle issues of competency in criminal cases. The rule will also assist new alienists in conducting their evaluations and preparing reports. As a former member of the Mental Health Issues Implementation Task Force, and its predecessor task force, I am delighted to see the Judicial Council take this action. See comments on specific provisions below.	The committee appreciates Judge Kingsbury's input. See responses to comments below.
12.	Barbara McDermott Professor UC Davis, Department of Psychiatry	AM	I have reviewed the proposed changes and agree that the competency evaluations must be improved. See comments on specific provisions below.	The committee appreciates Professor McDermott's input. See responses to comments below.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
13.	Orange County Bar Association By: Michael L. Baroni President	A	See comments on specific provisions below.	The committee appreciates the support of the Orange County Bar Association. See responses to comments below.
14.	State Bar of California's Standing Committee of Legal Services By: Sharon Djemal Chair, Standing Committee on the Delivery of Legal	A	See comments on specific provisions below.	The committee appreciates the support of the State Bar of California's Standing Committee of Legal Services. See responses to comments below.
15.	Superior Court of California, Orange County, Family Law and Juvenile Court By: Cynthia Beltran Administrative Analyst	N/I	See comments on specific provisions below.	The committee appreciates the court's input. See responses to comments below.
16.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano Management Analyst	AM	See comments on specific provisions below.	The committee appreciates the court's input. See responses to comments below.
17.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		The committee appreciates the court's support.
18.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	N	Pursuant to the Judicial Council's Invitation to Comment, No. SPR17-10, regarding proposed amendments to Cal. Rules of Court, rule 4.130, Sonoma County Superior Court ("SCSC") respectfully provides the following comments: See comments on specific provisions below.	The committee appreciates the court's input. See responses to comments below.

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SPR17-10
Criminal Procedure Court-Appointed Expert's Report in Mental Competency Proceedings
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**
19.	Joint Rules Subcommittee, Trial Court Presiding Judges Advisory Committee (TCPJAC) Court Executives Advisory Committee (CEAC)	AM	See comments on specific provisions below.	The committee appreciates the input of the TCPJAC/CEAC Joint Rules Subcommittee. See responses to comments below.

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
20.	Yok Choi, Psy.D., Ll.B (Hons)	The requirement for items 1, 2, 3, 6, 7, and 8 is consistent with good practice for forensic assessments, and should be included in any report to the court. However, given that the fee for writing these reports is a meager $300 to $350 on an average, my concern is that evaluators will be forced to come up with hasty conclusions based on very little, or worse still, no, data. Such quick conclusions would not serve the purposes of justice, and could well backfire.	The committee understands the concerns raised by Dr. Choi and the burden that this proposal would place on the courts and experts. It has revised the proposal to lessen the burden, where appropriate. For example, the proposal now requires a diagnosis only "if possible."
21.	Albert De La Isla Principal Administrative Analyst Orange County Superior Court	No procedure impact, communication should be made to Supervising Judges and stakeholders (doctors on expert panel) This will be an issue for Alternate Defense Services in that we currently have contracts with our experts which outline our current scope of work and qualifications. This would potentially need to be modified to meet these requirements. Contract revisions would take several months. ☐Does the proposal appropriately address the stated purpose? **Response: Yes.** ☐Would the proposal provide cost savings? If so, please quantify.	No response required. The committee recognizes the potential impact on the court. No response required.

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	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		Response: No cost savings anticipated.	No response required.
		☐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, just lays out the standards for reports we are already receiving today.	No response required.
		☐Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
		Response: Yes.	No response required.
		☐How well would this proposal work in courts of different sizes?	
		Response: Unknown.	No response required.
22.	Department of State Hospitals By: Pam Ahlin Director	Implementation of the proposed rule would set an appropriate standard for the completeness and rigor of forensic evaluations of defendants that will provide Judges with the information required to make a fully informed decision on the competence of defendants. It would also offer clinicians at State Hospitals or other treatment venues more timely and useful information on the condition of a defendant prior to their admission for treatment to restore their competence.	No response required.
		DSH was an active participant in the Task Force for	No response required.

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	Comments Applicable to Multiple Rules		
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		Criminal Justice Collaboration on Mental Health Issues Final Report of April 2011, which developed its Competence to Stand Trial recommendations that have now become this proposed Rule of Court. DSH supported them then and continues to do so today. The lack of a meaningful mental health diagnosis for the potentially incompetent defendant and the failure to address the question of potential malingering by those being assessed for competency present our hospitals with defendants who do not require competency restoration and unnecessarily delay the admission of defendants whose condition requires intensive treatment. In the Department of State Hospitals' opinion these are the two most basic and significant reforms contained in this proposed rule. DSH appreciates the chance to express its support for the Judicial Council's proposed amendment to the California Rules of Court rule 4.130 and appreciates the Judicial Council's active effort to improve the quality and thoroughness of forensic evaluations of defendant competence.	No response required. No response required.
23.	Disability Rights California, California's Protection & Advocacy System By: Tifanei Ressi-Moyer Legal Fellow Sacramento Regional Office	Respectfully, DRC submits two recommendations for requirements that may assist the courts in making individual competency determinations. **<u>Recommendation One</u>: A detailed analysis of what placement for treatment is most appropriate for the defendant to be restored to competency and a summary of the assessment used.** California courts have broad discretion in their ability to	No response required. The committee agrees. To the extent that the expert can recommend the defendant's placement for treatment (e.g., whether the defendant might be suitable for outpatient restoration), that recommendation should be reflected in the report and thereby made available to the court for its consideration in

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		determine the most appropriate placement for restoration of an individual found incompetent to stand trial. This recommended requirement will be a valuable tool to the court when making its decision, and will provide additional insight into balancing the individual mental health needs of the defendant and public safety concerns. *See* Cal. Pen. Code § 1370(a)(1)(B)(i). It will also supplement the Council's recent efforts to increase the number of options available for this population of defendants. Assembly Bill No. 2190, Approved by Governor (September 28, 2014). Court-appointed expert report requirements that focus solely on inpatient and jail-based programs are problematic for individuals determined incompetent to stand trial, and would contravene the Council's own stated objective to prevent prolonged delays and provide timely restoration. *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* 27 (April 2011). According to lawsuits filed against California's Department of State Hospitals, there are currently hundreds of defendants who have been determined incompetent and are languishing in county jails for months without appropriate treatment while waiting for a hospital bed. *See Stiavetti v. Ahlin*, case no. RG15779731 (2015); *People v. Brewer*, *235 Cal.App.4th 122 (2015)*; *In re Loveton*, 244 Cal. App. 4th 1025 (2016). Relying on inpatient hospital care is restrictive and expensive, and "increases hospital census and lengthens delays for restoration services." W. Neil Gowensmith, et al., *Forensic Mental Health Consultant Review Final Report* 25 (2014); NR Johnson, et al., *Outpatient Competence Restoration: A Model and Outcomes* World Journal of Psychiatry (2015). Jail-based restoration programs are also not sufficient to	ordering the defendant's placement. Accordingly, the committee has revised the proposal to require that reports include "[a] recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency." See response above. See response above.

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		meet the complicated needs of this population. It is well-documented that conditions within jails exacerbate pre-existing mental health issues rather than provide relief. Jails are not therapeutic environments designed for treatment, and the quality of treatment can vary widely from jail to jail. ACLU & Bazelon, *A Way Forward: Diverting People with Mental Illness from Inhumane and Expensive Jails into Community-Based Treatment that Works* (2014); Treatment Advocacy Center, *A Beds Capacity Model to Reduce Mental Illness Behind Bars* (January 2017). Moreover, in 2014, the Council sponsored successful legislation to "[i]ncrease the number of treatment options available for people who have been found incompetent to stand trial." *Mental Health Issues Implementation Task Force: Final Report* 14 (December 2015). The court sought and procured broader discretion to allow mental health treatment for an individual in their respective communities "rather than in a custodial or in-patient setting" until competency is restored. *Ibid*. This was a formidable initial step in realizing that for many individuals, community-based restoration services are more efficient, cost-conscious and client-centered than facility-based treatment, and should be seriously considered for each individual recommended for restoration before the court. *See* W. Neil Gowensmith, et al., *Looking for Beds in All the Wrong Places: Outpatient Competency Restoration as a Promising Approach to Modern Challenges*, Psychology, Public Policy, and Law 9 (June 6, 2016) (explaining that States save nearly four-hundred dollars per day, per patient, in outpatient programs compared to inpatient treatment, which is in line with the Council's goal to promote cost-savings). A court-appointed expert report must afford the judicial	See response above.

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	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		branch an opportunity to meet its clear and specifically stated objectives regarding defendants determined incompetent to stand trial. For these reasons, DRC suggests that expert reports be required to include a detailed analysis of the most appropriate treatment setting for the defendant to be restored to competency and a summary of the assessment used in that analysis.	The committee has revised the proposal to require that the expert's report include a placement recommendation, if possible. Satisfying this requirement necessarily entails explaining why the expert selected a particular placement. The committee declines to revise the proposal to require a detailed analysis or that the report include a summary of the assessment used. Instead, the committee prefers to leave this in the discretion of the expert.
		<u>Recommendation Two</u>: A detailed statement explaining how individual characteristics of the defendant may influence the conclusions of their assessment (e.g. the defendant distrusts psychologists); whether auditory, linguistic, or cultural barriers to communication limit the accuracy of the analysis; whether education, socioeconomic, sexual and racial biases or differences have been considered and addressed; and whether the basis for a determination of malingering has been controlled for cultural differences.	The committee declines to pursue this recommendation. In evaluating the defendant, the expert should be aware of and take into account how any individual characteristics of the defendant might influence that evaluation. The committee has concluded that requiring a detailed statement to this effect would be too onerous.
		As identified in the final report of the Council's Task Force for Criminal Justice Collaboration on Mental Health Issues, culturally and linguistically appropriate treatment services and programs are a necessary component of restoration. Final Report 13-14 (2011). Although "not solely within the purview of the judicial branch," addressing the disparities in access to these services and programs is a shared responsibility of the courts. *Mental Health Issues Implementation Task Force: Final Report* 70 (December 2015). When determining	See response above.

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	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		competency and potential placement, the courts must have confidence that biases held by the expert will not aggravate disparities in access to mental health treatment in California's criminal justice system. Inequity in access to mental healthcare is persistent throughout California, including, and perhaps especially, in the criminal justice system. Latino Mental Health Concilio, et al., *Community-Defined Solutions for Latino Mental Health Care Disparities: California Reducing Disparities (*2012) (hypothesizing that ineffective communication between patient and doctor, biases about distribution and severity of illnesses in people of color, and "poor access and quality of care," are all root causes of these disparities). For example, studies have demonstrated that men of color with mental health illness are less likely than white men to be determined appropriate for alternatives to jail-based treatment. Similarly, Black men's behavior is more likely interpreted as aggressive or dangerous compared to similarly behaved white men, potentially rendering them ineligible for otherwise appropriate outpatient or inpatient treatment for competency restoration. Joshua C. Cochran & Daniel P. Mears, *Race, Ethnic, and Gender Divides in Juvenile Court Sanctioning and Rehabilitative Intervention*, JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY (2014) (reviewing analyses of racial and ethnic disparities in placement options within diversion and probation); Camille A. Nelson, *Racializing Disability, Disabling Race: Policing Race and Mental Status*, 15 BERKELEY JOURNAL OF CRIMINAL LAW, 8-9, 53 (2010); Hubbard, et al., *Competency Restoration: An Examination of the Differences Between Defendants Predicted Restorable and not Restorable to Competency*, 27 LAW HUM BEHAVIOR 127 (2003); Lonnie R. Snowden, *Bias in Mental Health Assessment and Intervention: Theory and Evidence*,	See response above.

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		AMERICAN JOURNAL OF PUBLIC HEALTH (2003). The disparities seen across the spectrum of cultures that make up the State of California should be acknowledged and abated where possible within the judicial branch. Studies have shown that "implicit bias is most likely to have an effect in situations with substantial ambiguity, room for 'judgement calls,' and constraints on time and attention." Irene V. Blair, et al. *Unconscious (Implicit) Bias and Health Disparities: Where Do We Go from Here?*, THE PERMANENTE JOURNAL (2011). Given the nature of expert reports submitted to the court, a requirement to provide a statement explaining any potential cultural barriers to an expert's assessment is both appropriate and encouraged.	 See response above.
24.	ENRIGHT & OCHELTREE, LLP By: Noelle Bensussen	We believe that Penal Code sections 1369 and 1370.1 need revisions as well as the Rule of Court, rule 4.130 in order to clarify the appropriate process for determining whether a defendant has a developmental disability and is incompetent to stand trial. We would be happy to propose revisions to the Committee in the future. For your information, Regional Centers are non-profit corporations contracted by the State of California, Department of Developmental Services, to assess individuals to determine whether they have a developmental disability and to coordinate services for individuals with developmental disabilities under the Lanterman Developmental Disabilities Services Act ("the Lanterman Act.") (Welf. & Inst. Code § 4500 et seq., spec. § 4620, 4640, 4512, subd.(a), 4646-4648.) There are 21 Regional Centers in California serving specific geographical areas of the State. In order to be eligible for Regional Center services after	No response required. No response required. No response required.

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	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		that age of 3 years, an individual must have a developmental disability as that term is fined by law. The Lanterman Act defines the term "developmental disability" to mean "a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (Welf. & Inst. Code § 4512, subd. (a); see also Penal Code § 1370.1, subd. (a)(1)(H).) The Lanterman Act defines "substantial disability" to mean "the existence of significant functional limitations in three or more of the following areas of major life activity, ***as determined by a regional center***, and as appropriate to the age of the person: a) Self-care. b) Receptive and expressive language.	No response required.

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		c) Learning. d) Mobility. e) Self-direction. f) Capacity for independent living. g) Economic self-sufficiency." (Welf. & Inst. Code § 4512, subd. (l); emphasis added.) As stated in the Lanterman Act's companion regulations, developmental disabilities do ***not*** include handicapping conditions that are: "(1) ***Solely psychiatric disorders*** where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder." "(2) ***Solely learning disabilities***. A ***learning disability*** is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss." "(3) ***Solely physical in nature***. These conditions include congenital anomalies or conditions acquired through disease, ***accident***, or faulty development which are not associated with a	No response required.

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		neurological impairment that results in a need for treatment similar to that required for mental retardation." (Cal. Code of Regs., tit. 17, § 54000, subd. (c); emphasis added.)	
		Only a Regional Center can determine whether an individual has a developmental disability and, in turn, is eligible for regional center services. (Welf. & Inst. Code §§ 4642-4643, 4512, subd. (a) & (l), *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 488.) A multidisciplinary team at a Regional Center makes the eligibility determination; it is not determined by one individual or based on one report. (Cal. Code of Regs., tit. 17, § 54001, subd. (b).)	No response required.
		For your information, we recently filed a petition for writ of mandate in the Court of Appeal in Riverside on behalf of Inland Regional Center after a Superior Court ordered that Inland Regional Center assess a defendant for competency without giving the Regional Center a chance to determine whether the defendant was eligible for regional center services (i.e. whether he had a developmental disability.) The Regional Center filed the writ after sanctions were issued against Inland Regional Center. The Court of Appeal's Opinion in favor of Inland Regional Center is attached hereto. The Court of Appeal ordered that it be published. The Opinion should be considered when making revisions to the relevant competency statutes.	No response required.
		In sum, Rule of Court 4.130 and competency statutes must address developmental disabilities. If it is suspected that a defendant has a developmental disability, the defendant must be referred to the regional center for assessment and,	To the extent the commenter is recommending that the committee propose revising rule 4.130 more broadly to address developmental disabilities, that recommendation is outside the

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		at least for purposes of determining eligibility for services, the regional center must make determination as to whether the defendant has a developmental disability. Furthermore, if the defendant is developmentally disabled, the competency assessment must be performed by a psychologist with expertise in assessing individuals with developmental disabilities. We are informed that the assessment tool administered to an individual with an intellectual disability (formerly known as "mental retardation") is different than the assessment tool utilized when an individual does not have an intellectual disability. Therefore, the assessor must be given information about the diagnosis of the developmentally disabled defendant so that he/she can determine the appropriate competency assessment tool to use. The attached Opinion [*Inland Counties Regional Center, Inc., v. Superior Court of Riverside County* (2017) 10 Cal.App.5th 820, 216 Cal.Rptr.3d 450, 459] and the *Leonard* case [*People v. Leonard* (2013) 40 Cal.4th 1370] to which it cites, support the conclusion that a Regional Center must assess a developmentally disabled defendant for competency. However, we are informed that some Courts have on their panel of experts individuals with expertise in assessing competency in individuals with developmental disabilities. Other Courts appoint the appropriate Regional Center to make the competency determination. We urge against drafting or modifying any statute to require that a Regional Center perform the competency assessments without considering the negative impact this would have on Regional Centers. Except for the assessment for eligibility and coordination of services, Regional Centers do not generally provide direct services and must utilize outside vendors to perform services, including competency assessments. We would like the opportunity to further discuss statutory language that	scope of the present proposal but may be considered by the committee in the future. Any change to statute is outside the scope of the present proposal.

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	Comments Applicable to Multiple Rules		
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		would assure that the defendant's rights are protected but that does not shift assessment obligations to the Regional Centers.	
25.	Carlos Flores Executive Director San Diego Regional Center	In general the proposal appropriately addresses the stated purpose for persons with mental illness. It is less clear if the proposal adequately addresses persons with developmental disabilities [as defined in §4512(a) of the W&I Code]. The proposal is consistent with the penal code (i.e. §1369) and uses the term "mental disorder." This term usually applies to persons with mental illness and not to persons who solely have a developmental disability. For example the term severe mental disorder is defined in the penal code as follows: **2962.** As a condition of parole, a prisoner who meets the following criteria shall be provided necessary treatment by the State Department of State Hospitals as follows: (a) (1) The prisoner has a severe mental disorder that is not in remission or that cannot be kept in remission without treatment. (2) The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder," as used in this section, <u>does not include</u> a personality or adjustment	No response required. No response required.

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		disorder, epilepsy, <u>mental retardation or other developmental disabilities</u>, or addiction to or abuse of intoxicating substances. Accordingly, below are suggestions for Rule 4.130 your consideration (additions in red font): (d)(2)(B) ". . . including a current diagnosis, if any, of the defendant's mental disorder <u>or developmental disability</u> and a summary of the defendant's mental status." (d)(2)(F) " A list of all sources of information considered by the examiner, including legal, medical, school, <u>regional center</u>, military, . . ."	The committee declined to pursue this recommendation. Although a defendant may be mentally incompetent "as a result of mental disorder *or* developmental disability," Penal Code section 1369(a) requires only that the examiner "evaluate the nature of the defendant's mental disorder," not the developmental disability. (Pen. Code, §§ 1367(a), 1369(a), italics added.) The committee also recognized that a court would appoint a regional center if it suspected a developmental disability and that the regional center would necessarily evaluate the defendant for a developmental disability. (See *id.*, § 1369(a); Welf. & Inst. Code, § 4643; Cal. Code Regs., tit. 17, § 54010; *People v. Leonard* (2007) 40 Cal.4th 1370, 1387–1391.) Adding this requirement to the rule would appear to be unnecessary, may prove confusing where a developmental disability is not indicated, and may be outside the scope of the rules proposal as circulated. The committee agreed and incorporated the recommendation into the proposal. If the expert considers information from a regional center, the report should identify that source.

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26.	Orange County Bar Association By: Michael L. Baroni President	When an expert is appointed during competency proceedings, rule 4.130(d)(2) requires the expert to examine the defendant and submit a report on the issue of defendant's competency to the court, counsel of defendant, and counsel for the prosecution. The rule does not otherwise describe what the report should contain. This proposal would amend rule 4.130(d)(2) to require that the report include the following information to assist courts in making competency determinations: 1) A brief statement of the examiner's training and experience; 2) a summary of the examination conducted by the examiner on the defendant, including a current diagnosis of defendant's mental disorder and a summary of the defendant's mental status; 3) a detailed analysis of the competence of the defendant to stand trial using California's current legal standard; 4) a summary of an assessment conducted for malingering, or feigning symptoms; 5) which may include, but need not be limited to, psychological testing; 6) under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence; 6) a list of all sources of information considered by the examiner, including legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion; 7) a statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; 8) a statement on whether the examiner reviewed the booking information, including the information from any booking,	No response required. No response required.

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		mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; and 9) a summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses. These amendments, which parallel recommendations made by The Task Force for Criminal Justice Collaboration on Mental Health Issues and The Mental Health Implementations Task Force, would provide more information to the court and attorneys on the strengths of the expert's opinion, provide guidance to the experts on the expected scope of their examination, and promote uniform professional standards among examiners in their reports to the court.	No response required.
27.	State Bar of California's Standing Committee of Legal Services By: Sharon Djemal Chair, Standing Committee on the Delivery of Legal Services	**Specific Comments** • Does the proposal appropriately address the stated purpose? Yes.	No response required.
28.	Superior Court of California, Orange County, Family Law and Juvenile Court By: Cynthia Beltran Administrative Analyst	**Q: What would the implementation requirements be for courts?** Information would be shared with staff, judges and justice partners to notify them of the new requirements. Updates to our case management system and procedure revisions would also be needed. **Q: Would three and a half months from Judicial Council approval of this proposal until its effective date**	No response required.

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	Commentator	**Comment**	**Committee Response**
		provide sufficient time for implementation? Three and a half months would be sufficient time to implement this requirement for courts. However, the court-appointed experts may need additional time to make the necessary changes on their end.	No response required.
29.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano Management Analyst	The proposed changes to Rule 4.130 of the California Rules of Court will fix a problem experienced in some counties, but will cause even greater problems and will dramatically increase costs in other counties. Accordingly, the changes to Rule 4.130 should allow counties to opt-out by local rule. Changes to Rule 4.130 were originally proposed in the *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (April 2011). Several counties apparently experienced problems with the completeness of reports submitted by court-appointed experts in proceedings under Penal Code section 1369. The rule change was designed to address this problem. Different counties have different needs: in Los Angeles County, there has never been a problem with completeness of experts' reports, but the proposed rule change would have collateral consequences which would be significantly detrimental. Due to the volume of competency adjudications, Los Angeles staffs its mental health courthouse with on-site psychiatrists every day – two doctors each morning, and two each afternoon – who perform relatively brief competency evaluations in the courthouse lockup. The evaluation is memorialized in a one-page "short" report, which is oftentimes sufficient for the parties, and the court, to reach a determination of competency. The experts who prepare these reports are	The committee recognized the burden that the proposal will place on courts, including the Superior Court of Los Angeles County. In response, the committee clarified the application of this rule. The committee intended for the rule amendments to apply only to full evaluations conducted under Penal Code section 1369. It did not intend for the rule amendments to apply to preliminary evaluations so long as (1) the parties stipulate to the evaluation and (2) the court orders the evaluation under a local rule that that specifies the content of the evaluation and the procedure for its preparation and submission to the court. The committee expected that this clarification would alleviate the burden on the court.

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		extremely experienced, thoroughly vetted, and very well-known to both court and counsel. Any of the lockup experts can complete as many as six short reports in a three-hour shift. In some cases, either because of the seriousness of the charges, or because the defendant's competency is a close call, the matter is referred out to an expert for a more traditional "long" report. The requirements of the proposed rule would make it very difficult to continue to utilize short reports. The proposed rule mandates that competency reports include a discussion of the expert's training and previous experience, a summary of the examination conducted and the defendant's mental status, a detailed analysis of the defendant's competence, a summary of an assessment for malingering, a list of all sources of information considered by the examiner, a statement of whether the expert reviewed booking police reports, criminal history, the defendant's statement, and witness statements, and a summary of information from those sources relevant to the expert's opinion of competency, a statement of whether the expert reviewed booking information, mental health screening, and mental health records, and a summary of information from those sources relevant to the expert's opinion, and a summary of the expert's consultation with the prosecutor and defense attorney, as well as their impressions of the defendant's competence-related strengths and weaknesses. The sheer volume of this information could not possibly be included in a one-page "short" report. While the lockup experts in Los Angeles consider all of this information, requiring the experts to write a narrative of all of this information would make the short report format untenable. Elimination of the short report would have drastic consequences in Los Angeles. First, short reports save	See response above. See response above.

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		money. A lockup psychiatrist is paid $1,000 per three-hour shift, and completes as many as six short reports per shift. Evaluating those same six defendants by way of long reports, which cost $500 each, would triple the cost. Second, short reports save court appearances. When competency can be determined by way of a short report, the entire competency matter can be adjudicated in a single court appearance. If a long report is necessary, at least two and possibly more court dates are required, using additional resources of the court as well as the sheriff's department to transport the defendant to court. Third, short reports can be better for a defendant's mental health. The preparation of a long report typically takes four to six weeks. If the defendant has a serious mental illness and is in custody – which is very often the case – the defendant can deteriorate even further during this time period. The challenges to Los Angeles brought about by the proposed rule changes are exponentially greater because of the skyrocketing caseload for competency cases. The mental health courthouse, which handles approximately 95% of the competency cases in Los Angeles County, received approximately 1,000 competency cases per year between 2006 and 2010, but topped 5,000 competency cases during 2016, a 500% increase. The caseload is expected to be even higher in 2017. The short report process is indispensable in allowing the court to meet this demand. Recognizing that there is a need for this rule in counties other than Los Angeles, the proposed rule should be modified to allow a court to opt out by local rule. Allowing a court to opt out of a provision of the California Rules of Court by local rule is not unprecedented. For example, Rule 3.720 allows a court to opt out of the statewide case management rules. Allowing opt-outs only upon enactment	See response above. See response above.

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
		of a local rule causes courts to engage in a considered, deliberate action. By adding language in proposed Rule 4.130 such as, "unless a court by local rule specifies otherwise," each court would have the flexibility to apply the proposed rule in the way that makes the most sense for that particular county.	
30.	TCPJAC/CEAC Joint Rules Subcommittee TCPJAC/CEAC	The JRS notes that the proposal will create a significant fiscal impact for the trial courts and result in increases to court staff workload. The proposal seeks to mandate court operations/procedures that, instead, should be permissive/discretionary. The proposed rule should instead be in the form of guidelines or suggested practices. The only stated purpose appears to be to adopt a recommendation in the 2011 report without any other background or stated purpose. That report does not mention why these factors should be mandatory in every competency evaluation. The 2015 Final Report mentioned the issue of "lengthy delays in case processing and competence restoration." Requiring every report to include all of the detail in the proposed rule may result in unnecessary delay. *Suggested Modification:* The JRS strongly recommends that the last sentence in rule 4.130 (d)(2) read as follows instead of as proposed: "The scope of the report shall address all requirements set forth in Penal Code Section 1369, and the court may order that the report include, but not be limited to, any of the following:"	The committee recognized the significant fiscal and operational burden that the proposal may place on courts. In revising the proposal, the committee sought to strike a balance between minimizing the burden on the courts and standardizing evaluations statewide to minimize deficiencies. It is also mindful that Penal Code section 1369 already provides for several of these requirements. The committee has revised specific requirements in an effort to minimize the burden. For example, the revised proposal requires a diagnosis only "if possible" and a malingering assessment only "if clinically indicated." It also requires only a list of the sources reviewed; it no longer requires a summary of each. In addition, the committee sought to clarify that the application of the proposal is limited to full evaluations under Penal Code section 1369. As explained above, it does not extend to brief preliminary evaluations if those evaluations (1) are stipulated to by the parties and (2) ordered by the court under a local rule specifying the content of the evaluation and the procedure for its preparation and submission to the court.

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
			For these reasons, the committee declined to pursue the subcommittee's recommendation to make all of the requirements optional.

	Subdivision (d)(2)(A)		
	Commentator	**Comment**	**Committee Response**
31.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 1 [subdivision (d)(2)(A)]: A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial, and preparing a resulting report. CBHDA Comment: This is something the examiner would need to testify to if called into court. While this item makes sense for new evaluators, for counties using the same evaluators on a regular basis, this item is redundant be required to include in every report.	The committee declined to revise the proposal to omit this requirement. Once prepared, experts can readily copy and paste this statement into new reports. Including the statement in every report will ensure that it becomes part of the record, regardless of whether the expert is called to testify.
32.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	1. This [subdivision (d)(2)(A)] would not be in line with other assessments or evaluation done by psychologists and psychiatrists. Also, getting onto the panel itself indicates that someone is qualified to perform the assessment. As some will have extensive experience, this "brief statement" may not end up being brief and become unwieldy.	See response above.

	Subdivision (d)(2)(B)		
	Commentator	**Comment**	**Committee Response**
33.	Yok Choi, Psy.D., Ll.B (Hons)	[G]iven that the fee for writing these reports is a meager $300 to $350 on an average, my concern is that evaluators will be forced to come up with hasty conclusions based on very little, or worse still, no, data. Such quick conclusions would not serve the purposes of justice, and could well backfire. For instance, the proposed rules [subdivision	The committee recognized that a diagnosis may not be possible depending on the information available to the expert and the length of time the expert has to evaluate the defendant. Accordingly, the committee has revised the proposal to provide that the report must contain a diagnosis "if possible."

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

	Subdivision (d)(2)(B)		
	Commentator	**Comment**	**Committee Response**
		(d)(2)(B)] call for a diagnosis. Any diagnosis, or even a diagnostic impression, based on a 15-minute interview which produces only self-reported uncorroborated information from the defendant, is likely to follow the defendant through the course of his commitment, should he eventually be committed to a state hospital, and may inadvertently provide a basis (where maybe none existed before) for that defendant to pursue a PC 1026 defense later on. I know that the considerations for PC 1026 commitment are very different than for PC 1370. However, one of the things evaluators look for is a history of psychiatric disorder. Hence a diagnosis at the PC 13667 stage may provide such history. Such a diagnosis may, again inadvertently, also provide a basis for a disability claim in the future. Many defendants who enter the state hospital system, go in with no psychiatric history other than while they were incarcerated, when there is clear secondary gain to their establishing a psychiatric history.	
34,	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 2 [subdivision (d)(2)(B)]: A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant's mental disorder and a summary of the defendant's mental status. CBHDA Comment: We support the inclusion of this item in the examiner's report.	No response required.
35.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	2. Yes, absolutely. All evaluators should conduct an MSE [mental status evaluation] and provide diagnostic information.	No response required.

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

	Subdivision (d)(2)(B)		
	Commentator	**Comment**	**Committee Response**
36.	Barbara McDermott Professor UC Davis, Department of Psychiatry	Under Rule 4.130 (d) (2) (B) I would suggest that the evaluator be required to use the current version (now 5) of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and provide justification for how they arrived at that diagnosis. I have reviewed hundreds of competency evaluations and have seen examiners assign diagnoses that do not or no longer exist in the current version of the DSM or do not provide rationale for their diagnostic opinion, or both. Providing an accurate diagnosis with justification forces the examiner to be thoughtful in their evaluation. Additionally, accurate diagnoses will facilitate treatment planning if the defendant is found not competent and ordered for restoration.	The committee agreed and incorporated the recommendation to require a diagnosis under DSM-V into the proposal. To avoid having to update the proposal when the DSM is revised, the proposal now requires, if possible, "a current diagnosis under the most recent version of the Diagnostic Statistical Manual of Mental Disorders."
37.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	4.130(d)(2) (B): "A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant's mental disorder and a summary of the defendant's mental status" SCSC comment: This proposed amendment might present issues if it requires the alienist to assess a diagnosis where there is not a history of mental health care. Requiring, or suggesting, that the alienist work up a diagnosis may be unnecessary, and potentially costly to the courts. Penal Code § 1368 et seq. is a procedure to assess competency; not necessarily to provide for a diagnosis. The underlying diagnosis, at this stage, is somewhat irrelevant to the question posed, i.e. is the defendant competent. Further, a majority of the population of defendants that would be assessed under § 1369 are likely not receiving (nor have received in the past) regular mental health care. As a result, an assessment that required a diagnosis would potentially require a much more detailed examination that would be outside of the scope of the statutory scheme. Moreover, requiring a diagnosis might require the input from additional	Penal Code section 1369 requires that the expert evaluate not only the defendant's ability or inability to understand the nature of the criminal proceedings and assist counsel, but also "the nature of the defendant's mental disorder." Evaluating the nature of the defendant's mental disorder is directly relevant to the competency determination. (See Pen. Code, § 1367(a) [recognizing mental incompetence only if it is "as a result of a mental disorder or developmental disability"].) To the extent that a diagnosis is not feasible, the expert should not include one. Accordingly, the committee has revised the proposal to require a diagnosis "if possible." Input from other disciplines would not be necessary because psychiatrists and psychologists are

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	Subdivision (d)(2)(B)		
	Commentator	**Comment**	**Committee Response**
		disciplines, e.g. neuropsychiatrists, further increasing exposure to additional costs by the court. However, if this subsection only requires the alienist to report on past diagnosis(s) from the defendant's past medical records, if available, then the proposed amendment should more clearly state that restriction.	authorized to make diagnoses. (See, e.g., Bus. & Prof. Code, § 2903.)
		The requirement of a "summary of the defendant's mental status" is too open ended. Exactly what is a "summary of the defendant's mental status"? Would this require the alienist to review the defendant's entire medical history and summarize it? Or is this to insure that the alienist provide the court with a short executive summary of their present findings related to this evaluation? This requirement, as currently drafted, is too broad, and might negatively impact costs.	A mental status evaluation involves an assessment of the client's current mental capacity through an evaluation, for example, of general appearance, orientation, speech pattern, affect, mood, impulsivity, potential for harm, judgment, insight, thought processes, reality testing, intellectual functioning, and memory. It is a routine part of any mental health assessment.
		Further, these additional requirements, beyond a competency evaluation, might increase the timing for such evaluations; increasing the time a defendant is within a legal gray area (i.e. before a determination of competency, and before a forced medication evaluation) with respect to forced medications and mental health care while awaiting the results of the evaluation. As drafted this amendment will likely increase both the timing of the evaluation and the costs to the court.	The committee recognized the potential impact on the courts and revised the proposal to require a diagnosis only if possible.

	Subdivision (d)(2)(C)		
	Commentator	**Comment**	**Committee Response**
38.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 3 [subdivision (d)(2)(C)]: A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder.	No response required.

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

	Subdivision (d)(2)(C)		
	Commentator	**Comment**	**Committee Response**
		CBHDA Comment: We support the inclusion of this item in the examiner's report.	
39.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	3. I would be surprised if there were evaluations that did not include this.	No response required.

	Subdivision (d)(2)(D)		
	Commentator	**Comment**	**Committee Response**
40.	Yok Choi, Psy.D., Ll.B (Hons)	Item 4 [subdivision (d)(2)(D)] may, or may not, be clinically indicated, so a mandatory summary of an assessment for malingering/feigning may be inappropriate. Also, if an opinion as to malingering/feigning is expressed at this stage, subsequent court evaluations (which state psychologists at state hospitals typically author) would also have to address this issue, whether or not it is a salient consideration. If they disagree with the PC 1367 evaluator's view, they would have the additional burden of providing a basis for a contrary opinion.	The committee agreed and revised the proposal to require a summary of an assessment for malingering or feigning symptoms only "if clinically indicated."
41.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 4 [subdivision (d)(2)(D)]: A summary of an assessment conducted for malingering, or feigning symptoms, which may include, but need not be limited to, psychological testing. CBHDA Comment: We support the inclusion of this item in the examiner's report.	No response required.
42.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	4. I do not think it ALWAYS necessary to conduct assessment for malingering. Generally, the symptoms impeding competency are clear and as psychologists/ psychiatrists who work with individuals with mental illness,	See response above.

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	Subdivision (d)(2)(D)		
	Commentator	**Comment**	**Committee Response**
		we know what signs to look for that would indicate malingering and then therefore warrant further exploration (possibly with a malingering assessment tool). Also, a concern would be exaggeration. This is often harder to detect, but if a malingering tool detected it - the danger would be finding someone competent due to malingering when he/she isn't.	

	Subdivision (d)(2)(E)		
	Commentator	**Comment**	**Committee Response**
43.	California Board of Psychology By: Antonette Sorrick Executive Officer Dr. Stephen Phillips President	[T]he Board would like to express concern regarding guideline #5 [subdivision (d)(2)(E)]. "Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication" The following comments are provided to assist in the clarification and finalization of guideline #5: First, while it may be within the scope of competence and the scope of licensure for psychologists to recommend the evaluation of an individual's medication needs, it may not be within the knowledge, skills, or abilities of a licensed psychologist to make definitive determinations regarding the medical necessity for, and the ultimate impact of, the administration of medication. It is, however, fully within the	No response required. The committee agreed that the proposed rule amendment, as circulated, did not adequately differentiate between psychiatrists and psychologists. The committee revised the proposal, as suggested by the California Psychological Association, to provide: "If an examining psychologist is of the opinion that a referral to a psychiatrist is necessary to address these issues, the psychologist must inform the court of this opinion and his or her recommendation that a psychiatrist

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	Subdivision (d)(2)(E)		
	Commentator	**Comment**	**Committee Response**
		scope of competency and licensure for a well-trained criminal forensic psychologist to ascertain the competency or capacity of the individual defendant to make decisions regarding antipsychotic or other medication. Second, it should be noted that antipsychotic medication is not the only class of psychotropic drugs, which may restore a defendant to competency depending on the nature of the disorder or condition, which draws a defendant's competency into question. Reference might be better made to psychiatric or psychotropic medication rather than antipsychotic medication. Third, as many criminal forensic evaluations are performed by psychologists as opposed to psychiatrists, it may be important to provide alternative guidelines depending on whether the evaluation is being performed by a psychologist or by a psychiatrist in order to provide appropriate guidance to evaluators and to the Court. The Board respectfully requests the language be amended appropriately to address these concerns.	should examine the defendant."
44.	California Psychological Association By: Elizabeth Winkelman Director of Professional Affairs	Please consider revising the proposal to amend Rule 4.130(d)(2) to clarify that, in some cases, an examining psychologist may recommend a referral to a psychiatrist for further examination, consistent with the flexibility provided by Penal Code section 1369. This could be accomplished by adding the text suggested below in capital letters to section (d)(2)(E): "Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the	See response above.

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

	Subdivision (d)(2)(E)		
	Commentator	**Comment**	**Committee Response**
		defendant has the capacity to make decisions regarding antipsychotic medication. IF AN EXAMINING PSYCHOLOGIST IS OF THE OPINION THAT A REFERRAL TO A PSYCHIATRIST IS NECESSARY TO ADDRESS THESE ISSUES, THE PSYCHOLOGIST SHALL INFORM THE COURT OF THIS OPINION AND HIS OR HER RECOMMENDATION THAT A PSYCHIATRIST SHOULD EXAMINE THE DEFENDANT.""	The committee has incorporated this language into the proposal.
45.	Yok Choi, Psy.D., Ll.B (Hons)	Item 5 [subdivision (d)(2)(E)], which talks about an assessment for the involuntary administration of antipsychotic medications, should not be a mandatory item. Competence to make decisions regarding medications involves a question of dangerousness, and not merely one of mental capacity. Mental capacity to make these decisions call for a different inquiry than mental capacity to understand the criminal trial process and to work with an attorney, which is what trial competence is about. By making this item mandatory, psychologists may be ruled out as assessors of competence, because a determination of the necessity for medications and their side effects, etc., is, arguably, not within the scope of practice of psychologists.	Because the proposal requires only that the expert state whether treatment is appropriate, the committee has retained this requirement to facilitate compliance with Penal Code section 1369(a). However, the committee agrees that the proposal should not require psychologists to opine on issues outside the scope of their license. It has revised the proposal to require that psychologists only inform the court if they are of the opinion that a psychiatrist should examine the defendant.
46.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 5 [subdivision (d)(2)(E)]: Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication.	No response required.

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	Subdivision (d)(2)(E)		
	Commentator	**Comment**	**Committee Response**
		CBHDA Comment: If the court-appointed expert is a mental health professional other than a psychiatrist or prescribing practitioner, this requirement is out of the professional's scope of practice.	See response above.
47.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	5. Although I do think it prudent to indicate whether medication may assist in rendering someone competent, listing the side effects, efficacy, and alternative treatments is unnecessary and may be outside of the scope of psychologists' practice.	See response above.
48.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	4.130(d)(2) (E): "Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication"	No response required.
		SCSC Comment: This proposed amendment makes a medication evaluation mandatory for all evaluations, which may be contrary to statute. Pursuant to § 1369, such a statement is only statutorily required "if within the scope of [the examiner's] license and appropriate to their opinions." Thus, under the statute, such an evaluation is not mandated in every case – it's only mandated if such an evaluation is within the scope of the examiner's license and appropriate to their opinion. If it's beyond their licensed expertise, or not pertinent to their opinion, the statute doesn't require this evaluation. But the proposed Rule of Court makes it mandatory evaluation. The statute does make it mandatory for any examiner to address issues of capacity to consent to	See response above.

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	Subdivision (d)(2)(E)		
	Commentator	**Comment**	**Committee Response**
		medication and whether the defendant is a danger to self or others (but that's a different analysis than whether treatment with antipsychotic medication is appropriate). Making this evaluation mandatory will necessarily limit the pool of examiners to psychiatrists licensed to make determinations whether antipsychotic medication is appropriate. Limiting the pool of alienists will increase both the timing of the evaluation and the costs to the court.	See response above.

	Subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
49.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 6 [circulated subdivision (d)(2)(F)]: A list of all sources of information considered by the examiner, including legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion. CBHDA Comment: We support the inclusion of this item in the examiner's report.	No response required.
50.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	6. Evaluators should be doing this already. It is standard practice to list all information considered in the assessment.	No response required.

	Circulated subdivision (d)(2)(G), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
51.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 7 [circulated subdivision (d)(2)(G)]: A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any	No response required.

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

	Circulated subdivision (d)(2)(G), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
		information from those sources relevant to the examiner's opinion of competency. CBHDA Comment: We support the inclusion of this item in the examiner's report, and recommend that the requirement should focus on the summary of the information obtained and its relevance to the examiner's opinion of competency.	To reduce the burden of implementing this proposal, the committee revised it to require that the expert list only the sources considered. However, the committee understands that an expert would include in the report any information derived from these sources that is relevant to the competency determination.
52.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	7. I would hope this is already being done as well.	No response required.
53.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	4.130(d)(2)(G): "A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency" SCSC Comment: This proposal will add time to the evaluation because it requires the alienist to provide a "summary" of each source that was reviewed that was relevant. As drafted this amendment will likely increase both the timing of the evaluation and the costs to the court.	No response required. The committee agreed that providing for a summary of each source reviewed may be too onerous. Accordingly, the committee revised the proposal to require that the report list only the sources considered. To the extent that the information derived from any of the listed sources informed the expert's competency determination, the examiner should include that analysis in the report.

	Circulated subdivision (d)(2)(H), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
54.	County Behavioral Health Directors	Item 8 [circulated subdivision (d)(2)(H)]: A statement on	No response required.

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

	Circulated subdivision (d)(2)(H), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
	Association of California By: Linnea Koopmans Senior Policy Analyst	whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency. CBHDA Comment: We support the inclusion of this item in the examiner's report, and recommend that the requirement should focus on the summary of the information obtained and its relevance to the examiner's opinion of competency.	To reduce the burden of implementing this proposal, the committee revised the proposal to require that the expert list only the sources considered. However, the committee understood that an expert would include in the report any information derived from these sources that is relevant to the competency determination.
55.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	8. This would be included with the above two proposals. All information reviewed should be noted in the report. However, I do not think it necessary to report what was not reviewed. If something is not listed, the assumption would be that it was not reviewed.	The committee agreed and revised the proposal to require only that the expert list the sources considered.
56.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	4.130(d)(2) (H): "A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency" As a result of the use of commas in this provision, the scope of the information required by proposed amendment is unclear. Is it only "booking" information, which is then described to "include" certain information that's considered "booking" information; or is talking about "booking" information and other "non-booking" information. The grammar/punctuation of the proposed amendment makes it vague and susceptible to multiple interpretations. In any	No response required. The committee declined to pursue these recommendations because it removed this requirement from the proposal.

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	Circulated subdivision (d)(2)(H), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
		event, this new requirement will add time to alienist's evaluation by requiring a "summary" of these items. As drafted this amendment will likely increase both the timing of the evaluation and the costs to the court.	

	Circulated Subdivision (d)(2)(I), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
57.	Yok Choi, Psy.D., Ll.B (Hons)	Item 9 [circulated subdivision (d)(2)(I)] may also lead to inadvertent consequences. A court appointed evaluator is by definition, an independent evaluator, who should render an unbiased opinion, with no input from either attorney. The inclusion of this item in the list of required information may suggest to evaluators that they should seek input from counsel, which may not be the intention of the proposal. If on the other hand, input had been obtained, I would agree that such information ought to be disclosed in the court report.	The committee agreed that requiring a summary of the expert's consultation with the prosecutor and defense counsel may be problematic for this reason and for the other reasons expressed in the comments below. However, the committee believed that if the expert consults with the prosecutor and defense counsel, the report's list of sources considered should so note. Accordingly, the committee removed this requirement from the proposal. It also listed "consultation with the prosecutor and defendant's attorney" among the examples of sources that, if considered, the report should identify.
58.	County Behavioral Health Directors Association of California By: Linnea Koopmans Senior Policy Analyst	Item 9 [circulated subdivision (d)(2)(I)]: A summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses. CBHDA Comment: We do not believe the prosecutor and defense attorney's impressions of the defendant's competency is a useful component to include in the report.	No response required. See response above.
59.	Harbor Regional Center By: Kimberly Robbins Forensic Psychologist	9. Not necessarily a bad idea, but not sure it should be required. The evaluator should note who referred the client and why, but the findings should really rest on document	See response above.

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

	Circulated Subdivision (d)(2)(I), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
		review, clinical interview, and testing.	
60.	State Bar of California's Standing Committee of Legal Services By: Sharon Djemal Chair, Standing Committee on the Delivery of Legal	**Additional Comments** SCDLS supports the positive change in the content of the court-appointed expert's report in mental competency proceedings. SCDLS also suggests that the report not include anything beyond check boxes to indicate that the report has been prepared in consultation with both the prosecutor and defense counsel. We do not think it is necessary or appropriate to disclose the impression or substantive comments of defendant's counsel regarding such matters in the report. The integrity of the attorney client relationship is important and such disclosures might inadvertently undermine it. The mere fact of the expert's consultation with both parties in the context of preparation of the report in mental competency proceedings should be sufficient for the court. The court would thereby be on notice that both parties have had an opportunity to confer with the expert freely about the salient facts, concerns, and potential issues with regard to the defendant's ability to understand the proceedings, communicate with counsel, and to aid in his or her own defense.	See response above.
61.	Superior Court of California, County of Sonoma By: Ken English Sup. Research Attorney	4.130(d)(2)(I): "A summary of the examiner's consultation with the prosecutor and defendant's attorney, and of their impressions of the defendant's competence-related strengths and weaknesses." SCSC Comment: The second clause of the proposed amendment is ambiguous: ",…and of their impressions…". Who is "their"? Does this refer to the alienist or the attorneys with whom the alienist consulted? SCSC proposes the following language: "A summary of the examiner's consultation with the prosecutor and defendant's	No response required. The committee declined to pursue these recommendations because it removed this requirement from the proposal.

	Circulated Subdivision (d)(2)(I), now part of subdivision (d)(2)(F)		
	Commentator	**Comment**	**Committee Response**
		attorney, including the attorney's communications about their impressions of the defendant's competence-related strengths and weaknesses." Finally, what are "competence-related strengths and weaknesses"? The evaluation under § 1369 is binary (to some degree)—the defendant is either competent or not. As a result SCSC, is unclear as to the necessity of this proposed amendment. Further, requiring the alienist to consult with both attorneys may increase both the timing of the evaluation and the costs to the court.	

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence

Rules, Forms, Standards, or Statutes Affected
Approve forms MC-245 and MC-246

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
June 27, 2017

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

Executive Summary

The Criminal Law Advisory Committee recommends two new optional forms to assist self-represented individuals and the courts in implementing recent legislation that permits criminally convicted individuals no longer in custody to file a motion to vacate a conviction or sentence and withdraw the plea of guilty or nolo contendere. The legislation provides for motions based on prejudicial errors related to immigration consequences or newly discovered evidence of actual innocence. The forms also provide for a motion under an existing statute that offers similar relief for a comparable judicial error related to immigration consequences.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018, approve:

1. *Motion to Vacate Conviction or Sentence* (proposed form MC-245) for use by individuals who have been criminally convicted and are no longer in custody to file a motion to vacate a conviction or sentence and withdraw the plea of guilty or nolo contendere based on

(1) prejudicial error related to immigration consequences, or (2) newly discovered evidence of actual innocence; and

2. *Order on Motion to Vacate Conviction or Sentence* (proposed form MC-246), for use by courts to grant or deny the motion to vacate the conviction or sentence of individuals who have been criminally convicted and allege prejudicial error related to immigration consequences or newly discovered evidence of actual innocence.

The proposed forms are attached at pages 6–9.

Previous Council Action

The council has taken no previous action regarding these recommended forms.

Rationale for Recommendation

Recent legislation[1] added Penal Code section 1473.7[2] to authorize individuals convicted of criminal offenses and no longer in custody to file a motion to vacate a conviction or sentence based on either of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence.

Section 1016.5, originally enacted in 1977, provides similar relief for a comparable judicial error related to immigration consequences. This section permits individuals to file a motion to vacate a conviction and withdraw the plea of guilty or nolo contendere based on the court's failure to advise the defendant of the potential immigration consequences of a conviction and the defendant's showing that the conviction may have immigration consequences.

Proposed form MC-245 provides for a motion to vacate a conviction under either section 1016.5 or section 1473.7. The form identifies the statutory bases for these motions and includes space for the moving party to provide facts regarding each of the required elements for the requested relief.

Proposed form MC-246 is designed to assist courts in making the requisite findings to order appropriate relief or deny the motion.

Sections 1016.5(b) and 1473.7(b)–(f) establish specific procedures for the motion and hearing process, as follows:

[1] Assem. Bill 813 (Gonzalez); Stats. 2016, ch. 739, sec. 1.

[2] All future references are to the Penal Code.

- Section 1473.7(d) provides in part that, on request, the court may hold the hearing without the personal presence of the moving party if counsel is present and the court finds good cause as to why the moving party cannot be present.

- Section 1473.7(e) provides in part that, in granting or denying the motion, the court shall specify the basis for its conclusion.

- Sections 1016.5(b) and 1473.7(e) provide in part that, if the court grants the motion, the court shall allow the moving party to withdraw the plea.

Proposed forms MC-245 and MC-246 include provisions designed to guide the moving party and the court in implementing these procedures.

Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from February 27 to April 28, 2017. A total of eight comments were received; of those, five agreed with the proposal, one agreed if modified, and two did not indicate a position but included a number of suggestions. No commenters opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 10–16.

A number of the commenters noted the value of having a motion form that is easy for self-represented litigants to understand. Because the committee anticipates that proposed form MC-245 will be used by self-represented litigants to address prejudicial errors that result in potential immigration consequences, the committee has directed staff to prioritize development of a Spanish translation of proposed form MC-245, if the form is approved.

Notable comments

Information sheet for form MC-245. Two commenters suggested that the committee consider developing an information sheet to assist the moving party in understanding and filling out proposed form MC-245, *Motion to Vacate Conviction or Sentence*.

In response, the committee declined to develop an information sheet but revised proposed form MC-245 to make it more readable and included brief definitions of the terms "perjury" and "prejudicial error."

Request for hearing without personal presence but with presence of counsel. One commenter suggested that item 4 on proposed form MC-245 be revised to clarify that the moving party may request that the court proceed in his or her absence only if he or she is represented by counsel who will appear at the hearing. Another commenter noted that the format of item 2 on form MC-246 was confusing because a grant or denial of the request for the court to proceed in the absence of the moving party indicates whether there is a finding of good cause.

In response, the committee revised item 4 on proposed form MC-245 to allow the moving party to request that the court hold the hearing without the personal presence of the moving party but with the presence of counsel, and revised item 2 on proposed form MC-246 for the court to indicate whether it grants or denies the request.

Attorney representing moving party. One commenter suggested revising proposed form MC-245 to enable an attorney to submit the motion on behalf of the moving party.

In response, the committee revised the signature line on form MC-245 to indicate that either the moving party or his or her attorney may sign the motion. To maintain ease of use by self-represented litigants, the committee did not otherwise revise the format of proposed form MC-245.

Alternatives

In addition to the alternatives considered in response to the public comments outlined above, the committee considered postponing or declining to propose new forms to implement the provisions of section 1473.7. The committee also considered proposing new forms that solely address section 1473.7 relief. The committee decided, however, to recommend the two new optional forms at this time that address both section 1016.5 and section 1473.7 because of the Legislature's emphasis on providing relief for eligible defendants, and in the interest of reducing confusion for self-represented parties and assisting courts to meet statutory requirements.[3]

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[3] Subdivision (d) of section 1016.5 states, in part:

> The Legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea.

(Pen. Code, § 1016.5(d).)

Similarly, the author of Assembly Bill 813 noted the following:

> California lags far behind the rest of the country in its failure to provide its residents with a means of challenging unlawful convictions after their criminal sentences have been served. Forty-four states and the federal government all provide individuals with a way of challenging unjust convictions after criminal custody has ended. In California, however, individuals who gain access to evidence of actual innocence—or to proof of a defect in the underlying criminal proceeding—have no way to present this evidence before the court after criminal custody has expired. [¶] This omission has a particularly devastating impact on California's immigrant community. Since 1987, California law has required defense counsel to inform non-citizen defendants about the immigration consequences of convictions. However, many defense attorneys still fail to do so. Many immigrants suffer convictions without having any idea that their criminal record will, at some point in the future, result in mandatory immigration imprisonment and deportation, permanently separating families.

(Sen. Com. on Public Safety, Analysis of Assem. Bill No. 813 (2015–2016 Reg. Sess.) July 7, 2015, pp. 5-6, *www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0801-0850/ab_813_cfa_20150706_144023_sen_comm.html*.)

Implementation Requirements, Costs, and Operational Impacts

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

Attachments and Links

1. Proposed forms MC-245 and MC-246, at pages 6–9
2. Chart of comments, at pages 10–16

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:

MOTION TO VACATE CONVICTION OR SENTENCE
(Pen. Code, §§ 1016.5, 1473.7)

FOR COURT USE ONLY
DATE:
TIME:
DEPARTMENT:

Instructions — Read Carefully

- You must file a separate motion for each separate case number.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- **File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in the above case number. On *(date)* , I was convicted of a violation of the following offenses *(list all offenses included in the conviction)*:

CODE	SECTION	TYPE OF OFFENSE *(felony, misdemeanor, or infraction)*

If you need more space for listing offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

Form Approved for Optional Use
Judicial Council of California
MC-245 [New January 1, 2018]

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

2. ☐ **Motion under Penal Code section 1016.5**

GROUNDS FOR RELIEF: I am requesting relief based on the following:

a. Before my acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise me that the conviction might have immigration consequences as required under Penal Code section 1016.5(a).

b. The conviction that was based on my plea of guilty or nolo contendere may result in immigration consequences for me, including possible deportation, exclusion from admission to the United States, or denial of naturalization.

c. I likely would not have pleaded guilty or nolo contendere if the court had advised me of the immigration consequences of my plea. *(People v. Arriaga* (2014) 58 Cal.4th 950.)

- Supporting facts

Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

3. ☐ **Motion under Penal Code section 1473.7**

I am not currently imprisoned or restrained.

GROUNDS FOR RELIEF: I am requesting relief based on the following:

a. ☐ The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged my ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

- Supporting facts

Tell your story briefly. Describe the facts you allege to be prejudicial error. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifying what your attorney did or failed to do and how that affected your plea.(*If necessary, attach additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

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

3. b. ☐ Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matterof law or in the interests of justice.

☐ I discovered the new evidence of actual innocence on *(date):*

- Supporting facts

Tell your story briefly. Describe the facts you allege to constitute newly discovered evidence of actual innocence. (*If necessary, attach additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

4. ☐ I am represented by counsel who will appear at the hearing. I request that the court hold the hearing on this motion without my personal presence for the following reasons:

5. I request that the court vacate the conviction or sentence in the above-captioned matter.

6. I request that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

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 MOVING PARTY OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE **(Pen. Code, §§ 1016.5, 1473.7)**	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

1. **For purposes of Penal Code section 1016.5 relief, the court**
   ☐ grants ☐ denies the moving party's request to vacate the judgment and to permit the moving party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
2. **For purposes of Penal Code section 1473.7 relief**
   a. The court
   ☐ grants ☐ denies the request that the court hold the hearing *without* the personal presence of the moving party but *with* the presence of counsel.

   b. The moving party ☐ has established ☐ has not established the existence of grounds for relief, as specified below:

   c. The court ☐ grants ☐ denies the moving party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error.

   d. The court ☐ grants ☐ denies the moving party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.

   e. The court ☐ grants ☐ denies the moving party's request to withdraw the plea of guilty or nolo contendere.

Date:

(JUDICIAL OFFICER)

SPR17-11
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence
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	□ Does the proposal appropriately address the stated purpose? **Response: Yes** □ Are the forms easy to understand and follow for a self-represented litigant? If not, please identify specific recommendations for improving their readability, format, and design. **Response: Consider creating an information sheet that would allow for explanation of words that may be easier to understand. For example, explaining "prejudicial error" may be needed.** **Also, changes to the form so that an attorney can file it on their behalf. The use of the word "I" for example.** **Also suggest that there be an ability for the defendant to request a court hearing (with or without appearance).** □ Would the proposal provide cost savings? If so please quantify. **Response: No cost savings associated with this change.**	• No response required. • The committee declines to develop an information sheet but has revised form MC-245 to make it more readable, and has included brief definitions of the terms "perjury" and "prejudicial error." • In response to this comment, the committee has revised the signature line on form MC-245 to indicate that either the moving party or his or her attorney may sign the motion. The committee has not otherwise revised the format of the form in order to maintain ease of use by self-represented litigants. • Since the statute mandates "all motions shall be entitled to a hearing," the committee is confident that courts will hold hearings, as needed, and declines to add an item for requesting a hearing. • No response required.

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

SPR17-11
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence
All comments are verbatim unless indicated by an asterisk (*).

	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? **Response: If the court decides to utilize this optional form, docket codes would need to be modified to accept the form and process the order. Procedures would be updated to reflect the use of the form.** □ Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Response: Yes, as it is an optional form.** □ How well would this proposal work in courts of different sizes? **Response: Should be consistent for large or small courts.**	• No response required. • No response required. • No response required.
2.	Lawyers' Committee for Civil Rights By: Rose Cahn Director, Immigrant Post-Conviction Relief Project	A	This form looks great and will be a big contribution to the pro se community and the courts.	No response required.
3.	Orange County Bar Association By: Michael L. Baroni President	A	AB 813 created Penal Code section 1473.7, which went into effect January 1, 2017. The new statutes permits individuals convicted of criminal offenses and no longer in custody to file a motion to vacate a	No response required.

	Commentator	Position	Comment	Committee Response
			conviction or sentence based on either of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a pleas of guilty or nolo contendre; or (2) newly discovered evidence of actual innocence. A related, section Penal Code section 1016.5, allows for a defendant to vacate a conviction based on the court's failure to give a statutorily mandated immigration admonishment. The Criminal Law Advisory Committee is proposing the creation of optional forms (MC-245 and MC 246) to help self-represented litigants and the courts follow the procedural requirements of the section 1016.5 and 1473.5. The forms address their stated purpose and are easy to understand for self-represented litigants.	
4.	San Diego County Bar Association By: Michael Pulos Chair, Appellate Practice Section	N/I	Our section supports the proposed new forms to assist self-represented litigants and the courts in implementing recently-passed legislation that permits criminally convicted individuals who are no longer in custody to file a motion to vacate a conviction or sentence; we offer the following suggestions as to the proposed forms to clarify certain points and make the forms easier for persons filing such a motion to understand: 1. The introductory language on page 1 of the form specifies that a filer must file a separate motion "for each conviction or sentence". We believe that this language may be confusing or misleading and suggest that the language be modified to specify that	• The committee agrees and has revised the introductory language to specify that a separate motion must be filed for each separate case number.

	Commentator	Position	Comment	Committee Response
			a filer must file a separate motion "for each separate case number." 2. As currently written, the table in item 1 only requests information about the offense of which the filer was convicted. However, it appears that a criminal defendant is also permitted to seek to vacate an allegation or enhancement even if he or she does not seek to vacate the conviction as to the offense to which the enhancement was attached. We bring this to the committee's attention for consideration of the intended scope of the form. 3. Item 4 on page 3 of the proposed form specifies that the filer is requesting that the court hold a hearing on the motion without his or her personal presence. Under Penal Code section 1473.7, subdivision (d), the court may hold a hearing on a motion to vacate without the personal presence of the moving party if counsel for the moving party is present. To be consistent with this statutory requirement, we suggest that item 4 be revised to clarify that the moving party may request that the court proceed in his or her absence only if he or she is represented by counsel who will appear at the hearing. The same considerations may apply to item 2 on page 1 of the proposed court order. 4. Items 5 and 6 on page 3 are currently set forth separately, although there may be instances where both apply (such as when a request to vacate is based on an ill-advised plea or where there was a trial and the filer asserts that newly-discovered evidence adversely impacted his or her ability to	• The committee declines to revise the table in item 1 because in all instances the court will need identifying information regarding the conviction to which an allegation or enhancement is attached. • In response to this comment, the committee has revised form MC-245 to allow the moving party to request that the court hold the hearing without the personal presence of the moving party but with the presence of counsel, and has revised item 2 on proposed form MC-246 for the court to indicate whether it grants or denies the request. • Items 5 and 6 on form CR-245 are included on the form without check boxes, which indicates to the court that each person filing a motion has included a request to vacate the conviction or sentence and to allow the withdrawal of the

	Commentator	Position	Comment	Committee Response
			defend at trial). To avoid any confusion in this regard, we suggest that these provisions be combined, perhaps using a check-box format.	plea. Using check boxes for these two fundamental requests would add confusion.
5.	State Bar of California Standing Committee of Legal Services Sharon Djemal Chair, Standing Committee on the Delivery of Legal	A	• Does the proposal appropriately address the stated purpose? Yes. • Are the forms easy to understand and follow for a self-represented litigant? If not, please identify specific recommendations for improving their readability, format and design. Yes. **Additional Comments** SCDLS suggests that the form include a provision whereby individuals may order transcripts of the plea of guilty or nolo contendere, if such transcripts are available. The transcripts would likely be the best evidence, in the absence of a written plea agreement as to whether the proper advisements were given to the defendant prior to entering his or her plea. SCDLS supports the positive change set forth in the proposed new forms. The proposed new optional	• No response required. • No response required. • Although the committee recognizes that transcripts could be of assistance to the court in some instances, the committee declines the suggestion to revise the proposed form because including a request for various types of evidence that may support a successful motion is beyond the scope of form CR-245. • No response required.

SPR17-11
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			forms will promote procedural due process and assist self-represented individuals by affording them the opportunity to appeal, file a motion to vacate a conviction or sentence, and withdraw a plea in circumstances where they were inadequately advised of the collateral immigration consequences of their plea.	
6.	Superior Court of California, County of Los Angeles Sandra Pigati-Pizano Management Analyst	A	These forms would make it easier for bench officers to handle such matters and would provide reminders to them as to the finding needed to support the granting of the motion. We support the adoption of the optional forms.	No response required.
7.	Superior Court of California, County of Riverside By: Susan Ryan Chief Deputy of Legal Services	AM	Bullet point #4 on the first page of form MC-245 makes it sound like no service on the District Attorney is required, and is otherwise unnecessary. This should be deleted altogether. Section 2(a) on form MC-246 has an unnecessary number of boxes, since a grant implies good cause and no good cause implies a denial. It should be rewritten to just give the two choices. Does the proposal address the stated purpose? Yes. Are the forms easy to understand and follow for a self-represented litigant?	• The committee has revised the instructions to direct the moving party to serve the motion on the prosecuting agency. • In response to this comment, the committee has revised form MC-245 to allow the moving party to request that the court hold the hearing without the personal presence of the moving party but with the presence of counsel, and has revised item 2 on proposed form MC-246 for the court to indicate whether it grants or denies the request.

SPR17-11
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Yes, but an information sheet would be helpful. Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Training for court clerks, courtroom clerks and bench officers. Possibly have to develop local rules. Is three and a half months sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? No difference.	• The committee declines to develop an information sheet but has revised form MC-245 to make it more readable, and has included brief definitions of the terms "perjury" and "prejudicial error." • No response required. • No response required. • No response required. • No response required.
8.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Criminal Procedure: Plea Form, with Explanations and Waiver of Rights—Felony

Rules, Forms, Standards, or Statutes Affected
Revise form CR-101

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

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 5, 2017

Contact
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Executive Summary

The Criminal Law Advisory Committee recommends revising the optional form for taking guilty pleas in felony cases, which includes advisements of criminal defendants' rights. The proposed revisions (1) respond to recent case law that confirmed the scope of the advisement regarding the court's approval of the plea agreement and underscored the importance of accurately conveying the advisement on form CR-101, and (2) add an advisement regarding the effect of a violation of the terms and conditions of mandatory supervision. These proposed revisions circulated for public comment during the spring 2017 comment cycle. In response to recent case law issued after the comment cycle, the committee also recommends revising the form to enhance the advisement of waiver of right to jury trial. To ensure that a form reflecting each of the legal developments is available to courts as soon as possible, the committee seeks approval of all of the proposed revisions, without a prior period of public comment for the additional revisions to the advisement of waiver of right to jury trial. The committee will seek circulation of the form for public comment on revisions to the advisement of waiver of right to jury trial in the winter 2018 cycle and propose any further revisions based on comments received, to be effective September 1, 2018.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018, revise *Plea Form, with Explanations and Waiver of Rights—Felony* (form CR-101) as follows:

1. Revise item 2.c. to include an advisement that if the defendant violates any of the terms or conditions of mandatory supervision, he or she may be remanded into custody for a period up to the total of the unserved portion of the sentence.

2. Revise item 6.e. by changing the title of the item to "Court Approval of Plea Agreement." Retain the first sentence of the item that confirms the defendant understands the plea agreement is based on the facts before the court. Substitute for the remainder of the item a statement confirming that the approval of the court is not binding, the court may withdraw its approval of the plea agreement upon further consideration of the matter, and if the court withdraws its approval the defendant understands that he or she will be allowed to withdraw the plea. Add a citation to Penal Code section 1192.5.

3. Revise item 5.a. regarding waiver of trial by jury to indicate that the rights being waived include (1) a jury trial in which 12 impartial jurors chosen from the community must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, and (2) the defendant's right to participate, through counsel, in jury selection.

A copy of form CR-101 with the recommended revisions is attached at pages 4–10.

Previous Council Action

Form CR-101 is an optional form that was originally adopted by the Judicial Council effective January 1, 2007. Unrelated revisions were later approved effective July 1, 2008, and January 1, 2010, and the form was substantially revised in 2012 in response to criminal justice realignment legislation.

Rationale for Recommendation

Form CR-101 is designed to assist courts in making complete records of guilty pleas by including all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings.

Criminal justice realignment legislation enacted changes to felony sentencing laws, including authorizing courts to impose a period of mandatory supervision under Penal Code section 1170(h)(5)(B), and addressing proceedings to modify or revoke mandatory supervision.[1] The

[1] Assem. Bill 109 (Committee on Budget; Stats. 2011, ch. 15); Assem. Bill 117 (Committee on Budget; Stats. 2011, ch. 39); ABX1 17 (Blumenfield; Stats. 2011, ch. 12); Sen. Bill 1023 (Committee on Budget; Stats. 2012, ch. 43).

item on form CR-101 that addresses split sentencing does not currently include an advisement on the effect of a violation of the terms and conditions of mandatory supervision. The committee recommends filling this gap by adding language to item 2.c. on the form.

Recent case law[2] confirms the scope of the advisement regarding the court's approval of the plea agreement and the circumstances under which the court may withdraw its approval of a negotiated disposition, and underscores the importance of accuracy in the advisements included on form CR-101. Specifically, the court held that paragraph 6.e. on the current form does not adequately convey the admonishments of Penal Code section 1192.5. The court found that "[t]he form does not inform defendants that the court's approval of the negotiated disposition is not binding and that the court could withdraw its approval simply upon 'further consideration' as stated in section 1192.5." The court noted that the "discovery of new facts"—the title of current paragraph 6.e.—is one circumstance under which a trial court could reject a negotiated agreement, but that section 1192.5 is not limited to that one circumstance. The committee recommends revisions to the title and content of section 6.e. to respond to this decision.

After the proposed revisions to these two items circulated for public comment and the Criminal Law Advisory Committee agreed to recommend approval by the Judicial Council, the California Supreme Court rendered a decision in *People v. Vaene Sivongxxay*.[3] The decision included guidance regarding trial courts' determinations whether a jury trial waiver was knowing, intelligent, and voluntary and the information that must be conveyed to a defendant to make this determination. The current advisement in item 5.a. on form CR-101 does not include all of the required information. Though it addresses waiver of the right to a jury trial, it does not currently state that the jury must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, nor does it include an advisement regarding the defendant's right to participate, through counsel, in jury selection. In response to this recent case, the committee recommends addressing these elements by adding appropriate language to item 5.a.

Comments, Alternatives Considered, and Policy Implications

The attached form with the proposed revisions to item 2.c. and 6.e. circulated for public comment as part of the spring 2017 invitation-to-comment cycle from February 27 to April 28. A total of six comments were received; of those, three commenters agreed with the proposal, and three did not designate a position, although their comments indicated agreement with the proposal. No commenters opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 11–17.

Two commenters included several suggestions that did not relate to the items proposed for revision. Since these comments were beyond the scope of the proposal, the committee is not including those suggestions in its recommendation. The committee anticipates that it may consider a more extensive revision of form CR-101 in the future.

[2] *People v. Silva* (2016) 247 Cal.App.4th 578, 588.
[3] *People v. Vaene Sivongxxay* (Cal., June 19, 2017, No. S078895) 2017 WL 2628158

A chart with all comments received and the committee's responses is attached at pages 11–17.

Alternatives considered

The committee considered not proposing any changes to form CR-101. The committee, however, determined that these revisions are appropriate because they are responsive to recent case law and modifications of felony sentencing laws under criminal justice realignment.

With respect to the proposed revisions to the advisement on waiver of jury trial, the committee considered whether to delay recommendation that item 5.a. be revised until after there had been an opportunity to circulate the proposed revisions for public comment. The committee concluded that it was preferable to recommend that the Judicial Council consider all of the proposed revisions in order to be responsive to recent case law and provide, as efficiently as possible, an accurate form for court use, and that the proposed revisions to item 5.a. then be circulated for public comment.

Implementation Requirements, Costs, and Operational Impacts

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

Attachments and Links

1. Form CR-101, at pages 4–10
2. Chart of comments, at pages 11–17

4

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
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.
(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
				AGGREGATE MAXIMUM TIME OF IMPRISONMENT			

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS
(1) ☐ years and months or
(2) ☐ Not less than years and months and/or not more than years and months.
(3) ☐ Other *(specify):*

b. **Probation** for years under conditions to be set by the court, including:
☐ days in the **county jail** or
☐ up to days in the **county jail.**

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

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2. c. **Split Sentence (1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence. ☐

d. **Narcotics Addiction Confinement** ☐
I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea** ☐
1. ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
2. ☐ I understand that I am not eligible for probation.
3. ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. **Restitution, Statutory Fees, and Assessments** ☐
I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1. ☐ $ **to the Victim Restitution Fund**
2. ☐ $ **restitution to actual victims**
3. ☐ $ **restitution to the State of California, Victims of Crime Fund**
4. ☐ $ **court operations assessment**
5. ☐ $ **court facilities assessment**
6. ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
7. ☐ $ **other** *(specify):*
8. ☐ $ **other** *(specify):*
9. ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine** ☐
I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts** ☐
I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea. ☐

i. **Other Terms (*specify):*** ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

3. **CONSEQUENCES OF MY PLEA** INITIALS

a. **No Contest ("Nolo Contendere") Plea** ☐
I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. **Parole and Postrelease Community Supervision** ☐
I understand that if I am sentenced to **state prison** or a **narcotics treatment facility**
(1) I will be placed on parole or postrelease community supervision for up to years after my release.
(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases** ☐
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration** ☐
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender
(2) ☐ a gang member
(3) ☐ a narcotics offender
(4) ☐ a sex offender **(this registration is a lifelong requirement)**
(5) ☐ other (*specify*):

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples** ☐
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony** ☐
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my convicion in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. **Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)** ☐
I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture** ☐
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

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3. i. **Immigration Consequences**
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense. ☐

j. **Firearms**
I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life. ☐

k. **Other Consequences** (*specify*): ☐

4. **RIGHT TO AN ATTORNEY**
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. ☐

I hereby give up my right to be represented by an attorney. ☐

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection. ☐

b. **Right to a Court Trial**
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty. ☐

c. **Right to Confront and Cross-Examine Witnesses**
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them. ☐

d. **Right to Remain Silent and Not to Incriminate Myself**
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify. ☐

e. **Right to Produce Evidence and to Present a Defense**
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf. ☐

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney** ☐

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;
(2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
(3) Any defenses that I may have;
(4) My constitutional and statutory rights and waiver of those rights;
(5) The consequences of this plea, including the immigration consequences; and
(6) Anything else I think is important to my case.

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6. b. **Questions**
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form. ☐

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me. ☐

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: ☐

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.) ☐

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING** ☐
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS** ☐
I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA** ☐
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:** ☐

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other *(specify):*
(g) ☐ (Specify facts):

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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender**
I understand that the court is allowing me to surrender at a later date to begin serving time in custody. ☐

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court**
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me. ☐

c. **Sentencing Date**
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date. ☐

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

DEFENDANT'S SIGNATURE _____ DATE _____

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other (*specify*): (*People v. West* (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE _____ DATE _____

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INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents of the form and then initialed and signed the form.

Language: ☐ Spanish ☐ Other (*specify*):

INTERPRETER'S SIGNATURE _____ DATE _____

INTERPRETER'S NAME (TYPE OR PRINT) _____

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

ATTORNEY'S SIGNATURE _____ DATE _____

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West.*

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

JUDGE'S SIGNATURE _____ DATE _____

SPR17-12
Criminal Procedure: Felony Waiver and Plea Form
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 Orange County	N/I	□ Does the proposal appropriately address the stated purpose? **Response: Yes**	• No response required.
			□ Are the proposed revisions an effective way to address recent case law regarding court approval of plea agreements, and advise defendants regarding possible consequences for mandatory supervision violations? **Response: Yes.**	• No response required.
			□ Would the proposal provide cost savings? If so please quantify. **Response: No cost savings associated with this change.**	• No response required.
			□ 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: This does not appear to be a mandatory form.**	• No response required.
			□ Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Response: No. If a court chooses to adopt this form, there would need to be stakeholder meetings to ensure DA / PD are aligned with content. This would require 4 – 6 months.**	• The committee understands that implementation may require more than two months for some courts; since the form is optional, and the revisions are responsive to case law and recent legislation, the committee recommends the proposed two month implementation timeline.

SPR17-12
Criminal Procedure: Felony Waiver and Plea Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? **Response: Unknown.**	• No response required.
2.	Hon. Michael M. Dest, (Ret.) Judge Superior Court of California, County of San Bernardino	N/I	Re: Page 1; paragraph 1 chart: It is useless to only provide a Minimum and Maximum sentencing range for the following reasons: 1. Most cases, the minimum could be probation and 2. The triad is important for the basis of calculating the 1/3 mid-term consecutive sentence. Re: page 3/7 paragraph 3f (2): The word NOT is missing:" …conduct worktime credits I may accrue will ***exceed 15%" Page 5/7 paragraph 9b(1): Eliminate the individual boxes and just state that 'it may include any and/or all of the following… or: _____" Finally, in practical form drafting, all the individual variable information should be stated on one page rather than in-between sentences on several other pages or fill in the blanks on different pages. An oversight by an attorney in a specific area on a separate page may have unintended consequences.	• The committee declines to revise the chart in item 1 because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future. • Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101. • The committee declines to revise item 9.b.(1) because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future. • The committee declines to revise form CR-101 to include all individual variable information on one page because those revisions are substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.

SPR17-12
Criminal Procedure: Felony Waiver and Plea Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Orange County Bar Association By: Michael L. Baroni President	A	Judicial Council form CR-101 is an optional form for use when a defendant pleads guilty or nolo contendere in a criminal action. The proposal would amend two parts of the form. The first amendment would add language pursuant to Penal Code section 1192.5 indicating that approval of the court is not binding and that the court may withdraw its approval of the plea agreement at prior to the pronouncement of judgment, and if the court withdraws its approval the defendant understands he or she will be able to withdraw the plea. The absence of this language from the form was criticized in *People v. Silva* (2016) 247 Cal.App.4th 578, 588. **This suggested amendment does accurately convey the language of section 1192.5 and addresses the concerns raised in *Silva*.** The second proposed amendment is to add an advisement regarding the effect of a violation of the terms and conditions of mandatory supervision. Specifically, it would include an advisement that if the defendant violates any of the terms or conditions of mandatory supervision, he or she may be remanded into custody for a period up to the total of the unserved portion of the sentence. This proposed revision is consistent with realignment legislation enacting changes to felony sentencing laws, including authorizing courts to impose a period of mandatory supervision under Penal Code section 1170(h)(5)(B), and addressing proceedings to modify or revoke mandatory supervision. The item on form CR-101 that addresses split sentencing does not currently include an advisement on the effect of a violation of the terms and conditions of mandatory	• No response required. • No response required.

	Commentator	Position	Comment	Committee Response
			supervision. **The amendment would clearly inform a defendant of the consequences of violating the terms and conditions of mandatory supervision.**	
4.	San Diego County Bar Association By: Michael Pulos Chair, Appellate Practice Section	N/I	We support the Criminal Law Advisory Committee's decision to revise the felony waiver and plea form and offer the following corrective revisions to the proposed revised form: 1. Page 5 of the Invitation to Comment (page 2 of 7 of the plea form): A. The margin preceding item d. relating to narcotics addiction confinement contains a stray "2". B. As currently written, item 2.h is limited to counts being dismissed as part of the plea. The committee may wish to revise this item to include prior convictions or other enhancement allegations being dismissed pursuant to the terms of the plea. 2. On page 6 of the Invitation to Comment (page 3 of 7 of the plea form): A. As currently drafted, item 3.a regarding no contest and nolo contendere pleas specifies that such a plea may be used against the	• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101. • The committee declines to revise item 2.h. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future. • The committee declines to revise item 3.a. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.

	Commentator	Position	Comment	Committee Response
			defendant in a civil case. This language appears overly broad because if a defendant pleads to a misdemeanor on a felony charge, his or her plea cannot be used in a civil action. (Pen. Code, § 1016(3).) We recommend that the language be modified to specify that a ". . . no contest plea *to a felony* . . . ." could be used against the defendant in a civil case.	
			B. Item 3.f.(2) appears to be missing a "not" between the words "will" and "exceed". In addition, it specifies that a criminal defendant who pleads guilty to a "violent felony" will have a limited ability to accrue conduct and work-time credits; because a defendant's perception of whether his or her felony was "violent" may not be consistent with what the law provides, we suggest adding the words "as defined by law" after "violent felony" in this provision.	• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.
			3. On page 8 of the Invitation to Comment (page 5 of 7 of the plea form):	
			A. In item 7, the word "understand" is missing the "a".	• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.
			B. Item 9.b.(1)(c) currently includes a probation report as one of the sources that	• The committee declines to revise item 9.b.(1)(c) because it is substantively

	Commentator	Position	Comment	Committee Response
			can be relied on as providing the factual basis for the plea. However, as a probation report is prepared only after the entry of a plea, it cannot provide the factual basis for the plea at *the time of the plea*. For this reason, we suggest deleting the probation report from the list of possible sources for the factual basis for a plea.	beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.
			4. On page 9 of the Invitation to Comment (page 6 of 7 of the plea form):	
			A. Item 10.a currently specifies that if the defendant fails to appear for sentencing, the court may sentence him or her to the "maximum [term] allowed by law". The committee may wish to consider revising this language to specify that the defendant may be sentenced to the maximum terms specified in item 1 on the first page of the plea form.	• The committee declines to revise item 10.a. because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.
			B. In item 11, the word "drive" includes a capital "I".	• Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101.
			C. As noted, a probation report cannot provide a factual basis for the plea at the time of the plea. We accordingly suggest deleting the probation report from the list of possible sources for the factual basis for a plea in the	• The committee declines to revise the Attorney's Statement because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101

SPR17-12
Criminal Procedure: Felony Waiver and Plea Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			"Attorney's Statement". 5. On page 10 of the Invitation to Comment (page 7 of 7 of the plea form), the placement of the check boxes under Interpreter's Statement is somewhat difficult to interpret. We suggest adding more spacing between the word "Language" and the check box intended to indicate that the language being interpreted is "Spanish." As a final matter, we note that certain of our members have a concern about the plea form insofar as it includes a provision on the last page that appears to require the defendant's attorney to stipulate as to the source of the factual basis for the plea despite the fact that the law does not require this. (*See People v. Palmer (2013) 58* Cal.4th 110, 118 [recognizing that the superior court may satisfy its statutory duty by accepting a stipulation from counsel that a factual basis for the plea exists without also requiring counsel to recite the facts or the documentary source of those facts].) We recognize that this is an existing provision of the form, rather than a proposed revision, but nonetheless offer this observation for the Committee's consideration.	in the future. • Due to converting form CR-101 to a new software program, technical errors were included in the version of the form that circulated for comment. The committee has corrected those errors in the recommended version of form CR-101. • The committee declines to revise the attorney statement because it is substantively beyond the scope of this proposal; the committee may consider more extensive revision of form CR-101 in the future.
5.	Superior Court of California, County of Los Angeles	A		No response required.

SPR17-12
Criminal Procedure: Felony Waiver and Plea Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
6.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		No response required.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Criminal Procedure: Firearms Relinquishment

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Approve form CR-210

Effective Date
January 1, 2018

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

Date of Report
July 5, 2017

Contact
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Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council approve optional form CR-210, *Prohibited Persons Relinquishment Form Findings*. Form CR-210 is a form that courts may use to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810, which was amended by Proposition 63.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2018, approve optional form CR-210. The new form is attached at page 5.

Previous Council Action

The Judicial Council has taken no previous action.

Rationale for Recommendation

On November 8, 2016, the people of California voted to enact "The Safety for All Act of 2016" ("Proposition 63"). Effective January 1, 2018, courts are required to provide defendants subject to firearms and ammunition prohibitions upon conviction with a new Prohibited Persons Relinquishment Form (PPRF). Penal Code section 29810, subdivision (a)(2) directs the California Department of Justice to develop the form, and subdivisions (c)(1) and (c)(2) direct county probation departments to (1) investigate through credible information whether the defendant owns any firearms, (2) receive the PPRF from the defendant, and (3) report the defendant's compliance with relinquishment procedures to the court. Defendants subject to the requirements must relinquish their firearms, through named designees, within 5 days of conviction if they are not in custody and within 14 days of conviction if they are in custody. Courts may either shorten or lengthen those time periods for good cause and allow an alternative method of relinquishment.

Prior to the final disposition or sentencing in the case, the court is required to make specific findings as to (1) whether the probation officer's report indicates that the defendant has relinquished all of his or her firearms, and (2) whether the court has received a completed PPRF along with itemized receipts detailing who took possession of the relinquished firearms. Further, if the court finds probable cause to believe that the defendant has failed to comply with the relinquishment requirements, the court must order the search for and removal of the firearms at any location the judge has probable cause to believe the defendant's firearms are located.

The number of potential cases subject to the procedures under Penal Code section 29810 is significant, considering that it is applicable to all felonies and over 40 misdemeanors. The requirements of section 29810 will impose significant workload burdens on the courts. The optional form is intended to mitigate this burden by providing courts with a form to streamline the process.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment from April 21 to May 31, during the spring 2017 invitation-to-comment cycle. Five comments were submitted in response to the invitation to comment; one agreed with the proposal and four agreed with the proposal if modified. The committee revised the proposed form in response to the comments. The committee's specific responses to each comment are available in the attached comment chart at pages 6–42. The main substantive comments and the committee's response are discussed below.

Search for and removal of defendant's firearms

The proposed form that circulated for public comment incorporated a space for judicial findings related to Penal Code section 29810(c)(4), which states:

> "If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any

location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order."

Accordingly, the proposed form listed the following:

4. The court finds probable cause that the defendant has failed to relinquish all firearms ☐ Yes ☐ No
   a. Probable cause obtained from:
      ☐ Probation Officer's report ☐ Statements made in open court
      ☐ Other:

5. The court finds probable cause for the search for and removal of defendant's firearms.
   a. Type of firearm, if known:
   b. Location and scope:
   c. Probable cause obtained from:
      ☐ Probation Officer's report ☐ Statements made in open court
      ☐ Other:

6. Search required, pursuant to a term or condition of probation ☐ Yes ☐ No

7. Search warrant required; matter referred to the prosecuting agency of the county for appropriate action ☐ Yes ☐ No

Two commenters suggested that the proposed form was unclear and confusing as to the processes related to the search for and removal of defendant's non-relinquished firearms. One commenter thought the proposed form created unnecessary procedures, while the other thought the form needed additional information to be consistent with constitutional requirements for searches and seizures.

In response, the committee recommends revising the proposed form to take out items 4 through 6, but to keep item 7 ("Search warrant required; matter referred to the prosecuting agency of the county for appropriate action.") because it reflects the proper procedures for the application of a search warrant. These revisions are reflected in proposed form CR-210 on page 5.

Implementation Requirements, Costs, and Operational Impacts

The proposed form is optional, so expected costs are limited to the production of new forms. Regardless of whether the form is used, implementing Proposition 63 may require additional judicial training and education, and case management system updates.

Attachments and Links

1. Form CR-210, at page 5
2. Chart of comments, at pages 6–42

3. Penal Code section 29810, effective January 1, 2018, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=29810.&lawCode=PEN*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* DRAFT NOT APPROVED BY JUDICIAL COUNCIL
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
PROHIBITED PERSONS RELINQUISHMENT FORM FINDINGS **(Pen. Code, § 29810(c))**	CASE NUMBER: *FOR COURT USE ONLY* Date: Time: Department:

The defendant is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall relinquish all firearms pursuant to Penal Code section 29810.

The court finds as follows:

Compliance:

1. ☐ Defendant has completed a Prohibited Persons Relinquishment Form; and
2. ☐ Defendant relinquished all firearms per the probation officer's report and provided relinquishment receipts; or
3. ☐ Defendant was allowed an alternative method of relinquishment under Penal Code section 29810(f) and relinquished all firearms under an alternative method; or
4. ☐ Defendant has no reportable firearms per the probation officer's report.

Non - Compliance:

5. ☐ Defendant has not completed a Prohibited Persons Relinquishment Form.
6. ☐ Defendant has not complied with the relinquishment requirements of Penal Code section 29810.
7. ☐ Search warrant required; matter referred to the prosecuting agency of the county for appropriate action.

(DATE)

(SIGNATURE OF JUDICIAL OFFICER)

SPR17-03
Criminal Procedure: Firearms Relinquishment
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Hon. Jeff Finigan Judge Superior Court of California, County of San Mateo	AM	Paragraphs 6 and 7 are unclear. What do those paragraphs mean and under what circumstances would they be utilized? There is no language in the statute regarding a search pursuant to a probationary condition. Likewise, there is no language in the statute requiring inclusion of a prosecuting agency or going through the search warrant process. These paragraphs, especially #7, will potentially create confusion and build in unnecessary procedures.	The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it reflects the proper procedures for the application of a search warrant.
2.	National Rifle Association and California Rifle & Pistol Association By: Joseph A. Silvoso, III Attorney, Michel & Associates, P.C.	AM	The process of fine-tuning this form is important for the courts and the California public. Pivotal to this process is the recognition of the common goal to clarify the firearm relinquishment process for courts and defendants convicted of a firearm-prohibiting offense. Significantly, many Californians unwittingly get in trouble for possessing firearms simply because they do not know that the law forbids such possession or that avenues exist for them to lawfully surrender the firearms at issue. The confusion caused by California's firearms law is well established, and it is not surprising that the average citizen often cannot determine how to comply with the law. Former Attorney General Dan Lungren compared the complexity of California's firearm laws to the state's convoluted tax laws and bemoaned how "civilian gun owners do not have corporate compliance counsel standing by to advise them on how to comply with California gun laws[,]" and former Governor Arnold Schwarzenegger also acknowledged the general confusion surrounding California's "lengthy and complex area of firearm laws."[1]	No response required.

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

	Commenter	Position	Comment	Committee Response
			[1]Letter from Arnold Schwarzenegger, Governor of California, to the Members of the California State Senate (Sept. 20, 2004), available at ftp://leginfo.public.ca.gov/pub/03-04/billlsen/sbl101-1150/sb_i 140_vt_20040920.html As a result, Californians depend even more on the court to obtain notice of their firearm rights and accompanying legal obligations. Quite often, these obligations are unknown or misunderstood by trial counsel. So the court is obligated to inform the defendants why they are prohibited from possessing firearms and what they must do to relinquish their firearms. On top of that, the California Department of Justice's ("DOJ") "Armed and Prohibited Persons Section" is actively seeking those who have prohibiting convictions and still have firearms registered in their name.[2] Many times, the trial court's advisement is all that stands between these defendants and an inadvertent violation of the statutes barring the possession of firearms and ammunition by prohibited persons. Thus, it is crucial that Proposed Form CR-210 adequately delineates, for both the trial court and the prohibited person, how firearm relinquishment operates under the new version of Penal Code section 29810 implemented by Proposition 63. [2] A description of what the Armed and Prohibited Person Section does may be found in DOJ's yearly report to the	The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

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

	Commenter	Position	Comment	Committee Response
			legislature, available at https://oag.ca.gov/sites/alL'files/agweb/pdfs/publications/armed-prohib-person-system-20 16.pdf **I. LEGAL BACKGROUND** Californians voted to pass Proposition 63 (the Safety for All Act) on November 8, 2016. Under Proposition 63, any person who has been convicted of an offense listed in Penal Code section 29800 or 29805 must use a Prohibited Person Relinquishment form ("PRRF") to identify a designee[3] to dispose of his or her firearms[4] in one of the following three ways: (1) Surrender the firearms to the control of a local law enforcement agency,[5] (2) Sell the firearms to a licensed firearms dealer, or (3) Transfer the firearm to a licensed firearms dealer for storage for the pendency of the prohibition.[6] [3] "The designee shall be either a local law enforcement agency or a consenting third party who is not prohibited from possessing firearms under state or federal law." Pen. Code, § 29810(a)(3) (effective Jan. 1, 2018). [4] "Any firearms that would otherwise be subject to relinquishment by a	No response required.

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

	Commenter	Position	Comment	Committee Response
			defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with [Penal Code] Section 25135." Pen. Code, § 29810(h) (effective Jan. 1, 2018) [5]Beginning January 1, 2018, law enforcement can destroy, sell, retain, or transfer any firearm that was thusly relinquished to the agency thirty-days after the person relinquished the firearm. Pen. Code, § 29810 (i) (effective Jan. 1, 2018). However, the firearm cannot be destroyed, sold, retained, or transferred if: (1) The judge of record or district attorney of the county certifies that the retention of the firearm is necessary or proper to the ends of justice; or (2) The defendant provides written notice of an intent to appeal his or her conviction for an offense listed in Penal Code section 29800 or 29805; or (3) If the AFS indicates that the firearm was reported lost or stolen by the lawful owner.	

	Commenter	Position	Comment	Committee Response
			Id. [6]Pen. Code, § 29810(a)(1), (a)(3)(effective Jan. 1, 2018). CALIFORNIA ATTORNEY GENERAL, FULL TEXT OF PROPOSITION 63, *available at* http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf (last visited May 19, 2017). However, *"[f]or good cause, the court may... allow an alternative method of relinquishment."*[7] For example, the court has discretion to allow the defendant to transfer his or her firearms to a family member instead of a licensed firearms dealer if good cause is shown for doing so. [7]Pen. Code, § 29810(f) (effective Jan. 1, 2018) (emphasis added). Regardless of which method of relinquishment is chosen, the designee must accomplish the necessary relinquishment within five days following the defendant's conviction if the defendant is out of custody, and the designee must obtain the resulting receipt from the local law enforcement agency or firearms dealer that documents the relinquishment and describes the firearms relinquished.[8] This five-day window is extended to fourteen days if the defendant is in custody at any point within the five days following the conviction.[9] Further, *"[f]or good cause, the court may shorten or enlarge the [5-day or 14-day] time periods specified [above]."*[10]	

	Commenter	Position	Comment	Committee Response
			[8]Pen. Code, § 29810(d) (effective Jan. 1, 2018). [9]Pen. Code, § 29810(e) (effective Jan. 1, 2018). However, "[i]f the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished[.]" Pen. Code, § 29810(e)4) (effective Jan. 1, 2018). [10] Pen. Code, § 29810(f) (effective Jan. 1, 2018) (emphasis added). Upon the defendant's conviction, the court must also "*immediately* assign the matter to a probation officer who will investigate whether the Automated Firearm System [AFS] or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms."[11]Also, the court must properly educate the defendant on the requirement to surrender his or her firearms: "The court *shall*, upon conviction of a defendant for an offense [listed in Penal Code section 29800 or section	

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

	Commenter	Position	Comment	Committee Response
			29805], *instruct* the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines[.]" [12] [11] Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added). [12] Pen. Code, § 29810(a)(2) (effective Jan. 1, 2018) (emphasis added). And the court must provide the defendant with the PRRF (to be developed by DOJ) and inform the defendant that his or her designee must submit the PRRF to the assigned probation officer, along with the necessary receipt(s), within the five- or fourteen-day window described above.[13] [13]Pen. Code, § 29810(a)(2), (b)(7) (effective Jan. 1, 2018). These deadlines apply even if the defendant does not have any firearms or ammunition to relinquish; the defendant must still submit the PRRF to the probation officer under these deadlines and shall include a statement on the PRRF affirming that he or she has no firearms to be relinquished. [14] Failing to timely file the completed PRRF with the probation officer is an infraction, punishable by a fine not exceed one hundred dollars. [15]	

	Commenter	Position	Comment	Committee Response
			[14]Pen. Code, § 29810(d)(3), (e)(3) (effective Jan. 1,2018). [15]Pen. Code, § 298 10(c)(5) (effective Jan. 1, 2018). Once the probation officer receives the PRRF from the defendant, or from the defendant's designee, the probation officer must review it, investigate whether the defendant still possesses any firearms, and update the AFS once the firearms have been relinquished. [16] This probation officer must then, [p]rior to final disposition or sentencing in the case, … report to the court whether the defendant has properly [met the deadline to submit the PRRF and] . . . relinquish[ed] all firearms identified by the probation officer's investigation or declared by the defendant on the [PRRF][.][17] [16] *See* Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018). [17] Pen. Code, § 29810(c)(2) (effective Jan. 1, 2018). Next, the court must make a finding prior to the final disposition or sentencing of the case as to (1) whether the probation officer's report indicates that the firearms were properly relinquished, "and [(2)] whether the court has received a completed Prohibited Persons Relinquishment Form, along with the (corresponding] receipts [.]" [18] "The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay	

	Commenter	Position	Comment	Committee Response
			in sentencing, the court may make and enter these findings within 14 days of sentencing." [19] *But, "[/]or good cause, the court may shorten or enlarge the time perio[d]"* for making this finding.[20] [18] Pen. Code, § 29810(c)(3) (effective Jan. 1, 2018). "The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing." *Id.* [19] Pen. Code, § 29810(c)(3) (effective Jan. 1, 2018). [20] Pen. Code, § 29810(t) (effective Jan. 1, 2018) (emphasis added). In the event that the court finds *probable cause* that the defendant has failed to relinquish any firearms as required, the court shall *order the search for and removal of any firearms* at any location where the judge has probable cause to believe the defendant's firearms are located. The court *shall state with specificity the reasons for and scope of the search and seizure* authorized by the order.[21] [21] Pen. Code, § 29810(c)(4) (effective Jan. 1, 2018) (emphasis added). On the other hand, if the court finds that "the firearms are relinquished as required[,]" the defendant shall be afforded immunity: he or she	

	Commenter	Position	Comment	Committee Response
			"shall not be subject to prosecution for unlawful possession of any firearms declared on the [PRRF]" (e.g., an unregistered "assault weapon").[22] [22] Pen. Code, § 29810(0) (effective Jan. 1, 2018). In light of all these new provisions of Penal Code section 29810 taking effect on January 1, 2018, the Judicial Council's Criminal Law Advisory Committee proposed the optional CR-210 Form "for courts to use to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810."[23] This is done [t]o implement relevant parts of Proposition 63."[24] As part of the implementation process, the Judicial Council solicited public comment concerning the Proposed Form CR-210. Specifically, the Judicial Council requests the public's comments "on the proposal as a whole" and on the issue of whether "the proposal appropriately addresses the stated purpose [.]"[25] We answer this call to comment by addressing whether Proposed Form CR-210 adequately reflects the requirements of Penal Code section 29810 that take effect in 2018. [23]Judicial Council of California, Invitation to Comment, SP 17-03, page 1 (2017). [24]Judicial Council of California, Invitation to Comment, SP 17-03, page 1 (2017). [25]Judicial Council of California, Invitation	

	Commenter	Position	Comment	Committee Response
			to Comment, SPJ 7-03, page 3 (2017). **II. COMMENTARY IN RESPONSE TO PROPOSED FORM CR-210** The apparent purpose of Proposed Form CR-210 is to help trial courts "to make appropriate findings concerning firearms relinquishment in criminal cases *under Penal Code section 29810.*"[26] But the current draft of the CR-210 form appears to limit itself to a few select provisions of Penal Code section 29810 and not the entirety of the section's requirements. As set forth below, our hope is that the form will be used to provide the court and the defendant a script and checklist to follow to make sure all of the requirements of section 29810 are followed, thus preventing unnecessary future prosecutions for offenses listed under Penal Code sections 29800 and 29805 (prohibited person in possession of a firearm). [26] Judicial Council of California, Invitation to Comment, SP 17-03, page 1 (2017) (emphasis added). Including the directives of Penal Code section 29810 on Proposed Form CR-210 would not only help ensure that courts satisfy their statutory duties, but it would also prevent defendants from	The committee declines to extend the scope of the proposed form to provide the court and defendant with a script and checklist outlining all requirements under Penal Code section 29810. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			inadvertently violating Penal Code section 29810 (and potentially sections 29800 or 29805) out of simple ignorance. It bears repeating that, due to the widespread confusion caused by California's firearms law and lack of guidance, it is essential for trial courts to provide defendants with the necessary instruction regarding firearms relinquishment when the evidence shows that the defendant has a conviction listed under sections 29800 or 29805. **A. Proposed Form CR-210 Does Not Currently Address the Requirements of Penal Code Section 29810 Mandating the Court to Instruct the Defendant on the Firearm Surrender Process** Proposition 63 requires courts to "instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines[.]"[27] Thus, Proposed Form CR-210 should facilitate the courts' mandatory efforts to instruct the defendant, walking him or her through all the requirements of firearms relinquishment under Proposition 63. This is what the law requires. We recommend that Proposed Form CR-210 should include language from Penal Code section 29810 outlining the obligations of the defendant and the probation department: [27] Pen. Code, § 29810(a)(2) (effective Jan. 1, 2018) (emphasis added).	The committee declines to extend the scope of the proposed form to include a further advisement on the firearm relinquishment process. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			The court shall advise the defendant follows: YOU ARE CONVICTED OF AN OFFENSE THAT PROHIBITS YOU FROM OWNING, PURCHASING, RECIEIVING, POSSESSING, OR HAVING UNDER YOUR CONTOL, ANY FIREARMS, AMMUNITON, AND AMMUNITION FEEDING DEVICES, INCLUDING BUT NOT LIMITED TO MAGAZINES. I HAVE INSTRUCTED MY CLERK TO PROVIDE YOU WITH THE PROHIBIITED PERSONS RELINQUISHMENT FORM. YOU ARE HEREBY ORDERED TO RELINQUISH FIREARMS AND AMMUNITION BY EITHER SURRENDERING THEM TO A LOCAL LAW ENFORCEMENTAGENCY, SELLING THE FIREARMS TO A LICENSED FIREARM DEALER, OR STORING THEM WITH A LICENSED FIREARM DEALER. [THE COURT MAY, IF GOOD CAUSE EXISTS, ALLOW THE DEFENDANT IMPLEMENT AN ALTERNATE METHOD OF RELINQUISHMENT THIS CAN INCLUDE, BUT IS NOT LIMITED TO, SELLING THE FIREARMS ON CONSIGNMENT, TRANSFERRING THE FIREARMS BY LAWFUL MEANS TO A FRIEND OR FAMILY MEMBER, ETC.] I FURTHER REFER THIS MATTER TO THE PROBATION DEPARTMENT AND ORDER THE PROBATION DEPARTMENT TO ASSIGN AN	

	Commenter	Position	Comment	Committee Response
			OFFICER TO OVERSEE THIS MATTER. USING THE PROHIBITED PERSONS RELINQUISHMENT FORM YOU SHALL GRANT A NON-PROHIBITED PERSON OR MEMBER Of LAW ENFORCEMENT THE POWER OF ATTORNEY TO DISPOSE OF YOUR FIREARMS AND AMMUNITION IN ONE OF THE WAYS, I HAVE MENTIONED BEFORE. THE PERSON YOU DESIGNATE TO DO THIS SHALL OBTAIN RECEIPTS OR OTHER PROOFS OF COMPLIANCE FOR YOUR FIREARMS' RELINQUISHMENTAND PROVIDE THAT INFORMATION TO THE PROBATION DEPARTMENT, OR IF YOU DO NOT HAVE FIREARMS OR AMMUNITION TO RELINQUISH YOU SHALL PROVDE THE SIGNED PROHIBITED PERSONS RELINQUISHMENT FORM TO THE PROBATION DEPARTMENT, MAKING SURE TO INCLUDE A STATEMENT AFFIRMING THAT YOU HAVE NO FIREARMS TO BE RELINQUISHED. IF YOU PROPERLY RELINQUISH ALL OF THE FIREARMS YOU REPORTED ON YOUR PROHIBITED PERSONS RELINQUISHMENT FORM CALIFORNIA LAW PROVIDES IMMUNITY FROM PROSECUTION FOR ILLEGALY POSSESSING ANY OF THESE FIREARMS. HOWEVER, IF YOU HAVE ANY QUESTIONS CONCERNING YOUR	

	Commenter	Position	Comment	Committee Response
			IMMUNITY, YOU ARE STRONGLY ADVISED TO TALK TO YOUR COUNSEL. YOU AND YOUR DESIGNEE ARE REQUIRED TO COMPLETE THIS PROCESS NO LATER THAN [(5-DAYS IF DEFENDANT IS OUT OF CUSTODY; 14-DAYS IF DEFENDANT IS IN CUSTODY CURRENTLY OR WILL BE WITHIN THE NEXT 5 DAYS. THE COURT MAY, WITH GOOD CAUSE, ENLARGE/SHORTEN THESE DEADLINES. IF GOOD CAUSE IS SHOWN, STATE THE GOOD CAUSE WITH THE DEADLINE OUTSIDE THE STATUTORY REQUIREMENTS)] FAILURE TO COMPLY WITH THE DEADLINE CAN RESULT IN A VIOLATION OF CALIFORNIA LAW FOR AN INFRACTION PUNISHABLE BY A FINE NOT TO EXCEED $100. It is important for Proposed form CR-210 to lay out in as much detail as possible what the courts and defendants must do to comply with Penal Code section 29810, particularly the 5-day or 14-day deadlines involved. This will serve to provide defendants with notice of their rights and what they must do so that effective compliance with Penal Code section 29810 may be ensured. Along these lines, it would be beneficial for Proposed form CR-210 to also list out the circumstances under which the Section 29810 firearms relinquishment is required. Penal Code section 29810 states that such relinquishment is	The committee declines to extend the scope of the proposed form to include all offenses under Section 29800 or Section 29805. The form is intended to address the findings required by the court under Penal Code

	Commenter	Position	Comment	Committee Response
			required "[upon conviction of any offense that renders a person subject to Section 29800 or Section 29805,[28] but few judges have memorized the long list of offenses encapsulated by those two sections. Therefore, Proposed form CR-210 should list out the specific offenses at issue. [28] Pen. Code, § 29810(a)(1) (effective Jan. 1, 2018.) And, to effectively dispel potential confusion as to whether a certain offense requires the firearm relinquishment at issue, Proposed Form CR-210 should cross-reference the comprehensive sentencing guidelines entitled *California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions*[29] and any other information source published by the Judicial Council. [29] Judicial Council of California, Operations and Programs Division, California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions (2017), available at http://www.sblaw1ibrary.org/uploads/7/3/1/1/7311175/bg07420l7pt.pdf. **B. Proposed Form CR-210 Can More Appropriately Address the Stated Purpose If It Addresses the Court's Statutory Duty Under Penal Code Section 29810, Subdivision (c)(2) to Assign the Matter to a**	section 29810(c). The committee may consider developing resources for judicial education regarding relevant offenses. The committee declines to extend the scope of the proposed form to include cross-references to *California Judges' Benchguide 74: Sentencing Guidelines for Common Misdemeanors and Infractions* and other Judicial Council references. The committee may consider developing resources for judicial education that refer to relevant references.

	Commenter	Position	Comment	Committee Response
			Probation Officer As it did with subdivision (a), Proposed Form CR-210 does not address the court's requirement located in subdivision (c) (2) of Penal Code section 29810: to "immediately assign the matter to a probation officer [.]"[30] This assignment is a conspicuous prerequisite to all the other provisions currently stated on Proposed Form CR-210, and its omission may harm all parties involved. Hence, it is important that Penal Code section 29820, subdivision (c) (2) also be reflected on Proposed form CR-210. [30]Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added). Correspondingly, Proposed Form CR-210 should address *how* a judge is to assign the matter to a probation officer in a way that furthers the purpose of Penal Code section 29810. It seems like the most obvious solution is for the Judicial Council to develop a supplementary form that not only indicates the assignment, but also indicates what the court wants the probation officer to do as is required of him or her by Penal Code section 29810. Without such a supplementary form, or other form of clear instruction from the court, there would be no coordination between the court and the probation department. The purpose of Penal Code section 29810 would therefore be foiled. Thus, we recommend that Proposed Form CR-210 should include an order for the probation department along the lines of:	The committee declines to extend the scope of this proposal to develop a supplementary form or other form for a court to assign a case to probation and make other related orders. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			The department of probation upon receipt of the Prohibited Person Relinquishment form ("PRRF")from the defendant due on or before [(DATE)] is ORDERED to prepare a report due [(DATE)] detailing and/or including the following: 1. *Confirmation that the defendant complied with the requirements for firearm disposal detailed in Penal Code section 22910(a) (2) or via "an alternative method of relinquishment" as specified by this court;*[31] 2. *The results of its investigation into the California Automated Firearm System, or of other credible information (e.g., a police report), regarding whether the defendant owns, possesses, or has under his or her custody or control any firearms;*[32] 3. *The department's findings as to whether it received the PRRF within the timeframe specified above and whether the defendant relinquished all firearms and ammunition he or she owns, possesses, or has under his or her custody (or whether the defendant simply has no firearms or ammunition to relinquish);* 4. *(In the event that the department determines that the PRRF was not received within the specified timeframe) The department may issue a citation.*	

	Commenter	Position	Comment	Committee Response
			alleging the defendant violated the requirements described in Penal Code section 29810, subdivision (c)(5), and requiring the defendant to attend court for the determination of the fine corresponding to the infraction. *5. (In the event that the department determines the information provided by the defendant to be faulty or incomplete) A* ***sworn affidavit*** *detailing the reasons why the department believes that relinquishment is faulty or incomplete, the location(s) where the department believes firearms or ammunition will be located, the items to be seized, and all the evidence supporting these findings; and* *6. The department's report shall also include the PRRF, receipt(s), and/or other documentation reflecting proper surrender of the firearms and/or ammunition (if applicable).* [31]Pen. Code, § 29810(t) (effective Jan. 1,2018) (emphasis added). [32] Pen. Code, § 29810(c)(1) (effective Jan. 1, 2018) (emphasis added). Without such a supplementary form, the probation officer might not furnish the court	

	Commenter	Position	Comment	Committee Response
			with sufficient information to help the court "to make appropriate findings concerning firearms relinquishment in criminal cases under Penal Code section 29810[,]" especially when it comes to the probable cause finding. [33]Or, due to a lack of communication, the probation officer might delay in submitting the necessary information and, in turn, cause the court to improperly delay in making its findings. Thus, to guarantee that the requirements of Penal Code section 29810 are followed, Proposed Form CR-210 should make reference to the probation department's report and include all of the information outlined above. [33]Judicial Council of California, *Invitation to Comment*, SF17-03, page 1 (2017). **C. Proposed Form CR-210 Can Better Address the Stated Purpose If It Addresses the Court's Statutory Duty Under Penal Code Section 29810, Subdivision (c)(3) to Make Its Findings and Enter Them in the Abstract of Judgment** If the Probation Department and the court determine that the defendant complied with the requirements of section 29810, as mentioned on the Proposed Form CR-210, the court is required to make sure those findings are recorded in the abstract of judgment. That order is lacking from the current version of Proposed Form CR-210. To better assist the court in meeting its statutory requirements, proposed Form CR-210 should have	The committee declines the suggestion to revise the form to include language ordering the clerk to record findings in the abstract of judgment. It is unclear whether the legislation is referring specifically to prison abstracts of judgment, which would only apply in certain relevant cases, or using 'abstract of judgment' to refer to minute orders, which are generally used in all relevant cases.

	Commenter	Position	Comment	Committee Response
			an order for the judge to check stating the following: o *Based on the information provided by the Probation Department, the court finds that the defendant appears to have met the relevant statutory requirements pursuant to Penal Code section 29810. The clerk is ordered to record this finding in the abstract of judgment.* **D. Proposed Form CR-210 Can More Appropriately Address the Stated Purpose If It Addresses the Constitutional Requirements Governing the Court's Probable Cause Findings and Orders for Searches** Inherent in Penal Code section 29810, subdivision (c)(4) is the requirement that the court abide by all constitutional procedures and protections in making its probable cause findings and orders for searches against a defendant. At all times, the court must keep in mind that "[i]n general a home may not be searched without a warrant notwithstanding probable cause."[34] And when it comes to search warrants, [t]he Fourth Amendment to the United States Constitution provides simply that "... no Warrants shall issue, but upon probable cause, *supported by Oath or affirmation,* and particularly describing the place to be searched, and the persons or	

	Commenter	Position	Comment	Committee Response
			things to be seized." Article I, section 1[3], of the California Constitution contains substantially identical language."[35] … Penal Code section 1525 restates the substance of the constitutional requirement:" A search warrant cannot be issued but upon probable cause, *supported by affidavit.* "Originally, the written affidavit was a mandatory requirement, but in 1970 the Legislature enacted Penal Code section 1526, subdivision (b), and provision is now made for the alternative by *a sworn oral statement.*[36] [34]*People v. Ramey*, 16 CaI.3d 263, 273 (1976) (internal citations and quotation marks omitted). [35]*People v. Meza*, 162 Cal.App.3d 25, 34— [35] *People v. Meza*, 162 Cal.App.3d 25, 34— (1984) (emphasis added) (internal citations and quotation marks omitted). [36]People v. Meza, 162 Cal.App.3d 25, 35 (1984) (emphasis added) (internal citations and quotation marks omitted). Yet, despite these requirements, Proposed Form CR-210 currently allows the court to make its probable cause findings based simply on the "Probation Officer's report" or "Statements made in open court." Unless the Judicial Council requires the Probation Officer's Report to include	The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the

	Commenter	Position	Comment	Committee Response
			an affidavit, as discussed in Section II.B, *supra*, no affidavit exists for the court to base its probable cause findings. And Proposed Form CR-210 currently guides judges into thinking that they can base their probable cause findings on *any* statements made in open court, as opposed to a *sworn* oral statement made during court. All of this can be easily remedied, though. Moreover, Proposed Form CR-210 should probably remind judges that due process requires them to certify the transcription of the sworn oral statements if they are to base their probable cause findings on such statements: Regarding the constitutional due process rights of defendant, the certification requirement has a two-fold purpose: to provide (1) defendant with an accurate transcription of the oral statement so appropriate challenges to its legal sufficiency might be made and (2) the reviewing court with an accurate record of the factual information considered by the magistrate in making the probable cause determination, without which meaningful review would be foreclosed. (See *Dunn v. Municipal Court*, *supra*, 220 Cal.App.2d 858, 873, 34 Cal Rptr. 251; compare *Kaylor v. Superior Court* (1980) 108 Cal.App.3d 451, 457, 166 Cal.Rptr. 598 [where the magistrate admitted he did not examine the entire affidavit which included a 155-page addendum, the appellate court could not conduct a meaningful review because of the uncertainty as to what the magistrate relied on in making the probable	county for appropriate action," because it reflects the proper procedures for the application of a search warrant. The committee declines to extend the scope of the proposed form to include an advisement to judges to certify the transcription of sworn oral statements. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			cause determination].)[37] [37]*People V. Meza*, 162 Cal.App.3d 25, 35 (1984). Therefore, we respectfully urge the Judicial Council to amend Proposed Form CR-210 so that it reflects the existence of the affidavit, sworn oral statement, and/or certified transcription that are constitutionally required for a probable cause finding. In addition, it is currently unclear what Proposed Form CR-210 means by the statement "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action." Does this mean that the court has already issued the search warrant and is referring the matter to the prosecuting agency for the execution of the search warrant? Or does it mean that the court has not issued the search warrant yet and is referring the matter to the prosecuting agency so that the prosecuting agency can apply for the warrant and then have a law enforcement agency execute it? And why is the court referring the matter to "the prosecuting agency" (presumably the District Attorney's Office), as opposed to local law enforcement, when a search warrant is "directed to a peace officer"[38] rather than to the prosecutor? We ask the Judicial Council to clarify these questions on Proposed Form CR-210. [38] Pen. Code, §§ 1523, 1528(a).	The committee agrees in part and has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it reflects the proper procedures for the application of a search warrant.

	Commenter	Position	Comment	Committee Response
			In doing so, the Judicial Council should also keep in mind who the applicant of the search warrant is and ensure that the court is not violating the separation of powers by acting as both the applicant and the adjudicator for the search warrant's issuance. Both the law and common sense require that the magistrate issuing the search warrant be a neutral, independent entity that is separate from the applicant seeking the search warrant's issuance.[39] The applicant arguing that probable cause exists must necessarily be distinguished from the adjudicator who will ultimately decide whether probable cause exists. Therefore, the court cannot unilaterally issue a search warrant in the absence of another entity's application for a search warrant. Proposed form CR-210 should either state that the court is referring the matter to the county's law enforcement agency for it to apply for a search warrant, or that the court is construing the probation officer as the applicant of the search warrant and is directing a law enforcement agency to serve and execute the warrant. [39]*See* Pen. Code, §§ 1525 (showing that an "application" need to be made in order for the search warrant to issue"), 1526 (stating that the magistrate "may examine on oath the person seeking the warrant," thereby implying that the magistrate and the warrant's applicant cannot be the same person).	The committee has revised proposed form CR-210 to take out #4 - #6 regarding probable cause findings and a search pursuant to a term or condition of probation. The committee declines to take out #7, "Search warrant required; matter referred to the prosecuting agency of the county for appropriate action," because it reflects the proper procedures for the application of a search warrant.

	Commenter	Position	Comment	Committee Response
			Lastly, Proposed Form CR-210 should remind the court to instruct the defendant about his or her rights to a hearing on the propriety of the search and seizure. "Due process of law entitles the claimant of seized property to an early court hearing to determine whether the articles were subject to seizure."[40] "[E]ven where summary action is justified, due process still requires a reasonably prompt hearing to test the probable merit of the government's case. [41] Ideally, for the sake of efficiency, this hearing should be scheduled before the court makes its finding of probable cause. That way, the court can take into consideration the defendant's explanations as to the whereabouts of the firearms. If that scheduling cannot be feasibly accomplished, then the hearing needs to be held as soon as possible after the court makes its probable cause finding. [40]*Williams v. Justice Court, Oroville Judicial Dist., Butte County* (1964) 230 Cal.App.2d 87, 98. [41]*O'Connell v. City of Stockton* (2005) 128 Cal.App.4th 831, as mod (fled on denial of reh'g (May 23, 2005), review granted and opinion superseded (Cal. 2005) 34 CaI.Rptr.3d 190, and aff'd (2007) 41 Cal.4th 1061. **E. Proposed Form CR-210 Can Better Address the Stated Purpose if It References the Infraction and Fine Stated in Penal Code**	The committee declines to extend the scope of the proposed form to provide the court with an instruction to defendant about rights to a hearing on the propriety of a search and seizure. The form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			Section 29810, Subdivision (c)(5) If the defendant fails to submit his or her PRRF in a timely manner to the assigned probation officer, Penal Code section 29810, subdivision (c)(5) requires the government to penalize such delay by (1) charging the defendant with an infraction and (2) requesting the defendant to pay a fine not exceeding $100. As can be seen, Proposition 63 carved a specific and important role for subdivision (c)(5) in effectuating the firearms relinquishment under Penal Code section 29810. Subdivision (c)(5) cannot be ignored. And it requires findings that only the court can make, namely the specific amount of the fine. Resultantly, it is necessary for Proposed form CR-210 to acknowledge subdivision (c)(5). In addition, because the separation of powers prevents the court from filing criminal charges against the defendant, Proposed Form CR-210 must also include a provision stating that the probation department is making the citation for the infraction (see corresponding proposal in Section 11.B, *supra*, regarding the citation for the probation department to make) or that the court is referring the matter to the county's prosecuting agency for it to file the criminal charge pertinent to the infraction stated in subdivision (c)(5). As a result, we propose that Form CR-2 10 should include a section stating something like: *The court finds as follows:* o *The defendant has timely filed the completed Prohibited Persons Relinquishment Form with*	The committee declines the suggestion because the infraction would be subject to a separate adjudication. Further, the form is intended to address the findings required by the court under Penal Code section 29810(c)(3), (4). The committee may consider developing resources for judicial education regarding other subdivisions of section 29810.

	Commenter	Position	Comment	Committee Response
			the assigned probation officer *o Yes* *o No. Accordingly:* i. *[The probation department has cited defendant with an infraction pursuant to Penal Code § 29210(c) (5) and required the defendant to attend court for the imposition of the corresponding fine]*<u>*OR*</u> *[the court refers the matter to the prosecuting agency of the county for the filing of a criminal charge pursuant to Penal Code § 29810(c)(5)]* ii.*(if proceeding via the citation from the probation department) The court has considered the aforesaid citation from the probation department and finds the defendant guilty of an infraction pursuant to Penal Code §29810(c)(5).* *iii. (if proceeding via the citation from the probation department) The defendant shall be punished by a fine in the amount of_____(not exceeding $100)* **F. Proposed Form CR-210 Does Not Appropriately Address the Stated Purpose Because It Does Not Address the Court's Discretion Under Penal Code Section 29810, Subdivision (1) to Allow an Alternative Method of Relinquishment** Subdivision (f) allows the court to set an alternative method of firearm disposition if the	The committee accepts the suggestion and will include a checkbox in the form.

	Commenter	Position	Comment	Committee Response
			defendant shows that good cause exists to allow for the alternative method that is not currently named in Penal Code section 29810. There is no reason why Proposed form CR-210 should not include the court's finding of good cause pursuant to Penal Code section 29810, subdivision (f). Such findings can dramatically change the process of the firearm relinquishment under Proposition 63, so it is important that they be documented. Documentation would also ensure that the defendant receive proper notice of the pivotal changes and that the court is aware of its actions and discretion. **II. ADDITIONAL ISSUES TO BRING TO THE JUDICIAL COUNCIL'S AWARENESS** **A. There May Be Fifth Amendment Concerns if the Defendant Is Compelled to Provide Information About Firearms** The Judicial Council may want to consider advising judges to tread softly or hold additional hearings when it comes to requiring the defendants to divulge information about the whereabouts and history of their firearms. Otherwise, courts may violate the defendants' Fifth Amendment rights. "The Fifth Amendment states that '[n]o person ... shall be compelled in any criminal case to be a witness against himself. To qualify for the Fifth Amendment privilege, a communication must be	The committee declines this comment because it is outside the scope of this proposal.

	Commenter	Position	Comment	Committee Response
			testimonial, incriminating, and compelled."[42] [42]*People v. Kurtenbach*, 204 Cal.App.4th 1264, 1283-84 (2012) (internal citation and quotation marks omitted). There are many instances during a firearms relinquishment process where fifth Amendment rights may be implicated. For example, if a judge requires a defendant to give specific details as to whom he transferred his firearms to and why he did not have a licensed firearms dealer ("FFL") conduct the transfer according to California law, then the judge would be forcing the defendant to admit that he had not complied with the applicable provisions of the Penal Code requiring an FFL for private party transfers. Because this non-compliance is a crime, this means that the court would be compelling the defendant to be a witness against himself, contrary to the provision of the Fifth Amendment.[43] Importantly, Section 29810 provides immunity for possession only. The section provides no immunity from prosecution if the firearms that the defendant declares are illegally stolen, have obliterated serial numbers, or were used in a crime. Hence, defendants have a right to remain silent so as not to be forced to testify and subject themselves to prosecution pursuant to those circumstances. [43]See U.S.C.A.Const. Amend. 5; *see, e.g., Russell v. United States*, 306 f.2d 402 (9th Cir. 1962). What this means is that judges should, at the very	

	Commenter	Position	Comment	Committee Response
			least, be advised that a defendant may assert his or her Fifth Amendment right to *refuse* to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction ... to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.[44] [44]Pen. Code, § 29810(b)(3) (effective Jan. 1, 2018). And judges should take care not to infringe upon those rights during the process of firearms surrender under Proposition 63. **B. The Judicial Council May Not Want to Wait Passively for the California Department of Justice to Develop the PRRF** DOJ's current budget and staffing concerns seem rather crippling. For instance, DOJ has ignored its statutory duties since September 18, 2014 to adopt the regulations needed to implement Assembly Bill ("AB") 2220 (allowing for the acquisition and possession of firearms by "private patrol operators").[45] DOJ has delayed in promulgating the "assault weapon" registration regulations required by AB 1135 and Senate Bill ("SB") 880 that should have been implemented early this year (and absolutely need to be implemented by January 1, 2018). Moreover, DOJ has failed to develop the ammunition vendor regulations	The committee declines this comment because it is outside the scope of this proposal. No response required.

	Commenter	Position	Comment	Committee Response
			required by Proposition 63 and AB 1235 that need to be in place by July 1, 2017. [45] DOJ has yet to provide the critical information or regulations needed for the full implementation of AB 2220 (Chapter 423, Statutes of 2014). Among other things, AB 2220 added section 28012 to the Penal Code, thereby allowing private patrol operators (i.e., security guard companies) to register firearms with DOJ and to assign the firearms to their security guard employees. There is no guarantee that DOJ will prioritize its duty to develop the PRRF ahead of all of these other duties. There is also no indication that DOJ will acquire additional staff and resources in order to increase its work output. Therefore, California may encounter a substantial delay when waiting for DOJ to finally publish an approved PRRF. In turn, this would prevent the courts from implementing the firearm relinquishment process that needs to be in place by January 1, 2018. This is a highly undesirable result for everyone involved. As a result, perhaps the Judicial Council might want to consider contacting DOJ (if it hasn't already) to prompt DOJ to develop the PRRF. We feel that such prodding by the Judicial Council will carry more weight than if it came from anyone else, as few organizations and entities have the Judicial Council's reputation and stature. It would	

	Commenter	Position	Comment	Committee Response
			be a shame for all of the Judicial Council's careful and timely work to go to waste simply because DOJ has persisted in its pattern of delay.	
3.	Superior Court of California, County of Los Angeles	AM	Add New Item 6 "The defendant has **NOT** complied with the relinquishment requirements of PC 29810." New Items 7 and 8 would be the same as old items 4 and 5 except for the checkbox before each. Items 6 and 7 would become 9 and 10. **Example** **The court finds as follows:** 1. Defendant has completed a Prohibited Persons Relinquishment Form □ Yes □ No 2. The defendant has reportable firearms per the Probation Officer's report □Yes □No **Compliance** 3. □ The defendant has relinquished all firearms and provided relinquishment receipts per Probation Officer's report. 4.□ The defendant has no reportable firearms per the Probation Officer's report. 5. □ The defendant has complied with the relinquishment requirements per PC 29810. **Non-Compliance** 6. □ The defendant has **NOT** complied with the	The committee accepts the suggestion in part and will include a 'compliance' section and a 'non-compliance' section.

	Commenter	Position	Comment	Committee Response
			relinquishment requirements of PC 29810. 7. □ The court finds probable cause that the defendant has failed to relinquish all firearms. a. Probable cause obtained from: □ Probation Officer's report □ Statements made in open court □ Other: 8. □ The court finds probable cause for the search for and removal of defendant's firearms. a. Type of firearm, if known: b. Location and scope: c. Probable cause obtained from: □ Probation Officer's report □ Statements made in open court □ Other: 9. Search required, pursuant to a term or condition of probation. □ Yes □ No 10. Search warrant required; matter referred to the prosecuting agency of the county for appropriate action. □Yes □ No **Does the proposal appropriately address the stated purpose?** Yes. Please see the suggested modifications above. **What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training),**	No response required.

	Commenter	Position	Comment	Committee Response
			revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Judicial and staff training. Implementation would require new CMS codes to track events. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **How well would this proposal work in courts of different sizes?** This proposal works well in courts of different sizes.	No response required. No response required. No response required.
4.	Superior Court of California, County of Orange By: Lupe Chaidez Operations Analyst	A	**Does the proposal appropriately address the stated purpose?** Unknown **Would the proposal provide cost savings?** No **What would the implementation requirements be for the courts?** Training for judicial officers and staff, costs related to copying and stocking the form; docket code creation/implementation; imaging costs;	No response required. No response required. No response required.

	Commenter	Position	Comment	Committee Response
			modification of procedures; other unanticipated issues. **Would three 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?** Unknown; however for large courts the completion and filing of an optional form for cases including a firearms prohibition would increase our workload tremendously.	 No response required. No response required.
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	AM	**Does the proposal appropriately address the stated purpose?** Yes **Would the proposal provide cost savings? If so, please quantify**. No **What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.**	 No response required. No response required.

SPR17-03
Criminal Procedure: Firearms Relinquishment
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			CRC's would need to be trained to include as an attachment to the minutes. **Would three 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?** Fine. Larger courts may choose to include necessary findings language on minute orders so as to not process additional papers, including stamping the judge's line stamp and making copies. Form may need to be in triplicate NCR to give parties a copy.	No response required. No response required. The committee declines the suggestion to provide the forms in triplicate because parties may be given a copy, if requested, through other means.

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 September 14–15, 2017

Title
Juvenile Law: Title IV-E Findings and Orders

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.710, 5.715, and 5.810; revise forms JV-320, JV-415, JV-421, JV-430, JV-432, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-672, JV-674, and JV-678

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, 2018

Date of Report
July 11, 2017

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending three rules of court and revising 18 juvenile law forms designed to assist the courts in documenting required findings and orders in out-of-home placement cases. The proposed changes are designed to bring these rules and forms into compliance with recent legislation.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Revise forms JV-320 (item 16a), JV-432 (item 8), JV-433 (item 13), JV-438 (item 10), JV-442 (item 9), JV-446 (item 28), JV-457 (item 8), JV-674 (item 15), and JV-678 (item 14) to include the newly implemented permanent plan options.

2. Revise forms JV-433 (item 14), JV-438 (item 11), JV-442 (item 10), JV-446 (item 29), JV-457 (item 9), JV-674 (item 17), and JV-678 (item 17) to include the new findings related to children 16 and older.
3. Revise form JV-672 (item 14) to reflect new plan options.
4. Amend the reference to Welfare and Institutions Code section 366.21(e) in rule 5.710 to refer to the correct code sections, which are sections 366.22(e) and (g).
5. Amend the reference to Welfare and Institutions Code section 366.21(f) in rule 5.715 to refer to the correct code sections, which are sections 366.22(f) and (g).
6. Revise forms JV-433 (item 9), JV-445 (item 14a), JV-674 (item 14b(4)), and JV-678 (item 10) to include the relative search finding.
7. Revise forms JV-440 (item 11), JV-445 (item 13), JV-446 (item 17), JV-455 (item 11), JV-674 (item 10a), and JV-678 (item 11a) to include an ongoing and intensive efforts finding for children 16 years of age and older.
8. Revise form JV-443 (item 6a(3)) to require the court to consider barriers to reunification faced by minor and nonminor dependent parents.
9. Revise forms JV-320 (item 20), JV-421 (item 32), JV-430 (item 20), JV-435 (item 20), JV-440 (item 21), JV-445 (item 20), JV-446 (item 26), and JV-455 (item 21) to change references to "independence" and "independent living" to "successful adulthood."
10. Revise form JV-678 to include the new permanent plan options and associated findings.
11. Revise forms JV-445 (item 24) and JV-446 (item 23) to include a check box that indicates whether a postadoption sibling contact agreement has been developed and, if not, specifies that the court inquired about the development of a voluntary postadoption contact agreement for the siblings.
12. Revise forms JV-674 (item 14) and JV-678 (item 5) to clarify when services are continued or terminated.
13. Revise forms JV-421 (item 29), JV-430 (item 17), JV-435 (item 17), JV-440 (item 18), JV-445 (item 17), JV-446 (item 27), JV-672 (item 21), JV-674 (item 24), and JV-678 (item 23) to include a check box that indicates whether or not the child has a psychotropic medication order and documents the date of the next hearing on that order.
14. Revise form JV-443 (item 6c) to include a finding that allows the court to continue the 18-month review hearing if it finds that reasonable services have not been provided.
15. Revise forms JV-415, JV-430, JV-435, JV-440, and JV-455 to include a notice section that informs parents they will not be advised of their appellate rights if they fail to appear at a future hearing.
16. Amend rule 5.810(c)(2)(A) to clarify that the new findings and orders set forth in Welfare and Institutions Code section 727.3(a)(5) should also be made at postpermanency hearings.

The text of the proposed amendments to the rules is attached at pages 9–12. The proposed revised forms are attached at pages 13–89.

Previous Council Action

Of the 18 forms proposed for revision, all of them, except the nonminor dependent status review hearing form that was created in 2012, were originally created in 2006 as part of a large package of optional forms designed to assist the courts in documenting required findings and orders in out-of-home placement cases. Forms JV-320, JV-415, JV-421, JV-430, JV-432, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, and JV-457 were last revised in 2011, while forms JV-672, JV-674, and JV-678 were last revised in 2012.

Rules 5.710 and 5.715 were implemented in 1990. Rule 5.710 has been amended 19 times, while rule 5.715 has been amended 18 times. Both were most recently amended effective January 2017 to replace language mirroring statute with citations to statute. Rule 5.810 was implemented in 1991 and has been amended eight times; it was most recently amended effective 2016 to comply with statutory changes to sibling visitation requirements and to clarify the timing of permanency and postpermanency hearings in delinquency cases.

All 18 forms proposed for revision were created for the documentation of findings and orders in cases where the child is placed outside of the home. In practice, these forms are put to a variety of uses by the courts. Some courts use the forms to document all findings and orders, others have programmed the findings and orders from the forms into their case management systems, and some courts use them as a template to create their own local findings and order documents.

Rationale for Recommendation

The majority of the revisions proposed are driven by statutory amendments in recent legislation.

Senate Bill 794

In 2015, the Legislature passed Senate Bill 794 (Stats. 2015, ch. 425), which brought large-scale change to the findings and orders required in out-of-home placement cases for dependent and delinquent youth. Specifically, SB 794 revised Family Code section 7950 and Welfare and Institutions Code sections 362.04, 362.05, 366, 366.21, 366.22, 366.25, 366.26, 366.3, 366.31, 706.5, 706.6, 727.2, 727.3, 10618.6, 11386, 11400, 16002, 16501, and 16501.1.

One of the most significant changes made by SB 794 was the narrowing of planned permanent living arrangements as a catchall option for children in out-of-home placements. Prior to SB 794, the court could designate placement in a foster home or group home (referred to as "another planned permanent living arrangement") as a long-term plan for children of any age. That is no longer true. Since the implementation of SB 794, the availability of another planned permanent living arrangement as a long-term plan is reserved for children age 16 or older.

In addition to modifying the permanent plan options available to probation and child welfare, SB 794 requires the court to make a variety of additional findings and orders aimed at achieving permanence more quickly for children. These additional findings and orders are included on the forms proposed for revision, including form JV-678, which is used during postpermanency

hearings in delinquency cases. This is noteworthy because while the legislation amended the statute that discusses permanency hearings for delinquent children[1] to include the additional findings and orders, it did not amend the statute that addresses postpermanency hearings.[2] Since the new findings and orders required by SB 794 are aimed at achieving permanence more quickly for children, it seems incongruous not to require the new findings and orders at both permanency and postpermanency hearings. Consequently, revising form JV-678 to include the additional findings and orders and amending rule 5.810(c)(2)(A) of the California Rules of Court will clarify that the new findings and orders set forth in Welfare and Institutions Code section 727.3(a)(5) should also be made at postpermanency hearings.

Senate Bill 1060

In addition to the revisions required by SB 794, two of the 18 forms listed above, forms JV-445 and JV-445, are being revised to comply with SB 1060 (Stats. 2015, ch. 719). The law currently allows, in an adoption proceeding, for continuing contact between the birth relatives and a child if a postadoption contact agreement is entered into voluntarily and is in the best interests of the child at the time the adoption petition is granted. Prior to the enactment of SB 1060, when parental rights were terminated and the dependent or delinquent child was ordered placed for adoption, the county adoption agency or the state Department of Social Services was required to take steps to facilitate ongoing sibling contact, including the encouragement of prospective adoptive parents to make a plan for facilitating postadoptive contact.

Pursuant to SB 1060, the county placing agency is now required to facilitate a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator to decide whether to voluntarily execute a postadoption sibling contact agreement. SB 1060 directs the court to inquire into the status of the development of a voluntary postadoption sibling contact agreement at the first review hearing conducted after parental rights have been terminated and adoption has been ordered.

To comply with SB 1060, it is recommended that forms JV-445 and JV-446 be revised to include a check box that specifies that the court inquired about the development of a voluntary postadoption contact agreement for the siblings.

Additional Revisions

During the five years since the last revision of the bulk of these forms, other bills and California case law have made minor modifications to the findings and orders; the proposed revisions to this group of forms capture those minor changes. In addition, revisions are proposed to increase the accuracy, clarity, and functionality of the forms.

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[1] Welf. & Inst. Code, § 727.3(a)(5).

[2] Welf. & Inst. Code, § 727.2(g).

Time limits. Welfare and Institutions Code section 727.3 sets forth the time limits on reunification services for parents. Although this code section was not changed by SB 794, the time limits on reunification services for parents of delinquent youth are currently not clearly delineated on the findings and order forms. The committee proposes revising forms JV-674 (item 14) and JV-678 (item 5) to clarify when services are continued or terminated. This will make the findings and orders more straightforward and will ensure legally accurate findings.

Psychotropic medication. Recent legislation, SB 238 (Mitchell; Stats. 2015, ch. 534), requires closer court oversight of children who have a court order for psychotropic medication. While not specifically required by statute, the inclusion of a check box that indicates whether the child has a psychotropic medication order and documents the date of the next hearing on that order will allow the court and parties to track such orders and comply with the statutory requirements. The committee therefore proposes revising forms JV-421 (item 29), JV-430 (item 17), JV-435 (item 17), JV-440 (item 18), JV-445 (item 17), JV-446 (item 27), JV-672 (item 21), JV-674 (item 24), and JV-678 (item 23) to include a psychotropic medication order finding.

Continue reunification services past 18 months. Recently, the court in *In re J.E.* (2016) 3 Cal.App.5th 557 reiterated that the court has the discretion to continue reunification services past 18 months when it finds that reasonable services have not been provided to the parent. Revising form JV-443 to include a finding authorizing continued reunification services at the 18-month hearing will ensure the form is as accurate as possible. The committee therefore proposes revising form JV-443 (item 6c) to include the following language for the finding:

> The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause pursuant to Welfare and Institutions Code section 352 to continue the 18-month status review to ___.

Revisions to provide information on appellate rights. California Rules of Court, rule 5.590(a) requires that a parent must be present at the court hearing to be advised of his or her appellate rights. In order to provide parents with information about the right to seek appellate review and alert them that they will not be advised of their appellate rights if they fail to appear at a future hearing, the committee recommends revising forms JV-415, JV-430, JV-435, JV-440, and JV-455 to include the following language in a section titled "For Your Information":

> You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2017 invitation-to-comment cycle, from February 27, 2017, to April 28, 2017, 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 Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee provided comment. Out of six commenters, five agreed with the proposal if modified and one agreed with the proposal as circulated. A chart with the full text of the comments received and the committee's responses is attached at pages 90–145.

The invitation to comment sought input on several different issues. The first issue was whether some of the forms should include a finding that documents whether the child has a psychological medications order and sets forth the next psychological medications hearing date. Four of the six commenters provided input on this question. Of the four, two recommended not including a check box to document such orders, noting that the forms already contain lots of dense information. One commenter felt the check box would be useful but raised confidentiality concerns. Another commenter thought the check box would be helpful. The committee considered not including this check box on the forms; however, after discussion, the committee decided to include the check box to document psychological medication orders because it is an important issue and would be a helpful reminder for the court and parties.

The next issue raised in the invitation to comment was whether form JV-443, *Eighteen-Month Permanency Attachment: Reunification Services Continued*, should include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided. Four out of the six commenters responded to this question. Out of those four, one questioned whether the finding, as written, accurately stated the law. This commenter also noted that including this finding might give the impression that extending services past the 18-month mark is routine, when in fact it should be a rare occurrence. The other three commenters supported including this finding on form JV-443. After discussion, the committee concluded that the finding is helpful and acknowledges recent decisional law. The committee recommended that the finding be included and reworded to resolve the concerns noted by commenters.

Another issue raised in the invitation to comment and addressed by commenters was whether the findings and orders related to delinquent youth should be revised to require independent living planning for children age 14 or older who are in out-of-home placement, to comply with federal mandates, despite the fact that the Welfare and Institutions Code does not require it. Three of the six commenters responded to this question. All three agreed that the findings and orders related to delinquent youth should require independent living planning for children age 14 or older, in

accordance with federal law. The committee did include these revisions in compliance with federal law.

The invitation to comment also sought input on whether revising form JV-462 (which applies to nonminor dependents) to comport with changes implemented by SB 794 would contradict the stated goal of extended foster care: achieving independence. Specifically, the legislation's directive to speak with nonminor dependents about their permanent plan seems to undermine the nonminor dependent's work toward his or her ultimate permanent plan, achieving independence. All four of the six commenters who provided guidance on this question felt that form JV-462 should be revised to comply with the statutory changes implemented by SB 794. The commenters noted that a nonminor dependent can be working toward both independence and another permanent plan, such as adoption. After a robust discussion of this issue, the committee determined, however, that changing form JV-462 to include the new plan options is not appropriate at this time. Specifically, the committee noted that nonminor dependents are adults, and it is inconsistent to apply permanent plans created for children to adults who are already in their permanent plan—namely, achieving independence.

The final question on the invitation to comment sought comments on whether providing a link on the forms to a website created by the Judicial Council with information on the right to seek appellate review would be an appropriate vehicle to inform parties of their potential right to seek appellate review. Three of the six commenters provided input on this question and the comments were split. One commenter felt that including the language about appellate rights on the forms was sufficient. Another believed that including a link that would provide more information would be helpful. Yet another commenter thought that though the link might be helpful, there are people who do not have access to the Internet and would not be able to access the information. After consideration and discussion, the committee determined that including language about appellate rights on the form is sufficient and that creating a website with information on appellate rights is not necessary.

One commenter raised an issue that was not implicated by the proposal but relates to how the forms are used. Specifically, this commenter noted that there is not currently a form the court can use when a child needs to be removed from an abusive, noncustodial parent. Over the past two years, this issue has been litigated in the court with some frequency and there is currently a bill pending in the Legislature, Assembly Bill 1332 (Bloom; 2017–2018 Reg. Sess.), dealing with the issue. The committee considered revising the title of form JV-421 to remove the word "custodial" so that it may be used to remove children from custodial and noncustodial parents. Ultimately, the committee decided against revising the form because the legislation is still pending. If AB 1332 passes, the committee will consider creating an attachment form that is specifically tailored to situations where children are removed from noncustodial parents.

Implementation Requirements, Costs, and Operational Impacts

This proposal will result in minimal printing costs and may result in a temporary increase in employee labor for those courts that need to reprogram existing case management systems. On

the other hand, it will likely result in a statewide savings because courts will not have to devote employee resources to developing legally accurate forms. Instead, these revised forms will be provided to courts statewide.

Attachments and Links

1. Cal. Rules of Court, rules 5.710, 5.715, and 5.810, at pages 9–12.
2. Forms JV-320, JV-415, JV-421, JV-430, JV-432, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-672, JV-674, and JV-678, at pages 13–89.
3. Chart of comments, at pages 90-145.

Rules 5.710, 5.715, and 5.810 of the California Rules of Court are amended, effective January 1, 2018, to read:

Title 5. Family and Juvenile Rules

Rule 5.710. Six-month review hearing

(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 (g), and as follows:

(1)–(4) * * *

(b) * * *

Rule 5.715. Twelve-month permanency hearing

(a) * * *

(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 (g), and as follows:

(1)–(5) * * *

Rule 5.810. Reviews, hearings, and permanency planning

(a) * * *

(b) Permanency planning hearings (§§ 727.2, 727.3, 11404.1)

(1)–(2) * * *

(3) *Selection of a permanent plan (§ 727.3(b))*

At the first permanency planning hearing, the court must select a permanent plan. At subsequent permanency planning hearings that must be held under section 727.2(g) and rule 5.810(c), the court must either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the ~~following~~ permanent plans~~,~~ listed in section 727.3(b) ~~which are, in order of priority:~~.

~~(A) A permanent plan that immediately returns the child to the physical custody of the parent or guardian. This plan must be the permanent plan unless no reunification services were offered under section 727.2(b), or unless the court finds that the probation department has established by a preponderance of evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the ward. The probation department has the burden of establishing that detriment. In making its determination, the court must review and consider all reports submitted to the court and must consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the child availed himself or herself of the services provided.~~

~~(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after 6 additional months of reunification services. The court may not order this plan unless the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal or that reasonable services have not been provided to the parent or guardian.~~

~~(C) A permanent plan of adoption. When this plan is identified, the court must order that a hearing under section 727.31 be held within 120 days.~~

~~(D) A permanent plan of legal guardianship. When this plan is ordered, the court must set a hearing under the procedures described in section 728 and rule 5.815.~~

~~(E) A permanent plan of placement with a fit and willing relative. When this plan is ordered, the court must specify that the child will be placed with the appropriate relative on a permanent basis.~~

~~(F) A permanent plan of placement in a planned permanent living arrangement. The court may order this permanent plan only after considering, and ruling out, each of the other permanent plan options listed above. If, after doing so, the court concludes that a planned permanent living arrangement is the most appropriate permanent plan for the child, it must also enter a finding, by clear and convincing~~

~~evidence, that there is a compelling reason, as defined in section 727.3(c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the child. When a planned permanent living arrangement is ordered, the court must specify the type of placement. The court must also specify the goal of the placement, which may include, but is not limited to, a goal of the child returning home, emancipation, guardianship, or permanent placement with a relative.~~

(4) * * *

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement no less frequently than once every six months.

(1) *Consideration of reports (§ 727.2(d))*

The court must review and consider the social study report and updated case plan submitted for this hearing by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.2(d).

(2) *Findings and orders (§ 727.2(g))*

At each postpermanency status review hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate. If the plan is another planned permanent living arrangement, the court must meet the requirements set forth in Welfare and Institutions Code section 727.3(a)(5);

(B) The continuing necessity for and appropriateness of the placement;

(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan for the child;

(D) Whether the child was actively involved, as age and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not

appropriately involved, the court must order the probation department 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; and

(E) If sibling interaction has been suspended and will continue to be suspended, sibling interaction is contrary to the safety or well-being of either child.

(d)–(e) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
ORDERS UNDER WELFARE AND INSTITUTIONS CODE SECTIONS 366.24, 366.26, 727.3, 727.31		CASE NUMBER:

Child's name:
Date of birth: Age:
Parent's name *(if known):* ☐ Mother ☐ Father
Parent's name *(if known):* ☐ Mother ☐ Father

1. a. Hearing date: Time: Dept.: Room:
   b. Judicial officer:
   c. Parties and attorneys present:

2. ☐ The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), 366.25(b), or 727.31(b) and the report and recommendation of the
   ☐ social worker ☐ probation officer ☐ and other evidence.
3. ☐ The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

THE COURT FINDS AND ORDERS

4. a. ☐ Notice has been given as required by law.
   b. ☐ This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
6. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7. ☐ The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
   ☐ parent *(name):* ☐ Mother ☐ Father
   ☐ parent *(name):* ☐ Mother ☐ Father

CHILD'S NAME:	CASE NUMBER:

8. a. ☐ There is clear and convincing evidence that it is likely the child will be adopted.
   b. ☐ This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9* ***unless*** *item 10, 11, 12, or 13 is applicable. If item 8a or 8b is not checked, go to item 15 or 16.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of
   a. ☐ parent *(name):* ☐ Mother ☐ Father
   b. ☐ parent *(name):* ☐ Mother ☐ Father
   c. ☐ alleged fathers *(names):*
   d. ☐ unknown mother ☐ all unknown fathers

   are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
   e. **The adoption is likely to be finalized by *(date):***
   (If item 9 is checked, go to item 17.)

10. This case involves an Indian child. The parental rights of
   a. ☐ parent *(name):*
   b. ☐ parent *(name):*
   c. ☐ Indian custodians *(names):*
   d. ☐ alleged fathers *(names):*
   e. ☐ unknown mother ☐ all unknown fathers

   are modified in accordance with the tribal customary adoption order of the *(specify):* tribe, dated and comprising pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.
   (If item 10 is checked, go to item 17.)

11. ☐ 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. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12. ☐ Termination of parental rights would be detrimental to the child for the following reasons: *(If item 12 is checked, check reasons below and go to item 15 or 16.)*
   a. ☐ The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
   b. ☐ The child is 12 years of age or older and objects to termination of parental rights.
   c. ☐ The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
   d. ☐ The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional 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. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either
      (1) under the age of 6; or
      (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:

12. e. ☐ There would be substantial interference with the child's sibling relationship.
f. ☐ The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(1) 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.

(2) The child's tribe has identified guardianship or another permanent plan for the child.

13. ☐ Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14):*

a. ☐ is a member of a sibling group that should stay together.
b. ☐ has a diagnosed medical, physical, or mental disability.
c. ☐ is 7 years of age or older.

14. a. ☐ Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order):*

(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)

b. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father
☐ parent *(name):* ☐ Mother ☐ Father
☐ legal guardian *(name):*
☐ other *(name):*

is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

15. ☐ The child's permanent plan is legal guardianship.

☐ *(Name):*
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*

a. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father
☐ parent *(name):* ☐ Mother ☐ Father
☐ legal guardian *(name):*
☐ other *(name):*

is scheduled as follows *(specify):*

b. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

c. ☐ Dependency ☐ Wardship is terminated.

d. ☐ Dependency ☐ Wardship is terminated. The likely date for termination of the dependency or wardship is *(date):* *(If this item is checked, go to item 17.)*

The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

CHILD'S NAME:	CASE NUMBER:

16. a. ☐ The child remains placed with *(name of placement):*
with a permanent plan of *(specify):*

(1) ☐ Returning home
(2) ☐ Adoption
(3) ☐ Tribal customary adoption
(4) ☐ Legal guardianship
(5) ☐ Permanent placement with a fit and willing relative
(6) ☐ Independent living with identification of a caring adult to serve as a lifelong connection

The child's permanent plan is likely to be achieved by *(date):*

(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)

b. ☐ Visitation between the child and

☐ parent *(name):* ☐ Mother ☐ Father
☐ parent *(name):* ☐ Mother ☐ Father
☐ legal guardian *(name):*
☐ other *(name):*

is scheduled as follows *(specify):*

c. ☐ Visitation between the child and *(names):*
is detrimental to the child's physical or emotional well-being and is terminated.

17. ☐ The child's placement is necessary.

18. ☐ The child's placement is appropriate.

19. ☐ The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.

20. ☐ The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years of age or older.)*

21. ☐ The child remains a ☐ dependent ☐ ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*

22. ☐ All prior orders not in conflict with this order will remain in full force and effect.

23. ☐ Other *(specify):*

24. ☐ Next hearing date: Time: Dept: Room:

a. ☐ Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
b. ☐ Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
c. ☐ Six-month postpermanency review

CHILD'S NAME:	CASE NUMBER:

25. The ☐ Parent *(name):* ☐ Mother ☐ Father
☐ Parent *(name):* ☐ Mother ☐ Father
☐ Indian custodian *(name):*
☐ Child
☐ Other *(name):*
have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____ _____
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING **(Welf. & Inst. Code, § 361 et seq.)**		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Dispositional hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
      ☐ For the purposes of establishing a guardianship, the report of the social worker includes an assessment as specified in Welf. & Inst. Code, §§ 360(a), 361.5(g).
      ☐ In the case of an Indian child, the report of the social worker includes an assessment in consultation with the Indian child's tribe, as specified in Welf. & Inst. Code, § 358.1(j), whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*
   f. ☐ Testimony of qualified expert under the Indian Child Welfare Act

Form Approved for Optional Use
Judicial Council of California
JV-415 [Rev. January 1, 2018]

FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING
(Welf. & Inst. Code, § 361 et seq.)

42 United States Code § 675;
Welfare and Institutions Code, § 361 et seq.;
Cal. Rules of Court, rule 5.695
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.

   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

5. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

6. ☐ A Court Appointed Special Advocate is appointed for the child.

7. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

8. **The court informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

9. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

10. ☐ **Sibling group**

    The child and the child's siblings listed below form a sibling group in which at least one child in the sibling group was under the age of three years at the time of the initial removal and all children in the sibling group were removed from parental custody at the same time.

    Sibling *(name):*

    a.
    b.
    c.
    d.
    e.
    f.

CHILD'S NAME:	CASE NUMBER:

11. **Disposition is ordered as stated in** *(check appropriate box and attach indicated form):*
    a. ☐ *Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision (Welf. & Inst. Code, § 360(b))* (form JV-416), which is attached and incorporated by reference.
    b. ☐ *Dispositional Attachment: In-Home Placement With Formal Supervision (Welf. & Inst. Code, § 361)* (form JV-417), which is attached and incorporated by reference.
    c. ☐ *Dispositional Attachment: Appointment of Guardian (Welf. & Inst. Code, § 360(a))* (form JV-418), which is attached and incorporated by reference.
    d. ☐ *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-420), which is attached and incorporated by reference.
    e. ☐ *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-421), which is attached and incorporated by reference.

12. **The child's rights** under Welf. & Inst. Code, § 388 and the procedure for bringing a petition under Welf. & Inst. Code, § 388, including the availability of appropriate and necessary forms, was provided to the child as follows:
    a. ☐ Child under the age of 12 years, through the child's attorney of record or guardian ad litem
    b. ☐ Child 12 years of age or older who was present at the hearing, on the record and in writing by handing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)
    c. ☐ Child 12 years of age or older who was present at the hearing, in writing by mailing the child a copy of *Child's Information Sheet—Request to Change Court Order (form JV-185)*

13. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
    a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
    b. ☐ *Visitation Attachment: Sibling* (form JV-401).
    c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

14. The child's medical, dental, mental health, and educational information required by Welfare and Institutions Code section 16010 was provided by the ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

15. **All prior orders not in conflict with this order remain in full force and effect.**

16. ☐ **Other findings and orders:**
    a. ☐ See attached.
    b. ☐ *(Specify):*

17. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

    a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)
    b. ☐ Six-month permanency hearing (Welf. & Inst. Code, § 366.21(e))
    c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
    (Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

    d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
    e. ☐ Other *(specify):*

18. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

CHILD'S NAME:	CASE NUMBER:

19. Number of pages attached: _____

Date: _____ _____

☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: _____ _____

☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

JV-421

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. & 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 the 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 exercised due diligence to identify, locate, and contact the child's relatives.

   b. ☐ The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.

      (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 the 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, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 361, 361.2, 361.5, 16501.1;
Cal. Rules of Court, rules 5.690, 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 county 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 placement.

   b. ☐ Other *(specify):*

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):*

CHILD'S NAME:	CASE NUMBER:

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)(7) ☐ 361.5(b)(9) ☐ 361.5(b)(11) ☐ 361.5(b)(13) ☐ 361.5(b)(16)
   ☐ 361.5(b)(4) ☐ 361.5(b)(8) ☐ 361.5(b)(10) ☐ 361.5(b)(12) ☐ 361.5(b)(15) ☐ 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.

   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.

CHILD'S NAME:	CASE NUMBER:

20. 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.

g. **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 ☐ Presumed father
☐ Indian custodian ☐ Other *(specify):*

21. **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 ☐ has ☐ 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):*	☐	☐	☐	☐	☐

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.

CHILD'S NAME:	CASE NUMBER:

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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

30. ☐ 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:

31. ☐ 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 30:
a. ☐ Social worker.
b. ☐ Parent *(name):*
c. ☐ Surrogate parent *(name):*
d. ☐ Educational representative *(name):*
e. ☐ Other *(name):*

32. ☐ 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 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 enrolled in school.
c. ☐ The child is attending school.

33. ☐ **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:

CHILD'S NAME:	CASE NUMBER:

Advisements

34. ☐ **Child under the age of three years or 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 the age of three years on the date of initial removal or is a member of a sibling group:

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 the child entered foster care under Welf. & Inst. Code, § 366.21(e).

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.**

35. ☐ **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:

36. ☐ 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 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(g)(10) of the California Rules of Court to any party not present.

CHILD'S NAME:	CASE NUMBER:

e. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who had 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 permanent plan will be achieved is *(specify date):*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING (Welf. & Inst. Code, § 366.21(e))		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. **Six-month status review hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-430 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(e), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **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 whatever steps are necessary to finalize the permanent placement of the child.

11. ☐ 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.

12. **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):*	☐	☐	☐	☐	☐

Siblings

13. ☐ **The child does not have siblings under the court's jurisdiction.**

14. ☐ **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

15. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

16. 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.

17. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on .

18. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
    a. ☐ stated in the social worker's report.
    b. ☐ specified here:

CHILD'S NAME:	CASE NUMBER:

19. ☐ 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 18:

a. ☐ Social worker.
b. ☐ Parent *(name):*
c. ☐ Surrogate parent *(name):*
d. ☐ Educational representative *(name):*
e. ☐ Other *(name):*

20. ☐ The child's education placement has changed since the last review hearing.

a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
c. ☐ The child is attending school.

21. ☐ **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:

22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*

a. ☐ *Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
b. ☐ *Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
c. ☐ *Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.

23. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ *Visitation Attachment: Sibling* (form JV-401).
c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25. ☐ **Other findings and orders:**

a. ☐ See attached.
b. ☐ *(Specify):*

CHILD'S NAME:	CASE NUMBER:

26. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)

b. ☐ 12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))

c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

d. ☐ Other *(specify):*

27. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED
(Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **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-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ **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. ☐ does not continue to be 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-430, item 26 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

6. **For child under the age of three years at time of initial removal or a member of a sibling group**
   a. ☐ Having considered the relevant evidence, including the following factors
      (1) ☐ Whether there has been significant progress in resolving the problems that led to the removal;
      (2) ☐ Whether 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 has been demonstrated; and
      (3) ☐ Whether there has been consistent and regular contact and visitation with the child.

   The court finds there is a substantial probability that the child may be returned to the
   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*
   within six months of the date of this hearing or within 12 months of the date the child entered foster care, whichever is sooner.

   b. Reasonable services have not been provided to the
   ☐ mother ☐ biological father ☐ Indian custodian
   ☐ presumed father ☐ legal guardian ☐ other *(specify):*
   by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-432 [Rev. January 1, 2018]

Welfare and Institutions Code, § 366.21(e);
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

7. **Reunification services are continued for the**

☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*

a. ☐ as previously ordered.

b. ☐ as modified

(1) ☐ on the record.

(2) ☐ in the case plan.

8. ☐ **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, placed with a fit and willing relative or in another planned permanent living arrangement is *(specify date):*

Important individuals

9. ☐ **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

10. ☐ 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.

Advisement

11. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 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 **that 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, modification of parental rights and the adoption of the child and other members of the sibling group.**

Twelve-month permanency hearing date:

CHILD'S NAME:	CASE NUMBER:

SIX-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.21(e))

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **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-430, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ **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. ☐ does not continue to be 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-430, item 26 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

6. ☐ **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
   a. ☐ The child was under the age of three years on the date of the initial removal from the home.
   b. ☐ The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
      (1)
      (2)
      (3)
      (4)
      (5)
      (6)
   c. By clear and convincing evidence the
      ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian
      ☐ other *(specify):*
      failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
   d. Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.

Form Approved for Optional Use
Judicial Council of California
JV-433 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(e), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.710
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

7. ☐ **Reunification services terminated: Child of any age**

a. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence,
(1) ☐ the person's whereabouts remain unknown.
(2) ☐ the person has not had contact with the child for six months.

b. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.

c. ☐ Reunification services are terminated for the
☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian
☐ other *(specify):*
because it is determined that the person is deceased.

8. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

9. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
b. ☐ The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
(1) ☐ as stated on the record.
(2) ☐ as follows:

Health

10. ☐ The ☐ mother ☐ biological father ☐ other *(specify):*
☐ presumed father ☐ legal guardian
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.

CHILD'S NAME:	CASE NUMBER:

Setting for selection of permanent plan

11. ☐ 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 reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

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, § 366.21(i).

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 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 (Juvenile Dependency)* (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 must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person 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):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is *(specify date):*

12. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

b. ☐ The child remain in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

CHILD'S NAME:	CASE NUMBER:

12. c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

13. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interests are *(describe):*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER 12-MONTH PERMANENCY HEARING (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

1. **Twelve-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify)*:	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-435 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(f), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ Other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **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 whatever steps are necessary to finalize the permanent placement of the child.

11. ☐ 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.

12. **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):*	☐	☐	☐	☐	☐

Siblings

13. ☐ **The child does not have siblings under the court's jurisdiction.**

14. ☐ **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

15. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

16. 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.

17. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

18. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:

a. ☐ stated in the social worker's report.
b. ☐ specified here:

CHILD'S NAME:	CASE NUMBER:

19. ☐ 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 18:
   a. ☐ Social worker.
   b. ☐ Parent *(name):*
   c. ☐ Surrogate parent *(name):*
   d. ☐ Educational representative *(name):*
   e. ☐ Other *(name):*

20. ☐ The child's education placement has changed since the last review hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
   c. ☐ The child is attending school.

21. ☐ **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:

22. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
   a. ☐ *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.
   b. ☐ *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.
   c. ☐ *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.

23. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

CHILD'S NAME:	CASE NUMBER:

26. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)

b. ☐ 18-month permanency hearing (Welf. & Inst. Code, § 366.22)

c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)

e. ☐ Other *(specify):*

27. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

28. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.21(f))

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**

Placement

3. **The child's out-of-home placement is necessary.**
4. ☐ **The child's current placement is appropriate.**
5. ☐ **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-435, item 26 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*
6. ☐ **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. ☐ does not continue to be 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-435, item 26 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):*
7. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

8. ☐ **Child in out-of home placement for six months or longer**
   a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
      (1) ☐ as stated on the record.
      (2) ☐ as follows:

Health

9. ☐ The ☐ mother ☐ presumed father ☐ biological 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.

Form Approved for Optional Use
Judicial Council of California
JV-438 [Rev. January 1, 2018]

TWELVE-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED
(Welf. & Inst. Code, § 366.21(f))

42 United States Code § 675;
Welfare and Institutions Code, § 366.21(f), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

Selection of permanent plan

10. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

b. ☐ The child remains in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

11. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

CHILD'S NAME:	CASE NUMBER:

12. ☐ 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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

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, § 366.21(i).

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 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 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 must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person 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):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING (Welf. & Inst. Code, § 366.22)		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. **Eighteen-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

Form Approved for Optional Use
Judicial Council of California
JV-440 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.22, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.720
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **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 whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12. ☐ 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.

13. **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):*	☐	☐	☐	☐	☐

Siblings

14. ☐ **The child does not have siblings under the court's jurisdiction.**

15. ☐ **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

16. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

17. 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.

18. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

CHILD'S NAME:	CASE NUMBER:

19. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
   a. ☐ stated in the social worker's report.
   b. ☐ specified here:

20. ☐ 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 19:
   a. ☐ Social worker.
   b. ☐ Parent *(name):*
   c. ☐ Surrogate parent *(name):*
   d. ☐ Educational representative *(name):*
   e. ☐ Other *(name):*

21. ☐ The child's education placement has changed since the last review hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
   c. ☐ The child is attending school.

22. ☐ **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:

23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
   a. ☐ *Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22)* (form JV-441), which is attached and incorporated by reference.
   b. ☐ *Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22)* (form JV-442), which is attached and incorporated by reference.
   c. ☐ *Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.22)* (form JV-443), which is attached and incorporated by reference.

24. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:

26. ☐ **Other findings and orders:**

a. ☐ See attached.

b. ☐ *(Specify):*

27. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)

b. ☐ Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)

c. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

d. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)

e. ☐ Other *(specify):*

28. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: _____

Date: _____ _____

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**

Placement

3. **The child's out-of-home placement is necessary.**
4. ☐ **The child's current placement is appropriate.**
5. ☐ **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-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*
6. ☐ **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. ☐ does not continue to be 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-440, item 27 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):*
7. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Important individuals

8. ☐ **Child in an out-of-home placement for six months or longer**
   a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
   c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
      (1) ☐ as stated on the record.
      (2) ☐ as follows:

Health

9. ☐ The ☐ mother ☐ biological father ☐ other *(specify):*
   ☐ presumed father ☐ legal guardian
   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.

Form Approved for Optional Use
Judicial Council of California
JV-442 [Rev. January 1, 2018]

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED
(Welf. & Inst. Code, § 366.22)

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.21(f), 16501.1;
Cal. Rules of Court, rules 5.708 and 5.715
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

Selection of permanent plan

10. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
The likely date by which the child's permanent plan will be achieved is *(specify date):*

b. ☐ The child remains in foster care with a permanent plan of *(specify):*

(1) ☐ Return home.
(2) ☐ Adoption.
(3) ☐ Tribal customary adoption.
(4) ☐ Legal guardianship.
(5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

The likely date by which the child's permanent plan will be achieved is *(specify date):*

c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

11. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

CHILD'S NAME:	CASE NUMBER:

12. ☐ 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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

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, § 366.22(c).

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 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 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 must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person 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):*

g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

CHILD'S NAME:	CASE NUMBER:

EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED

(Welf. & Inst. Code, § 366.22)

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.

Placement

2. **The child's out-of-home placement is necessary.**

3. ☐ **The child's current placement is appropriate.**

4. ☐ **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-440, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*

5. ☐ **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. ☐ does not continue to be 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-440, item 27 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

6. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
   a. ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian ☐ other *(specify):*
      (1) ☐ who is making significant and consistent progress in a substance abuse treatment program.
      (2) ☐ who is recently discharged from incarceration, institutionalization, or the custody of the Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return.
      (3) ☐ who was a minor parent or a nonminor dependent parent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

   and

   b. **There is a substantial probability that the child may be returned to the**
      ☐ mother ☐ biological father ☐ Indian custodian
      ☐ presumed father ☐ legal guardian ☐ other *(specify):*
      by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has
      (1) consistently and regularly contacted and visited the child;
      (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
      (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and
         (a) ☐ to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
         (b) ☐ to complete a treatment plan postdischarge from incarceration or institutionalization.

Form Approved for Optional Use
Judicial Council of California
JV-443 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 366.22, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.720
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. c. The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause pursuant to Welf. and Inst. Code section 352 to continue the 18-month status review to *(specify date):*

7. **Reunification services are continued for the**

☐ mother ☐ biological father ☐ Indian custodian
☐ presumed father ☐ legal guardian ☐ other *(specify):*

a. ☐ as previously ordered.

b. ☐ as modified

(1) ☐ on the record.

(2) ☐ in the case plan.

8. ☐ **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or for a child 16 years of age or older in another planned permanent living arrangement *(specify date):*

Important individuals

9. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

b. ☐ The county agency has **not** made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

10. ☐ 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.

Advisement

11. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. **That 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.**

Twenty-four-month permanency hearing date:

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING— PARENTAL RIGHTS TERMINATED; PERMANENT PLAN OF ADOPTION (Welf. & Inst. Code, § 366.3)		CASE NUMBER:

1. **Postpermanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Legal guardian:	☐		☐	☐
(3) Indian custodian:	☐		☐	☐
(4) De facto parent:	☐		☐	☐
(5) County agency social worker:	☐		☐	☐
(6) Tribal representative:	☐		☐	☐
(7) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker *(dated):*
   b. ☐ Report of CASA volunteer *(dated):*
   c. ☐ Case plan *(dated):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

CHILD'S NAME:	CASE NUMBER:

5. ☐ A Court Appointed Special Advocate is appointed for the child.

Placement

6. **The child's out-of-home placement is necessary.**
7. ☐ **The child's current placement is appropriate.**
8. ☐ **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 item 31 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other*(specify):*

9. ☐ **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. ☐ does not continue to be 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 item 31 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):*

Case plan development

10. a. ☐ The child was actively involved in the case plan development, including the child's plan for permanent placement.
    b. ☐ The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
       (1) ☐ the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
       (2) ☐ the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.

11. ☐ **Child 12 years of age or older:**
    a. ☐ The child was given the opportunity to review the case plan, sign it, and receive a copy.
    b. ☐ The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
       (1) ☐ the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The county agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
       (2) ☐ the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.

Efforts

12. **The county agency**
    a. ☐ has
    b. ☐ has not

    complied with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

13. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

CHILD'S NAME:	CASE NUMBER:

14. ☐ **Child not yet placed with prospective adoptive parent or a guardian**

a. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

b. The child has identified the following as an individual important to him or her:
(1) *(name):*
(2) *(name):*

c. The county agency ☐ has ☐ has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.

d. The county agency ☐ has ☐ has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.

e. The county agency ☐ has ☐ has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.

f. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
(1) ☐ as stated on the record.
(2) ☐ as follows:

g. ☐ To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service
(1) ☐ as stated on the record.
(2) ☐ as follows:

15. The services provided to the child have been
a. ☐ adequate.
b. ☐ not adequate.

Health and education

16. 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.

17. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

18. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
a. ☐ stated in the social worker's report.
b. ☐ specified here:

19. ☐ 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 18:
a. ☐ Social worker.
b. ☐ Surrogate parent *(name):*
c. ☐ Educational representative *(name):*
d. ☐ Other *(name):*

CHILD'S NAME:	CASE NUMBER:

20. ☐ The child's education placement has changed since the last review hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
   c. ☐ The child is attending school.

21. ☐ **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:

Siblings

22. ☐ **The child does not have siblings under the court's jurisdiction.**

23. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

24. ☐ The child has siblings. A postadoption sibling contact agreement ☐ has ☐ has not been developed. If not, the court has inquired into the status of the development of a voluntary postadoption sibling contact agreement.

Permanent plan

25. ☐ a. The permanent plan of adoption is appropriate and is ordered to continue as the permanent plan.
   b. **The likely date** by which the child's adoption will be finalized is *(specify date):*

26. ☐ a. The permanent plan of tribal customary adoption is appropriate and is ordered to continue as the permanent plan.
   b. **The likely date** by which the child's tribal customary adoption will be finalized is *(specify date):*

27. ☐ a. The child's permanent plan of adoption may or may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child. 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, § 366.22(b).
   b. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

28. ☐ **Contact with the child is ordered as follows** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

29. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:

30. ☐ **Other findings and orders:**

a. ☐ See attached.

b. ☐ *(Specify):*

31. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)

b. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)

c. ☐ Other *(specify):*

32. Number of pages attached: _____

Date: _____

_____

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—PERMANENT PLAN OTHER THAN ADOPTION (Welf. & Inst. Code, § 366.3)	CASE NUMBER:

1. **Postpermanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify)*:	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker *(dated):*
   b. ☐ Report of CASA volunteer *(dated):*
   c. ☐ Case plan *(dated):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ Indian custodian ☐ child
   ☐ presumed father ☐ alleged father ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Placement

9. **Continued out-of-home placement is in the best interest of the child.**

10. **The child's out-of-home placement is necessary.**

11. ☐ **The child's current placement is appropriate.**

12. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate place for the child.

   a. ☐ The matter is continued to the date and time indicated in item 39 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.

   b. ☐ Other *(specify):*

CHILD'S NAME:	CASE NUMBER:

13. ☐ **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. ☐ does not continue to be 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 item 39 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):*

14. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

Case plan development

15. a. ☐ The child was actively involved in the case plan development, including the child's plan for permanent placement.
   b. ☐ The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
      (1) ☐ the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
      (2) ☐ the county agency is not required to actively involve the child in the case plan development because the child was unable, unavailable, or unwilling to participate.

16. ☐ **Child 12 years of age or older:**
   a. ☐ The child was given the opportunity to review the case plan, sign it, and receive a copy.
   b. ☐ The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
      (1) ☐ the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
      (2) ☐ the county agency is not required to give the child this opportunity because the child was unable, unavailable, or unwilling to participate.

17. ☐ **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:

Efforts

18. **The county agency**
   a. ☐ has
   b. ☐ has not

compiled with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

CHILD'S NAME:	CASE NUMBER:

19. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

20. The services provided to the child have been
   a. ☐ adequate.
   b. ☐ not adequate.

21. ☐ **Child in out-of-home placement for six months or longer**
   a. The child has identified the following as an individual important to him or her:
      (1) *(name):*
      (2) *(name):*
   b. The county agency ☐ has ☐ has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.
   c. The county agency ☐ has ☐ has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.
   d. The county agency ☐ has ☐ has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.
   e. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
      (1) ☐ as stated on the record.
      (2) ☐ as follows:
   f. ☐ To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service
      (1) ☐ as stated on the record.
      (2) ☐ as follows:

Siblings

22. ☐ **The child does not have siblings under the court's jurisdiction.**

23. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

24. ☐ The child has siblings. A postadoption sibling contact agreement ☐ has ☐ has not been developed. If not, the court has inquired into the status of the development of a voluntary postadoption sibling contact agreement.

Education

25. 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.

CHILD'S NAME:	CASE NUMBER:

26. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 24 or other concerns are:
   a. ☐ stated in the social worker's report.
   b. ☐ specified here:

27. ☐ 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 25:
   a. ☐ Social worker.
   b. ☐ Parent *(name):*
   c. ☐ Surrogate parent *(name):*
   d. ☐ Educational representative *(name):*
   e. ☐ Other *(name):*

28. ☐ The child's education placement has changed since the last review hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
   c. ☐ The child is attending school.

Health

29. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

30. ☐ 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.

Permanent plan

31. It is ordered that:
   a. ☐ The child's permanent plan is legal guardianship.
   The likely date by which the child's permanent plan will be achieved is *(specify date):*
   b. ☐ The child's permanent plan is placement with a fit and willing relative.
   The likely date by which the child's permanent plan will be achieved is *(specify date):*
   c. ☐ The child remains in foster care with a permanent plan of *(specify):*
      (1) ☐ Return home.
      (2) ☐ Adoption.
      (3) ☐ Tribal customary adoption.
      (4) ☐ Legal guardianship.
      (5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
         ☐ return home ☐ establish legal guardianship
         ☐ place for adoption ☐ place with a relative
         ☐ other *(specify):*
      The likely date by which the child's permanent plan will be achieved is *(specify date):*

CHILD'S NAME:	CASE NUMBER:

31. d. The court finds that the barriers to achieving the child's permanent plan are *(describe):*

32. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

33. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

34. ☐ The child's permanent plan identified in item 31 is appropriate and continues as the permanent plan.

35. ☐ a. The child's permanent plan identified in item 31 may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.

b. 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, § 366.22(b).

c. 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 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 5.590(b)(2) of the California Rules of Court to any party not present.

d. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

CHILD'S NAME:	CASE NUMBER:

35. e. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person 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):*

36. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ *Visitation Attachment: Sibling* (form JV-401).
c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

37. **All prior orders not in conflict with this order remain in full force and effect.**

38. ☐ **Other findings and orders:**

a. ☐ See attached.
b. ☐ *(Specify):*

39. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
b. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)
c. ☐ Other *(specify):*

40. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*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:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING (Welf. & Inst. Code, § 366.25)		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

1. **Twenty-four-month permanency hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*

h. Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

2. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Case plan dated:
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

3. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

CHILD'S NAME:	CASE NUMBER:

4. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.

   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

5. ☐ A Court Appointed Special Advocate is appointed for the child.

6. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

Advisements and waivers

7. **The court has informed and advised the**

   ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The ☐ mother ☐ biological father ☐ legal guardian ☐ child
   ☐ presumed father ☐ alleged father ☐ Indian custodian
   ☐ other *(specify):*

   has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

Case plan development

9. a. ☐ The following were actively involved in the case plan development, including the child's plan for permanent placement.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   b. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

   c. ☐ The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
   ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Efforts

10. **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 whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12. ☐ 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.

13. **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):*	☐	☐	☐	☐	☐

Siblings

14. ☐ **The child does not have siblings under the court's jurisdiction.**

15. ☐ **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

16. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

17. 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.

18. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

CHILD'S NAME:	CASE NUMBER:

19. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
   a. ☐ stated in the social worker's report.
   b. ☐ specified here:

20. ☐ 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 19:
   a. ☐ Social worker.
   b. ☐ Parent *(name):*
   c. ☐ Surrogate parent *(name):*
   d. ☐ Educational representative *(name):*
   e. ☐ Other *(name):*

21. ☐ The child's education placement has changed since the last review hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were 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 enrolled in school.
   c. ☐ The child is attending school.

22. ☐ **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:

23. **Placement and services are ordered as stated in** *(check appropriate boxes and attach indicated forms):*
   a. ☐ *Twenty-Four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.
   b. ☐ *Twenty-Four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.

24. ☐ **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form):*
   a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ *Visitation Attachment: Sibling* (form JV-401).
   c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. ☐ **Other findings and orders:**
   a. ☐ See attached.
   b. ☐ *(Specify):*

CHILD'S NAME:	CASE NUMBER:

27. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:

a. ☐ In-home status review hearing (Welf. & Inst. Code, § 364)

b. ☐ Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)

Hearing date:	Time:	Dept:	Room:

c. ☐ Postpermanency hearing (Welf. & Inst. Code, § 366.3)

d. ☐ Other *(specify):*

28. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

29. Number of pages attached: _____

Date: _____

_____
☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

For Your Information

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

JV-457

CHILD'S NAME:	CASE NUMBER:

TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES TERMINATED

(Welf. & Inst. Code, § 366.25)

1. By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4. ☐ **The child's current placement is appropriate.**
5. ☐ **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-455, item 27 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
   b. ☐ Other *(specify):*
6. ☐ **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. ☐ does not continue to be 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-455, item 27 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):*

Selection of permanent plan

7. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.
8. ☐ **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
   a. ☐ The child's permanent plan is placement with *(name):* a fit and willing relative.
      The likely date by which the child's permanent plan will be achieved is *(specify date):*
   b. ☐ The child remains in foster care with a permanent plan of *(specify):*
      (1) ☐ Return home.
      (2) ☐ Adoption.
      (3) ☐ Tribal customary adoption.
      (4) ☐ Legal guardianship.
      (5) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
         ☐ return home ☐ establish legal guardianship
         ☐ place for adoption ☐ place with a relative
         ☐ other *(specify):*

      The likely date by which the child's permanent plan will be achieved is *(specify date):*

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Judicial Council of California
JV-457 [Rev. January 1, 2018]

Welfare and Institutions Code, §§ 366.25, 16501.1;
Cal. Rules of Court, rules 5.708 and 5.722
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

8. c. ☐ The court finds that the barriers to achieving the child's permanent plans are *(describe):*

9. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**
   a. The court asked the child where he or she wants to live and the child provided the following information *(describe):*

   b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

   c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

10. ☐ 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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

   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, § 366.25(b).

   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 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 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 must provide written notice as stated in rule 5.590(b)(2) of the California Rules of Court to any party not present.

   e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

   f. ☐ The court orders that no notice of the hearing set under Welf. & Inst. Code, § 366.26 be provided to the person 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):*

   g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative *(specify date):*

CHILD'S NAME:	CASE NUMBER:

Important individuals

11. ☐ **Child in out-of-home placement for six months or longer**

a. ☐ The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

b. ☐ The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.

c. ☐ To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services

(1) ☐ as stated on the record.

(2) ☐ as follows:

Health

12. ☐ 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.

CHILD'S NAME:	CASE NUMBER:

FINDINGS AND ORDERS AFTER SIX-MONTH PREPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**
   a. ☐ Report of probation dated:
   b. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

2. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ ***For child who is not present:*** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.

3. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

Child returned home

4. ☐ The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

Child remaining in out-of-home placement

5. ☐ By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.

6. ☐ The child's out-of home placement is necessary.

7. a. ☐ The child's out-of-home placement is appropriate.
   b. ☐ The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.

8. ☐ The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.

9. ☐ The child is placed outside the state of California and that out-of-state placement:
   a. ☐ continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.

10. ☐ Probation ☐ has ☐ 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 whatever steps are necessary to finalize the permanent plan.

11. ☐ **The child is an Indian child,** and by clear and convincing evidence active efforts ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

12. ☐ **The child has no known Indian heritage.**

CHILD'S NAME:	CASE NUMBER:

13. ☐ The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Child	☐	☐	☐	☐	☐
b. ☐ Mother	☐	☐	☐	☐	☐
c. ☐ Father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Other *(specify):*	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

14. ☐ The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, or placed permanently with a fit and willing relative is *(date):*

Case planning and visitation

15. ☐ **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

16. a. ☐ The following were actively involved in the case plan development, including the plan for permanent placement:
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

b. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

c. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement. The probation offier is not required to involve them because they are unable, unavailable, or unwilling to participate.
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

17. ☐ The court finds that the child's:

a. developmental needs ☐ are ☐ are not being met
b. mental health needs ☐ are ☐ are not being met
c. physical needs ☐ are ☐ are not being met
d. education needs ☐ are ☐ are not being met

18. ☐ The additional services, assessments, and/or evaluations the child requires and the persons or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:

a. ☐ set forth on the record.
b. ☐ as follows:

19. a. ☐ The following are ordered by the court to participate with the child in a counselling or education program as directed by probation: ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*

b. ☐ The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:
☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*

20. ☐ The child has siblings under the court's jurisdiction and all of the siblings are **not** placed together in the same home.

a. ☐ Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
b. ☐ The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be contrary to the safety and well-being of at least one of the children. No visitation is ordered.

21. ☐ Visitation with the child is ordered:

a. ☐ As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ As follows *(specify):*

CHILD'S NAME:	CASE NUMBER:

Health and education

22. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

23. ☐ The ☐ parents ☐ legal guardians are ☐ 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 Welfare and Institutions Code section 739 and vested with the probation department.

24. ☐ A limitation on the ☐ parents ☐ legal guardians to make educational decisions for the child
   a. ☐ is **not** necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
   b. ☐ is necessary. Those rights are limited as ordered and as set forth in *Order Designating Educational Rights Holder* (form JV-535).

25. ☐ The child's school placement has changed since the dispositional hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days.
   b. ☐ The child is ☐ enrolled in ☐ attending school.

Parentage

26. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.

   b. ☐ The ☐ court clerk ☐ probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
      (1) alleged father *(name):*
      (2) alleged father *(name):*

Advisement

27. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

28. **All prior orders not in conflict with this order remain in full force and effect.**

29. ☐ Other findings and orders:
   a. ☐ See attached.
   b. ☐ *(Specify):*

30. ☐ The date the child entered foster care is *(specify):*

31. ☐ **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date**:**	Time:	Dept:	Type of hearing:

32. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

33. ☐ The sealing process has been explained to the child, and the child has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

34. Number of pages attached:

Date:

▶ _____
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

FINDINGS AND ORDERS AFTER PERMANENCY HEARING—DELINQUENCY

☐ **12-MONTH** ☐ **18-MONTH** *(only if reunification services extended at 12 months)*

1. **The court has read and considered and admits into evidence:**
   a. ☐ Report of probation dated:
   b. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

2. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ ***For child who is not present:*** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.

3. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

Child returned home

4. ☐ The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

Child remaining in out-of-home placement

5. ☐ By a preponderance of the evidence, the return of the child to his or her 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 factual basis for this conclusion is stated on the record.

6. ☐ The child's out-of home placement is necessary.

7. a. ☐ The child's out-of-home placement is appropriate.
   b. ☐ The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.

8. ☐ The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.

9. ☐ The child is placed outside the state of California and that out-of-state placement:
   a. ☐ continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.

10. ☐ Probation ☐ has ☐ 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 whatever steps are necessary to finalize the permanent plan.
    ☐ For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

11. ☐ **The child is an Indian child,** and by clear and convincing evidence active efforts ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

Form Approved for Optional Use
Judicial Council of California
JV-674 [Rev. January 1, 2018]

FINDINGS AND ORDERS AFTER PERMANENCY HEARING
(Welf. & Inst. Code, § 727.3)

42 United States Code § 675;
Welfare and Institutions Code, §§ 727.3, 16501.1;
Cal. Rules of Court, rule 5.810(b)
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

12. ☐ **The child has no known Indian heritage.**

13. ☐ The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Child	☐	☐	☐	☐	☐
b. ☐ Mother	☐	☐	☐	☐	☐
c. ☐ Father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Other *(specify):*	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

14. a. ☐ Reunification services are continued (Welf. & Inst. Code, § 727.3 (b)(2)).

(1) ☐ There is a substantial probability that the child may be returned to the ☐ mother ☐ father ☐ legal guardian by the date set for the 18-month permanency hearing because the ☐ mother ☐ father ☐ legal guardian and the child have demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are continued to the ☐ mother ☐ father ☐ legal guardian.

(2) ☐ The probation department has not provided reasonable services to the ☐ mother ☐ father ☐ legal guardian. The services provided have been inadequate in that:

The probation department is ordered to provide reasonable reunification services to the ☐ mother ☐ father ☐ legal guardian.

b. ☐ Reunification services are terminated.

(1) ☐ The probation department has provided or offered reasonable services but the ☐ mother ☐ father ☐ legal guardian has not participated regularly and has not demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are terminated.

(2) ☐ The probation department has provided or offered reasonable services but there is not a substantial probability that the child may be returned to the ☐ mother ☐ father ☐ legal guardian by the date set for the 18-month review. Reunification services are terminated.

(3) ☐ **At 18-month review:** Reunification services are terminated because it has been 18 months since the date the child was originally removed from the physical custody of his or her parent or legal guardian.

(4) ☐ The probation department ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated. (Fam. Code, § 7950.)

15. a. ☐ **The following is appropriate and ordered as the permanent plan:**

(1) ☐ The child is returned home immediately.

(2) ☐ Continuation of reunification services and setting of a further permanency hearing. If the child is not returned home at the next permanency hearing, the court will set a hearing that could result in the termination of parental rights and the adoption of the child.

(3) ☐ Adoption. A hearing under Welfare and Institution Code section 727.31 is scheduled for *(date):* and an adoption assessment report is ordered.

(4) ☐ Legal guardianship.

b. ☐ The court finds by clear and convincing evidence that *(name of child)* is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:

(1) ☐ Permanent placement with *(name)* a fit and willing relative.

(2) ☐ Placement in foster care with a permanent plan of ☐ return home, ☐ adoption, ☐ legal guardianship, or ☐ placement with a fit and willing relative.

(3) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:

☐ return home ☐ establish legal guardianship
☐ place for adoption ☐ place with a relative
☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

16. a. ☐ **The likely date** by which the permanent plan will be achieved is:

b. ☐ **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is: . (Use this finding only when the court continues reunification services under item 14a.).

c. ☐ The court finds that the barriers to achieving the child's permanent plan are *(describe):*

For children 16 years of age or older placed in another planned permanent living arrangement:

17. a. ☐ The court asked the child where he or she wants to live and the child provided the following information *(describe):*

b. ☐ The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

c. ☐ The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

Case planning and visitation

18. ☐ **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

19. a. ☐ The following were actively involved in the case plan development, including the plan for permanent placement:
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

b. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

c. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.
☐ child ☐ mother ☐ father ☐ legal guardian ☐ tribal representative
☐ other:

CHILD'S NAME:	CASE NUMBER:

20. ☐ The court finds that the child's:
   a. developmental needs ☐ are ☐ are not being met
   b. mental health needs ☐ are ☐ are not being met
   c. physical needs ☐ are ☐ are not being met
   d. education needs ☐ are ☐ are not being met

21. ☐ The additional services, assessments, and/or evaluations the child requires, and the person or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations, are:
   a. ☐ set forth on the record.
   b. ☐ as follows:

22. a. ☐ The following are ordered by the court to participate with the child in a counselling or education program as directed by probation: ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*
   b. ☐ The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is **not** ordered:
   ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*

23. ☐ The child has siblings under the court's jurisdiction and all of the siblings are **not** placed together in the same home.
   a. ☐ Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
   b. ☐ The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be contrary to the safety and well-being of at least one of the children for the following reasons *(state reasons):*

   No visitation is ordered.

24. ☐ Visitation with the child is ordered:
   a. ☐ As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
   b. ☐ As follows *(specify):*

Health and education

25. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

26. ☐ The ☐ parents ☐ legal guardians are ☐ 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 Welfare and Institutions Code section 739 and vested with the probation department.

27. ☐ A limitation on the ☐ parents ☐ legal guardians to make educational decisions for the child
   a. ☐ is **not** necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
   b. ☐ is necessary. Those rights are limited as ordered and as set forth in *Order Designating Educational Rights Holder* (form JV-535).

28. ☐ The child's school placement has changed since the last hearing.
   a. ☐ The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
   b. ☐ The child is ☐ enrolled in ☐ attending *(specify school):*

Parentage

29. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

   as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
   b. ☐ The ☐ court clerk ☐ probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
   (1) alleged father *(name):*
   (2) alleged father *(name):*

CHILD'S NAME:	CASE NUMBER:

Advisement

30. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

31. **All prior orders not in conflict with this order remain in full force and effect.**

32. ☐ Other findings and orders:
   a. ☐ See attached.
   b. ☐ *(Specify):*

33. ☐ The date the child entered foster care is *(specify):*

34. ☐ **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date**:**	Time:	Dept:	Type of hearing:

35. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

36. ☐ The sealing process has been explained to the child, and the child has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

37. Number of pages attached:

Date:

▶ _____
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**
   a. ☐ Report of probation dated:
   b. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

2. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ ***For child who is not present:*** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.

3. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

Child returned home

4. ☐ The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

Child remaining in out-of-home placement

5. ☐ Continued out-of-home care is in the best interest of the child. Reunification services are terminated.

6. ☐ The child's out-of home placement is necessary.

7. a. ☐ The child's out-of -home placement is appropriate.
   b. ☐ The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.

8. ☐ The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.

9. ☐ The child is placed outside the state of California and that out-of-state placement:
   a. ☐ continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
   b. ☐ does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.

10. ☐ The probation department ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom *(name of child)* could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated. (Fam. Code, § 7950.)

11. ☐ Probation ☐ has ☐ has not complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.

☐ For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation ☐ has ☐ has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-678 [Rev. January 1, 2018]

42 United States Code § 675;
Welfare and Institutions Code, §§ 727.3, 16501.1;
Cal. Rules of Court, rule 5.810(c)
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

12. ☐ **The child is an Indian child,** and by clear and convincing evidence active efforts ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

13. ☐ **The child has no known Indian heritage.**

14. a. ☐ **The following is appropriate and ordered as the permanent plan:**
   (1) ☐ The child is returned home immediately.
   (2) ☐ Adoption. A hearing under Welfare and Institutions Code section 727.31 is scheduled for *(date):* and an adoption assessment report is ordered.
   (3) ☐ Legal guardianship.

   b. ☐ The court finds by clear and convincing evidence that *(name of child)* is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:
   (1) ☐ The permanent plan is placement in foster care with a permanent plan of return home, adoption, legal guardianship, or placement with a fit and willing relative.
   (2) ☐ The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with ongoing and intensive efforts to:
      ☐ return home ☐ establish legal guardianship
      ☐ place for adoption ☐ place with a relative
      ☐ other *(specify):*

15. ☐ **The likely date** by which the permanent plan will be achieved is:

16. ☐ The court finds that the barriers to achieving the child's permanent plan are *(describe):*

17. ☐ **For children 16 years of age or older placed in another planned permanent living arrangement:**
   a. ☐ The court asked the child where he or she wants to live and the child provided the following information *(describe):*

   b. ☐ The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe):*

   c. ☐ The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe):*

Case planning and visitation

18. ☐ **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

CHILD'S NAME:	CASE NUMBER:

19. a. ☐ The child was actively involved in the development of his or her case plan, including the plan for permanent placement.
b. ☐ The child was **not** actively involved in the development of his or her case plan, including the plan for permanent placement.
(1) ☐ Probation is ordered to involve the child and submit an updated case plan within 30 days.
(2) ☐ Probation is **not** required to involve the child because the child is unable, unavailable, or unwilling to participate.

20. ☐ The court finds that the child's:
a. developmental needs ☐ are ☐ are not being met
b. mental health needs ☐ are ☐ are not being met
c. physical needs ☐ are ☐ are not being met
d. education needs ☐ are ☐ are not being met

21. ☐ The additional services, assessments, and/or evaluations the child requires and the persons or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:
a. ☐ set forth on the record.
b. ☐ as follows:

22. ☐ The child has siblings under the court's jurisdiction and all of the siblings are **not** placed together in the same home.
a. ☐ Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
b. ☐ The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be contrary to the safety and well-being of at least one of the children. No visitation is ordered.

23. ☐ Visitation with the child is ordered:
a. ☐ as set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ as set forth in *Visitation Attachment: Sibling* (form JV-401).
c. ☐ as follows *(specify):*

Health and education

24. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

25. ☐ The ☐ parents ☐ legal guardians are ☐ 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 Welfare and Institutions Code section 739 and vested with the probation department.

26. ☐ A limitation on the ☐ parents ☐ legal guardians to make educational decisions for the child
a. ☐ is **not** necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
b. ☐ is necessary. Those rights are limited as ordered and as set forth in *Order Designating Educational Rights Holder* (form JV-535).

27. ☐ The child's school placement has changed since the last review hearing.
a. ☐ The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
b. ☐ The child is ☐ enrolled in ☐ attending school.

Parentage

28. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
b. ☐ The ☐ court clerk ☐ probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
(1) alleged father *(name):*
(2) alleged father *(name):*

CHILD'S NAME:	CASE NUMBER:

Advisement

29. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

30. **All prior orders not in conflict with this order remain in full force and effect.**

31. ☐ Other findings and orders:
   a. ☐ See attached.
   b. ☐ *(Specify):*

32. ☐ The date the child entered foster care is *(specify):*

33. ☐ **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date**:**	Time:	Dept:	Type of hearing:

34. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

35. ☐ The sealing process has been explained to the child, and the child has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

36. Number of pages attached:

Date:

▶ _____
JUDICIAL OFFICER

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By: Michael L. Baroni, President	AM	Most of the included changes simply incorporate new required findings as to permanency planning options and their correlated Title IV-E findings, and are well-taken. In particular, the modification to rule 5.590 emphasizing appellate rights and the need to consult an attorney to protect such rights is quite welcome. As to the specific questions presented: the addition of requirements for documenting psychotropic medication orders at each review hearing are not strictly necessary, and could cause confusion if (as can often happen) a proper box is not checked on one of these review forms (i.e., someone merely refers back to the last review hearing form to determine whether the child is on such medications, and erroneously concludes he or she is not on medication based on the missed finding). Also, these forms are dense as they are, and should be limited to the required findings for the particular hearing. We also take some issue with the proposed change to form JV-443 adding an option to continue reunification services based on a finding that reasonable services were not offered to the parent during the prior review period. As even recognized by the case	No response necessary. The committee acknowledges that missing a checkbox is a possibility but that is not unique to the psychotropic medications checkbox and does not diminish the importance of tracking such orders for dependent youth. In fact, the purpose of the checkbox is to remind the social worker (it is typically the social worker who submits the findings and orders to the court for adoption) to think about the child's psychotropic medication order and future hearing dates. The committee agrees that the language of this finding needs to be clarified and has revised it to read: "The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of

	Commentator	Position	Comment	Committee Response
			authority cited in support of this change (*In re J.E.* (2016) 3 Cal.App.5th 557), extending reunification services based on a lack of reasonable services, and where the predicate conditions of Welfare and Institutions Code (WIC) section 366.22(b) are *not* met, is actually done via continuing that very review hearing under WIC section 352. At the very least, this language must be edited to indicate that the section 366.22 hearing is being continued for the reason given, not that reunification services are being extended *from* that hearing to another level of review hearing. Further, the caselaw makes clear that such an extension of an 18-month review hearing is only undertaken under relatively rare circumstances, and placing a default option on the statutory form may incorrectly suggest that this is a more regular or pro-forma option than contemplated by the statutes.	further reunification services and the child's need for a prompt resolution of dependent status, the court finds good cause to continue the review hearing to ___."
2.	Rosemary Bishop, Attorney at Law	AM	I am a panel attorney with Appellate Defenders, Inc., specializing in Dependency appeals. Please consider these comments to the above proposal. I originally asked for a change to	

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

	Commentator	Position	Comment	Committee Response
			rule 5.590 (a), eliminating the requirement a parent be present at the hearing in order to be notified of appellate rights. I appreciate the Council's considering my request and providing an alternative by including an advisement on certain court forms. (*See,* Proposal, page 6.) The only question on which the Council seeks comment is whether the advisement language should include a link to the Judicial Council website for information on appeal rights. However, I also have some additional comments, which I hope will be considered at this time or in the future. **1. *The advisement language should include notice of deadlines and a link to the Judicial Counsel website for information***. The proposed advisement language reads as follows: You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next	The committee agrees that the advisement should contain language that encourages the litigant to contact the attorney quickly. As such, the committee recommends revising the final sentence of the advisement to read: "Contact your attorney immediately, if you miss the next hearing and want to discuss your appellate rights. Delay in contacting your attorney may negatively impact your appellate rights."

	Commentator	Position	Comment	Committee Response
			hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights. (Proposal, pp. 6-7.) The advisement does not include a statement there are deadlines to appeal. This would be helpful to put recipients on notice to contact their counsel quickly. A link to the Judicial Council website should be added at the end of this advisement, but only if the site provides clear information. It will be helpful to provide recipients with this additional option for getting information, as some may find it easier to go online than to contact their attorneys. The site must be clear and easy to understand, in order to be effective. For example, the link should include a link to the notice of appeal form or how to obtain it, and the 60-day deadline for appealing. It should also once again advise the recipient to contact his or her attorney to file the appeal. It has to be clear there are different deadlines for filing a writ: under	After consideration the committee has determined that including the language regarding appellate rights on the listed forms is sufficient and declines to include a link to a website that provides additional information. The information suggested for the website is information more appropriately provided by the litigant's attorney.

	Commentator	Position	Comment	Committee Response
			rule 5.590(b), the court does have to give written notice of writ rights even when the parent is not present, so the parent will be receiving such notice by mail. The website should make this clear. The danger in including the website is that recipients will not have easy access to the website or be able to navigate it or be able to obtain or complete the notice of appeal forms in a timely manner. Trying to find the information on the website could cause some recipients to delay contacting their counsel, who will know when and how to appeal. **2. *Additional comments.*** a) Unless the rules require the trial courts to mail these Findings and Orders forms, including the new appellate advisement language, to all parents at risk of losing their children through dependency proceedings, the advisement will have limited effect. The only rule that requires the court to send notice of Findings and Orders to a parent is rule 5.538, which refers to hearings held by a referee. The court transcripts I have seen, especially outside of	The court is already required to mail the findings and orders. This requirement is stated in Welfare and Institutions Code section 248.5.

	Commentator	Position	Comment	Committee Response
			San Diego County, which does send the minute orders to parents, do not show any evidence the trial court's written Findings and Orders are served on the parents by mail. In fact, the Findings and Orders of hearings (with the exception of the final Permanency Planning (366.26) hearing orders) frequently are *not* on any court forms. They are often adopted, as amended by handwritten interlineation, from the social workers' reports, and not memorialized on any other court forms in the record. If parents do not get copies of the Findings and Orders forms, they will not see the advisement and the proposed advisement will have no effect. b) The proposal does not include advisement of appellate rights from termination of parental rights or other final orders on the selection of a permanent plan under section 366.26. The proposal does not include the advisement language on proposed form JV-320, which provides Findings and Orders on a permanent plan and often includes an order terminating parental rights. (Proposal, p. 19.) Instead, the proposed form includes a box to check stating the parent has been advised of appellate rights under rule 5.590.	The court is required to orally inform the parents of their right to file an extraordinary writ after a Welfare and Institutions Code section 366.26 hearing. The checkbox on form JV-320 merely verifies that the court has complied with that requirement. It is unnecessary to include the advisement on form JV-320 because the advisement is included on the review hearing forms that occur prior to the 366.26 hearing; thus, if it is the 366.26 hearing the parent misses, they will have been advised of their appellate rights in a previous set of findings and orders.

	Commentator	Position	Comment	Committee Response
			(Proposal, p. 19.) This box is less likely to put parents on notice they have appellate rights. Under Rule 5.590 (a), parents who are not present at the permanency planning hearing will not be advised by the court of appellate rights. It would be helpful to include the advisement language on this form as well.	
3.	State Bar of California, The Executive Committee of the Family Law Section	AM	The Executive Committee of the Family Law Section (FLEXCOM) supports the proposed rule change. FLEXCOM suggests that "successful adulthood," while appropriate for the statute, might not be well received by young adults when read on a form. Therefore, we suggest eliminating the word "successful" from: page 4 of 6, #20 in JV-320; page 4 of 6, #21 in JV-430; page 4 of 6, #21 in JV-435; page 4 of 6, #22 in JV-440; page 4 of 6, #21 in JV-445; page 5 of 7, #28 in JV-446; page 4 of 6, #22 in JV-455; and page 2 of 4, #15 and #16, in JV-462.	No response necessary. The committee acknowledges that "successful adulthood" is a challenging phrase; however, it is important to track the statutory language as much as possible. The forms must reflect that "independent living" is no longer the phrase used in the Welfare and Institutions Code to describe young adults.
4.	Superior Court of California, Los Angeles	AM	**JV-421, Dispositional Attachment: Removal From Custodial Parent – Placement With Nonparent** We appreciate the opportunity to comment on the revised forms of orders the judicial council has prepared. With respect to the	

	Commentator	Position	Comment	Committee Response
			revised JV-421 which is titled "DISPOSITIONAL ATTACHMENT: REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT, we believe there are two legal issues which need to be covered but are not, of which one is extremely critical. **A. Bypass Provisions** As presently drafted, paragraph 20 of JV-421, which is the Dispositional Attachment to JV-415 and applies when a child is removed from one or more parent at disposition, accurately contains the findings and orders required when reunification is not bypassed for parents described by Section 361.5(b)(1)- (15). Similar findings on 361.5(b)(16), which applies to parents who have been required to be registered as a sex offender, and 361.5(b)(17), which applies to parents who knowingly participated in or permitted the sexual exploitation of the child. For reunification services to be provided to either of these categories of parents, the Court must find by clear and convincing	The committee appreciates this suggestion; however, the pending proposal does not seek to revise subdivision 20.d(1) of form JV-421. The suggested addition is one that would likely receive comments and therefore the committee declines to include it at this time.

	Commentator	Position	Comment	Committee Response
			evidence that providing services is in the best interests of the child. It would also be helpful to add "because competent testimony establishes that" to paragraph 20.d.(1) dealing with reunification services for parents described by 361.5(b)(5). This is a unique requirement for such parents and should be emphasized to assist the Judicial Officer in focusing on the issue. **B. Noncustodial Parents** A very serious omission in the disposition forms is the lack of any provision for removing children from the care, custody, or control of abusive noncustodial parents. To put this issue in context, on November 23, 2015 the case of *In re Dakota J.* (2015) 242 Cal. App. 4th 619 was published. In *Dakota J.* the trial court had removed two sons from their mother who had a serious mental illness under WIC Section 361(c). The mother, however, had allowed the sons to live with a relative for the last four years. Based on these facts, the Court held	The committee acknowledges that there has been litigation around removal from a noncustodial, abusive parent in the recent year or two. In fact, Assembly Bill 1332, which has an expected effective date of January 1, 2018, is currently pending and addresses the very issue raised by the commentator. In light of the pending legislation, the committee declines to create any new forms or make changes to any existing forms. The committee will consider creating a form that addresses situations where children are removed from non-custodial parents if AB1332 is signed into law.

	Commentator	Position	Comment	Committee Response
			that it was reversible error for the trial court to remove the two sons from the mother under 361(c) - despite the fact that the mother had a court order giving her sole legal and physical custody of the sons - because the mother was not "a parent with whom the [sons] resided at the time the petition was filed" as required by Section 361(c). *Dakota J.* did state that there were alternative statutes under which a child could be removed from a parent with whom the child did not reside - including WIC Sections 361(a)(1) and 362(a). As the Court explained, "*these sections allow the court to limit the control to be exercised over the dependent child by any parent or guardian, not just a custodial parent or guardian.*" 243 Cal. App. 4th, *supra,* at 632-3 (emphasis added). In the aftermath of *In re Dakota J.* there were at least 10 unpublished opinions issued that followed and expanded on the *Dakota J.* reasoning. Collectively these opinions held that children could not be protected	

	Commentator	Position	Comment	Committee Response
			from abusive noncustodial parents under 361(c) for the reasons stated in *Dakota J.,* and that WIC Section 361.2, the only WIC Section specifically referring to noncustodial parents, was of limited use for two reasons: (1) Section 361.2 requires that the noncustodial parent request physical custody of the child; it does and did not apply to parents like the mother in *Dakota J.* who did not explicitly request that the sons be placed with her, and (2) for Section 361.2 to apply, the child must first be removed from the custodial parent. It provides no basis for protection when the parent who poses the danger to the child is the noncustodial parent, the custodial parent is nonoffending, and the child is not removed from the custodial parent. While unpublished opinions cannot be cited as precedent, they are routinely reviewed by trial judges who are attempting to understand the rules that they need to apply. The net lesson of the unpublished opinions following *In re Dakota J.* was that there is no way to protect children in the increasing number of cases where the abuse and risk of	

	Commentator	Position	Comment	Committee Response
			abuse at issue is caused by an abusive noncustodial parent. One of the interesting facts about all the unpublished opinions issued following *In re Dakota J.* is that none of them mentioned the alternatives to Section 361(c) identified in that case: Sections 361(a)(1) and 362(a). Two recent published opinions on this issue, however, have directly addressed these sections. In *In re Julien H.* (2016) 3 Cal. App. 5th 1084, decided October 4, 2016, the Court agreed that the trial court erred when it removed a child from a noncustodial father under 361(c) because the statute applied only to custodial parents. Citing *In re Dakota J.* the Court found this error not to be prejudicial, however, because the trial court had the power to remove the child from his noncustodial parent under Sections 361(a) and 362(a), applying the same standards as it had applied under Section 361(c). The Court therefore remanded the case to the trial court for the limited purpose of doing exactly that.	

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

	Commentator	Position	Comment	Committee Response
			In re Alexander Q. (2016) 5 Cal. App. 5th 336, decided November 8, 2016, went even further in its ruling. Making an exhaustive analysis of the legislative history of Section 361, the Court in *Alexander* *Q.* found that in fact Section 361(c) was written to be *more* protective of custodial parents. In other words, far from being prejudicial, the application of the *standards* set forth in Section 361(c) to noncustodial parents from whom children are being removed could by definition not be prejudicial because the statutory limitation on such removal is that it be "reasonable" (361(a)(1)) or "necessary" (362(a)). **C. Proposed Solution** There are now three published opinions - including *Dakota J.* - that hold removal of a child from the care, custody, and control of an abusive noncustodial parent is authorized by Sections 361(a)(1) and 362(a).[1] As shown in the article *Protect Children From Abusive Noncustodial Parents* published in the *Daily Journal* by Judge Frank Menetrez	

	Commentator	Position	Comment	Committee Response
			of this Court shortly before *In re Julien H.* and *In re Alexander Q.* were decided, this prior failure of Appellate Courts to recognize the need to remove children from the care, custody, and control of abusive noncustodial parents can have serious adverse impacts on the welfare of the children who are subject to our jurisdiction.[2] The same is true of the failure to provide a proposed JV form that can be used to make the findings and orders necessary to implement the holdings of *Julien H.* and *Alexander Q.* As presently drafted JV-421, as indicated by its title, authorizes removal only from custodial parents. While paragraph 9 refers to placement and custody with a noncustodial parent, it does so only in the context of Section 361.2. A solution would be to create a dispositional attachment dealing with removal from the care, custody, and control of noncustodial parents under 361(a)(1) and 362(a). While these sections only require that any order be "reasonable" and "necessary," we believe that applying the same safeguards to	

	Commentator	Position	Comment	Committee Response
			noncustodial parents as those applied to custodial parents is appropriate given the extensive statement of the constitutionally protected rights of noncustodial parents contained in *Dakota J.* The test stated in this section would be the same as stated in the present removal from custodial parents section except the removal would be from the care, custody, and control of the noncustodial parent. **Request for Specific Comments:** **Does the proposal appropriately address the stated purpose?** Yes. The proposal appropriately addresses the stated purpose, which is to conform the forms to the revised statutes. **Is it useful to include an additional finding that documents whether the child has a psychological medications order and sets forth the next hearing date on that order on the findings and orders forms?** Although it would be useful for the forms to have the findings for psychological	No response necessary. The committee appreciates the commentators concern for confidentiality; however, dependency files, including the findings and orders made by the court, are confidential and may only be accessed under limited circumstances, which are set forth in the Welfare and Institutions Code. As such, the information included on a findings and orders form will be as protected as the other

	Commentator	Position	Comment	Committee Response
			medication orders and the next court hearing for that issue, it would be best to exclude that information to maintain the confidentiality of the child's psychological information. That information will be readily available elsewhere. **Should form JV-443, *Eighteen-Month Permanency Attachment: Reunification Services Continued,* include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided?** The form should include the language stated above. Additionally, Judicial Council should create a separate section for parents who do not fall under the 366.22(b) category (as listed in 6(a) of form JV-443 Attachment). In a separate section, Judicial Council should add language consistent with *In re J.E.* (2016) 3 Cal.App.5th 557, which allows parents not included in section 366.22(b) to receive additional services so long as (1) extending services is in the child's best interest; (2) further services will result in a successful reunification with parents; and (3) the Department failed to provide	documents in a child's dependency files. As noted by the commentator, it would be useful to include information on whether a review hearing regarding psychotropic medications is pending; consequently, the committee has determined that these checkboxes should remain on the form. As stated in the Invitation to Comment, the committee proposes including a checkbox allowing for the provision of additional reunification services in accordance with *In re J.E.* (2016) 3 Cal.App.5th 557. The question posed in the request for specific comment may have been misleading. The proposal is to include a checkbox that comports with the commentator's suggestion.

	Commentator	Position	Comment	Committee Response
			reasonable services. **Title 42 United States Code section 675 was amended to require that independent living planning begin for children at age 14 or older who are in out-of-home placement, rather than age 16 or older; however, the Welfare and Institutions Code was amended only to require that dependent youth – but not delinquent youth – receive independent living planning at age 14 or older. Should the findings and orders that relate to delinquent youth also be revised to require independent living planning for children at age 14 or older who are in out-of-home placement?** Because the statute applies to both dependent and delinquent youth, Judicial Council should amend the forms to include delinquent youth.	The committee agrees that independent living planning should begin at 14 for delinquent youth in out-of-home placement.
			The legislation driving the revision of these 18 juvenile law forms also impacts nonminor dependents. Specifically, the legislation contemplates speaking with nonminor dependents about their	The committee appreciates this comment, particularly its focus on achieving permanence for extended foster care youth. After consideration, the committee has determined it is best to leave form JV-462 as is because it is inconsistent to apply

	Commentator	Position	Comment	Committee Response
			permanent plans, which seems to contradict the stated goal of extended foster care: achieving independence. Should form JV-462 remain untouched, despite the statutory changes that explicitly apply to nonminor dependents? Revisions to form JV-462 would comport with the law and would not contradict the stated goal of extended foster care, which is achieving independence. This court has had a nonminor dependent adoption and another one is pending. Other nonminor dependents still reside with their former foster parents. DCFS and the court both do their best to cement the relationships. Adoption should be encouraged, even if it is right before the youth turns 21. At the same time, just as with dependent kids, the court encourages nonminor dependents to learn how to live independently. Therefore achieving permanency and encouraging independence do not conflict. **Likewise, should rule 5.903 (the rule governing nonminor dependent status**	permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living. The committee agrees that form JV-462 and rule 5.903 should mirror each other. As stated

	Commentator	Position	Comment	Committee Response
			review hearings), be revised to include language related to the appropriateness of another planned permanent living arrangement? To comport with the statute, rule 5.903 should be revised; however, if Judicial Council ultimately decides not to revise form JV-462, there is no need to revise rule 5.903. Both the form and the rule should provide the same information.	above, the committee has determined it is best to leave form JV-462 and rule 5.903 as is because it is inconsistent to apply permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living.
			Would providing a link on the forms to a website maintained by the Judicial Council with information on the right to seek appellate review be an appropriate vehicle to inform parties of their potential right to seek appellate review? Judicial Council wants to add information concerning a person's appellate rights in the following forms: JV-415, JV-430, JV-435, JV-440, and JV-455. The information will contain the following language: You may have a right to appellate review of some or all of the orders made during this hearing. Contact	The committee agrees that including the language regarding appellate rights on the listed forms obviates the need for additional information on the Judicial Council's website. At this time, the committee believes it is unnecessary to include the language about provision of free transcripts. The language on the form directs the party to contact their attorney and the point about free transcripts is just the sort of information that the attorney can provide.

	Commentator	Position	Comment	Committee Response
			your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights. To mirror the language in Rule 5.590(a), Judicial Council should also add: "The right of an indigent appellant to be provided with a free copy of the transcript." (Rule 5.590(a)(4)) However, providing a link on the forms to a website maintained by Judicial Council with information on the right to seek appellate review is not necessary. The rule requires that the advisement be made in "writing or orally." Including this information in the forms would satisfy the writing component, and many jurisdictions are also likely to provide an oral	

	Commentator	Position	Comment	Committee Response
			advisement.	
5.	Superior Court of California, Riverside	A	Does the proposal address the stated purpose? Yes. Is it useful to include an additional finding that documents whether the child has a psychological medications order and sets forth the next hearing date on that order on findings and order form? No. Should JV-443 include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided? Yes. Should the findings and orders that related to delinquent youth also be revised to require independent living planning for children at age 14 or older who are in out of home placement? Yes. Would it be helpful if requests to terminate parental rights were made on a separate attachment that was filed with the court?	No response necessary. After consideration, the committee has determined it would be useful to the court and parties to include information on whether a review hearing regarding psychotropic medications is pending; consequently, these checkboxes will remain on the form. The committee agrees that this finding should remain on the form, with a slight modification to the language that clarifies the court is continuing the review hearing, and thus services, because reasonable services were not provided. The committee agrees that the independent living planning findings are applicable to delinquent youth. The committee appreciates this comment and may consider developing such a form at a later date.

	Commentator	Position	Comment	Committee Response
			Yes-this would be helpful and remove repetitiveness of the language on all of the forms.	
			Should JV-462 remain untouched, despite the statutory changes the explicitly apply to nonminor dependents? JV462 should be amended to reflect the statutory changes. This will be consistent with other forms in which statutory changes have occurred.	After consideration, the committee has determined it is best to leave form JV-462 as is because it is inconsistent to apply permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living.
			Should rule 5.903 be revised? Yes.	As stated above, the committee has determined it is best to leave form JV-462 and rule 5.903 as is because is because it is inconsistent to apply permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living.
			Would a link on the forms to a JC website with information about the right to appellate review be appropriate?	After consideration the committee has determined that including the language regarding appellate rights on the listed forms obviates the need for additional information

	Commentator	Position	Comment	Committee Response
			Yes. Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Training of staff and judicial officers, recommendations with the agencies will need to be reviewed and updated, minute codes will need to be updated and/or created. Is six months sufficient time for implementation? No, these are substantial changes and six months will not be enough time to coordinate changes with agencies. Recommend a 12-month implementation period.	on the Judicial Council's website. The proposal may not provide cost savings but nor will it raise costs for the courts. A short-term cost increase is anticipated as templates are updated staff is trained on using the new forms. The committee agrees that these are the likely cost drivers While the committee acknowledges that these are significant changes, the majority of the revisions to the code sections went into effect on January 1, 2016. Thus, by the time the form changes are approved the new findings will have been required for two years.
6.	Superior Court of California, San Diego	AM	• Is it useful to include an additional finding that documents whether the child has a psycho[tropic] medications order and sets forth the next hearing date on that order on the findings and orders forms? Yes! Very helpful!	The committee agrees it would be useful to the court and parties to include information on whether a review hearing regarding psychotropic medications is pending; consequently, these checkboxes will remain on the form.

	Commentator	Position	Comment	Committee Response
			• Should form JV-443 … include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided? Yes.	The committee agrees that this finding should remain on the form, with a slight modification to the language that clarifies the court is continuing the review hearing, and thus services, because reasonable services were not provided.
			• [42 U.S.C. § 675] was amended to require that independent living planning begin for children at age 14 or older who are in out-of-home placement, rather than age 16 or older; however, the [WIC] was amended only to require that dependent youth—but not delinquent youth—receive [ILP] at age 14 or older. Should the findings and orders that relate to delinquent youth also be revised to require [ILP] for children at age 14 or older who are in out-of-home placement? Yes. Clean-up legislation should be sought to correct the oversight in the delinquency statutes.	The committee agrees that the independent living planning findings are applicable to delinquent youth.
			• Recently, concerns have been raised regarding the clarity of the process for requesting [TPR]. Currently, this request is embedded in a number of forms in this proposal. Would it be helpful if [TPR requests] were made on a separate attachment that was filed with the court?	The committee appreciates this comment and may consider developing such a form at a later date.

	Commentator	Position	Comment	Committee Response
			Would the separate attachment replace, or be an optional alternative to, the embedded requests? The embedded TPR requests should remain embedded, as most requests occur at the hearings for which these forms are used (e.g., dispo and reviews). If created for optional use, the separate attachment might be useful when the request is not made at one of those hearings.	
			• The legislation driving the revision of these 18 juvenile law forms also impacts [NMDs]. Specifically, the legislation contemplates speaking with [NMDs] about their permanent plans, which seems to contradict the stated goal of extended foster care: achieving independence. Should form JV-462 remain untouched, despite the statutory changes that explicitly apply to [NMDs]? Preliminarily, it should be noted that SB 794 changed the stated goal of extended foster care from "independence" to "successful adulthood." Although the difference in terms is arguably rhetorical (one need not be completely independent to experience a successful adulthood), it is not certain that asking a NMD about his or her plans for the future necessarily contradicts those goals. Assuming the focus of this question is the	After consideration, the committee has determined it is best to leave form JV-462 as is because it is inconsistent to apply permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living.

	Commentator	Position	Comment	Committee Response
			requirement for the court to ask a NMD in APPLA "about his or her desired permanency outcome" (WIC § 366.31(e)(10), see also WIC § 727.3(a)(5)), item 27 should be added to form JV-462 as proposed precisely because it is required by statute for these hearings. Curiously, forms JV-674 and JV-678 (item 17) frame this finding, "The court asked the child where he or she wants to live ..." Why is it necessary to paraphrase the statutory language? Being asked about one's "desired permanency outcome" should encompass much more than "where he or she wants to live." It is hoped courts will seek more information from the NMD or foster youth, e.g., future plans for further education and/or career goals, family relationships, support systems, etc. • Likewise, should rule 5.903 (the rule governing [NMD] status review hearings), be revised to include language related to the appropriateness of [APPLA]? If the "language related to the appropriateness of [APPLA]" refers to the requirements set forth in WIC § 366.31(e)(10), yes. • Would providing a link on the forms to a website maintained by the Judicial Council with information on the right to seek	As stated above, the committee has determined it is best to leave form JV-462 and rule 5.903 as they are for the time being. After consideration the committee has determined that including the language regarding appellate rights on the listed forms

	Commentator	Position	Comment	Committee Response
			appellate review be an appropriate vehicle to inform parties of their potential right to seek appellate review? It would be helpful, but it should not replace the new "For Your Information" language that has been proposed. Although we are well into the 21st century, there are still families who do not have easy access to the internet.	obviates the need for additional information on the Judicial Council's website. This commentator submitted lengthy edits to the forms, which are included as Attachment A. The majority of the suggested edits were made.
7.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	AM	The changes proposed in SPR17-13 are, for the most part, compliant with the new law and appropriate. However, the proposed changes to JV-462 require more discussion. The "Request for Specific Comments" aptly frames the question: whether achieving independence, as the stated goal of extended foster care, is furthered by discussions about and findings regarding "permanent plans" that may include adoption, foster care, and other things normally associated with minor dependent status (such as those in items 21, 27 and 28). The JRS respectfully suggests that the Family and Juvenile Law Advisory	After consideration, the committee has determined it is best to leave form JV-462 as is because it is inconsistent to apply permanent plans crafted for children to nonminor dependents, who are adults, and are actively pursuing their permanent plan – independent living.

	Commentator	Position	Comment	Committee Response
			Committee consider the possibility that such discussions and findings are appropriate in the case of nonminor dependents, but that the language of "another planned permanent living arrangement" should be avoided, as it suggests long-term outcomes that may not be feasible for a nonminor dependent about to leave the system as an adult. For this reason, the JRS recommends that section 27 of Form JV-462 be amended to read as follows instead of beginning with the proposed language of "For nonminors placed in another planned permanent living arrangement:" "For nonminors transitioning to independence:"	

Item SPR17-13 Response Form

Title: Juvenile Law: Title IV-E Findings and Orders

☐ **Agree** with proposed changes

☒ **Agree** with proposed changes **if modified**

☐ **Do not agree** with proposed changes

Comments:

Comments regarding specific questions:

- Is it useful to include an additional finding that documents whether the child has a psycho[tropic] medications order and sets forth the next hearing date on that order on the findings and orders forms?
Yes! Very helpful!

- Should form JV-443 … include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided?
Yes.

- [42 U.S.C. § 675] was amended to require that independent living planning begin for children at age 14 or older who are in out-of-home placement, rather than age 16 or older; however, the [WIC] was amended only to require that dependent youth—but not delinquent youth—receive [ILP] at age 14 or older. Should the findings and orders that relate to delinquent youth also be revised to require [ILP] for children at age 14 or older who are in out-of-home placement?
Yes. Clean-up legislation should be sought to correct the oversight in the delinquency statutes.

- Recently, concerns have been raised regarding the clarity of the process for requesting [TPR]. Currently, this request is embedded in a number of forms in this proposal. Would it be helpful if [TPR requests] were made on a separate attachment that was filed with the court?
Would the separate attachment replace, or be an optional alternative to, the embedded requests? The embedded TPR requests should remain embedded, as most requests occur at the hearings for which these forms are used (e.g., dispo and reviews). If created for optional use, the separate attachment might be useful when the request is not made at one of those hearings.

- The legislation driving the revision of these 18 juvenile law forms also impacts [NMDs]. Specifically, the legislation contemplates speaking with [NMDs] about their permanent plans, which seems to contradict the stated goal of extended foster care: achieving independence. Should form JV-462 remain untouched, despite the statutory changes that explicitly apply to [NMDs]?

Preliminarily, it should be noted that SB 794 changed the stated goal of extended foster care from "independence" to "successful adulthood." Although the difference in terms is arguably rhetorical (one need not be completely independent to experience a successful adulthood), it is not certain that asking a NMD about his or her plans for the future necessarily contradicts those goals.
Assuming the focus of this question is the requirement for the court to ask a NMD in APPLA "about his or her desired permanency outcome" (WIC § 366.31(e)(10), see also WIC § 727.3(a)(5)), item 27 should be added to form JV-462 as proposed precisely because it is required by statute for these hearings.
Curiously, forms JV-674 and JV-678 (item 17) frame this finding, "The court asked the child where he or she wants to live ..." Why is it necessary to paraphrase the statutory language? Being asked about one's "desired permanency outcome" should encompass much more than "where he or she wants to live." It is hoped courts will seek more information from the NMD or foster youth, e.g., future plans for further education and/or career goals, family relationships, support systems, etc.

- Likewise, should rule 5.903 (the rule governing [NMD] status review hearings), be revised to include language related to the appropriateness of [APPLA]?

If the "language related to the appropriateness of [APPLA]" refers to the requirements set forth in WIC § 366.31(e)(10), yes.

- Would providing a link on the forms to a website maintained by the Judicial Council with information on the right to seek appellate review be an appropriate vehicle to inform parties of their potential right to seek appellate review?

It would be helpful, but it should not replace the new "For Your Information" language that has been proposed. Although we are well into the 21st century, there are still families who do not have easy access to the internet.

RULE 5.810

Throughout rule 5.810, there is inconsistency in referring to the subject of the proceedings as either a "ward" or a "child." Rules 5.795 and 5.805 use "youth." Rule 5.812 uses "child" consistently, except in subd. (f). Rules 5.813 and 5.814 alternate between "ward" and "child." Although it may be appropriate to use one term or another in a particular rule, rule 5.810 could benefit from using only "ward" or "child," especially within the same paragraph (see, e.g., 5.810(a)(3)(C) and 5.810(b)(3)(A)).

Subds. (a)(3)(B), (b)(2)(B), and (c)(2)(C): Change per WIC § 727.2(e)(2) --

The extent of the probation department's compliance with the case plan in making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, the ongoing and intensive efforts to safely return the child to the child's home ~~and~~ or to complete whatever steps are necessary to finalize the permanent placement of the child;

Subds. (a)(3)(F), (b)(2)(H) (*new*), and (c)(2)(F) (*new*): Change per WIC § 727.2(e)(6) & (g), 727.3(a)(4) --

In the case of a child who is 16[1] years of age or older, the services needed to assist the child in making the transition from foster care to ~~independent living~~ successful adulthood;

The findings set forth in subds. (a)(3)(C) [education rights] and (a)(3)(E) [likely date] need to be added to **subd. (b)(2)**. (See WIC § 727.3(a)(4) ["At each permanency planning hearing, …. The court shall also make findings, as described in subdivision (e) of Section 727.2"].)

The finding set forth in subd. (a)(3)(C) [education rights] needs to be added to **subd. (c)(2)**. (See 727.2(g)) ["At all status review hearings subsequent to the first permanency planning hearing, the court shall consider the safety of the minor and make the findings and orders as described in paragraphs (1) to (4), inclusive, and (6) of subdivision (e)"].)

Suggestion: Delete subd. **(b)(2)(D)** as unnecessary in light of subd. (b)(3).

FORM JV-320

• Page 1 – Item 2:

The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), ~~or~~ 366.25(b), or 727.31(b) and the report and recommendation of the …

• Page 1 – Item 5:

… The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing~~,~~ and was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

• Page 1 – Right footer:

Welfare and Institutions Code, §§ 361.7, 366.24, 366.26, 727.3, 727.31, 727.4, 16501.1; Cal. Rules of Court, rules 5.485, 5.504, 5.590, 5.725, 5.810, 5.820

• Page 2 – Item 12:

Termination of parental rights would be detrimental to the child for the following reasons:
(If item 12 is checked, check reasons below and go to item 15 or 16.)~~:~~

Comment: The check boxes for items 12.a, b, c, d, e, and f accurately state the reasons for a detriment finding under WIC § 366.26(c)(1)(B), but the analogous reasons for finding that termination of parental rights would not be in the best interest of a minor under WIC §

[1] Or change 16 to 14, as in form JV-674, item 18.

727.3(c)(1)(B),[2] ***(1)(C),***[3] ***(1)(D),***[4] ***(2),***[5] ***(3),***[6] *and* ***(4)***[7] *are not provided in item 12 or anywhere else on the form. Since this form is intended to be used for orders under WIC §§ 727.3 and 727.31, should there be a separate (additional) item for these reasons?*

• Page 3 – Item 12.f: Per WIC § 366.26(c)(1)(B)(vi)(III), underneath reason (2), add:

(3) The child is a nonminor dependent, and the nonminor and the nonminor's tribe have identified tribal customary adoption for the nonminor.

• Page 3 – Item 14.a: WIC § 366.26(c)(3) uses "permanent placement goal," not "permanent plan."

Termination of parental rights is not ordered at this time. Adoption is the permanent ~~plan~~ placement goal, and efforts are to be made to locate an appropriate adoptive family. …

• Pages 3 & 4 – Items 14.c, 15.b, and 16.c: WIC § 366.26(c)(4)(C) uses "would be detrimental," not "is detrimental." "Terminated" is appropriate only if visitation was previously allowed. "Prohibited" (or "not allowed") will bar visitation whether or not it was previously allowed.

Visitation between the child and *(names):*
~~is~~ would be detrimental to the child's physical or emotional well-being and is ~~terminated~~ prohibited.

• Page 4 – Boxed sentence at top of page ("court retains jurisdiction of the guardianship"). *This sentence should be at the bottom of page 3 (i.e., "anchored" to item 15, which pertains to guardianship) rather than at the top of page 4, where it appears with item 16 (non-guardianship placements).*

• Page 4 – Item 16.a does not provide a check box for the permanent plan set forth in WIC § 366.26(c)(4)(B)(ii) or (iii) for youth 16 or older or for nonminor dependents, i.e., "another planned permanent living arrangement." Suggest adding:

[2] "The minor is 17 years of age or older and specifically requests that transition to independent living with the identification of a caring adult to serve as a lifelong connection be established as his or her permanent plan. On and after January 1, 2012, this includes a minor who requests that his or her [TILCP] include modification of his or her jurisdiction to that of dependency jurisdiction pursuant to [§ 607.2(b)] or of [§ 727.2(*i*)], or to that of transition jurisdiction pursuant to [§] 450, in order to be eligible as a [NMD] for the extended benefits pursuant to [§] 11403."
[3] "The parent or guardian and the minor have a significant bond, but the parent or guardian is unable to care for the minor because of an emotional or physical disability, and the minor's caregiver has committed to raising the minor to the age of majority and facilitating visitation with the disabled parent or guardian."
[4] "The minor agrees to continued placement in a residential treatment facility that provides services specifically designed to address the minor's treatment needs, and the minor's needs could not be served by a less restrictive placement."
[5] "Documentation by the probation department that no grounds exist to file for termination of parental rights."
[6] "Documentation by the probation department that the minor is an unaccompanied refugee minor, or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights."
[7] "A finding by the court that the probation department was required to make reasonable efforts to reunify the minor with the family pursuant to [§ 727.2(a)], and did not make those efforts."

(7) Another planned permanent living arrangement, as no other permanent plan is appropriate at this time.

FORM JV-415

Page 2 – Item 5.a. – Change "maybe" to "may be"

Page 3 – Item 17 – Is item 17.d. still necessary in light of the proposed revision to item 17.c.? In other words, would a court, at the dispo hearing, ever schedule a postpermanency hearing without having set a .26 hearing first (via item 17.c.)?

FORM JV-421

Page 1 – Right footer – CRC 5.690 should be added, and CRC 5.695 should remain. Not quite sure why 5.695 was replaced with 5.708 and 5.710, which apply to review hearings, not dispositional hearings.

Page 1 – Item 7.b.(1): Change as indicated to mirror the language in CRC 5.695(e)(2) and to be consistent with the proposed changes to items 7.a. and 7.b.

The county agency is ordered to ~~make such diligent efforts~~ exercise due diligence to identify, locate, and notify the child's relatives, except for ~~individuals the agency has determined to be inappropriate to contact because of their involvement with the family or domestic violence~~ any individual the social worker identifies as inappropriate to notify.

Page 2 – Item 10: In light of Continuum of Care Reform, is any consideration being given to replacing a, b, c, and d with "in a resource family home" and "in a short-term residential treatment program"?

Page 3 – Item 20.a.: Add check boxes for 361.5(b)(16) and 361.5(b)(17).

Page 4 – Item 21.b. Should it mirror the language provided on the Judicial Council's Gray Sheet ("Recommended Title IV-E Findings and Orders") for dispo hearings?

The likely date by which the child may be returned to and safely maintained in the home or ~~placed for adoption, in legal guardianship, or in an identified placement with a specific goal~~ another permanent plan selected is *(specify):*

Also, shouldn't this finding ("D4" on the Gray Sheet) be made regardless of whether services are ordered or denied? As such, should it be item 22 rather than item 21.b? In other words, as item 22, the D4 finding will be made regardless of whether item 20.a, 20.b, 20.c, 20.d, 20.e, 20.f, or 21.a is chosen. (Alternatively, item 21.a could be redesignated as 20.g., and item 21.b could be redesignated as 21. This would eliminate the need to renumber all subsequent items.)

Finally, this finding appears again on **page 7** as **item 36.f.**, although it is worded a bit differently (to include tribal customary adoption). Is it necessary to repeat it on page 7? Is it appropriately placed in this section ("Advisements")? If it remains, should it also be amended to mirror D6?

f. The likely date by which the ~~child may be placed for adoption, tribal customary adoption, legal guardianship, or in an identified placement with a specific goal~~ permanent plan will be achieved is *(specify date):*

Page 4 - Item 22. Should it mirror the language provided on the Judicial Council's Gray Sheet ("Recommended Title IV-E Findings and Orders") for dispo hearings?

The county agency _____ has _____ 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~~ whatever steps are necessary to finalize the permanent placement of the child.

Page 5 – Items 27.a & b: See proposed change to Form JV-455 – "rule 5.650(e)-(f)" is changed to "rule 5.650(e) and (f)" (page 72 of SPR-17-13).

Also, the JV-535 on www.courts.ca.gov is titled, "*Order Designating Educational Rights Holder*," not "*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs.*"

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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative,*[8] *and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

Page 5 – Item 29: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Our court suggests [1] moving this information to item 31 and [2] moving items 30 and 31 back to 29 and 30. Reason: Items 29 and 30 refer to the findings in Item 28, so all three items should remain together.

[8] If this is the correct name of form JV-535, a horizontal space is needed after this comma.

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 *(name):*
c. Surrogate parent *(name):*
d. Educational representative *(name):*
e. Other *(name):*

31. The child ____ does _____ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on (*date*).

Page 6 – Items 34 and 34.a: Suggest using language from WIC § 361.5(a)(3)(C):

"In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in subparagraph (C) of paragraph (1), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in subparagraph (C) of paragraph (1)."

Child under ~~the age of~~ three years of age or 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 ~~the age of~~ three years of age on the date of initial removal or is a member of a sibling group as described in Welf. & Inst. Code, § 361.5(a)(1)(C):

a. **Failure to participate regularly and make substantive progress in court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan 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 the child entered foster care under Welf. & Inst. Code, § 366.21(e).

Page 6 – Items 36.d., last sentence: Correct rule in last sentence (should be subd. (g)(10)).

The clerk of the court is directed to provide written notice as stated in rule 5.695~~(f)(19)~~(g)(10) of the California Rules of Court to any party not present.

Page 7 – Item 36.f. – See comments, *ante*, regarding Page 4 – Item 21.b.

FORM JV-430

Page 1 – Right footer: Add citations to WIC §§ **361.7**, **366**. A citation to § 366 also should be added to the citation footers on Forms JV-431, JV-432, and JV-433.

Page 3 – Item 10: Per WIC § 366(a)(1)(B):

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

Page 3 – Items 17: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 3 – Items 17-19: I suggest moving the psychotropic medication information to item 19 and moving 18 and 19 back to 17 and 18. Reason: Items 17 and 18 refer to the findings in Item 16, so all three items should remain together.

16. 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.

17. 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:

18. 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 17:
a. Social worker.

b. Parent *(name):*
c. Surrogate parent *(name):*
d. Educational representative *(name):*
e. Other *(name):*

19. The child ____ does _____ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on (*date*).

FORM JV-431
(not part of SPR 17-13)

Item 1 of Forms JV-432 and JV-433 start by stating the standard of proof ("By a preponderance of the evidence, …"). Should Item 1 of Form JV-431 be changed to likewise state the standard of proof?

FORM JV-432
(not part of SPR 17-13)

Page 1 – Items 4.a. & 5.b.: Change "item 25" to "item 26."

Page 2 – Item 8: Per WIC § 366(a)(2):

The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, tribal customary adoption, legal guardianship, placed with a fit and willing relative, or in ~~an identified placement with a specific goal~~ another planned permanent living arrangement is *(specify date):*

FORM JV-433

Page 1 – Item 4.a.: Change "item 25" to "item 26."

Page 2 – Item 7.a.: Change to accurately reflect the language in WIC § 366.21(e)(5).

Reunification services are terminated for the

mother biological father Indian custodian
presumed father legal guardian
other

because the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence,

~~the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and~~ the person's whereabouts remain unknown.

the person has not had contact with the child for six months.

Page 2 – Item 8: Delete. Item 8 repeats item 7.a., although it is less complete.

Page 2 – Item 10: Change "a group home" to "an out-of-home placement" and delete "from the date the child entered foster care (See WIC §§ 366(a)(1)(B), 366.1(g).) NOTE: WIC § 366.21(h) does not limit this finding to children 10 or older: "The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests."

Child 10 years of age or older, placed in ~~a group home~~ an out-of-home placement for six months or longer ~~from the date the child entered foster care~~

Page 3 – Item 12.c.: Change "§ 361.5(g)" to "§ 366.21(i)." (See WIC § 366.21(i).)

Page 3 – Item 12.d.: In the last sentence, change "rule 5.708(n)(5)" to "rule 5.590(b)(2)." (Alternatively, it can be changed to 5.708(i)(2), but that provision cross references to 5.590(b)(2).)

Page 3 – Item 12.e.: See WIC § 361.5(f):

The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or ~~an identified placement with a specific goal~~ another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. …

Note: Alternative language in WIC § 366.22(a)(3):

… adoption, or, in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption, guardianship, or continued placement in foster care …

Page 3 – Item 12.g.: Add "or in another planned permanent living arrangement." (See item 12 e., *ante*.)

g. The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement *(specify date):*

Page 3 – Item 13: Per WIC § 366.21(g)(5)

By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption ~~at this time~~ and ~~a potential legal guardian has not been identified~~ has no one willing to accept legal guardianship as of the hearing date.

Page 3 – Item 13.b.: Grammar error – can be changed to one of the following.

The child remain**s** in foster care with a permanent plan of …

The child remain**s placed** in foster care with a permanent plan of …

The child **shall** remain in foster care with a permanent plan of …

Page 3 – Item 13.b.(5): Per WIC § 366.21(g)(5)(A).

The child is 16 years of age or older, there is a compelling reason that no other ~~preferred~~ permanent plan is ~~in the child's best interest~~ appropriate at the time of the hearing, and the child is ordered placed in another planned permanent living arrangement with a goal of: …

Page 4 – Item 13.c.: Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.
Page 4 – Item 14.c.: See form JV-438, item 11.c.

The compelling reasons why the other permanent plan options are not in ~~(*name of the child*)~~ the child's best interest are (*describe*):

FORM JV-435

Page 3 – Item 10: Per WIC § 366(a)(1)(B):

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

Page 3 – Item 15.b.: Form has been renamed.

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 ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. …

Page 3 – Item 17: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 4 – Item 20.a.: Misplaced comma.

The child's educational records, including any evaluation regarding a disability, were 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.

FORM JV-438

Page 1 – Item 8: Change "a group home" to "an out-of-home placement" and delete "from the date the child entered foster care." (See WIC §§ 366(a)(1)(B), 366.1(g).) NOTE: WIC § 366.21(h) does not limit this finding to children 10 or older: "The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests."

Child 10 years of age or older, placed in ~~a group home~~ an out-of-home placement for six months or longer ~~from the date the child entered foster care~~

Page 2 – Item 10: Per WIC § 366.21(g)(5).

By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption ~~at this time~~ and ~~a potential legal guardian has not been identified~~ and has no one willing to accept legal guardianship as of the hearing date.

Page 2 – Item 10.b: Grammar error – can be changed to one of the following.

The child remain**s** in foster care with a permanent plan of …

The child remain**s placed** in foster care with a permanent plan of …

The child **shall** remain in foster care with a permanent plan of …

Page 2 – Item 10.b.(5): See JV-433, item 13.b.(5), *ante*.

The child is 16 years of age or older, there is a compelling reason that no other ~~preferred~~ permanent plan is ~~in the child's best interest~~ appropriate at the time of the hearing, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, ~~or~~ emancipation, or other (*specify*):

Page 2 – Item 10.c.: Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.

Page 2 – Item 12.c.

… as described in Welf. & Inst. Code, § ~~361.5(g)~~ 366.21(*i*).

Page 2 – Item 12.d.: In the last sentence, change "rule 5.708(n)(5)" to "rule 5.590(b)(2)." (Alternatively, it can be changed to 5.708(i)(2), but that provision cross references to 5.590(b)(2).)

Page 3 – Item 12.e.

The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or ~~an identified placement with a specific goal~~ another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. …

Page 3 – Item 12.g.

g. The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement *(specify date):*

FORM JV-440

Page 3 – Items 10 & 11.: Combine as suggested for item 10 in Forms JV-430 and JV-435. (This also would eliminate the need to renumber all subsequent items.)

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

~~**11. The child is 16 years of age or older and the agency has has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:**~~

Page 3 – Items 16.a. & b.: See proposed change to Form JV-455 – "rule 5.650(e)-(f)" is changed to "rule 5.650(e) and (f)" (page 72 of SPR-17-13).

Page 3 – Items 16.b.: Form has been renamed.

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 ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. …

Page 3 – Item 18: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 4 – Item 23.c.: The citation on Form JV-443 is WIC § 366.22, not § 366.25.

Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.2~~5~~2) (form JV-443), which is attached and incorporated by reference.

FORM JV-442

Page 1 – Item 8: Change "a group home" to "an out-of-home placement" and delete "from the date the child entered foster care." (See WIC §§ 366(a)(1)(B), 366.1(g).) NOTE: WIC § 366.21(h) does not limit this finding to children 10 or older: "The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests."

Child 10 years of age or older, placed in ~~a group home~~ an out-of-home placement for six months or longer ~~from the date the child entered foster care~~

Page 2 – Item 10: Per WIC § 366.21(g)(5)

By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption ~~at this time~~ and ~~a potential legal guardian has not been identified~~ has no one willing to accept legal guardianship as of the hearing date.

Page 2 – Item 10.b.: Grammar error – can be changed to one of the following.

The child remain**s** in foster care with a permanent plan of …

The child remains **placed** in foster care with a permanent plan of …

The child **shall** remain in foster care with a permanent plan of …

Page 2 – Item 10.b.(5): Per WIC § 366.21(g)(5)(A).

The child is 16 years of age or older, there is a compelling reason that no other ~~preferred~~ permanent plan is ~~in the child's best interest~~ appropriate at the time of the hearing, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, ~~or~~ emancipation, or other (*specify*):

Page 2 – Item 10.c.: Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.

Page 2 – Item 12.c.:

… as described in Welf. & Inst. Code, § ~~361.5(g)~~ 366.22(c).

Page 2 – Item 12.d.: In the last sentence, change "rule 5.708(n)(5)" to "rule 5.590(b)(2)." (Alternatively, it can be changed to 5.708(i)(2), but that provision cross references to 5.590(b)(2).)

Page 3 – Item 12.e.:

The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, placement with a fit and willing relative, or ~~an identified placement with a specific goal~~ another planned permanent living arrangement, or in the case of an Indian child, in consultation with the child's tribe, tribal customary adoption for the child. …

Page 3 – Item 12.g.

The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement is (*specify date*):

FORM JV-443

Page 1 - Items 4.a. & 5.a. – Change "item 25" to "item 27" (or, if items on JV-440 are renumbered, as appropriate).

Page 1 - Item 6.a.(1) – Per WIC § 366.22(b).

who is making significant and consistent progress in a court-ordered residential substance abuse treatment program

Page 1 - Item 6.b.(3)(b) – Per WIC § 366.22(b)(3),

to complete a treatment plan postdischarge from incarceration, ~~or~~ institutionalization, or detention, or following deportation and his or her return to the United States.

Page 2 - Item 6.c.: Insert (*date*) at the end of the second sentence, "… the court finds good cause to continue reunification services to" …

Page 2 - Item 8.

The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement *(specify date):*

Page 2 - Item 9: Change "a group home" to "an out-of-home placement" and delete "from the date the child entered foster care." (See WIC §§ 366(a)(1)(B), 366.1(g).) NOTE: WIC § 366.21(h) does not limit this finding to children 10 or older: "The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests."

Child 10 years of age or older, placed in ~~a group home~~ an out-of-home placement for six months or longer ~~from the date the child entered foster care~~

FORM JV-445

Page 2 - Item 11.b.(2).

the county agency is not required to ~~actively involve~~ give the child an opportunity to review the case plan, sign it, and receive a copy because the child is unable, unavailable, or unwilling to ~~participate~~ review the case plan, sign it, and receive a copy.

Page 2 - Items 12 & 13: Combine as suggested for item 10 in Forms JV-430 and JV-435. (This also would eliminate the need to renumber all subsequent items.)

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-

home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

Page 3 - Item 17: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 4 - Item 20.a.: Misplaced comma.

The child's educational records, … were 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 ….

Page 4 - Item 27.a.: If the court chooses this option (setting a .26), shouldn't this form also include the findings, orders, and advisements required when the court sets a .26 hearing (e.g., form JV-457, item 10)?

Page 4 - Item 27.b.

The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement is *(specify date):*

FORM JV-446

Page 3 - Item 16.b.(2):

the county agency is not required to ~~actively involve~~ give the child an opportunity to review the case plan, sign it, and receive a copy because the child is unable, unavailable, or unwilling to ~~participate~~ review the case plan, sign it, and receive a copy.

Page 3 - Items 17 & 18: Combine as suggested for item 10 in Forms JV-430 and JV-435. (This also would eliminate the need to renumber all subsequent items.)

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

Page 4 - Item 20: Change "a group home" to "an out-of-home placement" and delete "from the date the child entered foster care." (See WIC §§ 366(a)(1)(B), 366.1(g).) NOTE: WIC § 366.21(h) does not limit this finding to children 10 or older: "The court shall make any other

appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests."

Child 10 years of age or older, placed in ~~a group home~~ an out-of-home placement for six months or longer ~~from the date the child entered foster care~~

Page 5 - Item 29: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 5 - Item 31.c: Grammar error – can be changed to one of the following.

The child remain**s** in foster care with a permanent plan of …

The child remain**s placed** in foster care with a permanent plan of …

The child **shall** remain in foster care with a permanent plan of …

Page 5 – Item 31.c.(5): Per WIC § 366.21(g)(5)(A).

The child is 16 years of age or older, there is a compelling reason that no other ~~preferred~~ permanent plan is ~~in the child's best interest~~ appropriate at the time of the hearing, and the child is ordered placed in another planned permanent living arrangement with a goal of: …:

Page 6 – Item 31.d.: Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.

Page 6 – Item 33: Per WIC § 366.3(h)(1).

By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption ~~at this time~~ and ~~a potential legal guardian has not been identified~~ has no one willing to accept legal guardianship as of the hearing date.

Page 6 – Item 35.c: In the last sentence, change "rule 5.708(n)(5)" to "rule 5.590(b)(2)." (Alternatively, it can be changed to 5.708(i)(2), but that provision cross-references to 5.590(b)(2).)

FORM JV-455

Page 3 – Items 10 & 11: Combine as suggested for item 10 in Forms JV-430 and JV-435. (This also would eliminate the need to renumber all subsequent items.)

The county agency ... complied with the case plan by making reasonable efforts, or, in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, or, in the case of an Indian child, active efforts as described in Welf. & Inst. Code, § 361.7, 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 ~~whatever~~ any steps ~~are~~ necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

Page 3 - Item 18: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 3 - Item 21: Misplaced comma.

The child's educational records … were 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 ….

FORM JV-457

Page 1 – Items 5.a. & 6.b.: Change "form JV-440" to "form JV-455."

Page 1 – Item 8: Change to mirror the language in § 366.25(a)(3) --

By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or, in the case of an Indian child, tribal customary adoption, and has no one willing to accept legal guardianship as of the hearing date ~~at this time and a potential legal guardian has not been identified~~.

Page 1 – Item 8: Change to mirror the language in § 366.25(a)(3) –

b. The child shall remain in foster care with a permanent plan of *(specify):*

(1) Return home.
(2) Adoption.
(3) Tribal customary adoption.
(4) Legal guardianship.
(5) Placement with a fit and willing relative.

c. The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.

The likely date by which the child's permanent plan will be achieved is *(specify date):*

~~e~~d. The court finds that the barriers to achieving the child's permanent plans are *(describe):*

Page 1 – Item 8.c. and Page 2 – Item 9.c.: Consider adding the following as optional alternatives to "(*describe*):"
_____ stated in the record.
_____ stated in the report.

Page 2 – Item 10.c.: Change "§ 361.5(g)" to "§ 366.25(b)."

Page 2 – Item 10.d.: In the last sentence, change "rule 5.708(n)(5)" to "rule 5.590(b)(2)." (Alternatively, it can be changed to 5.708(i)(2), but that provision cross-references to 5.590(b)(2).)

Page 2 – Item 10.e.: Change to mirror the language in WIC § 361.5(f).

The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, ~~or an identified~~ placement with a fit and willing relative, or another planned permanent living arrangement, or, in the case of an Indian child, tribal customary adoption ~~specific goal~~ for the child. …

Page 2 – Item 10.g.

The likely date by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative, or in another planned permanent living arrangement is *(specify date):*

Page 3 – Item 11: Change to mirror the language in WIC § 366.25(a)(3).

Child 10 years of age or older, placed in ~~a group home~~ foster care ~~for six months or longer from the date the child entered foster care~~

a. The county agency has made reasonable efforts ~~to identify individuals who are important to the child and~~ to maintain the child's relationships with ~~those~~ individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

b. The county agency has not made reasonable efforts ~~to identify individuals who are important to the child and~~ to maintain the child's relationships with ~~those~~ individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

c. To ~~identify individuals who are important to the child and to~~ maintain the child's relationships with ~~those~~ individuals other than the child's siblings who are important to the child, the county agency must provide the services

…

FORM JV-462

Page 1 – Lower right footer: Provide legal authority citations.

Welfare and Institutions Code, §§ 224.1(b), 295, 366(f), 366.3, 366.31, 366.32, 16503; Cal. Rules of Court, rule 5.903

Page 2 – Our court was instructed that WIC § 11403(b) findings need to be made regarding *both* (1) the six months preceding the hearing and (2) the six months following the hearing, e.g., "Since the last review hearing, the nonminor has satisfied the criterion of ..." and "During the next six months, it is anticipated the nonminor will satisfy the criterion of..." (See **CRC 5.903(e)(1)(E) & (F)**.) These two findings are not on form JV-462. Query: Is the court no longer required to make these two separate findings regarding the WIC § 11403(b) criteria?

Page 2, item 10: This item does not allow for the possibility that the TILCP does *not* include a plan for the NMD to satisfy a criterion, e.g.,

"The nonminor dependent's Transitional Independent Living Case Plan ____ does ____ does not include a plan for him or her to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) …"

Page 2, item 24: Suggestion: Insert "(*date*)" before the ending colon.

Page 3, item 26: Delete "to."

…, and juvenile court jurisdiction is terminated under ~~to~~ those findings and orders.

Page 3, item 27.b.: Per WIC §§ 366.3(h)(2)(B) & 366.31(e)(10)(B):

The court has considered the evidence before it and finds that another planned permanent living arrangement is the best ~~permanent~~ permanency plan because:

Page 3, item 27.b.(1): Query -- Is the fact that "The nonminor is 18 years of age or older" really a sufficient reason for finding that APPLA is the best permanency plan for the nonminor?

Page 3, item 28.a.: Insert "legal guardianship" between "tribal customary adoption" and "placement with a fit and willing relative." Insert "another planned permanent living arrangement" between "placement with a fit and willing relative" and "other."

a. the youth's permanent plan is

(1) return home
(2) adoption
(3) tribal customary adoption

(4) legal guardianship
(5) placement with a fit and willing relative
(6) another planned permanent living arrangement
(7) other *(specify):*

Page 3, item 31.c. Suggestion: Insert "(*date*)" before the ending colon.

Page 4, item 31.d.(3). Suggested changes for consistency with item 31.d.(2):

The nonminor cannot safely reside in the family home, and ~~the~~ reunification services are terminated *(check all that apply).*

Page 4, item 33.b.: Suggested changes for consistency with item 33.a.

Hearing to consider termination of jurisdiction (Welf. & Inst. Code, § 391; Cal. Rules of Court, ~~under~~ rule 5.555~~ of the California Rules of Court.~~)

FORM JV-672

Page 1, right footer: Add WIC § 16002.

Page 1, item 4, last sentence. Per WIC § 727.2(e)(2) & CRC 5.810(a)(3)(B):

… Probation has complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child ~~safely~~ to the child's home and to complete whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

Page 1, item 8, last sentence. Per WIC § 727.2(e)(2) & CRC 5.810(a)(3)(B):

… Probation has complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child to ~~a safe~~ the child's home and to complete whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

Page 1, item 10. Per WIC § 727.2(e)(2) & CRC 5.810(a)(3)(B):

Probation _____ has _____ has not complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child to ~~a safe~~ the child's 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 whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

Page 2, item 14. Per WIC § 727.2(e)(5):

The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, or placed permanently with a fit and willing relative, or, if the child is 16 years of age or older, referred to another planned permanent living arrangement is *(date):*

Page 2, item 20.b. Change "detrimental to" to "contrary to the safety and well-being of" per WIC § 16002(b) & (c).

Page 3, item 22: Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 3, item 24.b.: Form has been renamed.

… Those rights are limited as ordered and as set forth in in ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535).

Page 3, item 25.a. For consistency with dependency forms (e.g., JV-435, JV-445, JV-455).

The child's educational records, including any evaluation regarding a disability, were ~~transferred to the new school placement~~ 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.

Page 3, item 26.a.: Form has been renamed.

… All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding* ~~*Paternity*~~ *Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.

Page 3, item 33. Suggest changing "youth" to "child" for consistency with the rest of the form.

FORM JV-674

Page 1, right footer: Add WIC §§ 727.2 and 16002.

Page 1, item 4, last sentence. Per WIC §§ 727.2(e)(2), 727.3(a)(4):

… Probation has complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child ~~safely~~ to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child.

Page 1, item 10. Per WIC §§ 727.2(e)(2), 727.3(a)(4):

Probation _____ has _____ has not complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child to ~~a safe~~ the child's 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 whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

~~For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation _____ has _____ has not made the following and intensive efforts to return the child to a safe home or finalize the permanent plan:~~

Page 2, items 14.a. & 14.b. Suggest lower case "s" – "Reunification ~~S~~services are … "

Page 2, items 14.b.(1) & (2). Per WIC § 727.3(b)(2) & (b)(3):

The probation department has provided or offered reasonable services, ~~and opportunities~~ but the … has not participated regularly and has not demonstrated the capacity and ability to complete the objectives of the case plan. …

The probation department has provided or offered reasonable services, ~~and opportunities~~ but there is not a substantial probability that the child may be returned to the … . …

Page 2, items 14.b.(3). Change "minor" to "child" for consistency.

Page 2, items 14.b.(4). Change "*(name)*" to "the child."

Page 2, items 15.a.(2): Suggestion for clarity.

… If the child is not returned home at the next permanency hearing, the court will set a hearing that could result in the termination of parental rights and the adoption of the child.

Page 2, items 15.a.(3): Suggest inserting "(*date*):" after "is scheduled for."

Page 2, item 15.a. Move item 15.b.(1) to 15.a.(5) because the "clear and convincing evidence..." finding is not required for the court to order permanent placement with a fit and willing relative. (See WIC § 727.3(b)(5).) The changes to the first sentence in item 15.b. below are intended to mirror the language in WIC § 727.3(b)(6) & (c). Nothing in WIC § 727.3(b)(6) & (c) requires a finding that that the child "is not a proper subject for adoption and there is no one willing to accept legal guardianship."

15. a. The following is appropriate and ordered as the permanent plan:

(1) The child is returned home immediately.

(2) Continuation of reunification services and setting of a further permanency hearing. If the child is not returned home at the next permanency hearing, the court will set a hearing that could result in the termination of parental rights and the adoption of the child.

(3) Adoption. A hearing under Welfare and Institution Code Section 727.31 is scheduled for (*date*): and an adoption assessment report is ordered.

(4) Legal guardianship.

(5) Permanent placement with *(name)* _____, a fit and willing relative.

b. The court finds by clear and convincing evidence that there is a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the child ~~*(name of child)* is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:~~

~~(1) Permanent placement with *(name)* a fit and willing relative.~~

(1) The permanent plan is ~~P~~placement in foster care with a permanent plan of *(specify)* return home, adoption, legal guardianship, or placement with a fit and willing relative.

(2) The child is 16 years of age or older, there is a compelling reason for determining that no other ~~preferred~~ permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of*:* ...

Alternative suggestion for item 15.b.(1): Replace "(*specify*)" with check boxes for each option; add "legal guardianship."
Placement in foster care with a permanent plan of ~~*(specify)*~~ □ return home, □ adoption, □ legal guardianship, or □ placement with a fit and willing relative.

Page 3, item 16.c. Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.

Page 4, item 23.b.(3). Change "detrimental to" to "contrary to the safety and well-being of" per WIC § 16002(b) & (c).

Page 4, item 24. Query: Add options for use of forms JV-401 (sibling visitation) and/or JV-402 (grandparent)?

Page 4, item 25. Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 4, item 27.b. Form has been renamed.

… Those rights are limited as ordered and as set forth in in ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and*~~

~~*Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535).

Page 4, item 28.a. For consistency with dependency forms (e.g., JV-435, JV-445, JV-455).

The child's educational records, including any evaluation regarding a disability, were ~~transferred to the new school placement~~ requested by the child's new school within two business days ~~since the placement change~~ 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.

Page 4, item 29.a.: Form has been renamed.

… All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding* ~~*Paternity*~~ *Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.

Page 5, item 36. Suggest changing "youth" to "child" for consistency with the rest of the form.

FORM JV-678

Page 1, right footer: Add WIC § 16002.

Page 1, item 4, last sentence. Per WIC § 727.2(e)(2) & (g):

… Probation has complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child ~~safely~~ to the child's home and to complete whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

Page 1, item 8, last sentence. Per WIC § 727.2(e)(2) & (g):

… Probation has complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, to safely return the child to ~~a safe~~ the child's home and to complete whatever steps are necessary to finalize the permanent ~~plan~~ placement of the child.

Page 1, item 11. Delete item 11.a. and modify item 11 per WIC § 727.2(e)(2) & (g):

11. Probation _____ has _____ has not complied with the case plan by making reasonable efforts, or in the case of a child 16 years of age or older with another planned permanent living arrangement, ongoing and intensive efforts, ~~including~~ to safely return the child to the child's home and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~a. For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation has has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:~~

Page 2, item 14. Move item 14.b.(1) to 14.a.(4) because the "clear and convincing evidence..." finding is not required for the court to order permanent placement with a fit and willing relative. (See WIC § 727.3(b)(5).) The changes to the first sentence in item 14.b. are intended to mirror the language in WIC § 727.3(b)(6) & (c). Nothing in WIC § 727.3(b)(6) & (c) requires a finding that that the child "is not a proper subject for adoption and there is no one willing to accept legal guardianship."

14. a. The following is appropriate and ordered as the permanent plan:

(1) The child is returned home immediately.

(2) Adoption. A hearing under Welfare and Institutions Code section 727.31 is scheduled for (*date*): and an adoption assessment report is ordered.

(3) Legal guardianship.

(4) Permanent placement with *(name)* _____, a fit and willing relative.

b. The court finds by clear and convincing evidence that there is a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the child ~~*(name of child)* _____ is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:~~

~~(1) Permanent placement with *(name)* a fit and willing relative.~~

(1) The permanent plan is ~~P~~placement in foster care with a permanent plan of return home, adoption, legal guardianship, or placement with a fit and willing relative.

(2) The child is 16 years of age or older, there is a compelling reason for determining that no other ~~preferred~~ permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.

Page 2, item 16. Consider adding the following as optional alternatives to "(*describe*):"

_____ stated in the record.
_____ stated in the report.

Page 3, item 22.b. Change "detrimental to" to "contrary to the safety and well-being of" per WIC § 16002(b) & (c).

Page 3, item 23. Query: Add options for use of forms JV-401 (sibling visitation) and/or JV-402 (grandparent)?

Page 3, item 24. Insert "(*date*)."

… The next hearing to review the psychotropic medication order is on *(date)*:

Page 3, item 26.b. Form has been renamed.

… Those rights are limited as ordered and as set forth in in ~~*Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs*~~ *Order Designating Educational Rights Holder* (form JV-535).

Page 3, item 27.a. For consistency with dependency forms (e.g., JV-435, JV-445, JV-455).

The child's educational records, including any evaluation regarding a disability, were ~~transferred to the new school placement~~ requested by the child's new school within two business days ~~since the placement change~~ 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.

Page 3, item 28.a.: Form has been renamed.

… All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding* ~~*Paternity*~~ *Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.

Page 4, item 35. Suggest changing "youth" to "child" for consistency with the rest of the form.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, April 28, 2017.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title
Juvenile Law: Court Appointed Special Advocates

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.655; approve form JV-474

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, 2019

Date of Report
July 17, 2017

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending the rule that establishes requirements for Court Appointed Special Advocate (CASA) programs to clarify the relationship between these programs and the court and to comply with legislation which authorized appointment of CASAs for delinquent youth and nonminor dependents. The committee also recommends approval of a new form to enable CASA programs to obtain consent from the nonminor dependent before reviewing the nonminor dependent's court file.

Recommendation

1. Amend rule 5.655 of the California Rules of Court to:
   - Clarify that the local court is the entity that designates a CASA program;
   - Delete the references to the creation of a policies and procedures manual and clearly state that CASA programs must comply with this rule to be eligible to receive Judicial Council funding;

- Repeal subdivision (b) and incorporate the definition of CASA program that was previously contained in subdivision (b) into current subdivision (a);
- Move current subdivisions (k), (*l*), and (m) up to become subdivisions (b), (c), and (d), respectively and reletter the remaining subdivisions of the rule;
- State that the relationship between the court and the CASA program must be clearly defined in a memorandum of understanding (MOU);
- Specify that a CASA program may serve more than one court as long as it executes MOUs with each court;
- Define the role of an advisory council for a CASA program serving under the auspices of a public agency or umbrella nonprofit organization;
- Delete the requirement that the presiding juvenile judge participate in the CASA volunteer selection process;
- Include nonminor dependents among the population of young people served by CASA volunteers;
- Include the training topics stated in rule 5.664 among the optional training requirements for CASA volunteers;
- Include the nonminor dependent as a person who should receive information about the roles and responsibilities of the CASA volunteer; and
- Specify that the nonminor dependent must consent to the CASA volunteer accessing his or her nonminor dependent court file.

2. Approve new *Nonminor Dependent—Consent to Copy and Inspect Nonminor Dependent Court File* (form JV-474) to enable CASA programs to obtain consent from the nonminor dependent before reviewing the nonminor dependent's court file.

The text of the amended rule and the new form are attached at pages 10-21.

Previous Council Action

Rule 5.655 was originally adopted as rule 1424 on July 1, 1994. The rule establishes the CASA program and presents the policies and procedures that the CASA program must follow, as well as the requirements one must complete to volunteer as a CASA. The rule was renumbered effective January 1, 2007, and has been amended seven times, most recently in 2016. All of the amendments effect relatively minor technical changes corresponding to legislative updates or clarifications of the business aspect of the CASA programs.

Rationale for Recommendation

Background

Since 2012, two pieces of legislation affecting the CASA rule have been enacted. In 2012, the Legislature passed AB 1712 (Beall; Stats. 2012, ch. 846), which amended Welfare and Institutions Code sections 101 and 102 to extend the availability of the CASA program to

nonminor dependents.[1] Likewise, in 2015, the Legislature passed AB 424 (Gaines; Stats. 2015, ch. 71), which again amended sections 101 and 102; this time to extend the CASA program to delinquent children.

In addition, in 2012, the legislature addressed the confidentiality of the nonminor dependent court file through AB 1712 (Beall; Stats. 2012, ch. 846). Access to nonminor dependent court files is governed by section 362.5. Section 362.5 requires that the clerk of the superior court open a separate file for nonminor dependents and addresses who may have access to the separate nonminor dependent court file. Section 362.5 does not list a CASA as entitled to access to the court file. Section 362.5(d) specifies that all individuals requesting access to the court file, who are not listed as entitled to access, must be designated by court order of the judge of the juvenile court upon filing a petition, which shall be determined pursuant to section 827.

Proposed Amendments to rule 5.655

To ensure conformance with the statutory changes implemented by these bills, the Family and Juvenile Law Advisory Committee (committee) proposes amending rule 5.655 to specifically refer to wards and nonminor dependents as part of the population of children CASA programs are authorized to serve.

The committee also recommends taking this opportunity to further amend rule 5.655 to clarify the relationship between the court and CASA programs. To do so, the committee recommends amending the rule to add a requirement that this relationship be clearly defined through a Memorandum of Understanding (MOU) between the CASA program and the court. This requirement will help ensure that the court and CASA programs are the only parties involved in the agreement, and that it can be amended or dissolved by either party with greater ease.

The committee also recommends restructuring the organization of the rule to reduce redundancy and promote clarity in the rule. Specifically, the committee recommends:

- Deleting the references to the creation of a policies and procedures manual and replacing it with a clear statement that the CASA program must comply with the rule to be eligible to receive Judicial Council funding. Creating the manual was not a mandate and it is not likely that the Judicial Council will have resources to create it. Requiring compliance with the rule only, rather than the manual or other procedures and guidelines set by the Judicial Council or by other organizations will help promote clarity and is in accord with the proposal's recommendation to require a MOU between the court and the CASA program.
- Deleting subdivision (b), "Definitions" The terms that are defined in that section are defined in other rules, and the remainder of the language in that section consists of statements, not definitions.

[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.

- Moving current subdivisions (k), (*l*), and (m) up to become subdivisions (b), (c), and (d), respectively, so that the subdivisions describing the process of becoming a CASA program come at the beginning of the rule, and relettering the remaining subdivision of the rule.
- Specifying that a CASA program may serve more than one court as long as it executes MOUs with each court. Many counties currently rely on CASA programs that serve multiple counties. This addition to the rule will allow for greater flexibility to courts and CASA programs.
- Defining the role of an advisory council for a CASA program serving under the auspices of a public agency or umbrella nonprofit organization. The advisory council is a requirement under the current rule, but its role is not defined. By defining the role of the advisory body, the rule will bring more clarity to what is required of an advisory council.
- Deleting the requirement that the presiding juvenile judge participate in the CASA volunteer selection process. The committee is recommending removing this requirement because participation in the CASA volunteer selection process could cause a conflict of interest on the part of the presiding judge;
- Include the training topics stated in rule 5.664 among the optional training requirements for CASA volunteers. Recently adopted rule 5.664 provides a comprehensive list of trainings topics on relevant issues related to serving dependent and delinquent youth.

Access to the Nonminor Dependent's Court File and Proposed New Form JV-474

As noted above, section 362.5 requires that the clerk of the superior court open a separate file for nonminor dependents and addresses who may have access to this file. CASAs are not currently listed in section 362.5 as entitled to access to this nonminor dependent court file. Section 362.5(d) specifies that all individuals who want access to this separate nonminor dependent court file but are not listed as entitled to access in the statute must be designated by court order of the judge of the juvenile court upon filing a petition, which shall be determined pursuant to section 827.

The committee believes that the CASA's absence from section 362.5 may have been an oversight on the part of the Legislature, and believes legislation to ensure that CASAs are granted access to nonminor dependent court files would be helpful. In the interim, the committee is recommending that rule 5.664 be amended to allow the nonminor dependent to consent to have the CASA inspect and copy their nonminor dependent court file. Although Section 362.5 does not specifically indicate that a nonminor dependent may authorize the release of their court file to a CASA or any other party, the committee concluded that this consent procedure was appropriate given the status of the nonminor dependent as an adult and also that the contents of the court file for a nonminor dependent—with the exception of when family reunification services are being provided—deal almost exclusively with information as it relates to the nonminor dependent. Further, the committee was wary of imposing a requirement that a CASA appointed for a nonminor dependent (presumably an appointment that the nonminor dependent has agreed to) file an 827 petition to have access to this file. Such a requirement would be particularly onerous on the CASA programs and the courts.

The committee recommends that rule 5.664 provide that the nonminor dependent must consent to the CASA volunteer accessing his or her nonminor dependent court file. The committee also recommends the adoption of optional form JV-474 to facilitate obtaining the consent of the nonminor dependent to this access. The form includes a space for the nonminor dependents to indicate that they understand that they are not required to consent to release of their file. The form also lists the records that may be included in the file for inspection by the CASA volunteer if the nonminor dependent gives consent. Approving this optional form will relieve CASA programs of the need to create a consent form and the need to pursue a section 827 petition to access the nonminor dependent court file.

The committee also believes that CASA programs should be allowed to screen for nonminor dependents who would be potential good matches for CASA volunteers; however, this cannot happen without a legislative change to section 362.5.

Effective Date

Recognizing that the proposal will result in a significant procedural change, namely the MOU between the court and the CASA program, the committee recommends a delayed effective date of January 1, 2019 for the amendments of rule 5.655 and the approval of form JV-474.

Comments, Alternatives Considered, and Policy Implications

External comments

The invitation to comment on this proposal circulated from February 27, 2017, through April 28, 2017, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. Fifteen comments were received (including one joint comment from California CASA and four county CASA programs). One commentator agreed with the proposal as circulated. Two commentators agreed with the proposal if modified. The other commentators did not indicate a position but provided extensive commentary. A chart providing the full text of the comments and the committee responses is attached at pages 23-50. The main substantive comments are discussed below.

Requirement for nonminors' consent to CASA access to juvenile file

California CASA and the four county CASA programs objected to the proposed requirement that a nonminor dependent must consent to the CASA volunteer's accessing his or her court file. The commentators noted that section 103(i) and section 827 are unambiguous in that CASA volunteers can have access to, and make copies of, the juvenile case file.

The legal requirements for confidentially of a juvenile case file are different from the requirements for the separate nonminor dependent court file. Under section 103(i), CASAs are considered "court personnel" for purposes of section 827, which applies to *juvenile* case files. There is no similar classification for CASAs as "court personnel" for the purpose of section 362.5, and, as noted above, CASAs are not listed in section 362.5 as entitled to access to the

separate nonminor dependent court file. Presumably, CASAs would fall under subsection (d) of section 362.5, which states all other individuals not listed must be designated by court order of the judge of the juvenile court upon filing a petition, which shall be determined pursuant to section 827. In addition, nonminor dependent files are different from juvenile files as they relate to young people who are adults with greater control over who has access to their information.

For all these reasons, the committee declined to eliminate the requirement that CASA volunteers who wish to access the court file of a nonminor dependent must get consent from the nonminor dependent or file a request pursuant to section 827. However, in response to this comment, item 2 on the JV-474 form was modified to make clear that the records the nonminor dependent is consenting to have released to the CASA volunteer are the "nonminor dependent court file," the term used for the case file in section 362.5(b).

California CASA and the four county CASA programs also requested that form JV-474 be reworked into a form to allow for the release of the nonminor's confidential records, such as school and hospital records, pursuant to section 107(b). Section 107(b) requires that access to records pursuant to a specific court order requires the explicit written and informed consent of the nonminor dependent. The committee found the creation of such a form to be outside the purview of this proposal. This proposal is limited to developing a form that covers access to the nonminor dependent court file.

Description of who CASAs are authorized to serve

In response to a request for specific comment, several commentators offered opinions on what language should be used in paragraph (a)(1) of the rule to refer to the children and nonminors that CASAs are authorized to serve. California CASA and the four county CASA programs noted that referring to only "nonminor dependents" would leave out the category of youth who fall under the jurisdiction of the juvenile court but don't meet the definition of a nonminor dependent under Welfare and Institutions Code section 11400(v).

The committee agrees with the commentators and is recommending that the language "children and nonminors under the jurisdiction of the juvenile court, including the dependency and delinquency courts" be inserted in paragraph (a)(1) to refer to the population that CASA programs may serve. This proposed language should also capture the youth who fall under section 450 jurisdiction of the juvenile court. The committee also recommends that the term "nonminor dependents" be replaced throughout the rule with "nonminors."

In addition, several commentators requested that any reference to delinquency court or wardship be removed from paragraph (a)(1) of the rule and instead state simply "children and nonminors who are under the jurisdiction of the juvenile court." Several commentators expressed concern about the prospect of CASA programs having to serve delinquent youth. The commentators did not feel that their CASA programs had the capacity or proficiency to serve delinquent youth.

The committee notes that the proposed revision to rule 5.655 is mandated by AB 424, which passed in 2015 and amended the Welfare and Institutions Code to specifically authorize the appointment of CASA volunteers for children in the juvenile justice system. Neither the rule nor the Welfare and Institutions Code require CASA programs to provide services to children in the juvenile justice system; the rule and statue merely authorize the provision of such services to a population of vulnerable youth who often have similar issues as children in the child welfare system. Consequently, trainings that relate to working with dependent children should also help prepare CASA volunteers for working with children in the juvenile justice system. The committee declined to excise the language specifying that CASA programs may serve both dependent and delinquent youth, both because this language was in the rule previously and because it is important to specify that CASA programs may also serve delinquent youth.

CASA programs serving more than one county

In response to the request for specific comment, three commentators expressed the view that a CASA program that serves more than one county should have an advisory board in each county. One commentator believed that variances in practice between counties are substantial enough as to warrant each program having an advisory council comprised of individuals familiar with those practices. The committee recommends not creating a requirement that these advisory councils have representation from each county that the CASA program serves because some counties may not be able to fulfill such a requirement. The committee elected to insert language in the rule as new subdivision (b)(4) stating that for CASA programs that serve more than one county, the program is encouraged to seek representation from each county it serves on the board of directors and/or advisory council from each county it serves.

Memorandum of Understanding

Two commentators recommended that the rule clarify that the CASA program and the designating court must be the only parties to the MOU and that the MOU must indicate when and how the CASA program will access the juvenile court file. The committee agrees with these recommendations and has amended paragraph (b)(1) to reflect these changes. If a MOU is being dissolved, it will become increasingly burdensome if there are more than two parties to the MOU. It would also be beneficial to clarify that the MOU between the CASA programs and courts should specify how CASA programs will access court files.

Presiding judge participation in CASA volunteer selection

As circulated for public comment, the proposed amendments to current subdivision (c) included removing the requirement that the presiding judge approve a person or persons to conduct a personal interview or interviews to probe the essential areas of concern with respect to the qualities of an effective CASA volunteer. This requirement was proposed to be removed from the rule because the committee felt it created a conflict of interest.

California CASA and the four county CASA programs did not feel there was a conflict of interest in having the presiding judge weigh in on the suitability of a CASA volunteer. The commentator noted that CASAs are sworn officers of the court, are court investigators, serve at

the discretion of the court, and are in every way accountable to the judge. The committee, however, elected to remove the requirement to limit the role of the presiding judge in the selection process. The committee reasoned that even though CASAs are sworn officers of the court, a presiding judge's impartiality might be questioned as a result of taking part in the CASA selection process. The revision does not limit the ability of a CASA program to interview and screen potential volunteers; it merely removes the presiding judge from the selection process.

Background checks

The invitation to comment solicited specific comment of whether current best practices related to background checks require amending proposed subdivision (e)(3)(B), only one commentator said that they agreed. The commentator did not provide any further reasoning for their response. The current "Standard Agreement" that the Judicial Council uses requires a background check on all prospective volunteers, boards of directors, and staff through state and federal agencies (both Department of Justice and Federal Bureau of Investigation) and through the Child Abuse Central Index. The committee revised the proposal to reflect these elements of the Standard Agreement, inserting language into subdivision (e)(3)(B) of the rule that the law enforcement agencies contacted as part of the security check, include but are not limited to the Department of Justice, Federal Bureau of Investigations, and the Child Abuse Index.

Suggestions for additional changes to rule 5.665

As part of the reorganization of the rule, several subdivisions of the rule were moved. In the invitation to comment, these subdivisions were shown as underlined, so that they appeared to be new subdivisions of the rule. However, the content of these subdivisions was not changed. The reorganization of the rule generated commentary on these subdivisions even though their content was not being changed, including the following:

- A commentator recommended that paragraph (c)(1) be amended to give the Judicial Council discretion to conduct a "financial review" in lieu of an audit for smaller counties that have difficulty meeting the costs of an audit.

- California CASA and the four county CASA programs recommended that paragraph (i)(2) be amended to prohibit a CASA volunteer from, "Adopting a relationship that confers evidentiary privilege to the CASA's communications, such as it's giving legal advice or therapeutic counseling." The commentator reasoned that the prohibition in the rule against giving legal advice or therapeutic advice is in use to prevent the CASA volunteer from entering into a relationship with the youth whereupon their communication will take on privileged character.

The suggested revisions received from commentators cannot be recommended for adoption by the committee at this time because they were not part of the original proposal and would require public comment before being adopted.

In addition, several more comments were received and technical revisions were made to the proposed form in response to comments outlined in the attached comment chart, on pages 23-50.

Alternatives

In addition to the alternatives considered in response to the public comments, the committee considered not amending the rule. The committee elected, however, to proceed with the proposal to comply with statutory amendments to the Welfare and Institutions Code over the last four years that have broadened the population of young people who are eligible for appointment of a CASA. The committee also believes that it is important to take this opportunity to clarify the relationship between the court and CASA programs.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that there will be costs associated with the creation of a MOU between the courts and the CASA programs during the period of 15 months after the adoption of the rule. Costs will vary between counties depending on how involved the process of creating the MOU will be. Some counties may have many of the elements required of the MOU already in place, and costs associated with the creation of the MOU may be minimal. However, the creation and implementation of the MOU may provide cost savings in the long term as it will provide more clarity in the relationship between the CASA program and the courts—thus creating more predictability and certainty in the management of the relationship between the two.

There may also be costs associated with the printing and distribution of the form JV-474. However, the use of the form may provide cost savings because the alternative is for a CASA to file a section 827 petition to get access to the nonminor dependent court file, which is more costly.

Attachments and Links

1. Cal. Rules of Court, rules 5.655, at pages 10–21.
2. Form JV-474, at page 22.
3. Chart of comments received and committee responses, at pages 23–50.

Rule 5.655 of the California Rules of Court is amended, effective January 1, 2019, to read:

Title 5. Family and Juvenile Rules

Chapter 11. Advocate for Parties

Rule 5.655. Program requirements for Court Appointed Special Advocate programs

(a) General provisions

(1) A Court Appointed Special Advocate (CASA) program is a child advocacy program that recruits, screens, selects, trains, supervises, and supports lay volunteers for appointment by the court to help define the best interest of children and nonminors under the jurisdiction of the juvenile court, including the dependency and delinquency courts.

(2) To be authorized to serve children and nonminors in a county, the CASA program must be designated by the presiding judge of the juvenile court.

(3) A CASA program must comply with this rule, to be eligible to receive Judicial Council funding. ~~The Judicial Council may consider compliance with the guidelines delineated in the *CASA Program Policies and Procedures Manual* when determining eligibility for and amount of program funding.~~

~~**(b) Definitions**~~

~~(1) A Casa program is the local child advocate program that adheres to this rule; has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers for appointment by the court to help define the best interest of children in juvenile court dependency and wardship proceedings; and has completed one development grant year and one "start-up" year.~~

~~(2) Judicial Council staff may create a *CASA Program Policies and Procedures Manual* containing recommended program policies and procedures. If Judicial Council staff create a manual, it will be developed in collaboration with the California CASA Association and California CASA program directors. The protocols will address program and fiscal management, and the recruitment, screening, selection, training, and supervision of lay volunteers.~~

~~(3) A CASA volunteer is a person who has been recruited, screened, selected, and trained, who is being supervised and supported by a local CASA program, and who has been appointed by the juvenile court as a sworn officer of the court to help define the best interest of a child or children in juvenile court dependency and wardship proceedings.~~

~~(4) A "dependency proceeding" is a legal action brought on behalf of an allegedly abused, neglected, or abandoned child under section 300 et seq. The action is designed to protect children, preserve and reunify families, and find permanent homes for children who cannot be returned to their parents. Dependency proceedings include actions to appoint a legal guardian, terminate parental rights, and facilitate adoptions for dependent children of the juvenile court.~~

~~(5) A "wardship proceeding" is a legal action involving a child under the age of 18 years who is alleged to be:~~

~~(A) A person described under section 601 (who is beyond parental control or habitually disobedient or truant); or~~

~~(B) A person described under section 602 (who has violated any state or federal law or any city or county ordinance).~~

(b) CASA program administration and management

(1) The court's designation of the CASA program must take the form of a memorandum of understanding (MOU) between the CASA program and the designating court.

(A) The MOU must state that the relationship between the CASA program and the designating court can be terminated for convenience by either the CASA program or the designating court.

(B) A CASA program may serve children and nonminors in more than one court if the program executes an MOU with each court.

(C) The CASA program and the designating court must be the only parties to the MOU.

(D) The MOU must indicate when and how the CASA program will have access to the juvenile case file and the nonminor dependent court file if applicable.

(2) A CASA program must function as a nonprofit organization or under the auspices of a public agency or nonprofit organization, and must adopt and adhere to a written plan for program governance and evaluation. The plan must include the following, as applicable:

(A) Articles of incorporation, a board of directors, and bylaws that specify a clear administrative relationship with the parent organization and clearly delineated delegations of authority and accountability.

(B) A clear statement of the purpose or mission of the CASA program that express goals and objectives to further that purpose. Where the CASA program is not an independent organization, but instead functions under the auspices of a public agency or a nonprofit organization, an active advisory council must be established. The role of the advisory council for CASA programs functioning under the auspices of a public agency or a nonprofit organization includes but is not limited to developing and approving policies for CASA, developing the CASA program's budget, promoting a collaborative relationship with the umbrella organization, monitoring and evaluating program operations, and developing and implementing fundraising activities to benefit the CASA program. The board of directors for the nonprofit organization or management of the public agency will function as the governing body for the CASA program, with guidance from the advisory council.

(C) A procedure for the recruitment, selection, hiring, and evaluation of an executive director for the CASA program.

(D) An administrative manual containing personnel policies, record-keeping practices, and data collection practices.

(E) Local juvenile court rules developed in consultation with the presiding judge of the juvenile court or a designee, as specified in section 100. One local rule must specify when CASA reports are to be submitted to the court, who is entitled to receive a copy of the report, and who will copy and distribute the report. This rule must also specify that the CASA court report must be distributed to the persons entitled to receive it at least two court days before the hearing for which the report was prepared.

(3) No CASA program may function under the auspices of a probation department or department of social services. CASA programs may receive funds from probation departments, local child welfare agencies, and the California Department of Social Services if:

(A) The CASA program and the contributing agency develop an MOU-stating that the funds will be used only for general operating expenses as determined by the receiving CASA program, and the contributing agency will not oversee or monitor the funds;

(B) A procedure resolving any conflict between the CASA program and contributing agency is implemented so that conflict between the two agencies does not affect funding or the CASA program's ability to retain an independent evaluation separate from that of the contributing agency's; and

(C) Any MOU between a CASA program and the contributing agency is submitted to and approved by Judicial Council staff.

(4) If a CASA program serves more than one county, the CASA program is encouraged to seek representation on the board of directors and/or advisory council from each county it serves.

(c) Finance, facility, and risk management

(1) A CASA program must adopt a written plan for fiscal control. The fiscal plan must include an annual audit, conducted by a qualified professional, that is consistent with generally accepted accounting principles and the audit protocols in the program's Judicial Council contract.

(2) The fiscal plan must include a written budget with projections that guide the management of financial resources and a strategy for obtaining necessary funding for program operations.

(3) When the program has accounting oversight, it must adhere to written operational procedures in regard to accounting control.

(4) The CASA program's board of directors must set policies for and exercise control over fundraising activities carried out by its employees and volunteers.

(5) The CASA program must have the following insurance coverage for its staff and volunteers:

(A) General liability insurance with liability limits of not less than $1 million ($1,000,000) for each person per occurrence/aggregate for bodily injury, and not less than $1 million ($1,000,000) per occurrence/aggregate for property damage;

(B) Nonowned automobile liability insurance and hired vehicle coverage with liability limits of not less than $1 million ($1,000,000) combined single limit per occurrence and in the aggregate;

(C) Automobile liability insurance meeting the minimum state automobile liability insurance requirements, if the program owns a vehicle; and

(D) Workers' compensation insurance with a minimum limit of $500,000.

(6) The CASA program must require staff, volunteers, and members of the governing body, when applicable, to immediately notify the CASA program of any criminal charges against themselves.

(7) The nonprofit CASA program must plan for the disposition of property and confidential records in the event of its dissolution.

(d) Confidentiality

The presiding juvenile court judge and the CASA program director must adopt a written plan governing confidentiality of case information, case records, and personnel records. The plan must be included in the MOU or a local rule. The written plan must include the following provisions:

(1) All information concerning children and families, including nonminors, in the juvenile court process is confidential. Volunteers must not give case information to anyone other than the court, the parties and their attorneys, and CASA staff.

(2) CASA volunteers are required by law (Pen. Code, § 11166 et seq.) to report any reasonable suspicion that a child is a victim of child abuse or serious neglect as described by Penal Code section 273a.

(3) The child's original case file must be maintained in the CASA office by a custodian of records and must remain there. Copies of documents needed by a volunteer must be restricted to those actually needed to conduct necessary business outside of the office. No one may have access to the child's original case file except on the approval of the CASA program director or presiding judge of the juvenile court. Controls must be in place to ensure that records can be located at any time. The office must establish a written procedure for the maintenance of case files.

(4) If the nonminor provides consent for the CASA volunteer to obtain his or her nonminor dependent court file, the procedures stated in paragraph (3) related to maintenance of the case file must be followed.

(5) The volunteer's personnel file is confidential. No one may have access to the personnel file except the volunteer, the CASA program director or a designee, or the presiding judge of the juvenile court.

(e)~~(c)~~ Recruiting, screening, and selecting CASA volunteers

(1) A CASA volunteer is a person who has been recruited, screened, selected, and trained; is being supervised and supported by a local CASA program; and has been appointed by the juvenile court as a sworn officer of the court to help define the best interest of children or nonminors in juvenile court dependency and wardship proceedings. ~~A CASA program must adopt and adhere to a written plan for the recruitment of potential CASA volunteers. The program staff, in its recruitment effort, must address the demographics of the jurisdiction by making all reasonable efforts to ensure that individuals~~

~~representing all racial, ethnic, linguistic, and economic sectors of the community are recruited and made available for appointment as CASA volunteers.~~

(2) A CASA program must adopt and adhere to a written plan for the recruitment of potential CASA volunteers. The program staff, in its recruitment effort, must address the demographics of the jurisdiction by making all reasonable efforts to ensure that individuals representing all racial, ethnic, linguistic, and economic sectors of the community are recruited and made available for appointment as CASA volunteers.

(3)~~(2)~~ A CASA program must adopt and adhere to the following minimum written procedures for screening potential CASA volunteers under section 102(e):

(A) A written application that generates minimum identifying data; information regarding the applicant's education, training, and experience; minimum age requirements; and current and past employment.

(B) Notice to the applicant that a formal security check will be made, with inquiries through appropriate law enforcement agencies including but not limited to the Department of Justice, Federal Bureau of Investigations, and the Child Abuse Index, regarding any criminal record, driving record, or other record of conduct that would disqualify the applicant from service as a CASA volunteer. The security check must include fingerprinting. Refusal to consent to a formal security check is grounds for rejecting an applicant.

(C) A minimum of three completed references regarding the character, competence, and reliability of the applicant and his or her suitability for assuming the role of a CASA volunteer.

~~(D) A personal interview or interviews by a person or persons approved by the presiding juvenile court judge or designee, to probe the essential areas of concern with respect to the qualities of an effective CASA volunteer. A written, confidential record of the interview and the interviewer's assessments and observations must be made and retained in the advocate's file.~~

(4)~~(3)~~If a CASA program allows its volunteers to transport children, the program must ensure that each volunteer transporting children:

(A) Possesses a valid and current driver's license;

(B) Possesses personal automobile insurance that meets the minimum state personal automobile insurance requirements;

(C) Obtains permission from the child's guardian or custodial agency; and

(D) Provides the CASA program with a Department of Motor Vehicles driving record report annually.

(5)~~(4)~~ A CASA program must adopt a written preliminary procedure for selecting CASA candidates to enter the CASA training program. The selection procedure must state that any applicant found to have been convicted of or to have current charges pending for a felony or misdemeanor involving a sex offense, child abuse, or child neglect must not be accepted as a CASA volunteer. This policy must be stated on the volunteer application form.

(6)~~(5)~~ An adult otherwise qualified to act as a CASA must not be discriminated against based on marital status, socioeconomic factors, race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability or because of any other characteristic listed or defined in Government Code section 11135 or Welfare and Institutions Code section 103.

(f)~~(d)~~ Initial training of CASA volunteers (§ 102(d))

A CASA program must adopt and adhere to a written plan for the initial training of CASA volunteers.

(1) The initial training curriculum must include at least 30 hours of formal instruction. This curriculum must include mandatory training topics as listed in section 102(d). The curriculum may also include additional appropriate topics, such as those stated in California Rules of Court, rule 5.664.

(2) The final selection process is contingent on the successful completion of the initial training program, as determined by the presiding judge of the juvenile court or designee.

(g)~~(e)~~ Oath

At the completion of training, and before assignment to any child~~'s~~ or nonminor's case, the CASA volunteer must take a court-administered oath describing the duties and responsibilities of the advocate under section 103(f). The CASA volunteer must also sign a written affirmation of that oath. The signed affirmation must be retained in the volunteer's file.

(h)~~(f)~~ Duties and responsibilities

CASA volunteers serve at the discretion of the court having jurisdiction over the proceeding in which the volunteer has been appointed. A CASA volunteer is an

officer of the court and is bound by all court rules under section 103(e). A CASA program must develop and adopt a written description of duties and responsibilities, consistent with local court rules.

(i)~~(g)~~ Prohibited activities

A CASA program must develop and adopt a written description of activities that are prohibited for CASA volunteers. The specified prohibited activities must include:

(1) Taking a child or nonminor to the CASA volunteer's home;

(2) Giving legal advice or therapeutic counseling;

(3) Giving money or expensive gifts to the child, nonminor, or family of the child or nonminor;

(4) Being related to any parties involved in a case or being employed in a position and/or agency that might result in a conflict of interest; and

(5) Any other activities prohibited by the local juvenile court.

(j)~~(h)~~ The appointment of CASA volunteers

The CASA program director must develop, with the approval of the presiding juvenile court judge, a written procedure for the selection of cases and the appointment of CASA volunteers for children and nonminors in juvenile court proceedings.

~~**(k) CASA program administration and management**~~

~~A CASA program must adopt and adhere to a written plan for program governance and evaluation that includes the following as applicable:~~

~~(1) Articles of incorporation, bylaws, and a board of directors. Any CASA program that functions under the auspices of a public agency or private entity must specify in its plan a clear administrative relationship with the parent organization and clearly delineated delegations of authority and accountability. No CASA program may function under the auspices of a probation department or department of social services. CASA programs may receive funds from probation departments, local child welfare agencies, and the California Department of Social Services if:~~

~~(A) The CASA program and the contributing agency develop a memorandum of understanding (MOU) or contract stating that the funds will be used only for general operating expenses as determined~~

~~by the receiving CASA program, and the contributing agency will not oversee or monitor the funds;~~

~~(B) A procedure resolving any conflict between the CASA program and contributing agency is implemented so that conflict between the two agencies does not affect funding or the CASA program's ability to retain an independent evaluation separate from that of the contributing agency's; and~~

~~(C) Any MOU or contract between a CASA program and the contributing agency is submitted to and approved by Judicial Council staff.~~

~~(2) A clear statement of the purpose or mission of the CASA program and express goals and objectives to further that purpose. Where the CASA program is not an independent nonprofit organization, but instead functions under the auspices of a public agency or a private entity, an active advisory council must be established. The advisory council for CASA programs functioning under the auspices of a public agency or a private entity will not function as the governing body of the CASA program. The board of directors for the private entity or the public agency management will function as the governing body for the CASA program, with guidance from the advisory council.~~

~~(3) A procedure for the recruitment, selection, hiring, and evaluation of an executive director for the CASA program.~~

~~(4) An administrative manual containing personnel policies, record-keeping practices, and data collection practices.~~

~~(5) Local juvenile court rules developed in consultation with the presiding judge of the juvenile court or a designee, as specified in section 100. One local rule must specify when CASA reports are to be submitted to the court, who is entitled to receive a copy of the report, and who will copy and distribute the report. This rule must also specify that the CASA court report must be distributed to the persons entitled to receive it at least two court days before the hearing for which the report was prepared.~~

(k)~~(i)~~ Oversight, support, and supervision of CASA volunteers

A CASA program must adopt and adhere to a written plan, approved by the presiding juvenile court judge, for the oversight, support, and supervision of CASA volunteers in the performance of their duties. The plan must:

(1) Include a grievance procedure that covers grievances by any person against a volunteer or CASA program staff and grievances by a volunteer against a CASA program or program staff. The grievance procedure must:

(A) Be incorporated into a document that contains a description of the roles and responsibilities of CASA volunteers. This document must be provided:

(i) When a copy of the court order that appointed the CASA volunteer is provided to any adult involved with the child's or nonminor's case, including but not limited to teachers, foster parents, therapists, and health-care workers;

(ii) To the nonminor upon appointment of the CASA; and

(iii)~~(ii)~~ To any person, including a volunteer, who has a grievance against a volunteer or a CASA program employee.

(B) Include a provision that documentation of any grievance filed by or against a volunteer must be retained in the volunteer's personnel file.

(2) Include a provision for the ongoing training and continuing education of CASA volunteers. Ongoing training opportunities must be provided at least monthly under section 103(a). CASA volunteers must participate in a minimum of 12 hours of continuing education in each year of service.

~~**(*l*) Finance, facility, and risk management**~~

~~(1) A CASA program must adopt a written plan for fiscal control. The fiscal plan must include an annual audit, conducted by a qualified professional, that is consistent with generally accepted accounting principles and the audit protocols in the program's contract with the Judicial Council.~~

~~(2) The fiscal plan must include a written budget with projections that guide the management of financial resources and a strategy for obtaining necessary funding for program operations.~~

~~(3) When the program has accounting oversight, it must adhere to written operational procedures in regard to accounting control.~~

~~(4) The CASA program's board of directors must set policies for and exercise control over fundraising activities carried out by its employees and volunteers.~~

~~(5) The CASA program must have the following insurance coverage for its staff and volunteers:~~

~~(A) General liability insurance with limits of liability of not less than $1 million ($1,000,000) for each person per occurrence/aggregate for~~

~~bodily injury and not less than $1 million ($1,000,000) per occurrence/aggregate for property damage;~~

~~(B) Nonowned automobile liability insurance and hired vehicle coverage with limits of liability of not less than $1 million ($1,000,000) combined single limit per occurrence and in the aggregate;~~

~~(C) Automobile liability insurance meeting the minimum state automobile liability insurance requirements, if the program owns a vehicle; and~~

~~(D) Workers' compensation insurance with a minimum limit of $500,000.~~

~~(6) The CASA program must require staff, volunteers, and members of the governing body, when applicable, to immediately notify the CASA program of any criminal charges against themselves.~~

~~(7) The nonprofit CASA program must plan for the disposition of property and confidential records in the event of its dissolution.~~

(*l*)~~(j)~~ Removal, resignation, and termination of a CASA volunteer

The CASA program must adopt a written plan for the removal, resignation, or involuntary termination of a CASA volunteer, including the following provisions:

(1) A volunteer may resign or be removed from an individual case at any time by the order of the juvenile court presiding judge or designee.

(2) A volunteer may be involuntarily terminated from the program by the program director.

(3) The volunteer has the right to appeal termination by the program director under the program's grievance procedure.

~~(m) Confidentiality~~

~~The presiding juvenile court judge and the CASA program director must adopt a written plan governing confidentiality of case information, case records, and personnel records. The written plan must include the following provisions:~~

~~(1) All information concerning children and families in the juvenile court process is confidential. Volunteers must not give case information to anyone other than the court, the parties and their attorneys, and CASA staff.~~

~~(2) CASA volunteers are required by law (Pen. Code, § 11166 et seq.) to report any reasonable suspicion that a child is a victim of child abuse or serious neglect as described by Penal Code section 273.~~

~~(3) The child's original case file must be maintained in the CASA office by a custodian of records and must remain there. Copies of documents needed by a volunteer must be restricted to those actually needed to conduct necessary business outside of the office. No one may have access to the child's original case file except on the approval of the CASA program director or presiding judge of the juvenile court. Controls must be in place to ensure that records can be located at any time. The office must establish a written procedure for the maintenance of case files.~~

~~(4) The volunteer's personnel file is confidential. No one may have access to the personnel file except the volunteer, the CASA program director or a designee, or the presiding judge of the juvenile court.~~

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*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:	
NONMINOR DEPENDENT'S NAME:	
NONMINOR DEPENDENT—CONSENT TO COPY AND INSPECT NONMINOR DEPENDENT COURT FILE	CASE NUMBER:

To the nonminor dependent: *Review this form with your attorney. This form is used to authorize the release of your court records to your assigned CASA volunteer.*

1. I am the Nonminor Dependent in this case. My date of birth is

For items 2 through 6, initial the box for each item that applies. *If you have a question about an item, ask your attorney or the judge before you initial that item.*

	Initial
2. I understand that I am not required to give my CASA volunteer consent to inspect and copy my nonminor dependent court file.	_____
3. I understand that my consent includes the inspection and copying of records in my nonminor dependent court file, which may include records from any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic.	_____
4. I hereby give my permission for my assigned CASA volunteer to inspect my nonminor dependent court file.	_____
5. I hereby give my permission for my assigned CASA volunteer to copy my nonminor dependent court file.	_____
6. I understand that I may revoke or modify my consent for the CASA to copy and inspect my nonminor dependent court file at any time after signing this consent form. My revocation may be given orally to my CASA or in writing.	_____

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

I am the attorney for the child, and I have explained to the Nonminor Dependent his/her rights and the potential consequences of signing this consent form.

Date: _____

_____ _____

(TYPE OR PRINT NAME) (SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
JV-474 [New January 1, 2018]

NONMINOR DEPENDENT—CONSENT TO COPY AND INSPECT NONMINOR DEPENDENT COURT FILE

Welfare and Institutions Code, §§ 101, 102
Cal. Rules of Court, rule 5.655
www.courts.ca.gov

SPR17-14
Juvenile Law: Court Appointed Special Advocate (Amend Cal. Rules of Court, rule 5.655; approve form JV-474)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Alameda County Court Appointed Special Advocates (CASA) Alameda Co Health Care Services Agency By: Ginni Ring, Executive Director California CASA Association By: Phil Ladew, Associate & Legal Director CASA of Los Angeles By: Wende Nichols-Julien, JD Chief Executive Officer CASA of Ventura County Teresa Romney Executive Director CASA of Contra Costa County Ann Wrixon Executive Director		1. 5.655(a)(1) – This section as written does not mirror statute. WIC § 103 states, "A judge may appoint a CASA when, in the opinion of the judge, a child requires services which can be provided by the CASA, consistent with the local rules of court." Further, WIC § 101(b) states, ""Child or minor" means a person under the jurisdiction of the juvenile court pursuant to Section 300, 601, or 602." Also, note that CASA volunteers can also serve dependent non-minors who are not "nonminor dependents" as that term is defined for purposes of eligibility for benefits (WIC § 11400(v)). Therefore, care should be taken when using the term nonminor dependent to mean all youth under juvenile court jurisdiction per WIC § 303. Suggestion: "A Court Appointed Special Advocate (CASA) program is a child advocacy program that recruits, screens, selects, trains, supervises, and supports lay volunteers for appointment by the juvenile court to help define the best interests of children and nonminors who are under the jurisdiction of the juvenile court." 2. As stated above, CASA volunteers can also serve dependent non-minors who are not "nonminor dependents" as that term is defined for purposes of eligibility for benefits (WIC § 11400(v)). Therefore, care should be taken when using the term nonminor dependent to mean all youth	The committee agrees that the term "nonminor dependent" may be construed to limit the universe of young people CASA programs may serve and has made the suggested modification. The rule has been modified to clarify that the rules application covers children and nonminors who remain under the jurisdiction of the dependency or delinquency court. The rule would therefore apply to any nonminor, whether they meet the definition of a "nonminor dependent" under section 11400(v) or not. The committee declines to excise the language specifying that CASA programs may serve children and nonminors under the jurisdiction of both the dependency and delinquency courts, both because this language is in the current version of the rule and because the committee feels it is important to specify that CASA programs may also serve delinquent youth. The Welfare and Institutions Code specifies in section 102(b) "That a CASA may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court." As stated above, the committee agrees that the term "nonminor dependent" may be construed to limit the universe of young people CASA programs may serve and has made the suggested modification. The rule has been modified to clarify that the rules application covers nonminors who remain under the jurisdiction of the

	Commentator	Position	Comment	Committee Response
			under juvenile court jurisdiction per WIC § 303. Suggestion: Instead of using "nonminor dependent" throughout, use another term, or additional term, like in (a)(1) "…best interests of children and nonminors who have been made…"	dependency or delinquency court.
			3. 5.655(a)(2) – This section is written too broadly. For example there are tribal courts were classes will serve. As written it implies that a tribal court could not designate a CASA program. Also, "serve" is an un-clear term. Generally the code uses the term "represent," or "appointed." Note that WIC § 102(c) states, "Each CASA shall serve at the pleasure of the court having jurisdiction over the proceedings in which a CASA has been appointed…." We suggest adopting that language. Suggestion: Each CASA program shall serve at the pleasure of the court having jurisdiction over the proceedings in which a CASA may be appointed. The presiding judge of the juvenile court shall designate which entity shall serve as the court's CASA program, and only the program that enjoys that designation shall be a CASA program for purposes of this rule.	The committee appreciates these points but does not believe that 5.655(a)(2) is written too broadly. First, the rule and applicable sections in the Welfare and Institutions Code do not apply to CASAs programs designated by a tribal court. Section 101(d) defines "court" as a superior court, including the juvenile court. Tribes are sovereign entities and the Judicial Council has no authority to regulate procedures in a tribal court. In addition, as the commentator observes, Welfare and Institutions Code section 102(c) uses the term "serve." Moreover, the current version of the rule – like the proposed version – states that a CASA program has to be "designated by the local presiding juvenile court judge." The committee believes this is a concise statement of the process.
			4. 5.655(a)(3) – "Now that the "Judicial Council" means the actual voting counsel, as well as its staff, this is an unclear term. Is this to mean that staff at the Judicial Council can set procedures and guidelines at will and	The committee agrees that the language in the rule should only require a CASA program to comply with the rule and not "other procedures and guidelines as set by the Judicial Council." The Judicial Council is not able to put specific

	Commentator	Position	Comment	Committee Response
			all CASA programs are mandated to follow them instantaneously? This can cause confusion, and set programs up for an unexpected loss in funding. Also this might prove especially problematic considering that the Judicial Council does not provide sufficient staff to assist CASA programs. Usually, the Judicial Council will add language to the grant agreement that it has between CASA programs. This allows a CASA program to decide whether they want to accept the funding or the terms.	requirements into contracts. The rule has been revised to reflect this change.
			National CASA Standard 13 requires that, "The CASA/GAL program communicates, collaborates and shares information with its fellow programs in the state and is a member of or affiliated with the state organization, association or network, if one exists." Further, it requires that, "The CASA/GAL program complies with state standards." This means, that in order to be in compliance with national standards, a local program must be in compliance with state standards (wherein state standards have been written, reviewed and approved by local programs) . It would be ideal to add this to 5.655, to allow for needed implementation of uniform standards, and the ability for CASA programs to implement a unified structure. Note that per WIC § 100, "At a minimum, the council shall adopt program guidelines consistent	The committee did not elect to reference to the "Standard 13 of the National CASA Standards for Local CASA/GAL Programs" in the rule. While CASA programs must meet the national CASA standards, such standards are not the subject of this rule. And while a CASA's programs compliance with the National CASA standards is vital, the Rules of Court follow the California Welfare and Institutions Code. CASA standards set by the state legislature may potentially set a standard higher than the national CASA standard. The committee therefore elected not to reference the national CASA standards in the rule.

	Commentator	Position	Comment	Committee Response
			with the guidelines established by the National Court Appointed Special Advocate Association, and with California law; but the council may require additional or more stringent standards." This language is consistent with, the National CASA guidelines and the Judicial Council is expressly permitted by §100 to include this requirement. Suggestion: Amend 5.655(a)(3) to read: "A CASA program must comply with this rule, other requirements as stated in any Judicial Council grant agreement, as well Standard 13 of the National CASA Standards for Local CASA/GAL Programs."	
			5. 5.655(b) – Often CASA programs will have MOUS with various county stakeholders, and there is a natural pull the have one convenient MOU between the CASA program, the Department of Social Services, and the Court. This is problematic because then the court will not be able to enforce this MOU. Also, the MOU between the CASA program and the court is usually where the CASA program gets the process and permissions to access information from the court. It would be beneficial to ensure the MOU includes that as well. Suggestion: Clarify that the MOU must be a two-party MOU between the court and CASA program. Add (b)(1)(C) "The CASA program	The committee agrees that the CASA program and the designating court should be the only parties to the MOU. The committee further agrees it would be beneficial to clarify that the MOU between the CASA programs and courts should specify how CASA programs will access files and has modified the rule accordingly. As suggested, subdivision (b)(1) has been modified by adding subdivisions (C) and (D) to add these requirements.

	Commentator	Position	Comment	Committee Response
			and the designating court must the only parties to the MOU." Also, add (b)(1)(D) "The MOU must indicate when and how the CASA program will have access to the juvenile case file."	
			6. 5.655(b)(3) – There has been some confusion in the past regarding the application of this section. Noting that Health and Human Services agencies will often provide funding at the county level, and Social Services agencies and "local child welfare agencies" are under that broad umbrella. Current practice is to only require an MOU and review when the funds come from a division of the County that would create a conflict. Suggestion: Add 5.655(b)(3)(D) that states: "This section does not apply to funds received from a parent division, or other division of the county that do not regularly appear before the juvenile court as parties, such as the Health and Human Services agency, unless Judicial Council staff determines an actual conflict of interests exists."	The committee appreciates this point however believes that this issue is sufficiently covered in 5.655(b)(3)(B). The committee believes the rule is sufficiently clear that it applies only to probation departments, local child welfare agencies, and the California Department of Social Services. Adding additional language could potentially create more confusion. In addition, the subdivision exists in the current rule and was unchanged by the proposal except to be moved to a new location in the rule. The suggested addition is one that would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time.
			7. 5.655(c)(1) – This section requires that "the fiscal plan must include an annual audit, conducted by qualified professional…." However many CASA programs are very small, and the cost of an annual audit can be oppressive. Therefore the practice is currently, that for smaller counties the judicial Council will allow for a financial review, rather than an actual full-blown	The committee is very sympathetic to the burden an audit can place on smaller CASA organizations; however, this subdivision exists in the current rule and was unchanged by the proposal except to be moved to a new location in the rule. The suggested addition is one that would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time.

	Commentator	Position	Comment	Committee Response
			CPA audit. Suggestion: Clarify that the judicial Council has discretion to allow a review rather than an audit. Change 5.655(c) to read, "A CASA program must adopt a written plan for fiscal control. The fiscal plan must include an annual audit, conducted by a qualified professional, that is consistent with generally accepted accounting principles, or if permitted by the Judicial Council staff, a financial review. The audit or review must comply with any audit protocols contained any grant agreement with the Judicial Council."	
			8. The proposal states: Add in proposed subdivision (d), "Confidentiality," a new subparagraph (4) that clarifies that the nonminor dependent must consent to the CASA volunteer's accessing his or her court file. Reletter current paragraph (4) to paragraph (5). The proposal also has a JV-474 form. This misstates the law. Welfare and Institutions code § 103(i) and § 827 are recent and unambiguous in that CASA volunteers can have access to, and make copies of the juvenile case file. (We recently helped draft the language of 103(i)). However, access to other, additional, records obtained pursuant to a "specific court order and consistent with the rules of evidence" does require the "explicit written and informed consent of the nonminor	Subdivision (d) of rule 5.655 does not purpose to limit access to juvenile files. As noted by the commentator, Welfare and Institutions Code section 827 allows CASA programs to access *juvenile* files. The subject of this subdivision and the form JV-474 is the nonminor dependent court file. Welfare and Institutions Code section 362.5(a) requires the superior court to open a separate court file for nonminor dependents under the dependency, delinquency or transition jurisdiction of the court. Section 362.5 further controls who has access to this separate nonminor dependent court file. While Welfare and Institutions Code section 103(i) makes CASA volunteers court personnel for the purposes of section 827, it does not do so for section 362.5. Consequently, CASA volunteers who wish to access the court file of a nonminor dependent must get consent from the nonminor dependent or file a request pursuant to section 827.

	Commentator	Position	Comment	Committee Response
			dependent," per § 107(b).	As to the suggestion to create a general release for all agencies that may hold records for nonminor dependents – such as schools and hospitals – that is outside the purview of this proposal. This proposal is limited to developing a form that covers access to *court* case files, which consist of the documents contained in the record maintained by the court clerk.
			Also, this proposal introduces an undefined term, "court file," which is confusing. What does a court file include? Currently, a CASA obtains access to otherwise confidential records by 1) the records being in the juvenile case file, as defined in Rule 5.552, or 2) the court ordering access pursuant to § 107. This proposal, and the judicial Council form conflates the two.	As to the undefined term "court file" mentioned by the commentator, section 827 refers to the juvenile "case file" and section 362.5 refers to "the nonminor dependent court file." Subdivision (d)(4) and the JV-474 form has been modified to refer to the "nonminor dependent court file" to reflect the term used in section 362.5(b).
			Form JV-474 it is quite confusing, it does not seem to account for the practical application of accessing certain records, and who in the world might hold them. (Most of these records are not maintained by the court). It would be better to create a release form, that, when combined with the order, and it can clear the way for the court to access	As mentioned above, a general release form is outside the purview of this proposal.

	Commentator	Position	Comment	Committee Response
			records by than through its appointed investigator – the CASA. See WIC § 103(h) which states "To accomplish the appointment of a CASA, the judge making the appointment shall sign an order, which may grant the CASA the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer of the court appointed to investigate proceedings on behalf of the court." Suggestion: This form should be discarded, or should be reworked to allow for permission of other records, outside of the juvenile case file. Better yet, a form should be created that is a recognized "release form" that the court and service providers can rely on when making an order pursuant to § 107 for youth aged 18 or older.	
			9. 5.655(d)(4) as proposed reads: "If the nonminor dependent provides consent for the CASA volunteer to obtain his or her case file, the procedures stated in paragraph (3) related to maintenance of the case file must be followed. The nonminor dependent's consent must be obtained before anyone else may be allowed to access his or her file." This is legally confusing for the CASA	The committee agrees that the last sentence of (d)(4) is legally confusing and unnecessary given the directives in other parts of the rule and the other rules related to confidentiality mentioned by the commentator. The last sentence of (d)(4) has therefore been removed. Paragraph (d)(4) will now simply state that the procedures in paragraph (3) related to the maintenance of the case file must be followed as it relates to nonminor dependent court files.

	Commentator	Position	Comment	Committee Response
			program. For example as written if the juvenile court judge wanted access to the file the program must then seek permission from the youth – this does not make sense in the context of the current statutory framework. If the goal is to have the CASA program maintain the confidentiality of case files rule 5.655(d)(3) (as renumbered), and the many laws relating to confidentiality of this information will do that just fine. Note that per 5.655(d)(1) (as renumbered), "All information concerning children and families in the juvenile court process is confidential. Volunteers must not give case information to anyone other than the court, the parties and their attorneys, and CASA staff." And that per WIC § 105, All otherwise confidential records and information acquired or reviewed by a CASA during the course of his or her duties shall remain confidential and shall be disclosed only pursuant to a court order." Also note, that per rule 5.552, the CASA file is part of the juvenile case file. So this proposed rule is really quite confusing as it interacts with WIC § 827. So the "anyone else" would need a court order before accessing the juvenile case file, or be listed in § 827. Does this rule purport to require the 827 court order and the youth's consent? This conflicts with section 827 and rule 5.552.	

	Commentator	Position	Comment	Committee Response
			Also note, that CASA's sharing information is more legally restricted then anyone. So the only legal incidences of sharing will occur to these individuals, or pursuant to a court order. This is in addition to the fact that this new language is quite confusing, and sets CASA programs up to not know what to do with records and information that they are legally obligated to share with the court, and may be ordered to share with the social worker, etc. Suggestion: No not add this proposed language. It will cause confusion, impermissibly conflicts with WIC 827, and not add any protection to the youth's information.	
			10. The proposal states: Amend current subdivision (c), which is proposed subdivision (e), to delete the requirement that the presiding juvenile judge personally interview each CASA volunteer: that requirement may cause a conflict of interest. This misstates the rule. We presume this proposal is referring to 5.655(c)(2)(D), which states: "A personal interview or interviews by a person or persons approved by the presiding juvenile court judge or designee, to probe the essential areas of concern with respect to the qualities of an effective CASA volunteer. A written, confidential record of the interview and the interviewer's assessments and observations	The proposed revision was implemented to limit the role of the presiding judge in the selection process. The committee believed that there is a conflict of interest in this practice. Even though CASA's are sworn officers of the court, impartiality may be a consequence of a presiding judge taking part in the selection process. The revision does not limit the ability of a CASA program to interview and screen potential volunteers; it merely removes the presiding judge from the selection process. As noted in the comment, the presiding judge approves the executives and staff at the CASA program to conduct the interviews when he or she authorizes the CASA program to provide services. That language in the current rule is unnecessary and superfluous.

	Commentator	Position	Comment	Committee Response
			must be made and retained in the advocate's file." There is no requirement here that the judge personally interview each CASA volunteer. The interview is to be by someone "approved by the presiding juvenile court judge or designee," so approval is all the juvenile court judge is doing. In practice, the presiding judge designates the CASA director to approve the person to conduct the interviews. There's nothing wrong with this practice, any personal interview is essential to the selection screening process. Also, the suggestion that there is a conflict of interest is an odd one. CASA volunteers are sworn in by a juvenile court judge. Statutorily they are sworn officers of the court, they are court investigators, serve at the discretion of the court, and for the singular and very limited purpose of accessing juvenile case files are "court personnel" for purposes of § 827, and are in every way accountable to the judge. See WIC § 103(e), (h), There is no conflict of interest in having the judge weigh in on the suitability of a CASA volunteer. Suggestion – Leave this section as is, or perhaps explain the thinking behind deleting.	
			11. 5.655(e)(4)(C) – for clarity purposes, suggest amending to add that permission of	This subdivision exists in the current rule and was unchanged by the proposal except to be moved to

	Commentator	Position	Comment	Committee Response
			the court is sufficient, per WIC section 362, to drive a child as long as all other requirements are met. Suggestion amend 5.655(e)(4)(C) to read: "Obtains permission from the court, child's guardian, or custodial agency; and"	a new location in the rule. The suggested addition is one that would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time.
			12. 5.655(e)(6) – in this anti-discrimination section, there is an unclear term, namely "age." There is not clear jurisprudence regarding volunteers and age discrimination. This is especially problematic because National CASA Association Standards require that volunteers be at least 21 years old. Therefore, we suggest to clarify this term to bring it in line with the presumed application (the employment law context) and clarify that the prohibited discrimination is for ages 40 and over. Suggestion: Amend 5.655(e)(6) to read, "An adult otherwise qualified to act as a CASA must not be discriminated against based on marital status, socioeconomic factors, race, national origin, ethnic group identification, religion, age (40 or over), sex, sexual orientation, color, or disability or because of any other characteristic listed or defined in Government Code section 11135 or Welfare and Institutions Code section 103.	This subdivision exists in the current rule and was unchanged by the proposal except to be moved to a new location in the rule. The suggested addition is one that would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time.
			13. 5.655(i)(2) – This is an often missed understood prohibition. The goal here is to prevent the CASA volunteer from entering into a relationship with the youth	The only change to subdivision (i)(2) of the rule 5.655 is the addition of references to nonminor dependents. The language cited in the comment is a subdivision that exists in the current rule and

	Commentator	Position	Comment	Committee Response
			whereupon their communications will take on a privileged character. Such as the lawyer-client, or psychotherapist-patient privilege. Remember, that the CASA is a court appointed investigator, and has an obligation to relay relevant information to the court as requested. Therefore a relationship with the youth that brings evidentiary privilege to the communications is inconsistent with the CASA role. Suggestion: Amend 5.655(i)(2) to read, "Adopting a relationship that confers evidentiary privilege to the CASA's communications, such as it's giving legal advice or therapeutic counseling;"	was unchanged by the proposal except to be moved to a new location in the rule. The suggested addition is one that would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time.
			14. General comment regarding the term used for the CASA program's MOU (or contract, or grant agreement) with the Judicial Council exists because of the request for proposal process established by WIC § 100. Therefore when referring to the agreement between the Judicial Council and the CASA program we have suggested the term "grant agreement." However, "MOU" is a fine term to use, as long as it is consistent throughout the rule, with an understanding that a CASA program might decide not to enter into such an MOU because the funding is not sufficient to cover the requirements contained therein.	The committee agrees that "MOU with the Judicial Council" is not a term that is often used to refer to contracts between the Judicial Council and CASA programs. The committee has changed the language in subdivision (c)(1) "MOU with the Judicial Council" to the language "Judicial Council Contract."
			15. To the question of, should CASA programs that serve more than one county have an	After considering the various comments on this issue, the committee has elected not to require that

	Commentator	Position	Comment	Committee Response
			advisory board in each county? Our response: No, they should not. Operating multiple boards is a time consuming and tricky process. Government intervention is not necessary here, as CASA programs will usually have members of the advisory board be from each county. Thus would create much more work.	advisory councils have representation from each county that the CASA program serves. This is because of the issues raised by the commentators and because some counties may not be able to fulfill such a requirement. The committee elected to insert language into the rule that encourages representation from each county it serves.
2.	Child Advocates of El Dorado County By: John R. Adams, M.A., Executive Director		5.655(a)(1) –Suggestion: "A Court Appointed Special Advocate (CASA) program is a child advocacy program that recruits, screens, selects, trains, supervises, and supports lay volunteers for appointment by the juvenile court to help define the best interests of children and nonminors who are under the jurisdiction of the juvenile court."	The committee declines to excise the language specifying that CASA programs may serve both dependent and delinquent youth, both because this language is in the current version of the rule and because it is important to specify that CASA programs may also serve delinquent youth. Welfare and Institutions code specifies in section 102(b) that "That a CASA may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court."
			5.655(a)(2) –Note that WIC § 102(c) states, "Each CASA shall serve at the pleasure of the court having jurisdiction over the proceedings in which a CASA has been appointed…." We suggest adopting that language. Suggestion: Each CASA program shall serve at the pleasure of the court having jurisdiction over the proceedings in which a CASA may be appointed. The presiding judge of the juvenile court shall designate which entity shall serve as the court's CASA program, and only the	The committee appreciates this suggestion but declines to make the suggested revision. The current version of the rule – like the proposed version - states that a CASA program has to be "designated by the local presiding juvenile court judge," which is a concise statement of the process.

	Commentator	Position	Comment	Committee Response
			program that enjoys that designation shall be a CASA program for purposes of this rule. 5.655(a)(3)- Suggestion: Amend 5.655(a)(3) to read: "A CASA program must comply with this rule, other requirements as stated in any Judicial Council grant agreement, as well Standard 13 of the National CASA Standards for Local CASA/GAL Programs." 5.655(b) – Suggestion: Clarify that the MOU must be a two-party MOU between the court and CASA program. Add (b)(1)(C) "The CASA program and the designating court must the only parties to the MOU." Also, add (b)(1)(D) "The MOU must indicate when and how the CASA program will have access to the juvenile case file." 5.655(d)(4) - Suggestion: No not add this proposed language. It will cause confusion, impermissibly conflicts with WIC 827, and not add any protection to the youth's information.	As noted in the response above, the committee declines to include national CASA standards in the rule because while CASA programs must meet the national CASA standards, such standards are not the subject of this rule. A CASA's programs compliance with the National CASA standards is vital, the Rules of Court follow the California Welfare and Institutions Code. Further, CASA standards set by the state legislature may potentially set a standard higher than the national CASA standard. The committee agrees with this suggestion and as mentioned above has made the suggested amendment to the rule. As mentioned above, the committee agrees that the second sentence of paragraph (d)(4) should be removed and has made the amendment to the rule.
3.	Leslie A. Golich, M.S.A. - HCM Director, Public Affairs and Brand Communications		I am writing in response to the proposed changes to CRC 5.655. I am the current President of the Board of Directors for CASA of Kern County. I urge you to wait and seek feedback from the 46 CASA programs in the state of California before moving forward. I	The committee appreciates that there are challenges for CASA programs in expanding its services to delinquent youth. However, Assembly Bill 424, which passed in 2015, amended the Welfare and Institutions Code to specifically authorize the appointment of CASA volunteers for

	Commentator	Position	Comment	Committee Response
			have several concerns regarding the proposed changes, a few of which I have outlined below. • CASA is a very reputable organization in Kern County and has a long standing history of operating with the highest degree of integrity. We have achieved this reputation because of the solid work we do with our children in dependency and the leadership of our organization. • On average, 93% of our closed cases achieve legal permanency. • Unfortunately, at any given time, Kern County has a wait list of 20-60 children waiting for a CASA. Our judges reserve recommendation of a CASA to the most vulnerable / at risk cases. There are an additional 1600 children in dependency that have not been identified to receive a CASA. • We simply to not have an excess supply of CASA's in Kern County. Our mission has always been to serve our children in dependency, we simply do not have the bandwidth to take on children in delinquency. • Our Officers of the Court (CASA's) receive established and approved training on the CW&I 300's and are coached / mentored by trained Advocate Supervisors. • There is no known approved or established training for the Wardships 602 proceedings. • Recruitment of CASA's for delinquency could be very problematic. Training for these new CASA's could be cost prohibitive. • CASA of Kern County represents our most	children in the juvenile justice system. Welfare and Institutions code specifies in section 102(b) "That a CASA may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court." The proposed revision to rule 5.655 is mandated by this legislative change. Neither the rule, nor the Welfare and Institutions Code require CASA programs to provide services to children in the juvenile justice system; the rule and statue merely authorize the provision of such services to a population of vulnerable youth who often have the same issues as children in the child welfare system. Consequently, trainings that relate to working with dependent children should also help to prepare CASA volunteers for working with children in the juvenile justice system.

	Commentator	Position	Comment	Committee Response
			vulnerable children in dependency. Mixing dependency and delinquency simply does not make sense and diminishes the role of, and the respect for, our CASA's.	
4.	Carla Musser Kern CASA Board Member CASA of Kern County Colleen McGauley, MPA Executive Director		I am a CASA of Kern County board member/officer and wanted to take the opportunity to respond to the proposed recommended changes to CRC 5.655, the rule that establishes CASA programs which serve children in dependency court. I am concerned with some of the proposed changes to CRC 5.655, and opposed to some of the recommended edits. To put my comments in perspective, Kern has always had many children in dependency, often twice the state averages per capita. This CASA program has never had enough CASAs to fill the waitlist for children needing a CASA. In the last 12 months, our high priority wait list for children has swung between 19 children to 60 children. We have never served delinquents, and we strive to find permanent legal placements for each child the court assigns to our program. On average 93% of our closed cases achieve legal permanency. We might stick with a child longer, but we hold on to help find lost family, or to urge for guardianships, adoptions or return to safe family. Because of our large waitlist, we do not serve AB12 nonminor dependents nor delinquent youth now. Below are my comments regarding the proposed	

	Commentator	Position	Comment	Committee Response
			changes: RE: Wardships- 602 Proceedings **A.** I know that many counties are not like Kern. Several have had excess CASA Volunteers who began to help in delinquency matters, especially welcomed by juvenile judges. **a.** Legal Training: One of the strengths of our CASA organization is that these officers of the juvenile court (CASAs) receive training on the CW&I 300's and the specific hearings that their child is facing in the next six months. In addition to the weekly contact with their child, CASAs are coached by our paid staff on what the judges need to decide on at the upcoming 366.21e or the 366.26 hearing. Each CASA's independent investigation and resulting report includes observations and recommendations that are focused on that hearing. From conversations with California CASA and many CASA colleagues whom serve wards, there is no concrete legal training established for their CASAs and what they will encounter in the 602's. I am saddened when I hear, "Oh CASAs are good mentors for the wards". So, is a mentoring program for these youths what is needed? I know that in Kern, we don't have concrete standing orders that would relate to any new role in delinquency, (access to any record of any organization, i.e., probation) plus the visitation rights, (CASAs in Kern show up announced and unannounced into placements per our court	Assembly Bill 424, which passed in 2015, amended the Welfare and Institutions Code to specifically authorize the appointment of CASA volunteers for children in the juvenile justice system. Welfare and Institutions code specifies in section 102(b) that "That a CASA may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court." The proposed revision to rule 5.655 is mandated by this legislative change. Neither the rule, nor the Welfare and Institutions Code require CASA programs to provide services to children in the juvenile justice system; the rule and statue merely authorize the provision of such services to a population of vulnerable youth who often have the same issues as children in the child welfare system. Consequently, trainings that relate to working with dependent children should also help to prepare CASA volunteers for working with children in the juvenile justice system.

	Commentator	Position	Comment	Committee Response
			order). How will these new partners (district attorneys & probation) welcome this new diplomatic insertion into their work? If CASAs don't have the same access to records as we do in dependency, are we diminishing the CASA role to that of a mentor? Are CASA reports accepted as evidence in the 602 proceedings? **b.** COST for legal training – since there isn't a curriculum for this area of the law, we would have to hire a competent attorney to assist us in training/creating a curriculum. CASA of Kern County would need to provide training for our 200 active CASAs and seven program staff to gain knowledge and proficiency in this area of the law. This will certainly be costly. Will Judicial Council fund that work locally, statewide? RE: Changes in 5.655 (general) **A.** In California, we do have some CASA challenge. Two CASA programs lost their court confidence in the last few years. I see, from Central California that California CASA is a guidance organization, but it has no real power to correct a CASA program that has gone rogue. Cal CASA doesn't fund us significantly; we raise most our own funds and we are independent non-profits or under a larger umbrella nonprofit. The Cal CASA Association is strong in helping a CASA program launch, and they oversee the every-four-year onsite visits for Judicial Council. California CASA does advocacy work at the state level, and helps	The committee appreciates the concerns raised but the suggested additions were not in the original proposal and would likely be of interest to other stakeholders and should receive public comment; therefore, the committee declines to include it at this time. It is hoped that some of the suggestions raised by the commentator can be addressed when the CASA program and the court are creating their MOU.

	Commentator	Position	Comment	Committee Response
			with pass through funding among many other initiatives. I wonder if what is needed at this juncture is enhanced connection between the California CASA Association and the Juvenile Court Judges. What interventions can be initiated, that are binding, prior to the Presiding judge in a county removing their total support from a CASA program? Is that what is needed as a change in 5.655? A section that initiates a process by which the Supervising Judge of the Juvenile Court in a County or the Presiding judge of the County notifies leadership of the CASA Program, the Program Director of Cal-CASA, and the National CASA representative that the future of said CASA program is in danger of defaulting their responsibilities due to A, B & C? That there is a 60 to 90-day window for resolution, that mentor CASA EDs & Cal CASA be brought in to evaluate the issues, develop a correction action plan, and reporting vehicle to meet the court's satisfaction? I would recommend exploration of such a process for insertion into this rule. **B.** Priority of CASA assignment. When a Judge assigns a CASA to a 300 child or a 602 or an AB12 adult do dependent children get priority to a CASA Volunteer? We always have a waiting list for dependent children. We have 1600 children in dependency in Kern that we are not reaching currently. Kern CASA enjoys a strong and positive working relationship with our Juvenile Court Judges, yet what if that should change and a judge insist on CASAs serving in delinquency, when I do not think we	Assembly Bill 424, which passed in 2015, amended the Welfare and Institutions Code to specifically authorize the appointment of CASA volunteers for children in the juvenile justice system. Welfare and Institutions code specifies in section 102(b) that "That a CASA may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court." The proposed revision to rule 5.655 is mandated by this legislative change. Neither the rule, nor the Welfare and Institutions

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			are ready or able to serve with even a baseline of knowledge about the 602 ground rules? **C.** Delay in implementation is absolutely recommended due to: **a.** Recruitment Strategies for wards and adults. I would estimate it might be easier to recruit a Volunteer to help a child abuse victim rather than a child whom commits a crime. What are those recruitment strategies? It does take time to create a different marketing campaign for a different type of program, and that is an additional cost. What will it cost to develop tools for the Wardship CASAs? What might be the increased risk when assigned to a youth who has committed several felonies? Will my current insurance/liability coverage be adequate? **b.** Altering of our current mission statement both internally and with the Attorney General's office would be needed. What if my Board of Directors doesn't want to expand into delinquency? Would Kern face challenges from my Court? From the Judicial Council? **D.** Concern that "CASA programs must follow guidelines established by the Judicial Council" With all due respect, I am concerned that the National CASA Standards are not noted, nor are the California CASA Association best practices. Could these Judicial Council guidelines be established without consultation with these other important entities? National CASA Standards clearly defines the amount of gift a	Code require CASA programs to provide services to children in the juvenile justice system; the rule and statue merely authorize the provision of such services to a population of vulnerable youth who often have the same issues as children in the child welfare system. Consequently, trainings that relate to working with dependent children should also help to prepare CASA volunteers for working with children in the juvenile justice system. See comment above. The committee did not elect to reference to the "Standard 13 of the National CASA Standards for Local CASA/GAL Programs" in the rule. While CASA programs must meet the national CASA standards, such standards are not the subject of this rule. A CASA's programs compliance with the National CASA standards is vital, the Rules of Court must follow the California Welfare and Institutions Code. Further, CASA standards set by

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			child could be given annually ($25.00), and the confidentiality of the CASA's personal information. Since the Judicial Council staff support given to CASA has evaporated over the past several years, who would be developing these guidelines, and how knowledgeable are they about CASA, our role as "diplomatic irritant", "squeaky wheel" to the system, yet not a provider of services ourselves. Could the Judicial council guidelines insist that CASA programs act one way when to do so would be in violation of our National CASA standards? Which guideline do we follow? Who will be at that decision-making table when these guidelines are created? **E.** MOU between the CASA Program and the Courts. In the past, Kern's local rules of court have been sufficiently clear and strong to eliminate the need for a distinct MOU with the Court. To establish an MOU with my county department of human services required that we participate in collective bargaining agreements, even though no money was to be exchanged. My corporate counsel advised me to not sign that document. I am concerned that these MOUs might be a vehicle for overreach into our nonprofit practices, mandating additional costs to us in this fiscally challenging time in the County of Kern.	the state legislature may potentially set a standard higher than the national CASA standard. The committee further does not believe that the rule creates any conflict with national standards. The committee does not agree that a MOU with a county department of human services is analogous to a MOU with the court. The rule is contemplated for only MOU's between CASA programs and the courts. One of the primary purposes of requiring a MOU is to allow the court or the CASA program to terminate the MOU or allow for greater flexibility to modify the MOU if there are issues such as the one mentioned in the comment.
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	AM	• In San Diego County, a delayed effective date should not be necessary. It could go into effect 1/1/18. Our CASA program already adheres to most, if not all, of these requirements. The	No response required.

	Commentator	Position	Comment	Committee Response
			requirement of an MOU between the court and the CASA program is new, but our court should be able to get that done before the end of the year.	
			• (c)(1) mentions an MOU with the Judicial Council. (It used to say contract.) Nowhere else does it mention or clarify the requirements for this MOU.	As mentioned in a previous response, the term "MOU with the Judicial Council" has been replaced with "Judicial Council Contract."
			• JV-474: The form is confusing and could be construed as being a little misleading. It is called "Consent to Copy and Inspect Court File" and it states that the youth is giving the CASA volunteer consent to inspect and/or copy "court records". Item 3 does state, " I understand that my consent includes the inspection and copying of records relating to my dependency case from any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic." A reasonable construction of this language is that they are only allowing CASA to look at such documents that are in the court file. It does not make it clear to the nonminor dependent that the CASA volunteer could actually go to the school or doctor or police department and get access to the records, which is what WIC 107(a) allows. The nonminor dependent should also be able to consent to the inspection and/or copying of the court file without also having to consent to the inspection and/or copying of all those other	The committee agrees that form JV-474 could be confusing. Form JV-474 is not intended to be a general release for all the agencies listed; rather, it is to alert the nonminor dependent that such documents may be contained in nonminor dependent's court file. Form JV-474 has been revised to clarify that point and to specify that the consent is to inspect the "nonminor dependent court file." In addition, the references to section 107(a) and (b) has been removed, as section 362.5 is the applicable statute as it relates to the nonminor dependent court file. The form is thus only intended to allow for consent to copy and inspect the nonminor dependent court file. It has no application for other records that are maintained outside of the nonminor dependent court file. A form for a release for other information pursuant to section 107(b) is not being addressed in this proposal, although the committee has noted that there may be a need for such a form.

	Commentator	Position	Comment	Committee Response
			records. We recommend to change the title of the form to make it more general and also break each type of record out to allow the youth to check which ones the CASA can copy, which ones the CASA can only inspect, and which ones the CASA cannot access at all.	
6.	Orange County Bar Association By: Michael L. Baroni President	AM	The rule changes are appropriate given the changes to the CASA program interactions with the courts, particularly their expansion to delinquents and nonminor dependents. In addition, while demanding an MOU between CASA and the juvenile courts will expend both court and CASA resources, these agreements will help clarify the relationship between these organizations and the courts. As to the specific questions presented: It seems duplicative and burdensome to require CASA programs operating in multiple counties to maintain advisory boards in each under (b)(2)(B), though these boards should if at all possible have some representation from each county the particular CASA agency serves. Also, if the terms are going to be used to designate any person with an assigned CASA, the definition of 'child/children' in rule 5.655 should be clarified, for the SOLE purpose of that rule, to include all present delinquents and/or dependents, above the age of 18 or still minors, that have an assigned CASA. In addition, while not strictly necessary (since these minors would come under the definitions already given under subdivision (a)), there is no objection to specifically designate transition	No response required. After considering the various comments on this issue, the committee has elected not require that advisory councils have representation from each county that the CASA program serves because of the issues raised by the commentators and that some counties may not be able to fulfill such a requirement. The committee elected to insert language into the rule that encourages representation from each county it serves. As mentioned in a previous response, the committee has elected to change paragraph (a)(1) to remove the reference to "nonminor dependents" to ensure nonminors who do not meet the definition of "nonminor dependents" but still fall under the jurisdiction of the juvenile court are covered by the rule. Youth under section 450 jurisdiction of the juvenile court are covered

	Commentator	Position	Comment	Committee Response
			dependents under Welfare and Institutions Code section 450 as included under the eligible population.	under the new language at the end of the paragraph, "children and nonminors under the jurisdiction of the juvenile court, including the dependency and delinquency courts."
7.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	A	Does the proposal address the stated purpose? *Yes.* Background checks require amending proposed subdivision (e)(3)(B)? *Yes.* Should CASA programs that serve more than one county be required to maintain advisory boards in each county? *No.* Should the rule include a definition of children to avoid confusion about the children CASA programs are authorized to serve? *Yes.* Should the rule explicitly state that the population that CASA can serve included nonminors who have transitioned from delinquency to dependency under WIC 450? *Yes.*	No response required. The committee agrees with providing more specific information about what inquires will be made as part of the formal security check for potential CASA volunteers. Language has been added to the rule that inquires will be made through appropriate law enforcement agencies including but not limited to the Department of Justice, Federal Bureau of Investigations, and the Child Abuse Index. See response above related to advisory councils. The committee has modified subdivision (a)(1) of rule 5.655, which should obviate the need for separate definition of "children." The rule has been amended to reflect that it covers all nonminors who remain under the jurisdiction of the dependency or delinquency court.

	Commentator	Position	Comment	Committee Response
			Is a delayed effective date necessary? *Yes.* Would the proposal provide a cost savings? *No.* What would be the implementation requirements be for courts? *Train staff, inform bench officers, meet/confer and revise MOU with CASA, possible revision of local rule, new codes in case management system.* Would fifteen 15 months be sufficient time for implementation? *This may be enough time.*	The committee agrees and has proposed a delayed effective date. The committee acknowledges that revising rule 5.655 will not provide an immediate cost saving; however, any associated cost will be moderate and in the end could provide cost savings long term. The committee agrees with the implementation requirements proposed by the commentator. No response necessary.
8.	Superior Court of Orange County Family Law and Juvenile Court Divisions Cynthia Beltrán Administrative Analyst		In subdivision 5(b)(1)(A), the proposed language states the relationship between the CASA program and the court can be terminated for "convenience." We recommend replacing "convenience" with specific terms that would cause the termination. **Q: Would the proposal provide cost savings? If so, please quantify.** The proposal would not provide a cost savings to the Court. A team would need to be established between CASA and the Court develop a memorandum of understanding (MOU).	The committee appreciates this comment but does not agree that the rule should include specific terms that could be the cause of the termination. The committee wants give latitude to both courts and CASA programs to dissolve the relationship at any time. Imposing a requirement in the rule that termination occur only in specific situations would create an undue restriction on the ability of the court and CASA program to dissolve the relationship. The committee appreciates that there may be additional resources used in each county to create the MOU. The goal of this proposal is to ensure that MOU are clearer, thus hopefully preventing problems in the future.

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Juvenile Law: Court Appointed Special Advocate (Amend Cal. Rules of Court, rule 5.655; approve form JV-474)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Q: What would the implementation requirements be for courts? In order to implement the requirements, the court would provide information regarding the change to judges, staff and justice partners. **Q: Would fifteen months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Since the proposal requires an MOU to be created between the court and CASA, we are unsure if fifteen months would be sufficient time to implement changes.	The committee agrees with the proposed steps to implement the changes to the rule. The committee appreciates the uncertainty regarding the timeframe of fifteen months. The extension of time beyond fifteen months curtails the movement towards clearer MOU's between courts and CASA programs that should benefit both parties.
9.	The State Bar of California By: Saul Bercovitch | Assistant General Counsel Office of General Counsel		SUPPORT WITH COMMENTS The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the proposed changes, with the following comments. FLEXCOM offers the following responses to specific questions in the Invitation to Comment. • Should CASA programs that serve more than one county be required to maintain advisory boards in each county they serve? FLEXCOM believes that variances in practice between counties are substantial enough as to warrant each program having an advisory council comprised of individuals familiar with those practices	After considering the various comments on this issue, the committee has elected not require that advisory councils have representation from each county that the CASA program serves because some counties may not be able to fulfill such a

SPR17-14

Juvenile Law: Court Appointed Special Advocate (Amend Cal. Rules of Court, rule 5.655; approve form JV-474)

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

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			• When defining the population of children a CASA program may serve, should the rule explicitly state that population includes nonminors who have transitioned from delinquency to dependency under Welfare and Institutions Code section 450? FLEXCOM believes the rule should be amended to specifically authorize the appointment of advocates for transition dependents. Calling out this authority would help judicial officers avoid uncertainty.	requirement. The committee elected to insert language into the rule that encourages representation from each county it serves. The committee elected to refer to youth under section 450 jurisdiction as "children and nonminors under the jurisdiction of the juvenile court, including the dependency and delinquency courts." This change should clarify that courts are authorized to appoint any child or nonminor who falls under the jurisdiction of the dependency or delinquency court.

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: September 14–15, 2017

Title
Juvenile Law: Psychotropic Medication

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.640; approve form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, JV-223, and JV-224

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, 2018

Date of Report
July 5, 2017

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 5.640, relating to the administration of psychotropic medications to children who are dependents or wards of the court; adopt one form; and revise nine forms to address suggestions received from stakeholders who assisted with the implementation of recent statutory changes to the requirements for court authorization of psychotropic medication for foster children and others affected by this rule and these forms.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Amend rule 5.640(b) of the California Rules of Court to clarify when a juvenile court judicial officer is authorized to make orders regarding the administration of psychotropic medication;

2. Amend rule 5.640(c)(1) to clarify when proof of notice must be filed;

3. Amend rule 5.640(c)(6) to clarify the items that must be completed on *Application for Psychotropic Medication* (form JV-220);

4. Amend rule 5.640(c)(7) to clarify what forms may be used when a physician is requesting to continue psychotropic medication;

5. Amend rule 5.640(c)(9) to clarify that the court's order must be on *Order on Application for Psychotropic Medication* (form JV-223);

6. Amend rules 5.640(c)(10) and 5.640(h)(4) to include different potential placement types;

7. Further amend rule 5.640(c)(10) to clarify how notice should be provided;

8. Amend rule 5.640(e) to clarify the process for parental authorization of psychotropic medication;

9. Amend rule 5.640(h) to include the correct Judicial Council forms that must be provided to caregivers;

10. Approve *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as an optional form to document the court's findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication;

11. Revise *Guide to Psychotropic Medication Forms* (form JV-217-INFO) to make the instructions consistent with the changes in this report;

12. Revise *Application for Psychotropic Medication* (form JV-220) to use the correct terminology for a child's placement type;

13. Further revise form JV-220 to clarify which items a physician, social worker, or probation officer must complete;

14. Revise *Physician's Statement—Attachment* (form JV-220(A)) and *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) to shorten the form and remove duplicative questions;

15. Revise *Proof of Notice of Application* (form JV-221) to indicate when information on how to obtain copies of a form can be provided;

16. Revise *Input on Application for Psychotropic Medication* (form JV-222) to clarify it is an optional form;

17. Further revise form JV-222 so the identifying information about the person filling out the form mirrors the other forms in this proposal.

18. Revise *Order on Application for Psychotropic Medication* (form JV-223) to increase the number of potential forms the court relied on as evidence; and

19. Revise *County Report on Psychotropic Medication* (form JV-224) to remove references to public health nurses.

Previous Council Action

As mandated by Senate Bill 543 (Bowen; Stats. 1999, ch. 552), effective January 1, 2001, the Judicial Council adopted a California Rule of Court and two Judicial Council forms regarding administration of psychotropic medications to children under the jurisdiction of the juvenile court. This initial proposal included rule 1432.5, *Application for Order for Psychotropic Medication—Juvenile* (form JV-220), and *Opposition to Application for Order for Psychotropic Medication—Juvenile* (form JV-220A). Clarifying changes were made to the rule and forms effective January 1, 2003, January 1, 2005, and July 1, 2005.

Effective January 1, 2007, rule 1432.5 was renumbered as rule 5.640, as part a comprehensive reorganization and renumbering to improve the format and usability of the California Rules of Court. Effective January 1, 2008, the Judicial Council amended rule 5.640, revised form JV-220, revoked form JV-220A, and adopted forms JV-219-INFO, JV-220(A), JV-221, JV-222, and JV-223 to improve the statewide procedure used to seek authorization for administering psychotropic medication to children in out-of-home placements.

Effective January 1, 2014, the council amended rule 5.640 and revised three related forms JV-219-INFO, *Information About Psychotropic Medication Forms*; JV-221, *Proof of Notice: Application for Psychotropic Medication*; and JV-222, *Opposition to Application Regarding Psychotropic Medication* to (1) clarify the time frame for filing an opposition to an application for the juvenile court to authorize the administration of psychotropic medication for a child, (2) clarify appropriate methods of service and notice protocols, and (3) add notice requirements for an Indian child's tribe if psychotropic medication is being sought for an Indian child.

Most recently, effective July 1, 2016, the council amended rule 5.640; approved two related forms, *Child's Opinion About the Medicine* (form JV-218) and *Statement About Medicine Prescribed* (form JV-219); adopted two related forms, *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) and *County Report on Psychotropic Medication* (form JV-224); revised five related forms, *Application for Psychotropic Medication* (form JV-220), *Physician's Statement—Attachment* (form JV-220(A)), *Proof of Notice of Application*

(form JV-221), *Input on Application for Psychotropic Medication* (form JV-222), and *Order on Application for Psychotropic Medication* (form JV-223); and revised and renumbered one related form, *Guide to Psychotropic Medications Forms* (form JV-217-INFO) to implement the mandates of Senate Bill 238 (Mitchell; Stats. 2015, ch. 534) which required the Judicial Council to develop rules and forms to (1) ensure that the child and his or her caregiver and Court Appointed Special Advocate volunteer (CASA), if any, have an opportunity to provide input on the medications being prescribed; (2) ensure that information regarding an assessment of the child's overall mental health and treatment plan, as well as information regarding the rationale for the proposed medication are provided to the court; (3) address how to proceed if information, otherwise required to be included in a request for authorization is not included in the request; (4) include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication; and (5) mandate that the child welfare agency, probation department, or other person or entity who submitted the request for authorization of psychotropic medication provide a copy of the court order approving or denying the request to the child's caregiver.

Rationale for Recommendation

As indicated in the legislative history for SB 238, in 1999, the Legislature passed SB 543 (Bowen; Stats. 1999, ch. 552), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster youth.[1] SB 543 also provided that the juvenile court may issue a specific order delegating this authority to a parent if the parent poses no danger to the child and has the capacity to authorize psychotropic medications. This legislation was passed in response to concerns that foster children were being subjected to excessive use of psychotropic medication, and that judicial oversight was needed to reduce the risk of unnecessary medication. The Judicial Council was required to adopt rules of court to implement the new requirement. Accordingly, rule 5.640 specifies the process for juvenile courts to follow in authorizing the administration of psychotropic medications and permits courts to adopt local rules for the courts to use to further refine the approval process.

In 2004, the provisions of SB 543 were amended by Assembly Bill 2502 (Keene; Stats. 2004, ch. 329), which required a judicial officer to approve or deny, in writing, a request for authorization to administer psychotropic medication, or set the matter for hearing, within seven days. This amendment was intended to ensure timely consideration of requests for authorization to administer psychotropic medication to dependent children.

SB 238 was enacted in 2015 to comprehensively address the issues related to the administration of psychotropic drugs in the foster care system by requiring additional training, oversight, and data collection by caregivers, courts, counties, and social workers. The bill also required the Judicial Council, in consultation with other identified groups, to implement specified provisions of the bill. To implement SB 238, effective July 1, 2016, the Judicial Council amended rule

[1] Sen. Com. on Judiciary, Analysis of Sen. Bill No. 238 (2014–2015 Reg. Sess.) Apr. 7, 2015, pp. 1–2.

5.640, approved two optional forms, adopted two mandatory forms, revised four forms, and revised and renumbered one form to implement the mandates of SB 238.

The committee has received information on an ongoing basis about how these forms are functioning. Additionally, as mentioned above, SB 238 required the Judicial Council to implement specified provisions of the bill in consultation with other stakeholder groups. Before the 2016 changes to rule 5.640 and the forms were recommended for adoption, members of the committee met with the stakeholders and made many changes to the rule and forms based on their input. For this proposal, the committee sought input from the same group of stakeholders, specifically asking if they had identified problems in using the forms or rule.

Based on the suggestions received from stakeholders and others, the committee is recommending several clarifying changes to the rule and forms in this "clean-up" proposal.

References to *Physician's Request to Continue Medication—Attachment* (form JV-220(B))
This form was created to address concerns from physicians and physician groups that *Physician's Statement—Attachment* (form JV-220(A)) was too long and would take too long to complete when the physician is requesting to continue use of a medication. In response to these comments, a shortened form for a request to continue the same medication by the same physician who completed the most recent form JV-220(A) was developed and adopted. Rule 5.640 and *Order on Application for Psychotropic Medication* (form JV-223) lack necessary references to this form (form JV-220(B)) that are needed for completing the approval process.

The committee recommends that the council amend rule 5.640, and revise form JV-223 to add references to form JV-220(B).

Length of *Physician's Statement—Attachment* (form JV-220(A)) and *Physician's Request to Continue Medication—Attachment* (form JV-220(B))
The committee received input from physicians that forms JV-220(A) and JV-220(B) are time-consuming to complete, in part because of duplicative questions. The committee carefully reviewed these suggestions and recommends streamlining the forms as follows:

- Removing a duplicative question regarding the symptoms that are expected to improve with the medications prescribed;
- Removing references to alphanumeric codes on form JV-220(A);
- Combining questions regarding the child's response to any current psychotropic medication and the symptoms not alleviated by other current or past treatment efforts so the prescribing physician does not need to provide the same information twice;
- Removing a question regarding the possible adverse reactions, and replacing it with a check box indicating whether the caregiver was given a copy of the informational packets regarding the medication; and

- Removing the requirement that the physician indicate the medication is a continuing medication on form JV-220(B).

The committee also recommends revising the instructions in *Application for Psychotropic Medication* (form JV-220) to clarify that the prescribing physician does not need to complete the questions beyond the first page of the form. The committee also proposes corresponding amendments to rule 5.640. These changes should help decrease the amount of time physicians spend filling out form JV-220 in jurisdictions where the belief is that if the physician is the applicant, he or she must fill out all pages of form JV-220.

Parental authorization

Under Welfare and Institutions Code sections 369.5 and 739.5 and rule 5.640(e), the court may order that the parent be authorized to approve or deny the administration of psychotropic medication in limited circumstances. Although parental authorization was not addressed in the winter 2016 proposal, the committee has become aware that the parental authorization process is unclear. The committee received a question from one county regarding whether form JV-220 is required when all parties agree that the parents can consent to psychotropic medication. Sections 369.5 and 739.5 are silent as to the process for the juvenile court to issue an order delegating the authority to a parent.[2] Rule 5.640(e), however, requires that the court first consider a physician's application and attachments and review the case file.[3]

To clarify the process, the committee recommends revising rule 5.640(e) to mirror statute and to remove the requirement that the court must first consider an application and attachments and review the case file before it can issue an order delegating authority to a parent. The committee further proposes that the rule cross-reference the statute with the required findings to support such an order. The committee also recommends adopting *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as an optional form to document the court's findings and order.

Other form changes

Guide to Psychotropic Medication Forms (form JV-217-INFO) omits parents and legal guardians in the description of people who can submit optional forms. The committee recommends revising this form to include parents and legal guardians, and to include references to form JV-220(B) where necessary.

[2] Sections 369.5 and 739.5 require that this delegation be requisite on making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications.

[3] The findings required by rule 5.640 are broader than those required by section 369.5. The rule requires the court to find that (1) the parent poses no danger to the child, and (2) the parent has the capacity to understand the request and the information provided and to authorize the administration of psychotropic medication to the child, consistent with the best interest of the child.

The signature line on *Statement About Medicine Prescribed* (form JV-219) reads "Caregiver signs here." The form, however, can also be filled out by parents and legal guardians, CASA volunteers, and Indian tribes. The committee therefore recommends changing the signature line to read "Sign your name."

Proof of Notice of Application (form JV-221) is a mandatory form that currently omits several of the documents that must be provided to the various parties when making an application for psychotropic medication. It also allows the applicant to explain how the caregiver was given information on how to obtain copies of the required forms, but rule 5.640 requires that the caregiver be given copies; it does not authorize the alternative approach of giving the caregiver information about how to obtain copies of the forms.

One court pointed out that submitting more than one *Input on Application for Psychotropic Medication* (form JV-222) is possible, but *Order on Application for Psychotropic Medication* (form JV-223) has space to enter only one form JV-222 as evidence on which the court relied. The committee proposes revising form JV-223 to allow for multiple submissions of form JV-222 and *Statement About the Medicine Prescribed* (form JV-219), and to reference form JV-220(B), as discussed above.

The committee recommends revising form JV-222 so the identifying information about the person filling out the form mirrors the other forms in this proposal. In addition to providing uniformity, this would provide the court with information about how long the person filling out the form has known the child and—if the child is living with the person—for how long the child has lived in the person's home or facility.

Other changes to rule 5.640

One large county asked who is required to give notice to the parties of the application. Rule 5.640(c)(8), which governs notice, does not specify. Rule 5.640(c)(5), however, provides that "local county practice and local rules of court determine the procedures for completing and filing the forms and for the provision of notice." The committee proposes amending the rule and moving the text regarding local practice to the paragraph of the rule governing notice.

Rule 5.640(c)(8) does not specify deadlines for serving *Proof of Notice of Application* (form JV-221) on the other parties. The committee recommends revising the rule to clarify that form JV-221 must be filed at the same time as the application.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2017 invitation to comment cycle, from February 27, 2017, to Friday, April 28, 2017, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court

administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, CASA programs, and other juvenile and family law professionals.

The proposal was also sent to organizations that the Judicial Council was mandated to consult with in developing the rules and forms implementing the legislation: the State Department of Social Services, the State Department of Health Care Services, and stakeholders, including, but not limited to, the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, the Chief Probation Officers of California, associations representing current and former foster children, caregivers, and children's attorneys.

Thirty-one individuals or organizations provided comments: 3 agreed with the proposal, 10 agreed if modified, 6 opposed the proposal, and 12 did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 48–83.

As the comment chart demonstrates, this proposal generated significant comments. The issues that received the most comment or which raised critical issues are noted below. The comment chart contains responses to all the input received and what action the committee proposes for council action.

Parental authorization

Under Welfare and Institutions Code sections 369.5 and 739.5 and rule 5.640(e), the court may order that the parent be authorized to approve or deny the administration of psychotropic medication in limited circumstances. The Invitation to Comment requested specific comment on whether a proposed form should be used; the form would document the court's findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication. The committee also sought comment on whether that form should be mandatory or optional. Commentators overwhelmingly replied in the affirmative and most requested the form be mandatory.

The committee concluded that the form should be optional, so that courts that currently have a process in place to delegate authority to the parents could continue to use that process rather than mandating use of a Judicial Council form.

One commentator recommended that the form, and the applicable subdivision of the rule, be amended in two ways. The first is to give the court the option of identifying the facts in support of the required findings.[4] The committee concluded that requiring the court to identify the facts in support of the required findings was too time-consuming and not necessary to include on the form since that information would be included in the record of the hearing.

[4] To delegate judicial authority to a parent, the court must find that (1) the parent poses no danger to the child, and (2) the parent has the capacity to authorize psychotropic medication.

The second recommendation was that the form indicate a time period in which the delegation is effective. This recommendation raised the most committee discussion. The committee discussed and voted on whether the newly proposed optional *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) should contain an expiration date. Some members asserted that the delegation of authority to approve or deny the administration of psychotropic medication to the parents should exist until further order of the court, and an expiration date was not necessary. Other members asserted that if the court did, at a later date, terminate the order delegating authority, the physical copy of the order delegating authority would still be in existence with no indication on it that it had been superseded. To ensure that someone reading the form would know whether it was indeed still valid, these members believed an expiration date was necessary on the form itself. Ultimately, the committee concluded, and now recommends, that an expiration date should not be included on the form, but that the form should read: "The parent or legal guardian in (1) is authorized to approve or deny the administration of psychotropic medication for the child, unless such authority is modified by a subsequently issued order."

Informed Consent

One large county commented that: "There have been questions as to whether or not the JV-220 with the JV-223 that has been signed off by the Court could serve as informed consent, or not. The Department of Health Care Services (DHCS) noted in an audit that the JV-220 forms are missing specific elements and thus, to date, the JV-220 forms do NOT suffice as informed consent. This leads to challenges for our providers as they are unsure who should sign the informed Consent documents used for non-dependent youth. The missing elements identified by DHCS include 1) route of administration (by mouth, injection, etc.) and 2) a list of potential side effects of prescribed medications. If it is the Judicial Council's intent that this process serve as informed consent for dependent youth, please consider adding the elements identified by DHCS."

The committee concluded that the committee did not intend for this to be an informed consent document and does not recommend amending the forms to attempt to do so.

***Physician's Statement—Attachment* (form JV-220(A)) and *Physician's Request to Continue Medication—Attachment* (form JV-220(B))**

In the Winter 2016 cycle, to address the concerns from physicians and physician groups that form JV-220(A) was too long and time consuming, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed several items and created a new form *Physician's Request to Continue Medication—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This decreased the form from six to four pages.

A commentator from one large county stated, "In our county, the JV-220A is accepted for first time requests and for renewals. Thanks to the ability to copy a file in the computer and then update it, this is far easier and faster for us to do compared to filling out a new JV-220B, which would have to be done from scratch." Two additional commentators made a similar request.

Several physicians, both as part of reaching out to stakeholders before circulating the proposal for public comment and during the comment period, requested several ways to streamline the forms they must fill out. The committee concluded that the physician should be allowed to choose the form that he or she thinks is easiest and quickest to fill out and recommends amending rule 5.640 and revising *Guide to Psychotropic Medication Forms* (form JV-217-INFO) to allow a physician to fill out either form JV-220(A) or form JV-220(B) when requesting a renewal of a medication previously authorized by the court. The committee also recommends labeling the footer of form JV-220(B) as an "Alternative Mandatory Form instead of JV-220(A) for renewal under rule 5.640(c)(7)" to indicate that this form can only be used for renewal, and not initial, requests.

Legal guardians

The Invitation to Comment also sought specific comment on whether rule 5.640(e) should include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the administration of psychotropic medication. Most commentators who commented on this question agreed that legal guardians should be included in that portion of the rule. Several commentators also suggested different portions of the forms should also contain references to legal guardians.

The committee recommends that the rule and forms be revised to include legal guardians every place a parent is mentioned.

County Report on Psychotropic Medication* (form JV-224*) and Public Health Nurses

Rule 5.640 requires, and form JV-217-INFO instructs, that form JV-224 must be filled out by a social worker or probation officer. The Invitation to Comment was also clear that this form must be filled out by the child's social worker or probation officer. The current form, however, includes a signature line for a public health nurse (PHN). While this form did not circulate for comment during this spring cycle, it generated many comments. Twelve PHNs or PHN organizations commented on this proposal, requesting that the signature line for PHNs be removed from this form because the PHN is a consultant, not a case manager, and therefore should not be filling out this form. Given that this proposal is a "cleanup" proposal and removing the PHN signature line will make the form legally accurate, the committee concluded that it should recommend removing the signature line without the form being circulated for public comment.

Alternatives

The committee considered consolidating or eliminating several questions on the *Physician's Statement—Attachment* (form JV-220(A)) and *Physician's Request to Continue Medication—*

Attachment (form JV-220(B)). The committee proposes some streamlining of these forms to address this concern. However, the committee concluded that most of the questions are critical to the court's oversight role of psychotropic medication and should remain on the form. For example, the committee concluded that specific questions on an assessment of the child's overall mental health and nonpharmacological treatments that the child is participating in were necessary to perform judicial oversight of the orders for psychotropic medication. Judges are also accepting forms that reference another item number if the information is contained in an item already filled out by the physician.

The committee considered that children's Health and Education Passports (HEPs), which are meant to relay pertinent medical information that would support the completion of form JV-220(A) and form JV-220(B), are not delivered in a timely fashion, if at all. Regarding a request that the committee recognize these delays and develop workarounds, the committee concluded that county agencies must resolve this issue, which is not under the council's rule-making authority.

At the request of public health nurses, the committee considered whether essential laboratory tests should be mandated to be attached to the application for psychotropic medication. The committee concluded that tests need not be attached, given confidentiality concerns and an existing cross-reference in the rule to the Civil Code section that governs how public health nurses can get the necessary information to perform their oversight role.

The committee considered specifying on *County Report on Psychotropic Medication* (form JV-224) which social worker or probation officer should complete the form if the child is placed outside his or her county of original jurisdiction, and the responsibility for providing or arranging for specialty mental health services is transferred to his or her county of residence. The committee concluded, however, that the social worker or probation officer with the most information regarding the child's mental health treatment should fill out this mandatory form and that person could differ on a case-by-case basis. The committee therefore does not propose directing or limiting who should fill out the form.

Implementation Requirements, Costs, and Operational Impacts

In implementing the revised forms, courts will incur standard reproduction costs.

Attachments and Links

1. Cal. Rules of Court, rule 5.640, attached at pages 12–15
2. Forms JV-216, JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, JV-223, and JV-224, at pages 16–47
3. Chart of comments, at pages 48–83
4. Senate Bill 238: *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB238*

Rule 5.640 of the California Rules of Court is amended, effective January 1, 2018, to read:

Rule 5.640. Psychotropic medications

(a) * * *

(b) Authorization to administer (§§ 369.5, 739.5)

(1) Once a child is declared a dependent child of the court and is removed from the custody of the parents or guardian, only a juvenile court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child, unless, under (e), the court orders that the parent or legal guardian is authorized to approve or deny the medication.

(2) Once a child is declared a ward of the court, removed from the custody of the parents or guardian, and placed into foster care, as defined in Welfare and Institutions Code section 727.4, only a juvenile court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child, unless, under (e), the court orders that the parent or legal guardian is authorized to approve or deny the medication.

~~(3) The court must grant or deny the application using *Order on Application for Psychotropic Medication* (form JV-223).~~

(c) Procedure to obtain authorization

(1) To obtain authorization to administer psychotropic medication to a dependent child of the court who is removed from the custody of the parents or legal guardian, or to a ward of the court who is removed from the custody of the parents or legal guardian and placed into foster care, the following forms must be completed and filed with the court:

(A) *Application for Psychotropic Medication* (form JV-220); ~~and~~

(B) *Physician's Statement—Attachment* (form JV-220(A)), unless the request is to continue the same medication and maximum dosage by the same physician who ~~that~~ completed the most recent JV-220(A); then the physician may complete *Physician's Request to Continue Medication—Attachment* (form JV-220(B)).~~;~~ and

(C) *Proof of Notice of Application* (form JV-221).

(2) The child, caregiver, parents or legal guardians, child's Indian tribe, and Court Appointed Special Advocate, if any, may provide input on the mediations being prescribed.

(A)–(C) * * *

(3)–(4) * * *

(5) Local county practice and local rules of court determine the procedures for completing and filing the forms ~~and for the provision of notice~~, except as otherwise provided in this rule. ~~The person or persons responsible for providing notice as required by local court rules or local practice protocols are encouraged to use the most expeditious manner of service possible to ensure timely notice.~~

(6) *Application for Psychotropic Medication* (form JV-220) may be completed by the prescribing physician, medical office staff, child welfare services staff, probation officer, or the child's caregiver. If the applicant is the social worker or probation officer, he or she must complete all items on form JV-220. If the applicant is the prescribing physician, medical office staff, or child's caregiver, he or she must complete and sign only page one of form JV-220.

(7) The physician prescribing the administration of psychotropic medication for the child must complete and sign *Physician's Statement—Attachment* (form JV-220(A)) or, if it is a request to continue the same medication by the same physician who ~~that~~ completed the most recent JV-220(A), then the physician ~~may~~ must complete and sign *Physician's Statement—Attachment* (form JV-220(A)) or *Physician's Request to Continue Medication—Attachment* (form JV-220(B)).

~~(7)~~(8) The court must approve, deny, or set the matter for a hearing within seven court days of the receipt of the completed form JV-220 and form JV-220(A) or form JV-220(B).

(9) The court must grant or deny the application using *Order on Application for Psychotropic Medication* (form JV-223).

~~(8)~~(10) Notice of the application must be provided to the parents or legal guardians, their attorneys of record, the child's attorney of record, the child's Child Abuse Prevention and Treatment Act guardian ad litem, the child's current caregiver, the child's Court Appointed Special Advocate, if any, and where a child has been determined to be an Indian child, the Indian child's tribe (see also 25 U.S.C. § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3).

(A) If the child is living in a group home or short-term residential therapeutic center, notice to the caregiver must be by notice to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, title 22, ~~regulation~~ section 84064.

(B) Local county practice and local rules of court determine the procedures for the provision of notice, except as otherwise provided in this rule. The person or persons responsible for providing notice as required by local court rules or local practice protocols are encouraged to use the most expeditious manner of service possible to ensure timely notice.

(C) Notice must be provided as follows:

~~(A)~~(i) * * *

~~(i) - (v)~~a–e * * *

~~(B)~~(ii) * * *

~~(i) - (v)~~a–e * * *

~~(C)~~(iii) * * *

~~(i) - (v)~~a–e * * *

~~(D)~~(iv) * * *

~~(i) - (vi)~~a–f * * *

~~(E)~~(v) * * *

~~(9)~~(11) * * *

~~(10)~~(12) * * *

(d) * * *

(e) Delegation of authority (§§ 369.5; 739.5)

~~After consideration of an application and attachments and a review of the case file,~~ If a child is removed from the custody of his or her parent or legal guardian, the court may order that the parent ~~be~~ is authorized to approve or deny the administration of psychotropic medication. The order must be based on the ~~following~~ findings in section 369.5 or section 739.5, which must be included in the order.~~:~~ ~~(1) the parent poses no danger to the child, and (2) the parent has the capacity to understand the request and the information provided and to authorize~~

~~the administration of psychotropic medication to the child, consistent with the best interest of the child.~~ The court may use *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) to document the findings and order.

(f) * * *

(g) Progress review

(1)–(5) * * *

(6) The child, caregiver, parents or legal guardians, and Court Appointed Special Advocate, if any, may provide input at the progress review as stated in (c)(2).

(7) * * *

(h) Copy of order to caregiver

(1)–(2) * * *

(3) If the court approves the request, the copy of the order must include the last two pages of form JV-220(A) or the last two pages of form JV-220(B) and all medication information sheets (medication monographs) that were attached to form JV-220(A) or form JV-220(B).

(4) If the child resides in a group home or short-term residential therapeutic program, a copy of the order, the last two pages of form JV-220(A) or the last two pages of form JV-220(B), and all medication information sheets (medication monographs) that were attached to ~~the~~ form JV-220(A) or form JV-220(B) must be provided to the group home administrator, or to the administrator's designee, as defined in California Code of Regulations, title 22, ~~regulation~~ section 84064.

(5) If the child changes placement, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A) or the last two pages of form JV-220(B), and the medication information sheets (medication monographs) that were attached to form JV-220(A) or form JV-220(B).

(i)–(k) * * *

JV-216 Order Delegating Judicial Authority Over Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

(1) Parent or legal guardian *(name):* _____

(2) The court finds as follows:

a. The parent or legal guardian poses no danger to the child.

b. The parent or legal guardian has the capacity to authorize psychotropic medications.

(3) The parent or legal guardian in (1) is authorized to approve or deny the administration of psychotropic medication for the child, unless such authority is modified by a subsequently issued order.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:
Date of Birth:

Court fills in case number when form is filed.

Case Number:

Date:

_____ ▶ _____

Type or print name of person completing this form. *Signature*

JV-217-INFO Guide to Psychotropic Medication Forms

Use these Judicial Council forms to ask for an order to give (or to continue giving) psychotropic medication to a child who is a ward or a dependent of the juvenile court and living in an out-of-home placement or in foster care, as defined in Welfare and Institutions Code section 727.4. Local forms may be used to provide additional information to the court.

Exception: These forms are ***not*** required in these situations:

- If the child lives in an out-of-home facility ***not*** considered foster care, as defined by section 727.4, unless a local court rule requires it; or
- If there is a previous court order that gives the child's parent(s) or guardian(s) the authority to approve or refuse the medication.

Required Forms		Optional Forms
JV-220	*Application for Psychotropic Medication*	The parent, guardian, child, caregiver, CASA, or Indian tribe wanting to give input to the court may use one of these forms:
JV-220(A)	*Physician's Statement—Attachment*	JV-218 *Child's Opinion About the Medicine*
JV-220(B)	*Physician's Request to Continue Medication—Attachment*	JV-219 *Statement About Medicine Prescribed*
JV-221	*Proof of Notice of Application*	A person who opposes the proposed medication or who wants to give the court more information may fill out this form:
JV-223	*Order on Application for Psychotropic Medication*	JV-222 *Input on Application for Psychotropic Medication*
JV-224	*County Report on Psychotropic Medication*	

Required Forms

① Form JV-220, *Application for Psychotropic Medication*

This *Application* gives the court basic information about the child and his/her living situation. It also provides contact information for the child's social worker or probation officer.

This form is usually completed by the social worker or probation officer, but is sometimes completed by the prescribing physician or his/her staff, or the child's caregiver.

Whoever completes the form must identify him/herself by name and by signing the form. If the prescribing physician completes this form, s/he must also complete and sign form JV-220(A) or form JV-220(B). *(See below.)*

② Form JV-220(A), *Physician's Statement—Attachment*

This form must be used to ask the court for a *new* order. It can also be used to request to continue medication. The prescribing doctor fills out this form then gives it to the person who files the *Application* (form JV-220).

This form provides a record of the child's medical history, diagnosis, previous treatments, and information about the child's previous experience with psychotropic medications. The doctor will list his/her reasons for recommending the psychotropic medications.

Emergencies: A child may **not** receive psychotropic medication without a court order except in an emergency. A doctor may administer the medication on an emergency basis. For a case to qualify as an emergency, the doctor must find that the child's mental condition requires immediate medication to protect him/her or others from serious harm or significant suffering, and that waiting for the court's authorization would put the child or others at risk. After a doctor administers emergency medication, s/he has two days at most to ask for the court's authorization.

③ Form JV-220(B), *Physician's Request to Continue Medication—Attachment*

This is a shorter version of form JV-220(A). It may be used only by the same doctor who filled out the most recent form JV-220(A) if s/he is prescribing the same medication with the same maximum dosage. The prescribing doctor fills out this form then gives it to the person who is filing the *Application* (form JV-220).

④ Form JV-221, *Proof of Notice of Application*

This form shows the court that all parties with a right to receive notice were served a copy of the *Application* and attachments, according to rule 5.640 of California Rules of Court.

The person(s) in charge of notice must fill out and sign this form. A separate signature line is provided on each page of the form to accommodate those courts in which the provision of notice is shared between agencies. This occurs when local practices or local court rules require the child welfare services agency to provide notice to the parent or legal guardian and the caregiver, and the juvenile court clerk's office to provide notice to the attorneys and CASA

volunteer. If one agency does all the required noticing, only one signature is required on page 3 of the form. The person(s) in charge of service should use the fastest method of service available so that people can be served on time. E-notice can be used only if the person or people to be e-served agree to it. (Code Civ. Proc., § 1010.6)

5 Form JV-223, *Order on Application for Psychotropic Medication*

This form lists the court's findings and orders about the child's psychotropic medications. The agency or person who filed the *Application* must provide the child's caregiver a copy of the court order approving or denying the *Application*.

The copy of the order must be provided (in person or by mail) within two days of when the order is made.

If the court approves the *Application*, the copy of the order must include the last two pages of form JV-220(A) or JV- 220(B), and all of the medication information sheets (medication monographs) that were attached to form JV-220(A) or JV-220(B).

If the child's placement is changed, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A) or JV-220(B), and all of the medication information sheets (medication monographs) that were attached to form JV-220(A) or JV-220(B).

6 Form JV-224, *County Report on Psychotropic Medication*

The social worker or probation officer must complete and file this form before each progress review. It has information that the court must review, including the caregiver's and child's observations about the medicine's effectiveness and side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.

This form must be filed at least 10 calendar days before the progress review hearing. If the progress review is scheduled for the same time as a status review hearing, the form must be attached to and filed with the court report.

Optional Forms

7 Form JV-218, *Child's Opinion About the Medicine*

The child may use this form to tell the judge about him/herself and his/her opinion about the medicine.

The child may ask someone s/he trusts for help with the form.

The child may also tell the judge how s/he feels in person at the hearing, by letter, or through his social worker, probation officer, lawyer, or CASA.

8 Form JV-219, *Statement About Medicine Prescribed*

The parent, guardian, caregiver, CASA, or Indian tribe may use this form to tell the court how they feel about the *Application*, and the effectiveness and side effects of the medicine.

This form must be filed within four court days of receipt of the notice of an *Application*, or before any status review hearing or medication progress review hearing.

This form is not the only way for the parent, guardian, caregiver, CASA, or tribe to provide information to the court. They can also provide input on the medication by letter; by talking to the judge at the court hearing; or through the social worker, probation officer, attorney of record, or CASA. A CASA can also file a report under local rule.

9 Form JV-222, *Input on Application for Psychotropic Medication*

This form may be used when the parent or guardian, attorney of record for a parent or guardian, child, child's attorney, child's CAPTA guardian ad litem, or Indian child's tribe does not agree that the child should take the recommended psychotropic medication. This form may also be used to provide input to the court.

Within four court days of service of notice of the pending application regarding psychotropic medication, the parent or guardian, his or her attorney, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe that disagrees must complete, sign, and file form JV-222 with the clerk of the juvenile court.

The court will make a decision about the child's psychotropic medication after reading the *Application,* its attachments, and all statements filed on time. The court is not required to set a hearing if a statement opposed to medication is filed.

If the court does set the matter for a hearing, the juvenile court clerk must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys, the child if 12 years of age or older, the child's attorney, the child's current caregiver, the child's social worker, the social worker's attorney, the child's CAPTA guardian ad litem, the child's CASA, if any, and the Indian child's tribe at least two court days before the hearing date. In delinquency matters, the clerk also must provide notice to the child regardless of his or her age, the child's probation officer, and the district attorney.

JV-219 Statement About Medicine Prescribed

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

You may use this form to give the court input on the request for an order for medication for the youth.

You do not *have to* use this form if you do not want to. There are other ways to give input to the court. You may:

- Send a letter to the judge,
- Speak to the judge at the hearing, or
- Ask your lawyer or the child's social worker, probation officer, or CASA to tell the judge how you feel.

You may add pages to this form if you need more space for your answers. Please put the child's name and the number of the question you are answering on each extra page.

Fill in court name and street address:

Superior Court of California, County of

Child's name: _____
(first) *(middle)* *(last)*

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Your name: _____
(first) *(middle)* *(last)*

2 Your relationship to the child: ☐ Caregiver ☐ CASA ☐ Parent ☐ Legal Guardian ☐ Indian Tribe ☐ Other *(explain):* _____

3 How long have you known the child? _____
(years) *(months)* *(days)*

4 How long has the child lived in your home or facility? _____
(years) *(months)* *(days)*

☐ The child does not live with me.

Child's Behavior

5 How does the child act at home? ☐ Don't know

Describe here: _____

6 How does the child act at school? ☐ Don't know

Describe here: _____

Child's name: _____ **Case Number:**

7 How does the child interact with friends and peers? ☐ Don't know

Describe here: _____

8 How does the child interact with adults? ☐ Don't know

Describe here: _____

9 How does the child sleep? ☐ Don't know

Describe how well the child sleeps and about how many hours each day: _____

Describe the Child's Treatment Now

10 List any other treatment the child is doing now:

☐ None ☐ Individual talk therapy ☐ Family therapy
☐ Group talk therapy ☐ Counseling at school ☐ Art or play therapy
☐ Cognitive Behavioral Therapy (CBT or practicing behaviors)
☐ Other *(list any other treatment here):* _____

11 List all the medicines the child takes regularly now: ☐ Don't know

Name of medicine: _____ Dose (if you know): _____
Name of medicine: _____ Dose (if you know): _____
Name of medicine: _____ Dose (if you know): _____
☐ Other medicines *(list here):* _____

12 Did you meet with the doctor who prescribed the psychotropic medicine? ☐ Yes ☐ No
If Yes:

a. Did the doctor explain the medicine's expected benefits, and possible side effects, and provide other information about the medicine? ☐ Yes ☐ No
b. Did you give the doctor information about the child? ☐ Yes ☐ No
c. Do you agree with use of the medication? ☐ Yes ☐ No ☐ Not sure

Child's name: _____ **Case Number:**

13 Follow-up and Maintenance

a. Do you know about the child's follow-up plan with this doctor? ☐ Yes ☐ No

b. Do you know how to schedule follow-up appointments with this doctor? ☐ Yes ☐ No

c. Do you know how and where to get the medicine the doctor prescribed? ☐ Yes ☐ No

d. Do you know how to make sure the child gets to the follow-up appointments? ☐ Yes ☐ No

e. Do you know how the child is supposed to take this medicine? ☐ Yes ☐ No

f. Do you know who is in charge of making sure s/he takes the medicine correctly? ☐ Yes ☐ No
If Yes, describe here: _____

g. Do you know what to do if the child has a bad reaction to the medicine? ☐ Yes ☐ No

14 List below anything else you want the judge to know.

_____

_____

_____

_____

_____

_____

_____

Fill out questions 15–23 ONLY if the child is taking psychotropic medicine now

If the child is not taking this/any psychotropic medicine now, skip to question 24.

15 Does the medicine affect the child's school or ability to learn? ☐ Yes ☐ No ☐ Don't know
If Yes, describe here: _____

_____

_____

16 Does the medicine affect the child's ability to concentrate? ☐ Yes ☐ No ☐ Don't know
If Yes, describe here: _____

_____

_____

17 Does the child have reasonable energy levels throughout the day? ☐ Yes ☐ No ☐ Don't know
If No, describe here: _____

_____

_____

18 Does the medicine affect the child's participation in hobbies or after-school activities?
☐ Yes ☐ No ☐ Don't know
If Yes, describe here: _____

_____

_____

Child's name: _____ Case Number:

19 Is it easy to get the child to take the medicine? ☐ Yes ☐ No ☐ Don't know
If No, describe what it's like: _____

20 Does anyone talk to the child about how he or she feels when he or she is on this medicine?
☐ Yes ☐ No ☐ Don't know
If Yes, explain who and how often: _____

21 Has the child's weight changed with this medicine? ☐ Yes ☐ No ☐ Don't know
If Yes, check one: ☐ Lost weight ☐ Gained weight *How many pounds?* _____

22 List any other side effects from the medicine:
☐ Headache ☐ Constipation ☐ Confusion ☐ Feel dizzy
☐ Problems sleeping ☐ Feeling very sleepy ☐ Nausea
☐ Other *(list any other side effects here):* _____

23 List any benefits you have noticed from the child's taking this medicine:

24 ☐ Check here if you are going to add extra pages to this form. Any say how many pages: _____

Date:

_____ ▶ _____
Type or print your name *Sign your name*

JV-220 Application for Psychotropic Medication

A completed and signed *Physician's Statement—Attachment (form JV-220(A)), or Physician's Request to Continue Medication—Attachment* (form JV-220(B)) with all its attachments must be attached to this form before it is filed with the court. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application process.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Information about where the child lives:

a. The child lives ☐ with a relative ☐ in a foster home
☐ with a nonrelative extended family member
☐ in a group home, level _____ ☐ at a juvenile custodial facility
☐ in a short-term residential therapeutic program
☐ other *(specify):* _____

b. If applicable, the name of the facility where the child lives:

c. Contact information for a responsible adult where the child lives:
(1) Name:
(2) Phone:

d. The child has lived at the placement in (a) since *(insert date):*

2 Information about the child's current location:

a. ☐ The child remains at the location identified in 1.
b. ☐ The child is currently staying in:
(1) ☐ a psychiatric hospital *(name):*
(2) ☐ a juvenile hall *(name):*
(3) ☐ other *(specify):*

3 Child's ☐ social worker ☐ probation officer
a. Name:
b. Address:
c. Phone: E-mail: Fax:

4 Number of pages attached:

Date:

Type or print name of person completing this form

Signature

☐ Child welfare services staff *(sign above, complete items 1–13, and sign on page 4)*
☐ Probation department staff *(sign above, complete items 1–13, and sign on page 4)*
☐ Medical office staff *(sign above)*
☐ Caregiver *(sign above)*
☐ Prescribing physician *(sign on page 6 of JV-220(A) or page 4 of JV-220(B))*

Child's name: _____ **Case Number:**

If you are the child's social worker or probation officer, you must fill out items 5–13 of this form. If you do not know the answer to a question, write "I do not know." If you are **not** *the child's social worker or probation officer, you do not need to fill out items 5–13 of this form.*

5 Describe if the child has shared feelings about starting to take medication. If this is a request to renew or modify medication, include what the child reports regarding the benefits and side effects of having taken the medication.

_____

_____

_____

_____

_____

6 The child will provide input on the medication being prescribed (*check all that apply):*

a. ☐ Through the social worker/probation officer.
b. ☐ Through his or her attorney.
c. ☐ Through his or her CASA.
d. ☐ By filling out form JV-218.
e. ☐ By writing a letter to the judge.
f. ☐ By talking to the judge at a hearing.
g. ☐ Other *(specify):* _____

7 Describe what the caregiver reports regarding the child being placed on the medication. If this is a request to renew or modify medication, include what the caregiver reports regarding the benefits and side effects of having the child take medication.

_____

_____

_____

_____

_____

8 The caregiver will provide input on the medication being prescribed (*check all that apply)*:

a. ☐ Through the social worker/probation officer.
b. ☐ By filling out JV-219.
c. ☐ By writing a letter to the judge.
d. ☐ By talking to the judge at a hearing.
e. ☐ Other *(specify):* _____

9 a. Is the information provided by the physician on form JV-220(A) at questions 10 and 11 or on form JV-220(B) at question 8 accurate, to the best of your knowledge?
☐ Yes ☐ No ☐ I do not know

b. Do you have additional information about mental health treatment alternatives to the proposed medications that have been used in the last six months? ☐ Yes ☐ No If yes, explain:

_____

_____

_____

_____

_____

_____

9 c. Do you have additional information to add about other psychotropic medications that have been tried in the last six months? ☐ Yes ☐ No If yes, explain:

_____

_____

_____

_____

_____

_____

d. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped, if the reasons are known to you.

Medication name (generic or brand)	*Reason for stopping*

10 Therapeutic services, other than medication, which the child is enrolled in or is recommended to participate in during the next six months *(check all that apply; include frequency for therapy on blank line):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____

c. ☐ Milieu therapy *(explain):* _____

d. ☐ Therapeutic Behavioral Services (TBS): _____

e. ☐ Therapy for children on the autism spectrum: _____

f. ☐ Art therapy: _____

g. ☐ Cognitive behavioral therapy (CBT): _____

h. ☐ Wraparound services: _____

i. ☐ American Indian/Alaska Native healing and cultural traditions: _____

j. ☐ Speech therapy: _____

k. ☐ In Home Behavioral Services (IHBS): _____

l. ☐ Other modality *(explain):* _____

11 What other services could benefit or enhance the child's well-being *(for example, sports, art, extracurricular activities)?*

_____

_____

_____

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

12 What comments, if any, do you have regarding the application? What else do you want the judge to know?

13 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet or sheets of paper.

Date: _____

_____
Type or print name of person completing this form

▶ _____
Signature

☐ Child welfare services staff *(sign above)*

☐ Probation department staff *(sign above)*

JV-220(A) Physician's Statement—Attachment

Case Number:

This form must be completed and signed by the prescribing physician. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application process.

1 Information about the child *(name):* _____

Date of birth: _____ Current height: _____ Current weight: _____

Gender: _____ Ethnicity: _____

2 Type of request:

a. ☐ An initial request to administer psychotropic medication to this child
b. ☐ A request to start a new medication or to increase the maximum dose of a previously approved medication
c. ☐ A request to continue psychotropic medication the child is currently taking

3 ☐ This application is made during an emergency situation as defined in California Rules of Court, rule 5.640(i). The emergency circumstances requiring the temporary administration of psychotropic medication pending the court's decision on this application are:

_____
_____
_____

4 Prescribing physician:

a. Name: _____ License number: _____
b. Address: _____
c. Phone numbers: _____
d. Medical specialty of prescribing physician:
☐ Child/adolescent psychiatry ☐ General psychiatry ☐ Family practice/GP ☐ Pediatrics
☐ Other *(specify):* _____
e. How long have you been treating the child? ____ years ____ months ____ days
f. In what capacity have you been treating the child (e.g., treating psychiatrist, treating pediatrician)?

_____
_____
_____
_____
_____

5 This request is based on a face-to-face clinical evaluation of the child by:

a. ☐ The prescribing physician on *(date):* _____
b. ☐ Other *(provide name, professional status, and date of evaluation):* _____
_____

6 Information about the child was provided to the prescribing physician by *(check all that apply):*

☐ Child ☐ Caregiver ☐ Teacher ☐ Social worker ☐ Probation officer ☐ Parent
☐ Public health nurse ☐ Tribe
☐ Records *(specify):* _____
☐ Other *(specify):* _____

Child's name: _____

Case Number:

7 Provide to the court your assessment of the child's overall mental health. ☐ I don't know.

8 Describe the child's symptoms, including duration, and the child's treatment plan. ☐ I don't know.

9 a. Describe the child's response to any current psychotropic medication. ☐ I don't know.

b. Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts. ☐ I don't know.

Child's name: _____

Case Number:

10 a. Have nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?
☐ Yes ☐ No ☐ I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

11 a. Have other pharmacological treatment alternatives to the proposed medications been tried in the last six months?
☐ Yes ☐ No ☐ I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

c. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped if the reasons are known to you.

Medication name (generic or brand)	*Reason for stopping*

12 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5):*

Child's name: _____ **Case Number:**

13 Relevant medical history *(describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results):*

☐ I don't know.

_____

_____

_____

_____

_____

_____

_____

14 a. ☐ All essential laboratory tests were performed.

b. ☐ All essential laboratory tests were not performed *(explain what laboratory tests were not done and why).*

_____

_____

15 a. ☐ The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects, and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was

☐ agreeable ☐ not agreeable

Briefly describe child's response: _____

_____

_____

_____

_____

b. ☐ The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:

(1) ☐ The child lacks the capacity to provide a response *(explain):* _____

_____

(2) ☐ other *(explain):* _____

16 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months *(check all that apply; include frequency for therapy on blank line):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____

c. ☐ Milieu therapy *(explain):* _____

d. ☐ Therapeutic Behavioral Services (TBS): _____

e. ☐ Therapy for children on the autism spectrum: _____

f. ☐ Art therapy: _____

g. ☐ Cognitive behavioral therapy (CBT): _____

h. ☐ Wraparound services: _____

i. ☐ American Indian/Alaska Native healing and cultural traditions: _____

j. ☐ Speech therapy: _____

k. ☐ In Home Behavioral Services (IHBS): _____

l. ☐ Other modality *(explain):* _____

Child's name: _____ **Case Number:**

17 a. **Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

b. ☐ The caregiver was informed of the mandatory information, which is attached.

c. ☐ The caregiver's response was ☐ agreeable ☐ other *(explain):*

_____

_____

_____

_____

_____

_____

_____

18 Additional information regarding medication treatment plan and follow-up: _____

_____

_____

_____

_____

_____

_____

_____

19 List all psychotropic medications currently administered that you propose to continue and all psychotropic medications you propose to begin administering. Mark each psychotropic medication as New (N) or Continuing (C).

Medication name (generic/brand) and class, and symptoms targeted by each medication's anticipated benefit to child	*C or N*	*Maximum total mg/day*	*Treatment duration* 6-month maximum*	*Administration schedule* • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				
Med: Class: Targets:				

**Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.*

Child's name: _____

Case Number:

20 Other information about the prescribed medication that you want the court to know (e.g., reasons for prescribing more than one medication in a class, prescribing outside the approved range, or prescribing medication not approved for a child of this age):

_____

_____

_____

_____

_____

_____

21 List all psychotropic medications currently administered that will be stopped if this application is granted.

Medication name (generic or brand)	*Reason for stopping*	*Stop immediately or over period of time? (specify, including time)*

Date:

_____ ▶ _____

Type or print name of prescribing physician *Signature of prescribing physician*

JV-220(B) Physician's Request to Continue Medication—Attachment

Case Number:

This form must be completed and signed by the prescribing physician. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application process.

1 Information about the child *(name):* _____

Date of birth: _____ Current height: _____ Current weight: _____

Gender: _____ Ethnicity: _____

2 Fill out this form only if both boxes below are checked. If you cannot check both boxes, fill out form JV-220(A).

a. ☐ This is a request to continue the same psychotropic medication and maximum dosage that the child is currently taking.

b. ☐ This is the same prescribing physician who completed the most recent form JV-220(A).

3 Prescribing physician:

a. Name: _____ License number: _____

b. Address: _____

c. Phone numbers: _____

d. Medical specialty of prescribing physician:

☐ Child/adolescent psychiatry ☐ General psychiatry ☐ Family practice/GP ☐ Pediatrics

☐ Other *(specify):* _____

4 This request is based on a face-to-face clinical evaluation of the child by:

a. ☐ The prescribing physician on *(date):* _____

b. ☐ Other *(provide name, professional status, and date of evaluation):* _____

_____

5 Information about the child was provided to the prescribing physician by *(check all that apply):*

☐ Child ☐ Caregiver ☐ Teacher ☐ Social worker ☐ Probation officer ☐ Parent

☐ Public health nurse ☐ Tribe

☐ Records *(specify):* _____

☐ Other *(specify):* _____

6 Provide to the court your assessment of the child's overall mental health.

_____

_____

_____

_____

_____

_____

_____

_____

_____

Child's name: _____

Case Number:

7 a. Describe the child's response to any current psychotropic medication.

b. Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.

8 a. Have nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?
☐ Yes ☐ No ☐ I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

9 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5):*

10 Relevant medical history *(describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results):*

Child's name: _____ **Case Number:**

11 a. ☐ All essential laboratory tests were performed.

b. ☐ All essential laboratory tests were not performed *(explain what laboratory tests were not done and why).*

_____

_____

12 a. ☐ The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects, and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was:

☐ Agreeable ☐ Not agreeable

Briefly describe child's response: _____

_____

_____

_____

b. ☐ The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:

(1) ☐ The child lacks the capacity to provide a response *(explain):* _____

_____

(2) ☐ Other *(explain):* _____

13 a. **Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

b. ☐ The caregiver was informed of the mandatory information, which is attached.

c. ☐ The caregiver's response was ☐ agreeable ☐ other *(explain):*

_____

_____

_____

_____

_____

_____

_____

14 Additional information regarding medication treatment plan and follow-up: _____

_____

_____

_____

_____

_____

_____

_____

Child's name: _____ **Case Number:**

15 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months *(check all that apply; include frequency for therapy on blank line):*

a. ☐ Group therapy: _____ b. ☐ Individual therapy: _____
c. ☐ Milieu therapy *(explain):* _____
d. ☐ Therapeutic Behavioral Services (TBS): _____
e. ☐ Therapy for children on the autism spectrum: _____
f. ☐ Art therapy: _____ g. ☐ Cognitive behavioral therapy (CBT): _____
h. ☐ Wraparound services: _____
i. ☐ American Indian/Alaska Native healing and cultural traditions: _____
j. ☐ Speech therapy: _____
k. ☐ In Home Behavioral Services (IHBS): _____
l. ☐ Other modality *(explain):* _____

16 List all psychotropic medications currently administered that you propose to continue.

Medication name (generic/brand) and symptoms targeted by each medication's anticipated benefit to child	*Maximum total mg/day*	*Treatment duration* 6-month maximum*	*Administration schedule* • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Class: Targets:			
Med: Class: Targets:			
Med: Class: Targets:			
Med: Class: Targets:			

**Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.*

17 Other information about the prescribed medication that you want the court to know (e.g., reasons for prescribing more than one medication in a class, prescribing outside the approved range, or prescribing medication not approved for a child of this age):

_____
_____
_____
_____
_____
_____

Date:

_____ ▶ _____
Type or print name of prescribing physician *Signature of prescribing physician*

JV-221 Proof of Notice of Application

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application process.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:
Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 ☐ The following parents/legal guardians of the child were notified of the physician's request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with form JV-217-INFO, a blank copy of form JV-219, *Statement About Medicine Prescribed,* and a blank copy of form JV-222, *Input on Application for Psychotropic Medication*.

a. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):*
_____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):*
_____

b. Name: _____ Date notified: _____
Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):*
_____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____
_____

c. Name: _____ Date notified: _____ Relationship to child: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____
_____

2 ☐ Parental rights were terminated, and the child has no legal parents who must be informed.

3 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

4 ☐ Parent/legal guardian *(name):* _____
was not informed because *(state reason):* _____

5 The child's current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that an application is pending before the court. The caregiver was provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms*, a blank copy of form JV-218, *Child's Opinion About the Medicine,* and a blank copy of form JV-219, *Statement About Medicine Prescribed* as follows:

Child's name: _____ **Case Number:**

5 Caregiver's name: _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____ ☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the following address *(specify):* _____

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

Date:

_____ ▶ _____

Type or print name *Sign your name* ☐ Signature follows on page 3.

6 ☐ The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed form JV-220, *Application for Psychotropic Medication;* completed form JV-220(A), *Physician's Statement—Attachment* or completed form JV-220(B), *Physician's Request to Continue Medication—Attachment;* a copy of form JV-217-INFO, *Guide to Psychotropic Medication Forms* or information on how to obtain a copy of the form; a blank copy of form JV-218, *Child's Opinion About the Medicine* or information on how to obtain a copy of the form; and a blank copy of form JV-222, *Input on Application for Psychotropic Medication* or information on how to obtain a copy of the form, as follows:

a. Attorney's name: _____ Date notified: _____
Manner: ☐ In person ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing copies in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. CAPTA guardian ad litem's name: _____ Date notified: _____
Manner: ☐ In person ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing copies in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

7 ☐ The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms;* a blank copy of form JV-219, *Statement About Medicine Prescribed;* and a blank copy of form JV-222, *Input on Application for Psychotropic Medication,* as follows:

a. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information and copies of forms JV-217-INFO and JV-222 in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

b. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____

Child's name: _____ **Case Number:**

7 b. ☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

c. Attorney's name: _____ Date notified: _____
Attorney for *(name):* _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

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

Date:

_____ ▶ _____
Type or print name *Sign your name* ☐ Signature appears below

8 ☐ The child's CASA volunteer was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. The CASA volunteer was provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms*; a blank copy of form JV-218, *Child's Opinion About the Medicine*; and a blank copy of form JV-219, *Statement About Medicine Prescribed,* as follows:

CASA volunteer *(name):* _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

9 ☐ The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. It was also provided with form JV-217-INFO, *Guide to Psychotropic Medication Forms;* a blank copy of form JV-218, *Child's Opinion About the Medicine;* a blank copy of form JV-219, *Statement About Medicine Prescribed;* and a blank copy of JV-222, *Input on Application for Psychotropic Medication* or information on how to obtain a copy of the forms, as follows:

Indian Tribe *(name):* _____ Date notified: _____
Manner: ☐ In person ☐ By phone at *(specify):* _____ ☐ By fax at *(specify):* _____
☐ By electronic service at *(e-mail address):* _____ *(time sent):* _____
☐ By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address *(specify):* _____

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

Date:

_____ ▶ _____
Type or print name *Sign your name*

JV-222 Input on Application for Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

If you do not agree that the child should take the recommended psychotropic medication and/or continue the psychotropic medication that the child is currently taking, or if you wish to tell the court something about the child or medication, complete this form and file it with the court within four court days of receiving notice of the pending application for psychotropic medication. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms,* for more information about the required forms and the application.

Child's name: _____
(first) *(middle)* *(last)*

Fill in court name and street address:

Superior Court of California, County of

1 Your name: _____
(first) *(middle)* *(last)*

2 Your relationship to the child: ☐ Caregiver ☐ CASA ☐ Parent ☐ Legal Guardian ☐ Indian Tribe ☐ Other *(explain):* _____

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

3 How long have you known the child? _____
(years) *(months)* *(days)*

4 How long has the child lived in your home or facility? _____
(years) *(months)* *(days)*

☐ The child does not live with me.

Court fills in case number when form is filed.

Case Number:

5 The application is opposed because: _____

Child's name: _____

Case Number:

6 The application is not opposed, but I want to tell the court the following:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

7 ☐ I am the attorney for the child.

a. ☐ I need more time to investigate the application.

b. ☐ I need the following information to determine whether to agree with or oppose the application:

_____
_____
_____
_____
_____
_____
_____

c. ☐ There is other information the judge should know:

_____
_____
_____
_____
_____
_____
_____

8 ☐ Additional information about the child for the court to consider is included on an attached sheet or sheets of paper. *(Write "Attachment 5" on top.)*

Date:

_____
Type or print name

▶ _____
Sign your name

JV-223 Order on Application for Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

The Court read and considered:

a. Form JV-220, *Application for Psychotropic Medication*, and form JV-220 (A), *Physician's Statement—Attachment*, or JV-220(B), *Physician's Request to Continue Medication—Attachment* filed on *(date):* _____

b. ☐ Form JV-218, *Child's Opinion About the Medicine*, filed on *(date):* _____

c. ☐ Form JV-219, *Statement About Medicine Prescribed*, filed on *(date):* _____

d. ☐ Form JV-219, *Statement About Medicine Prescribed*, filed on *(date):* _____

e. ☐ Form JV-222, *Input on Application for Psychotropic Medication*, filed on *(date):* _____

f. ☐ Form JV-222, *Input on Application for Psychotropic Medication*, filed on *(date):* _____

g. ☐ CASA report

h. ☐ Other *(specify):* _____

The Court finds and orders:

1 a. ☐ Notice requirements were met.

b. ☐ Notice requirements were *not* met. Proper notice was not given to:

2 ☐ The matter is set for hearing on (*date*): _____ at *(time):* _____ in *(dept.):* _____

3 ☐ Application was made for authorization to begin or to continue giving the child the psychotropic medication listed in 19 on page 5 of form JV-220(A) or 16 on page 4 of form JV-220(B).

Copies of pages 5 and 6 of form JV-220(A) or pages 3 and 4 of form JV-220(B) are attached to this order.

The application is *(check one):*

a. ☐ Granted as requested.

b. ☐ Granted with the following modifications or conditions to the request as made in 19 on page 5 of form JV-220(A) or 16 on page 4 of form JV-220(B) *(specify all modifications and conditions):*

c. ☐ Denied *(specify reason for denial):*

If the application was for medication the child is currently taking, the social worker or probation officer must consult with the prescribing physician to determine whether the physician is ordering that the medication should be stopped immediately or gradually reduced over time.

Child's name: _____ **Case Number:**

4 ☐ The applicant must resubmit the application no later than *(date):* _____ with the missing information, which is: _____

_____

_____

The matter is set for hearing on (*date*): _____ at *(time):* _____ in *(dept.):* _____

5 The

a. ☐ social worker

b. ☐ probation officer

c. ☐ person who submitted application

is ordered to give a copy of this order, including pages 5 and 6 of form JV-220(A) or pages 3 and 4 of form JV-220(B) and the medication monograph attached to the form JV-220(A) to the child's caregiver either in person or by mail within two court days.

6 ☐ Other *(specify):* _____

_____

7 The order is set for a progress review on (*date*): _____ at *(time):* _____ in *(dept.):* _____

This order is effective until terminated or modified by court order or until 180 days from the date of this order, whichever is earlier. If the prescribing physician is no longer treating the child, this order extends to subsequent treating physicians. A change in the child's placement does not require a new order regarding psychotropic medication. Except in an emergency situation, a new application must be submitted and consent granted by the court before giving the child medication not authorized in this order or increasing medication dosage beyond the maximum daily dosage authorized in this order.

Date: _____

▶ _____

Signature of judge or judicial officer

JV-224 County Report on Psychotropic Medication

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

The social worker or probation officer must file this form for any hearing for which the court is providing oversight of psychotropic medications. This includes all scheduled progress reviews on orders authorizing psychotropic medication and every status review hearing. If you are filing this form for a status review hearing, file it with the status review hearing report. If you need more space for any of the items, write the item number and additional information on page 4 of this form. If you need more space than page 4, attach a sheet or sheets of paper. If you do not know the answer to a question, write "I do not know."

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Your name: _____

2 Your relationship to the child:

☐ Social worker ☐ Probation officer

☐ Other county staff *(specify):* _____

_____

3 a. Caregiver's relationship to child: _____

b. Date of last communication with caregiver: _____

4 Child Information

a. Child's height: _____ b. Child's weight: _____

c. Prescribing physician's name: _____

d. Date last seen by prescribing physician: _____

e. Next appointment date: _____

f. Therapist's name: _____

g. Date last seen by therapist: _____

5 List current court-approved psychotropic medications. *(Verify that this is what child is taking.)*

Name of Medication	Dosage

Name of Medication	Dosage

6 ☐ The child is taking the medication in **5**. This was verified by ☐ child ☐ caregiver ☐ other *(specify):*

_____

7 ☐ The child is not taking the following medication in **5** *(specify):* _____

This was verified by ☐ child ☐ caregiver ☐ other *(specify):* _____

8 Describe the caregiver's observations regarding how the child's behaviors and/or symptoms have changed since the medication was begun.

9 Describe the caregiver's observations regarding the side effects of the medication.

10 Describe any concerns the caregiver has regarding the medication.

11 Describe what the child says about whether his or her behaviors and/or symptoms have changed since the medication was begun.

12 Describe what the child says about the side effects of the medication.

13 Describe any concerns or complaints the child has regarding the medication.

14 List the dates of all medication management appointments since the last court hearing.

15 List the dates and reasons of other follow-up medical appointments since the last court hearing.

16 Describe other mental health treatments that are part of the child's overall treatment plan (for example, frequency and type of counseling, wraparound, etc.) or attach mental health treatment plan from treating clinician.

17 Provide any other information you think the judge should know.

Child's name: _____

Case Number:

18 ☐ Check here if you need more space for any of the items. Write the item number and additional information here. If you need more space, attach a sheet or sheets of paper.

Date:

_____
Type or print name of person completing this form

_____
Signature

☐ Child welfare services staff *(sign above)*
☐ Probation department staff *(sign above)*
☐ Other *(specify):* _____ *(sign above)*

SPR17-15

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)

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

	Commentator	Position	Comment	Committee Response
1.	Sherry Armstrong, BSN, RN, PHN II Nevada County Department of Public Health Child Protective Services		Please remove the check box and signature line for PHN on form JV 224. The instructions on JV 217 indicate the form to be filled by a probation or social worker. The PHN signature line has created confusion with social workers continuing to ask PHNs to fill out the form and sign. The PHN role is to collaborate and support as a medical professional providing monitoring and oversight and not to be assigned duties that can be performed by a staff member that is not a medical professional.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
2.	Uplift Family Services By: Mark Edelstein MD Medical Director	N	Thank you for eliminating certain redundancies in the JV-220A, but in my view it is only a beginning. This form and the entire JV-220 process negatively impact foster youth, a population that is already underserved. I work in a Level-14 group home with 34 foster children from multiple counties. While Court consent is supposed to take a week, in fact it often takes a month or more, prolonging children's suffering, increasing risk of injury (e.g., through staff restraints) and delaying discharge from the group home. Meanwhile, the administrative demand on child psychiatrists – the experts in our health care system on psychotropic medications in youth and a subspecialty that is already in short supply – means we are even less available to meet with foster youth and their families. I hope that someday the Judicial Council or the legislature will further review and revise this system that so blatantly discriminates against individual foster youth and the entire foster youth population.	The committee is aware that this process is often taking too long. Some courts are working with providers to track the length of time to complete each step to identify where delays are occurring.

SPR17-15

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)

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

	Commentator	Position	Comment	Committee Response
3.	Richard Mancina, M.D. Sacramento, CA	AM	The proposed changes seem reasonable and consistent with the goal of reducing redundancy. The one redundancy that is not addressed, however, is that there are two forms being used when one would suffice. flex I recommend that the JV-220A be the only form used.	The committee has amended rule 5.640 and revised the instructions on JV-217-INFO to allow a physician to fill out either form JV-220(A) or JV-220(B). In the Winter 2016 cycle, to address the concerns from physicians and physician groups that form JV-220(A) was too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed several items and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This decreased the form from 6 to 4 pages.
4.	FCPCFC By: Sung Kim, PHN Santa Clarita CA, 91355	AM	JV 224 is for the social worker or Probation Officer to file for court hearing. Since Public Health Nurse is not involved with any type of hearing, Public Health Nurse should be removed from JV224 page 1 #2 and Page 4 Signature part.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
5.	Sara Los Angeles, CA	A	Application for Psychotropic Medication JV 220-223 packet needs to have the contact phone and fax numbers on the first page for the prescribing psychiatrist to fax the PMA packet for court approval. No where on this packet has this information. Often time the provider does	These are statewide forms for use in all 58 counties. It is not feasible to list 58 facsimile numbers on the form, nor would it be feasible to amend the forms each time a fax number changed.

SPR17-15

Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)

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

	Commentator	Position	Comment	Committee Response
			not know where to fax the packet to. Also, provider should require to type not hand written information on these forms. Very hard to read their handwriting at times. Often time lab results are not attached to the JV packet from the psychiatrist to court.	The committee concluded that the issue of clarity of writing is best addressed in training. Physicians, social workers, and probation officers can all be trained that these forms are fillable and can be typed on a computer. In the Winter 2016 proposal, the committee revised the physician's statement form with a question regarding whether all relevant laboratory tests have been conducted and a request for a brief explanation if not. There is no requirement that the laboratory test results be attached the physician's form.
6.	Teresa Los Angeles, CA	N	Court approved JV PMA packet should go to DMH unit for review, data entry into CWS/CMS, and any necessary follow-up care with the caretaker, not to the CSW or public health nurse with this responsibility. We are not the experts on mental health issues and on Mental health medications. There is a co-located DMH unit housed at every DCFS office. They should be the one managing the PMA approved by court. However, each PMA packets that have been approved by court come to the CSW and public health nurses for review. CSWs are not trained in mental health stuffs. Also, currently each public health nurses are assigned 400-600 plus cases in each DCFS office to manage on medical and dental issues for the foster children. They also enter all the children well child exam report into the DCFS system and do follow-up care.	This is a county-specific issue and outside the rule making purview of the Judicial Council.

SPR17-15
Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
7.	dave neilsen, msw Senior Mental Health Policy Advocate California Alliance of Child and Family Services		The California Alliance of Child and Family Services, a membership association of over 130 community non-profit providers of services and supports to California's children, youth and families appreciated the opportunity to review and comment upon the proposed revisions to the JV-220 forms and Rules of the Court as related to the authorization of psychotropic medications. Our member agencies and the children served are dependent upon well-coordinated processes between the courts, placing agencies and parents of the children. As explained in the detailed Invitation to Comment overview, the Alliance is very supportive of these efforts to further clarify and streamline the processes. All attempts to reduce paperwork while preserving the necessary oversight of these medication requests will allow for more children and youth to access care in a timely manner. Eliminating confusion is always a welcome step when providers are serving children and youth from different counties, and the county processes have some minor differences. Thank You! The specific comments requested on Page 6 of the Invitation yielded these responses from our member agencies. • **Does the proposal appropriately address the stated purpose?** Yes the proposal is clear and specific.	No response required. No response required. No response required.

SPR17-15
Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			• **Should a form be created to document the court's findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional?** Yes, the court should adopt an order form and make it mandatory. The reasons being that many child cases have had multiple interventions within the child welfare and/or probation system. It is very difficult to ascertain if a parent still holds rights to authorize the use of psychotropic medications. If there were to be a mandatory standard order form, it would be clear and succinct as to the process the physician must follow in order to obtain court authorization for psychotropic medication(s).	The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form.
			• **Should rule 5.640(e) include legal guardians, in addition to parents as those the court can order authorized to approve or deny the administration of psychotropic medication?** Yes, currently legal guardians have been asked to take responsibility for the client and can sign for other aspects of medical care. There are times when a parent is not able to be involved or reached in the care of the child and therefore the court has ordered a legal guardian to assume these roles. As the legal guardian is able to authorize other aspects of care (general medical care, emergency care, and provide consent to	The committee has amended the rule and relevant portions of the forms to include legal guardians.

	Commentator	Position	Comment	Committee Response
			providers on behalf of the parent) it follows that the legal guardian can be given the responsibility of authorizing the use of psychotropic medication. However, there must be built in a notification process to the parent by the courts. This process would be in alignment with general treatment plan protocol and process. Additional Comments and Questions from Alliance members: • If an order is in place allowing for parental or legal guardian approval of psychotropic medication and the parent or legal guardian denies the authorization, what process does the prescriber take to obtain authorization/ notify the court if he/she has determined that the medication is necessary for the health of the youth? This process should be documented on the court order to the parent/legal guardian so that they know that if they have court authorization to approve or deny and they deny the request, the prescriber may move ahead accordingly with a court process. • If a parent/legal guardian authorizes the use of psychotropic medication does the prescriber still fax in the JV220 (and other such required forms) for the court to review and have on file? • On the court docket Rule 5.640. Psychotropic medications- Page 7 line 14 (2)- If there is an order for the parent or legal guardian to authorize psychotropic	This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for public comment. No. The JV-220 process is only required if the child is removed from the custody of his or her parent and that parent is not authorized by the court to approve or deny the administration of psychotropic medication. This is a comment that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the rule is again circulated for

SPR17-15
Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			medication it should be stated here who copies of that order will be given to (e.g., parent/legal guardian, SW, Probation Officer, group home(STRTP) etc). Again, on behalf of the California Alliance member agencies, we appreciate the continued focus upon improving these authorization protocols. If there are any further questions you may have of us, please do not hesitate to contact me directly at dneilsen@cacfs.org or 916.449.2273, extension 204.	public comment. No response required.
8.	Smit Chauhan MD MPH Child and Adolescent Psychiatrist Imperial County Behavioral Health Services		I agree to the suggested changes to Prescribers concerns, here are some additions: 1) For patients being seen in county clinics, there may be more than 1 MDs working and JV 220 is a time sensitive issue. So in absence of a MD, if the other MD is covering, or when a patient is transferred to different clinics based on their foster home placement, they are seen by more than 1 MDs. So I suggest the checkbox in form JV 220b, question 2b, needs to be taken out. Some of the MDs feel compelled to fill out JV 220a which is very extensive. 2) I work in a county clinic and we have extensive caseloads. The behavior health clinics do not take the responsibility to ensure that the patients on JV 220 are identified in a timely manner and are provided appointments. The onus should be on the county clinics to ensure that they	1) The committee concluded that the shortened physician's form should only be used if the request is to continue the same medication and maximum dosage and if it is the same prescribing physician. If it is a new physician the information in the longer physician's form is necessary for the court to provide its oversight function. 2) The committee agrees that there should be better tracking and oversight of children who are subject to the JV-220 process. Mandating that it is county behavioral health's responsibility to do so is beyond the rule making purview of the Judicial Council.

SPR17-15
Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			have a system in place to track the timeliness on JV 220s. We, the child psychiatrists are often in a useless battle over this for the last few years and if there is a directive from the state of California that it is county behavioral health's responsibility, the overall health outcomes of these foster kids would improve tremendously. 3) Other neighboring counties have mental health courts and have a Child Psychiatrist work with the judicial officers and Department of Social Services to review the JV 220s, answer some medical question to the judicial system which actually expedites the JV 220 process and prevent unnecessary delays. In our county, there are a lot of unnecessary delays in JV 220s which hamper out ability to prescribe medications to foster kids and some of them loses placements or their morbidity is worsened. Now there is definitely a conflict between Child Psychiatrists and Management here, but the patients are being affected. So, my suggestion is if there is a directive from state of California about requiring every county behavioral health agencies to have a Psychiatrist, preferably Child Psychiatrist work with the courts to review the JV 220s and expedite the process.	3) The committee concluded that while implementing a process where every county behavioral health agencies must have a Psychiatrist, preferably a Child Psychiatrist, work with the courts to review the JV 220s is a good suggestion, it is not mandated by statute and is beyond the purview of the Council's rule making authority. SB 238 was a comprehensive bill and added to the already mandated judicial training, training that addresses the authorization, uses, risks, benefits, assistance with self-administration, oversight and monitoring of psychotropic medications, trauma, and substance use disorder and mental health treatments, including how to access those treatments. Welf. & Inst. Code §§304.7(a)(3), 16501.4(d).
9.	Hillsides By; Amy Cousineau Division Chief, Campus Based Services	AM	We would like to see a return to just one form instead of the JV220 A and B- It is very simple to use the same form and indicate (as we did in the past) whether med was a continued med (C)	The committee has amended rule 5.640 and revised the instructions on JV-217-INFO to allow a physician to fill out either form JV-220(A) or JV-220(B).

SPR17-15
Juvenile Law: Psychotropic Medication (Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			or a new med (N). It was clear and concise, and much easier for the prescribing physician, reducing duplicate typing and filling in forms.	In the Winter 2016 cycle, to address the concerns from physicians and physician groups that form JV-220(A) was too long, the committee split it into two forms, one for initial requests and one for a continuing request by the same physician, to decrease the length of the form for renewal requests. The committee removed several items and created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This decreased the form from 6 to 4 pages.
			Otherwise, we want to highlight our agreement with the following: DR very happy with the idea that some sections will have check boxes instead of expecting a narrative from dr…so that's great! Its great to see that they are responding to the physicians who voiced their opinions that current system is way too long (cumbersome) with duplicate info required… Removing the duplicate sections and allowing DR to indicate that info is already in another section ("see #2" as example) is great! We are glad to see the committee did not feel it necessary to attach lab results as requested by PHN. We have all the labs results available and	No response required.

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	Commentator	Position	Comment	Committee Response
			having to attach them to faxes just makes it more cumbersome. Pg 10, section 5 – good to see in writing that the expectation is that SW, PO must provide us with current JV220 when they admit new client.	
10.	LA CO Dept. of Public Health By: Armida Enriquez, PHN	AM	This Public Health Nurse is recommending removal of the PHN Check Box on the JV224. The form instructs the social worker or probation officer to file form for any court hearings for psychotropic medications. The PHN does not prepare such reports. So, to request signature of PHN on this form is unnecessary and just adds confusion. Thank you for this consideration.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs, that this form must be filled out by a social worker or probation officer.
11.	Jessica Los Angeles, CA	AM	There is a DMH D-rate unit which the D-rate evaluator's responsibility is to call the caretaker on a monthly basis to monitor the child's medication status. Also, this D-rate evaluator ensures the child is taking the medication in order to continue paying the caretaker the D-rate specialized rate. Any psychotropic medication monitoring should be done by DMH staff with mental health training such as their psychologist, PCSW, and mental health nurses.	This is a county-specific issue and outside the rule making purview of the Judicial Council.
12.	Sutter County Social Services By: David Patrick Social Services Supervisor	AM	This is in regards to the JV-223. The top of the JV-223 reads “The Court read and considered” and lists the JV-220 and applicable documents which includes the JV-	As circulated for public comment, form JV-223 contains references to both JV-220(A) and JV-220(B) in item 3.

	Commentator	Position	Comment	Committee Response
			220(A) and JV-220(B). The form next states "The Court finds and orders:" and under section 3 references the JV-220(A). There are then check boxes following that allow the court to grant, grant with modifications, or deny the request. This order to grant, modify, or deny under section 3 is specific as to a JV-220(A). I do not see any language that references the JV-220(B) under section 3 or any other section for the court to grant, modify, or deny the request. My understanding is that a JV-220(B) would require the same orders by the Court as a JV-220(A) yet there is no where for the Court to designate its decision.	
13.	Evelyn P. Oronico, RN Public Health Nurse Health Care Program For Children In Foster Care Santa Fe Springs, CA		I am requesting to please remove / not include Public Health Nurse in the form JV 224. [page 1 #2 and in page 4]. For minors prescribed with psychotropic medications due to their emotional and behavioral problems, the best person to complete the form JV 224 are either the CSW or the Probation Officers because they know the child and the caregiver of that child more than anybody in the Child Welfare System. Other reasons are as follows: 1. Public Health Nurse's (PHN) role is Consultant to the Child Social Worker or Probation Officer. CSW and Probation	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer. 1. See response above.

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			Officers are the case managers. 2. The form JV 224 should be the responsibility of the Social Worker or Probation Officer since they are the primary case manager of the child/minor and will eliminate confusion if CSW or Probation officer is only in the form. 3. The CSW visits and sees the child regularly every month. PHN do joint home visits with Case carrying Social Worker as requested and if deemed necessary due to medical problems as according to PHN policies and guidelines. 4. Foster Care PHNs here in LA County, have an average of 300 children assigned v/s CSW's average of 25 cases. 5. PHNs attend Team Meetings to ensure the child's safety and optimum health. PHNs also attend training so that we can deliver the best care to the children assigned to us.	2. See response above. 3. See response above. 4. See response above. 5. See response above.
14.	Isidora Sison Public Health Nurse Healthcare Program for Children in Fostercare Pomona, CA		This is in regards to JV 224 County Report on the Psychotropic Medication form. May I request your office to please not include the "Public Health Nurse" in this form for the following reasons: 1) The Child Social Worker (CSW) and Probation Officer are the Case Manager to the child, whereas the Foster Care Public Health Nurse's (PHN) role is Consultant to the Child Social Worker or Probation Officer. 2) The CSW visits and sees the child regularly every month, whereas the PHN visits & sees the child when requested by the CSW for joint visit.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.

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	Commentator	Position	Comment	Committee Response
			Or at times, when the PHN deemed necessary for her/him to see the child due to medical condition, PHN would request the CSW to do joint visits, not on a regular basis. 3) Foster Care PHNs here in LA County, have an average of 300 children assigned to us to assess their medical and dental needs, coordinate and collaborate with CSW, Primary Provider, Specialty Clinics, Community Agencies, etc. We document all assessments and interventions we do for the child. We attend Team Meetings to ensure the child's safety and optimum health. PHNs also attend training so that we can deliver the best care to the children assigned to us. 4) CSW have an average of 27 caseload they supervised. 5) The form JV 224 states that the form should be completed by the Social Worker or Probation Officer and not the PHN. For the benefit of the child I believe that the best person to complete the form JV 224 are either the CSW or the Probation Officers because they know the child and the caregiver of that child more than anybody in the Child Welfare System. In order not to create confusion, the Social Worker and Probation Officer Title should only be in that form. Can you please remove the "Public Health Nurse" in JV 224?	
15.	Kathryn Kestler R.N., P.H.N. Nevada County Public Health		Please remove the check box and signature line for PHN on form JV 224. The instructions on	The committee has revised the form to remove the signature line for public health nurses. While this

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	Department Child Protective Services, and Probation Nurse		JV 217 indicate the form to be filled by a probation or social worker. The PHN signature line has created confusion with social workers continuing to ask PHNs to fill out the form and sign. The PHN role is to collaborate and support as a medical professional providing monitoring and oversight and not to be assigned duties that can be performed by a staff member that is not a medical professional.	form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
16.	Chidinma Ruth Eke, MSN/Ed, PHN, RN. Public Health Nurse Health Care Program for Children in Foster Care Van Nuys, CA		I am writing to request the removal of Public Health Nurses out of form JV/224. This is because, the social workers and probation officers are the primary case managers. They visit and assess these children on routine bases and have full knowledge and accurate information at all times. Public health nurses are consultants and do assessments and follow up as we are consulted or notified of issues. To be on the safe side social worker/probation officers are at closer contact and will be better complete this form. Please remove Public Health Nurses on the list in this form JV/224.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
17.	Virginia R. Luna, PHN Child Welfare Public Health Program Pomona, CA		This is in regards to JV 224 County Report on the Psychotropic Medication form. May I request your office to please not include the "Public Health Nurse" in this form in ITEM #2 for the following reasons: 1) The Child Social Worker (CSW) and Probation Officer are the Case Manager to the child, whereas the Foster Care Public Health Nurse's (PHN) role is Consultant to the Child Social Worker or Probation Officer.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.

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			2) The CSW visits and sees the child regularly every month, whereas the PHN visits & sees the child when requested by the CSW for joint visit. Or at times, when the PHN deemed necessary for her/him to see the child due to medical condition, PHN would request the CSW to do joint visits, not on a regular basis. 3) Foster Care PHNs here in LA County, have an average of 300 children assigned to us to assess their medical and dental needs, coordinate and collaborate with CSW, Primary Provider, Specialty Clinics, Community Agencies, etc. We document all assessments and interventions we do for the child. We attend Team Meetings to ensure the child's safety and optimum health. PHNs also attend training so that we can deliver the best care to the children assigned to us. 4) CSW have an average of 27 caseload they supervised. 5) The form JV 224 states that the form should be completed by the Social Worker or Probation Officer and not the PHN. For the benefit of the child I believe that the best person to complete the form JV 224 are either the CSW or the Probation Officers because they know the child, and the caregiver of that child more than anybody in the Child Welfare System. In order not to create confusion, the Social Worker and Probation Officer Title should only be in that form. Can you please remove the "Public Health Nurse" in JV 224?	

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	Commentator	Position	Comment	Committee Response
18.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	AM	• JV-219, item 24 has a typo (any say) • JV-220(A), item 16; JV-220(B), item 15: "in which the child is enrolled in or is recommended to participate": remove the second "in" • JV-220(A) and JV-220(B): Our medical partners asked for a place to record the method of administration (oral, IV, etc.) and expected side effects. They said that they were dinged in an audit for not documenting that information on the form. • JV-221: Be consistent throughout - semicolons or commas; provided with or just provided; blank form or blank copy of form; by depositing . . ., etc. Why are attorneys being served at the "last known" address?	The committee has revised the form to correct typographical and grammatical errors.
19.	Superior Court of California, County of Riverside By: Susan D. Ryan Chief Deputy of Legal Services	A	Address stated purpose? -*Yes.* Should a form be created to document the court's findings and orders when the court order that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional? -*Yes and it should be mandatory.* Should rule 5.640(e) include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the administration of psychotropic medication? -*Yes.*	No response required. The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form. The committee has amended the rule to include legal guardians.

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			Would the proposal provide cost savings? *-Possibly, if the need for additional hearings was eliminated.* What would the implementation requirements be for courts? *-Training of staff, informing bench officers, update desk procedures and codes in the case management system.* Would two months be sufficient time for implementation? *-No.*	No response required. No response required. All the forms and procedures discussed in this proposal were effective July 1, 2016. In implementing the revised forms, courts will incur standard reproduction costs.
20.	LA County Dept. of Public Health - CMS By: Alonso Machuca Public Health Nurse	N	Remove the public health nurse from the JV224 form. The PHN is a consultant and does not carry a case. The PHN provides recommendations to the Probation Officer or Social Worker.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
21.	DPH-Children Medical Services By: Sofia Public Health Nurse	N	Jv-224 includes Public Health Nurse under item #2. Social worker and Probation are case carrying worker. PHN is consultant and per child welfare guidelines secondary to the case. Phn will review and recommend as appropriate after approval or denial. Phn can continue to assist in advocating for the youth.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
22.	DPH-CMS By: Esther Feng PHN	N	Remove Public Health Nurse from JV224 form, PHN is consultant, not a case manager.	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule

	Commentator	Position	Comment	Committee Response
				5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
23.	Sofia Lujano, PHN Health Care for Children in Foster Care		These are my thoughts in serving this vulnerable population. We will not be able to serve the children (minor or youth) well-being, if we continue to believe that the public health nurse can complete this task alone. In our role as public Health nurse we depend on the team and the team depends on us. I kindly ask you to consider that the interdisciplinary team play their role; • JV-224 includes Public Health Nurse under item #2. This item should not be included in this form. • In child welfare, the Social worker and Probation role includes being the primary case carrying worker. The PHN is a consultant and per child welfare guidelines PHN role is assigned as secondary to the case. Phn will review and recommend as appropriate after approval or denial JV-220. Phn can continue to assist in advocating for the youth. This process has worked, what has not worked is that we sometimes do not have the man power to meet the needs of these children. Please consider that given the circumstance all duties cannot be given to the nurse otherwise we are truly not helping the children. Jv-224 includes Public Health Nurse under item	The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.

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			#2. Social worker and Probation are case carrying worker. PHN is consultant and per child welfare guidelines secondary to the case. Phn will review and recommend as appropriate after approval or denial. Phn can continue to assist in advocating for the youth.	
24.	Orange County Bar Association By: Michael L. Baroni, President	AM	The rule modifications and form changes are well-taken, and streamline the fairly burdensome forms that treating physicians must now complete to authorize such medication. As for the specific questions presented: an additional form for the required findings authorizing/denying parental/guardian authorization is not necessary. Such a requirement would add yet another layer of increasingly complex paperwork in an aspect of dependency proceedings already overflowing with such required forms, and such a form is unnecessary given that the court would be presumed to be acting under its proper statutory authority. In addition, rule 5.640(e) should indeed be changed to include legal guardians as those eligible to receive court authorization to approve or deny psychotropic medication, especially considering that rule 5.640(a) as proposed would reference parents and guardians as so eligible.	No response required. The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form. Of the commentators who answered this specific question, only one was opposed to the creation of this form. By filling out one simple form, the entire JV-220 process, including multiple lengthy forms, would not be necessary. The committee has amended the rule to include legal guardians.
25.	**Mary Ader,** Deputy Director, Legislative Affairs, County Behavioral Health Directors Association of		We appreciate the efforts to enhance communication between all parties and the juvenile court with regard to the JV-220	No response required.

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	California (CBHDA) **Chris Castrillo,** Legislative Advocate, California Academy of Child & Adolescent Psychiatry **Randall Hagar,** Director of Governmental Relations, California Psychiatric Association		procedures that govern the prescribing of psychotropic medication to youth in foster care. We hope that revisions will achieve a better balance in providing useful information to the court and other stakeholders and reduce the burden on mental health providers. The goal of the JV-220 procedures is to reduce or eliminate the suffering of children due to mental illness. We continue to support this goal and strive to implement procedures accordingly. The phrase that "concerns remain that psychotropic medication is overused" despite previous efforts to curb usage, is included in the introduction of the notice for solicitation of comments (page 2). We request that the source of the data for this extremely broad and significant statement be included. The proposed streamlining of physician forms on the top of page 3 appears to address some of the concerns related to time burdens for physicians with the current forms. However, several concerns remain: • Form JV-220(A): Item #7, #8 and #9a are appropriate to be combined together as one description of a child's overall mental health which could include personal health information, symptoms and response to medications, all in narrative form. Detail could be drawn from clinical progress notes to reduce the time for completion of the form. • Form JV-220(A), Item #8 requires	Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items to ensure they were answered. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist,

	Commentator	Position	Comment	Committee Response
			description of symptoms and duration. This seems appropriate. However, asking for a child's treatment plan in this context seems excessive.	treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. If the physician filling out the form believes he or she has already answered a question, he or she can write, "See answer to question __."
			• Form JV-220(A): Item #9b: "Past treatment efforts" can be difficult to document or obtain from children and caregivers without the specifics contained in a medical record or the Health and Education Passport. For example, it is unlikely that a 5 year old child will recall accurately how a medication affected his/her behavior ten years later. Seldom are past caregivers available to comment. Item #11c may also be problematic for same reasons. Information provided with respect to #9a is much more available and reliable but may also be enhanced when prior medical documentation is available.	Both of these items have the option for the physician to check a box indicating "I don't know."
			• Form JV-220(A), Item #10: With regard to nonpharmacological treatment alternatives, the form should also require specification of treatment alternatives the physician would like to see in place.	The committee has amended this item on the form to include a question about what treatment alternatives should be offered.
			• Form JV-220(A), Item #21 and Item #19 could be consolidated in some fashion. It would be sensible to discuss issues related to continuing a medication "in the long	The committee has amended the form to renumber these two items sequentially.

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			term", titrating medication and discontinuing medication in a single section.	
			• Form JV-220(B): The requirement is to complete this form "only" if both boxes are checked. If the physician who completes JV-220(B) did not complete JV-220(A) previously, it is doubtful that the JV-220(B) physician will have much of note to add to a new JV-220(A) form. Deleting this requirement would better align with streamlining the JV-220 process.	In the Winter 2016 cycle, the committee created a new form *Prescribing Physician's Statement, Request to Continue—Attachment* (form JV-220(B)) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. Allowing a physician who has not previously prescribed the medication to fill out the shortened form is a suggestion that is likely to have varying opinions and would need to circulate for public comment. The committee will discuss this comment if the rule is again circulated for public comment.
			• Form JV-220(A): We recommend that a place for a diagnosis is included on the form.	As circulated for public comment, the form requests the diagnoses from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* at item 12.
			• Form JV-220(B), Item #7b. Please see comment on JV-220(A) #9.	Both of these items have the option for the physician to check a box indicating "I don't know."
			• Form JV-220(B), Item #17. Consolidation of #17 and #7 is recommended since both potentially include discussion of what may be extraordinary circumstances for the proposed medication regimen.	The committee concluded that these should remain as separate items. One asks about the child's response to the current medication and the other asks for information about the future, prescribed medication.
			In general, the fewer forms required, the more	No response required.

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			streamlined the JV-220 process will become, thereby improving the quality of and access to care for foster youth. In regard to including the "legal guardian" (and Rule 5.640) as one who has authority for "informed consent", it would be advisable that, if there is a legal precedent for "legal guardians" to give informed consent for other health decisions, then such authority be provided to them in this instance. This would streamline JV 220 related processes. In regard to the discussion identified on page 5 related to serving children who cross county boundaries, a recently enacted law, AB 1299 (Ridley-Thomas), Chapter 603, Statutes of 2016, includes requirements to resolve the issues related to these same children. It may be prudent for the Judicial Council to urge county agencies that, insofar as the JV-220 procedures are concerned, decisions align with the spirit of AB 1299 to the degree possible. We have concerns with how reasonable the seven day codified completion time is, considering how many issues must be addressed via the JV-220 process.	The committee has amended the rule and forms to include legal guardians. No response required. The requirement that within seven court days from receipt of a request the judicial officer shall either approve or deny the request is contained in statute. (Welf & Inst. Code §§ 369.5, 739.5). It is beyond the Judicial Council's rulemaking authority to change this completion time.
26.	CDSS By: Lori Fuller Permanency Policy Bureau Chief	AM	1. Form JV-222 (Input on Application for Psych Med) states "Mandatory Form" whereas the JV-217 INFO indicates the form as an "Optional Form". Also, the individuals listed in (2) on the	1. The committee has revised the form to indicate it is an Optional Form.

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			JV-222 are not the same as those enumerated in the Rule of Court 5.640(c)(3), which says the JV-222 may be filed by a "parent or guardian, his or her attorney of record, a child's attorney of record, a child's CAPTA guardian ad litem, or the child's Indian tribe." Furthermore, Rule of Court 5.640(c)(2) indicates the child, caregiver, parents, tribe, and CASA may provide input through the JV-218, JV-219, or by letter, talking to the judge at a court hearing, through the social worker, probation officer, attorney, or CASA, or for CASA's, via their court report, so these individuals are NOT required to use any judicial council form. 2. Form JV-224 (County Report on Psych Meds) reads that social workers or probation officers must file this form, however, the form allows PHNs and "other county staff" to complete the form. Perhaps instructions need to be clarified to state that PHN or other staff may complete the form but it must be filed by SW or PO. 3. Form JV-220 On page 2 and the corresponding Rule 5.640(c)(6) have been re-worded to state that an applicant who is not the Social Worker or Probation Officer does not need to fill out items 5-13 of the form and only need to complete and sign page one. However, the signature line on page 1 of the form, currently reads "child welfare staff" whereas page two reads "social workers". It would be beneficial that language remain consistent. The instructions underneath the signature line state	2. The committee has revised the form to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer. 3. The committee has revised the form to indicate that the social worker or probation officer must complete all items of the form. The committee is unaware if staff other than the child's assigned social worker or probation officer is filling out the first page of this form, therefor, changing the wording of who must sign page one is possible to have varying opinions and would need to circulate for public comment. The committee will discuss this comment when the form is again circulated for public comment.

	Commentator	Position	Comment	Committee Response
			child welfare staff and Probation officers need to sign page one and complete items 5- 13. However, according to Rule 5.640(c)(6), it states "if the applicant is the social worker or probation officer, he/she must complete all items on form JV-220. The signature line should be re-worded to state SW and PO must sign above and complete items 1-13 OR delete this language as specific instructions are on page two. 4. Delegation of Authority for parental consent in Rule 5.640(e). The proposed changes in the proposed Rule 5.640(b)(1) –(2) includes "parent or guardian", but in 5.640(e) only parents are mentioned, not guardians, and the JV-216 only includes findings and orders for a parent, not a guardian. Same thing with the second bullet point of the JV-217 INFO, only mentions child's parents, not guardians. These need to be consistent. 5. Short-term Residential Therapeutic Programs On page 8 of the proposed Rule of court 5.640(c)(9)(A), the rule notes that if a child is living in a group home, notice to the caregiver must be by notice to the group home administrator. It is suggested that STRTP's be included: "…if a child is living in a group home or short-term residential therapeutic program, notice to the caregiver must be by notice to the group home or short-term residential therapeutic program administrator. Also on page 10, in 5.640(h)(4) "If the child resides in a group home or short-term residential therapeutic program, a	4. The committee has amended the rule and forms to consistently include legal guardians. 5. The committee has amended the rule and form with references to "short-term residential therapeutic program" consistent with this comment.

	Commentator	Position	Comment	Committee Response
			copy of the order….must be provided to the group home or short-term residential therapeutic program administrator….” Again on page 1 of the JV-220 under (1) Information about where the child lives. STRTC should be updated to STRTP.	
27.	State Bar of California By: Sharon Djemal Chair, Standing Committee on the Delivery of Legal Services	A	• Does the proposal appropriately address the stated purpose? *Yes. These are clean up changes that will further serve to streamline and reduce the time needed for the required recommendations to get to the court* • Should a form be created to document the court’s findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional? *Yes, a form should be created so that the parents’ views are considered and directions to the parents are clear. The form should be a mandatory form.* • Should rule 5.640(e) include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the administration of psychotropic medication? *Yes. Many low-income children have guardians and recognizing them can help shorten the process.* Low-income children with mental health challenges are often remanded into custody in	No response required. The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form. The committee has amended the rule and forms to consistently include legal guardians.

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

	Commentator	Position	Comment	Committee Response
			order for all physicians to see the child and make their recommendations. Anything that can help the physicians do their jobs and get their recommendations to the court is beneficial. Also, the proposal will aid the understanding of the process for practitioners, including pro bono attorneys, who might not practice full time in this area.	
28.	County of San Diego Health & Human Services Agency Children, Youth and Families, Behavioral Health Services By: Laura Vleugels, MD Supervising Child and Adolescent Psychiatrist		Historically, there have been multiple requests to the County for the forms to be available on-line. Prescribers desire the ability to save the document so that it could be edited at a later time for subsequent submissions. There have also been multiple requests for a process by which the forms could be submitted electronically. There have been questions as to whether or not the JV-220 with the JV-223 that has been signed off by the Court could serve as informed consent, or not. The Department of Health Care Services (DHCS) noted in an audit that the JV-220 forms are missing specific elements and thus, to date, the JV-220 forms do NOT suffice as informed consent. This leads to challenges for our providers as they are unsure who should sign the informed Consent documents used for non-dependent youth. The missing elements identified by DHCS include 1) route of administration (by mouth, injection, etc.) and 2) a list of potential side effects of prescribed medications. If it is the Judicial Council's intent that this process serve as informed consent for dependent youth, please consider adding the	The forms are available online on the Judicial Council's website. If an agency would like to save the document, Word versions of the forms are available upon request and signing a usage agreement. Needs F & J discussion—should way administered be added to chart at item 22 on form JV-220(A) and item 16 of form JV-220(B), and should prescribing physician list potential side effects rather than checking the box that the information was provided?

	Commentator	Position	Comment	Committee Response
			elements identified by DHCS.	
			The County of San Diego has initiated a brief work study to evaluate the length of time that elapses between when a JV-220 form is submitted by a prescriber and when the JV-223 is received by that prescriber. Our focus has been to evaluate this duration for youth in group homes and in juvenile detention. Our primary concerns are delayed access to care for children and youth who are suffering from severe psychiatric symptoms and who have functional impairment. We have found and are concerned that the JV-22- process is taking an extreme amount of time (usually more than 4 weeks). A child or youth is left waiting for nearly a month while the process takes place for relief from symptoms after finally being evaluated by a psychiatrist.	The committee is aware that this process is often taking too long. Hopefully the work study being conducted in this county can identify where these delays are occurring.
	Child and Adolescent Psychiatrist at a local FQHC		• We all agree at FHC with the suggested simplifications. • I agree with changes below to the JV-220 and feel that would appropriately address my concerns as a provider. • I also feel that it would be helpful to document if the courts find a parent can make decisions regarding meds and should be mandatory as otherwise not sure if this would always be done. Have the parents be able to sign consents and makes decisions for medications, would help speed up the process for starting and changing medications vs waiting several wks for a JV-220 to go though.	No response required. No response required. The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form.

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

	Commentator	Position	Comment	Committee Response
	Child and Adolescent Psychiatrist at an Outpatient Clinic and at our Juvenile Detention Facility		• I also feel that it should include legal guardians as in normal situations they would be able to make those decisions and often times I am dealing with legal guardians vs the biological parents. • Very glad for the clarification about only needing to do JV-220 (a or b) • Would be good to know local court rules or where to find them regarding notification. I could not locate this online and suspect that it is not really spelled out anywhere, at least in our notification. Maybe I just don't know where to look. • Regarding the JV-220A – they stated they wanted to make it simpler. It is the same form with one new section (9b), another previous questions subsumed and another moved in regards to the order. This is still highly repetitive, reduplicative and pointless to provide to a judge who will not really be able to make an informed decision. It will take even more time that previous. I understand that judicial oversight is deemed to be important but this is clearly just about trying to limit access as this will just dramatically increase the time it take to care for a foster kid as opposed to a non-foster kid. Prediction: Even fewer providers will do it and more will simply refuse to see this population. I am not sure that this is even a medical billable activity (although I could be wrong on this last point). Question 7 is not necessary. Question 11b would be included in the chart in 11c and so is pointless. The diagnosis should be	The committee has amended the rule to include legal guardians. No response required. As circulated for public comment, the rule was reorganized to make it clear that local county practice and local rules of court determine the procedures for the provision of notice. Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items to ensure they were answered. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional. If the physician filling out the form believes he or she has already answered a question, he or she can write, "See answer to question __."

	Commentator	Position	Comment	Committee Response
			subsumed under symptoms (one question) or vice versa, Question 16 is a repetition of question 10. Question 18 is pointless. • Regarding the JV-220B – I can't tell anything else different except the addition of the diagnosis.	No response required.
	Child and Adolescent Psychiatrist who evaluates many CWS involved youth		• What are they looking for in response to "Child's overall mental health" (Question #7)?	SB 238 amended Welfare and Instituiions Code sections 369.5 and 739.5 to require that the rule of court and forms ensure that "information regarding the child's overall mental health assessment and treatment plan is provided to the court".
29.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano, Management Analyst Management Research Unit	AM	**References to Physician's Request to Continue Medication - Attachment (form JV-220(B))** The issue of missing information on the JV-223 regarding the reference to the JV-220(B) pages was raised by judicial officers in Los Angeles County. The revisions address this issue and will provide clarification for the courts and staff as to the pages that will need to be copied.	No response required.
			Other form changes The addition of parents to the description in the Guide to Psychotropic Medication Forms (form JV-217-INFO) is helpful, especially for delinquency cases, where parents are more likely to be involved.	No response required.
			Including the list of specific documents and forms that must be provided to parties on the Proof of Notice of Application (form JV-221) will help staff in providing proper notice given	No response required.

	Commentator	Position	Comment	Committee Response
			that the documents and forms provided with the notice letter will vary depending on the party. **Rule 5.640** Section (e) adds the requirement to use form JV-216 which will be key in tracking the dependents and wards who are taking psychotropic medication that has been authorized by parent or legal guardian consent rather than the court. The language in Rule 5.640 (h) Copy of order to caregiver and the revisions to the JV-223 will minimize confusion regarding the reference to provide copies of specific pages from the JV-220(A) or (B) for the caregiver. **Suggested Modifications:** • Form JV-216 - Each section that mentions "parent" should include "legal guardian" as well. (Items 1, 2, and 3) • Form JV-217-INFO - Optional Forms - add in "legal guardian", "The parent, legal guardian, child, caregiver,…" Item 8 - Add "legal guardian" to the first and second paragraphs after "parent." • Form JV-221 - This form should include information as to which parties should receive a blank copy of a JV form or information on how to obtain the form that matches Rule 5.640. This would have a positive impact on time and cost for courts like Los Angeles that are providing the notices. • Form JV-222 - Item 2 - Include a box for	No response required. No response required. The committee has revised the form to include references to legal guardian. The committee has revised the form to include references to legal guardian. The committee has revised this form to clarify when information on how to obtain a copy of the form is permitted by rule 5.640 The committee has revised this form to include a box for legal guardian.

	Commentator	Position	Comment	Committee Response
			"legal guardian".	
			Request for Specific Comments:	
			Does the proposal appropriately address the stated purpose? *Yes*	No response required.
			Should a form be created to document the court's findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional? *Yes, a form to document the court's findings and order that authorizes parents to approve or deny psychotropic medication will help to minimize confusion as to when the agencies need to seek future approval from the court or a parent. The issue comes up regularly in Los Angeles and we currently do not have a paper trail in the court file. The form should be mandatory given that the court is required to make findings and the issue is of statewide concern. In addition, it will facilitate research and data tracking.*	The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form.
			Should rule 5.640(e) include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the administration of psychotropic medication? *Yes, legal guardians should be included. Often, the caregivers are not parents, but may involve legal guardians such as grandparents. This will*	The committee has amended the rule, and relevant portions of the forms, to include legal guardians.

	Commentator	Position	Comment	Committee Response
			minimize confusion as to whether the legal guardian is able to authorize the administration of psychotropic medications. Would the proposal provide cost savings? If so, please quantify. *It may require additional resources for implementation.* 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? *There will be a need for training and revision of procedures. The training and revision should be minimal.* 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? *Los Angeles County has a regular committee and dedicated staff to facilitate the implementation of such proposed changes. How well the proposal works will depend on the resources available to each jurisdiction.*	No response required. No response required. No response required. No response required.
30.	The State Bar of California By: Saul Bercovitch | Assistant General		SUPPORT WITH COMMENTS	

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	Commentator	Position	Comment	Committee Response
	Counsel Office of General Counsel		The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the proposed changes, with the following comments. FLEXCOM offers the following responses to specific questions posed in the Invitation to Comment. • Should a form be created to document the court's findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional? Having a form that the court can use when delegating decisionmaking authority back to the parent would be beneficial, as it would keep parties from having to scour through minute orders to confirm what happened. The proposed form includes the required findings a court must make in conjunction with such a delegation. FLEXCOM recommends the form, and the applicable subdivision of the rule, be amended in two ways. The first would call for a time period in which the delegation is effective. The second is to give the court the option of identifying the facts in support of the aforementioned findings. • Should rule 5.640(e) include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the	The committee is recommending that the Judicial Council adopt *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) as a mandatory form. For F & J discussion

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	Commentator	Position	Comment	Committee Response
			administration of psychotropic medication FLEXCOM opposes such a delegation. The reasons for which a court should have authority to delegate to a noncustodial parent do not uniformly apply with the same force to a noncustodial legal guardian. On a somewhat related note, there is some ambiguity as to whether a court must authorize the administration of medication if the child is in the care of a legal guardian. FLEXCOM recommends that Rule 5.640 be amended to clarify that a guardian with custody of a dependent or ward has the exclusive authority to authorize medication.	 The court can only authorize a parent to approve or deny the administration of psychotropic medication upon finding that the parent poses no danger to the child and has the capacity to authorize psychotropic medication. Based on all other comments received on the issue of legal guardians, the committee has amended the rule and relevant portions of the forms to include legal guardians. The committee has amended rule 5.640(e) to include legal guardians. The rule only applies if a child has been removed from the custody of his or her parent or legal guardian.
31.	Foster Care By: Rosie Louu	N	1. The PMA is too many pages, provider cannot complete all the pages.	1. Most of the new questions on form JV-220(A) are mandated by SB 238 or already existed on the form in a series of questions that were separated into distinct items to ensure they were answered. The committee added two other questions that it believed were critical. The new questions on the proposed form that are not required by SB 238 are: "How long have you been treating the child?" and "In what capacity have you been treating the child (e.g. treating psychiatrist, treating pediatrician)?" The committee also made the medication administration schedule, which is currently on the form, mandatory rather than optional.

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

	Commentator	Position	Comment	Committee Response
				If the physician filling out the form believes he or she has already answered a question, he or she can write, "See answer to question __."
			2. Sufficiency service time to patient not to the paper work.	2. See response above.
			3. PMA could be one of the task management by professional of Mental Health Department.	3. Sections 369.5 and 739.5 require that the court authorization of psychotropic medication must be based on a request from a physician.
			4. A foster child's case management is by social worker. Social worker made the overall care of plan for the child. Social worker has complete information about the child.	4. The committee has revised the form JV-224 to remove the signature line for public health nurses. While this form did not circulate for comment during this spring cycle, it generated many comments. Rule 5.640 requires, and form JV-217-INFO instructs that this form must be filled out by a social worker or probation officer.
			5. PHN name on the PMA is not proper. PHN would not have overall information about the child.	5. See response above,

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Indian Child Welfare Act: Tribal Access to Court Records

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.552

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

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Dennis M. Perluss, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
July 11, 2017

Contact
Ann Gilmour, 415-865-4207
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Executive Summary

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum jointly recommend amending the rule regarding the confidentiality of juvenile court records to conform to the current statutory language in the Welfare and Institutions Code. These amendments will eliminate discrepancies between the rule and statutory requirements that practitioners and court staff advised were causing confusion.

Recommendation

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2018, amend rule 5.552 of the California Rules of Court as follows:

1. Delete subdivision (b) of the rule, which is duplicative of section 827(a) of the Welfare and Institutions Code. This deletion also addresses the inconsistency between the rule and section 827(f);

2. Reletter and amend subdivision (c) of the rule in light of the removal of subdivision (b);

3. Change references to "juvenile court records" in subdivision (c) to "juvenile case files" to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c), which inadvertently remained unchanged;

4. Revise and reletter subdivision (d)(1)(C) of the rule to require notice to a child only when the child is 10 years of age or older, in conformity with sections 290.1 through 295;

5. Revise and reletter subdivision (f) of the rule to remove language that is duplicative of section 828;

6. Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2); and

7. Revise and reletter subdivision (h) in light of the deletion of other subdivisions and to remove reference to Government Code section 13968 which was repealed.

The text of the proposed amendments to the rule is attached at pages 5–8.

Previous Council Action

Rule 5.552 of the California Rules of Court was originally adopted as rule 1423 effective July 1, 1992, and has previously been amended effective January 1, 1994, July 1, 1995, July 1, 1997, January 1, 2001, January 1, 2004, January 1, 2007, and January 1, 2009. Effective January 1, 2015, the Judicial Council sponsored legislation—Assembly Bill 1618 (Stats. 2014, ch. 57, § 1)—that added subdivision (f) to section 827 of the Welfare and Institutions Code to clarify the right of an Indian child's tribe to have access to the juvenile case file of a case involving that child.[1] At that time, no changes were made to rule 5.552, which implements this section.

Rationale for Recommendation

The proposed revisions to rule 5.552 are recommended to conform the rule to the statutory language and avoid confusion, which has resulted in unnecessary court motions and costs of service.

Contrary to section 827 of the Welfare and Institutions Code as amended, rule 5.552 continues to require that representatives of an Indian child's tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion and results in

[1] That proposal is available at http://www.courts.ca.gov/documents/LEG13-03.pdf.

unnecessary motions. In addition, court staff have noted that rule 5.552(d)(1)(C) requires that notice of a petition for disclosure be served on "[t]he child," while the relevant statutes stipulate that notice be served on a child 10 years of age or older.[2] Commenters noted that serving notice on an infant or young child makes no sense and is a waste of resources.

In addition to these two inconsistencies, the Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum also recommend deleting language in the rule that is duplicative of statutory language. This follows the request of the Judicial Council's Rules and Projects Committee that the Family and Juvenile Law Advisory Committee review rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate. Since repetitions of statutory text in the rules of court necessitate that they be amended whenever the underlying statutes are amended, deleting the duplicative language will reduce the frequency of rule amendments.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment to the standard mailing list for family and juvenile law proposals during the spring 2017 invitation-to-comment cycle from February 27 to April 28. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues.

Eight comments were received during the comment period. Five commenters supported the proposal, two supported it if amended, and one did not indicate whether he or she supported the proposal. The bulk of the substantive comments centered on the issue of whether the language in the rule that duplicates statutory language should be retained. Of the eight commenters, three indicated that the duplicative language should be stripped, three indicated that it should be retained, and two took no position on this question.

The commenters who indicated that the duplicative language should be taken out were California Indian Legal Services, the Orange County Bar Association, and the Superior Court of San Diego County. Those who indicated that the duplicative language should be retained were the State Bar of California's Standing Committee on the Delivery of Legal Services, the Superior Court of Los Angeles County, and the Superior Court of Riverside County.

The commenters who urged that the language be retained argued that it is useful to litigants, particularly self-represented litigants, who may not have the access or capacity to seek out the statutory language and determine which category they fit in. Having the language in the rule is of assistance to them.

[2] See Welf. & Inst. Code, §§ 290.1–295.

In light of the comments, the Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum considered whether those portions of the rule that duplicate statutory language should be retained. While litigants and practitioners may prefer to have the statutory language repeated in the rule for ease of reference, ultimately the committee and forum decided that there was insufficient basis to outweigh the general policy that duplication of statutory language in the rules of court should be avoided. Such duplication risks creating uncertainty and confusion when there are minor inconsistencies in language, or where there is a lag time between statutory changes and rule revisions.

Alternatives Considered

The committee and forum considered taking no action at this time. However, as discussed above, rule 5.552 as currently drafted is inconsistent with statutory law. The inconsistency has caused confusion and results in unnecessary court motions and notices, which is an inefficient use of judicial and party resources. The committee and forum also considered whether to leave in the language that is duplicative of statutory law, as some commentators have observed that it helps explain and clarify the statutory requirements that are otherwise confusing. The committee and forum seek comments on this option.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs or operational impacts are anticipated. The rule revisions conform the rule to the statutory language. It is expected that this will reduce confusion and unnecessary court applications.

Attachments and Links

1. Cal. Rules of Court, rule 5.552, at pages 5–8
2. Chart of comments, at pages 9–16

Rule 5.552 of the California Rules of Court is amended, effective January 1, 2018, to read:

Rule 5.552. Confidentiality of records (§§ 827, 828)

(a) * * *

~~**(b) General provisions**~~

~~(1) The following individuals and entities may inspect, receive, and copy the juvenile case file without an order of the juvenile court:~~

~~(A) Court personnel;~~

~~(B) The district attorney, a city attorney, or a city prosecutor authorized to prosecute criminal or juvenile cases under the law;~~

~~(C) The child who is the subject of the proceeding;~~

~~(D) The child's parents;~~

~~(E) The child's guardians;~~

~~(F) The attorneys for the parties, including any trial court or appellate attorney representing a party in the juvenile proceeding or related appellate proceeding;~~

~~(G) Judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;~~

~~(H) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action;~~

~~(I) Members of child protective agencies as defined in Penal Code section 11165.9; and~~

~~(J) The California Department of Social Services in order to carry out its duty to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out- of-state placements.~~

~~(2) The following individuals and entities may inspect the juvenile case file without a court order and may receive a copy of the juvenile case file pursuant to a court order:~~

~~(A) All persons and entities listed in Welfare and Institutions Code sections 827 and 828 who are not listed in (b)(1) above; and~~

~~(B) An Indian child's tribal representative if the tribe has intervened in the child's case.~~

~~(3) Authorization for any other person or entity to inspect, obtain, or copy juvenile case files may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court.~~

~~(4) Juvenile case files may not be obtained or inspected by civil or criminal subpoena.~~

~~(5) When a petition is sustained for any offense listed in section 676, the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition that are contained in the juvenile case file must be available for public inspection, unless the court has prohibited disclosure of those records under that section.~~

~~(c)~~(b) Petition

Juvenile case files may only be obtained or inspected in accordance with sections 827 and 828. They may not be obtained or inspected by civil or criminal subpoena. With the exception of those persons permitted to inspect juvenile ~~court records~~ case files without court authorization under sections 827 and 828, every person or agency seeking to inspect or obtain juvenile ~~court records~~ case files must petition the court for authorization using ~~*Petition*~~ *Request for Disclosure of Juvenile Case File* (form JV-570).

(1) The specific ~~records~~ files sought must be identified based on knowledge, information, and belief that such ~~records~~ files exist and are relevant to the purpose for which they are being sought.

(2) Petitioner must describe in detail the reasons the ~~records~~ files are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the ~~records~~ files.

~~(d)~~(c) Notice of petition for disclosure

(1) * * *

(A)–(B) * * *

(C) The child if the child is 10 years of age or older;

(D)–(I) * * *

(2) * * *

(3) If the petitioner does not know the identity or address of any of the parties in ~~(d)~~(c)(1) above, the clerk must:

(A)–(B) * * *

(4) * * *

~~(e)~~(d) Procedure

(1) * * *

(2) If petitioner shows good cause, the court may set a hearing. The clerk must notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

(3)–(8) * * *

~~(f)~~(e) Reports of law enforcement agencies (§ 828)

~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45, information gathered and retained by a law enforcement agency regarding the taking of a child into custody may be disclosed without court authorization to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for the purposes of official disposition of a case.~~

~~(1) If the law enforcement agency retaining the report is notified under section 1155 that the child has escaped from a secure detention facility, the agency must release the name of the child and any descriptive information on specific request by any agency or individual whose attempts to apprehend the child will be assisted by the information requested.~~

~~(2) In the absence of a specific request, the law enforcement agency retaining the report may release information about a child reported to have escaped from a secure detention facility if the agency determines that the information is necessary to assist in the apprehension of the child or the protection of members of the public from substantial physical harm.~~

~~(3)~~ Except as authorized under section 828, all others seeking to inspect or obtain ~~such reports~~ information gathered and retained by a law enforcement agency regarding the taking of a child into custody must petition the juvenile court for authorization~~,~~ using *Petition to Obtain Report of Law Enforcement Agency* (form JV-575).

~~**(g) School notification**~~

~~When a child enrolled in a public school is found to have committed one of the offenses described in section 827(b)(2), the court must provide written notice of the offense and the disposition to the superintendent of the school district within seven days. The superintendent must disseminate information to the principal of the school the child attends, and the principal may disseminate information to any teacher or administrator for the purposes of the rehabilitation of the child or the protection of other students and staff.~~

~~(h)~~(f) Other applicable statutes

Under no circumstances must this rule or any section of it be interpreted to permit access to or release of records protected under any other federal or state law, including Penal Code section 11165 et seq., except as provided in those statutes, or to limit access to or release of records permitted under any other federal or state statute~~, including Government Code section 13968~~.

SPR17-16
Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Indian Legal Services, By Jedd Parr, Directing Attorney Sacramento	A	California Indian Legal Services agrees with the proposal to delete subsection (b) from Rule 5.552, which would achieve the stated purpose of eliminating the conflict between that subsection and WIC 827(f). We note that the Judicial Council has invited comment on whether practitioners prefer subsection (b) to be retained, in light of the complexity of WIC 827. If subsection (b) is indeed retained, it should be modified to comply with WIC 827(f), by stating that in cases where a child is a member of or eligible for membership in a tribe, persons serving the tribe, reservation, or tribal court in capacities similar to those listed at WIC 827(f) are entitled to inspect or receive a copy of the case file without a court order.	No response required. The committee and forum decided to remove the language that was duplicative of statute. As noted, this eliminated the conflict with WIC 827(f).
2.	Executive Committee of the Family Law Section of the State Bar of California By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California	A	The Executive Committee of the Family Law Section supports this rule change as proposed.	No response required.
3.	Orange County Bar Association, By Michael L. Baroni, President Newport Beach	A	Does the rule appropriately address the stated issue? Yes Given the complexity of Welfare and Institutions Code Section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and	No Response required. The committee and forum decided not to retain the statutory language.

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

	Commentator	Position	Comment	Committee Response
			(g) even if it is duplicative of the statutory language? No. The existing language contains conflicts and different terms that are potentially confusing. The rule should be consistent throughout subdivisions, even if the language is duplicative.	
4.	State Bar of California, Standing Committee on the Delivery of Legal Services By Sharon Djemal, Chair,.	A	**Specific Comments** • <u>Does the proposal appropriately address the stated purpose?</u> Yes, the proposal appropriately addresses the stated purpose with respect to when a child that is the subject of the juvenile case file must be served with notice. However, removal of language that is duplicative of Welfare and Institutions Code section 827 creates confusion and causes potential additional barriers for self-represented litigants. When a rule is not clear on its face as to whom it applies, then it creates confusion. If the rule states that juvenile case files may only be obtained or inspected in accordance with sections 827 and 828, this would require everyone who is reading the rule to then look up those code sections to determine if they meet the statutory requirements to have access to the case files, whether they have the right to access the case files without a court order, or whether a court order is required before they may have access. For self-represented litigants (either people who	The committee and forum considered whether the statutory language should be retained in light of this comment and those of other commentators. In the end, the committee and forum concluded that the continuing risk of confusion caused by duplicating statutory language that is subject to change was more problematic than the concerns expressed by the commentator. The committee and forum did not feel there was sufficient basis to depart from the general policy of avoiding duplicating statutory language in the rules.

	Commentator	Position	Comment	Committee Response
			do not have access to a legal aid attorney, or people who choose to self-represent), removal of the language may create an unintended barrier if they do not have the ability to access the code sections. Self-represented litigants residing in rural areas may have the ability to travel to their local court to read the rules of court, but they may not have law libraries or even internet access to look up the code sections referenced in the rules of court. To prevent confusion for court staff, self-represented litigants and representatives of an Indian child's tribe, and to prevent unnecessary court motions and notices, rule 5.552 should contain the duplicative language from section 827. This would make rule 5.552 clear on its face as to which agencies and people have the right to access juvenile case files, when access is allowed without a court order, and when a court order is required before access is allowed. • Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language? Given section 827's complexity, rule 5.552 should retain the duplicative language in section 827. **Additional Comments**	

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Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			The Invitation to Comment asks whether practitioners prefer the rule to retain the duplicative language from section 827, given that section's complexity. Self-represented litigants benefit from rules that are clear and easily understood; not rules that refer them to another code section that they have to look up.	
5.	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit	AM	**Comments:** The duplication of the WIC § 827(a) portion in the rule is helpful and should remain rather than be eliminated (with updates to be consistent). The information is so dense that it is easier to review the rule with the entitled parties list rather than having to go back and forth between WIC § 827 and Rule 5.552 to piece it together. **Suggested Modifications:** **Rule 5.552** **Original (b)** - Leave the duplicative language to allow for easy review of the list of entitled parties when reviewing the rest of the rule. **New (b)** - This section should stand out. Some are not aware of the subpoena not being applicable to juvenile records and often there are attempts to request records in this fashion. **New (e)** - Los Angeles County uses WIC § 827.9 for access to law enforcement reports and the JV-575 petition form. **Request for Specific Comments:**	See response to comments from the State Bar of California's Standing Committee on the Delivery of Legal Services above. See response to comments from the State Bar of California's Standing Committee on the Delivery of Legal Services above. This section applies only to Los Angeles County per subsection (p) and does not require rule revision.

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	Commentator	Position	Comment	Committee Response
			Does the proposal appropriately address the stated purpose? Yes. **Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?** Because WIC § 827 is complex, the duplicative language is helpful. It should, however, be updated to be consistent when there are changes to 827. **Would the proposal provide cost savings? If so, please quantify.** It is not likely that there would be cost savings. **What would courts require in order to implement this proposal? 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 courts would require additional training of staff, revision of processes and procedures such as staff manuals. **Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?**	

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	Commentator	Position	Comment	Committee Response
			Yes. **How well would this proposal work in small courts? Large courts?** The proposal should work well within small or large courts.	
6.	Superior Court of California, County of Orange By Cynthia Beltran, Administrative Analyst, Family Law anmd Juvenile Court.	NI	**Q: What would the implementation requirements be for courts?** In order to implement, information regarding amendment would need to be communicated to staff and judges. Procedures would also need to be revised. **Q: Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes, an effective date of six months would be sufficient time for implementation.	No response required. No response required.
7.	Superior Court of California, County of Riverside By Susan D. Ryan, Chief Deputy of Legal Services	A	Does the proposal address the stated purpose? Yes. Given the complexity of WIC 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language? Yes. Practitioners would prefer consistency in the code, even it if means the language is duplicative.	No response required. See response to State Bar of California of California's Standing Committee on the Delivery of Legal Services above.

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	Commentator	Position	Comment	Committee Response
			Would the proposal provide cost savings? No. What would the implementation requirements be for courts? Minimal time needed to inform bench officers and staff of the changes. Would six months be sufficient time to implement? Yes. How well would this proposal work in courts of different sizes? No difference.	No response required. No response required. No response required. No response required.
8.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	AM	• The old subdivision (b) is not necessary. It is a good idea to remove it and avoid having to make changes every time the statutes change. • In addition to WIC 827, there are other statutes that address the confidentiality and release of juvenile case files, most notably WIC 827.10. WIC 828 addresses the law enforcement report (not the case file) and is covered later in rule 5.552. Our court recommends removing WIC 828 from the new subdivision (b) and adding at least WIC 827.10.	The old subdivision (b) has been removed. Article 22 of Chapter 2, Part 1, Division 2 of the Welf. & Inst. Code §§ 825-832 contain various provisions governing the records of children who are wards or dependents. Section 827 specifically addresses court case files and who can have access. Section 827.10 addresses when the child welfare agency is authorized to permit access to its files and records and §828 addresses sharing of information related to information gathered by a

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	Commentator	Position	Comment	Committee Response
				law enforcement agency, including by court order.
			• Government Code section 13968 was repealed many years ago.	Reference to this section has been removed in response to this comment.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title
Family & Juvenile Law: Stepparent Adoption and Postadoption Contact by Siblings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325

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, 2018

Date of Report
June 29, 2017

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.451 of the California Rules of Court and revising five Judicial Council forms for use in adoption proceedings. The proposed changes conform them to new legislation relating to postadoption contact by siblings of dependent children or youth in delinquency and stepparent adoptions. Other proposed changes correct inaccuracies and outdated material in the forms.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Amend rule 5.451 (Contact after adoption agreement) to comply with Senate Bill 1060 (Stats. 2016, ch. 719), which encourages, where appropriate, postadoption and other permanent-plan contact by siblings of dependent children or youth in delinquency;

2. Revise *Adoption Request* (form ADOPT-200) to comply with Assembly Bill 2872 (Stats. 2016, ch 702), allowing the adopter to specify who will do the investigation or written report and addressing payment thereof; and

3. Revise *Contact After Adoption Agreement* (form ADOPT-310)*; Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315)*; Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-320)*;* and *Judge's Order to: Enforce, Change, End Contact After Adoption Agreement* (ADOPT-325) to appropriately facilitate contact with a child after adoption by birth parents, siblings, or other relatives, or with an Indian tribe in an ICWA case.

The text of the amended rule and the revised forms are attached at pages 6–18.

Previous Council Action

Rule 5.451 was first adopted as rule 1180, effective July1, 1998, followed by a series of amendments and renumbering, most recently as rule 5.451, effective January 1, 2013.

Adoption Request (form ADOPT-200) was first adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings. It was revised several more times, including in November 2002, to adopt plain language and to comply with Assembly Bill 25, which included provisions allowing domestic partners to adopt a partner's child using the stepparent adoption process, and in April 2010 to implement the provisions of AB 1325, tribal sponsored legislation allowing the adoption of Indian children who are dependents of the court through the custom, traditions, or law of the child's tribe without requiring termination of parental rights. It was last revised in January 2016 to conform to new statutory requirements under Assembly Bill 2344, the Modern Family Act, expediting adoptions for nonbiological parents, and Senate Bill 274, which amended the Family Code to provide that a child may have a parent-child relationship with more than two parents.

The ADOPT-300 series of forms related to postadoption contact has not been revised since it was first adopted in 2003.

Rationale for Recommendation

The amendment to rule 5.451 and revisions to the forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325 are necessitated by (1) the new legislation noted above, and (2) changes needed to update some of the companion forms related to the contact-after-adoption forms, which were last updated in 2003.[1]

[1] The separate report for the September council meeting titled *Juvenile Law: Title IV-E Findings & Orders* includes a proposed revision of two Judicial Council findings and orders forms used after termination of parental rights when there is a permanent plan of adoption or another plan; these revisions also respond to the postadoption contact requirements in Senate Bill 1060.

Revisions to form ADOPT-200 comply with AB 2872, which clarifies that the investigation required as part of a stepparent adoption may be, at the request of the adoption petitioner, completed by a licensed social worker or therapist or a private adoption agency, in which case the petitioner is not required to pay any investigation fees to the court. That request must be made in writing at the time ADOPT-200 is filed. It also provides that if the petitioner does not request that a licensed social worker or therapist or a private adoption agency complete the investigation, the court may collect an investigation fee and assign a probation officer, court investigator, or if so authorized by the county board of supervisors, the county welfare department to complete the investigation. In addition to adding the stepparent adoption investigation options provided in AB 2872, the committee is recommending minor changes intended to increase the form's plain language to make it more accessible to court users.

With regard to the ADOPT-300 series of forms, in addition to updating the forms to conform them to the requirements of SB 1060, the committee is proposing changes to the series responding to the fact that they have not been revised since they were adopted in 2003. The "Notice" to users in form ADOPT-310, which was included in the original form approved in 2003 in response to legislation,[2] does not adequately track the notice requirement in Family Code section 8616.5(e). The council's attention to plain language in rules and forms began in 2003, and the original notice in form ADOPT-310 may have been drafted in plain language to be more understandable to self-represented court users. The committee proposes the revised notice language on form ADOPT-310, which more thoroughly tracks the notice in the legislation while trying to use a plain language approach. The committee also proposes a change to form ADOPT-315 under item 4 to clarify its meaning to the user and again to keep it in plain language. Forms ADOPT-320 and ADOPT-325 were modified to clarify the language and make them consistent with the other forms in the series, again in an effort to ease their accessibility for court users. Those two forms do not need revisions to comply with the legislation, but need minor revisions to ensure consistent language throughout the series and to correct or update dates and minor errors because they have not been updated since 2003 and are in the same family of forms related to contact after adoption.

Comments, Alternatives Considered, and Policy Implications

The current proposal circulated for comment as part of the winter 2017 invitation-to-comment cycle, from February 27 to April 28, 2017, 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 including adoption law practitioners, family law facilitators and self-help center staff, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals.

[2] Sen. Bill 182; Stats. 2003, ch. 251.

Comments

The committee received seven comments on the proposal. Of these commenters, five raised no issues of note (two agreeing without modification and three with minor grammatical and formatting suggestions). Two other commenters specifically suggested that the statutory language required by Family Code section 8616.5(e) to be included in a postadoption agreement (ADOPT-310) should track the statute verbatim rather than be provided in plain language to assist all court users.

In response to those two commenters, since the notice has been in plain language since 2003, and the current proposed modification is intended to more accurately adhere to the language of the statute, we are recommending that the notice remain in plain language with the suggested modification because court users may have trouble understanding the verbatim statutory language.

In addition, in response to one of the commenters, the committee is recommending changes to the notice under item 4 on form ADOPT-315 to clarify its meaning in plain language for court users.

Alternatives considered

No alternatives were appropriate to consider in lieu of revising forms ADOPT-200, ADOPT-310, and ADOPT-315 because of the new legislation. And updates to forms ADOPT-320 and ADOPT-325 seemed appropriate because they are in the same family of contact-after-adoption forms and have not been revised since 2003.

The committee considered referring to the Family Code sections rather than amending rule 5.451 to avoid having the rule track the statute. But on review of the relevant statutes, having one rule that covers the issue of contact after adoption seemed likely to be much clearer to a potential court user than being referred to two separate statutes that could be confusing.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of revising five existing forms. These costs are outweighed by the efficiency benefits of making it easier for litigants to provide the information that the court needs for these cases in a concise and structured manner, which should aid in processing these adoption cases and result in a decreased need for court assistance and case management.

Attachments and Links

1. Cal. Rules of Court, rule 5.451, at page 6
2. Forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325, at pages 7–18
3. Comment chart, at pages 19–34
4. Link A: SB 1060 (Stats. 2016, ch 719), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1060*

5. Link B: AB 2872 (Stats. 2016, ch 702), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2872*

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2018, to read:

Rule 5.451. Contact after adoption agreement

(a) * * *

(b) Contact after adoption agreement

An adoptive parent or parents~~,~~; a birth relative or relatives, including a birth parent or parents or any siblings of a child who is the subject of an adoption petition~~,~~; or an Indian tribe that the child is a member of and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives, including the birth parent or parents or any siblings, or an Indian tribe. No prospective adoptive parent or birth relative may be required by court order to enter into a contact-after-adoption agreement.

(c)–(k) * * *

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

If you are adopting more than one child, fill out an adoption request for each child.

1 Your name(s) *(adopting parent(s)):*

a. _____

b. _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer *(if any): (Name, address, telephone numbers, e-mail address, and State Bar number):*

_____

_____

_____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 I/We filed this *Adoption Request* in this court because it is in the county *(check all that apply):*

- ☐ Where the adopting parent(s) live;
- ☐ Where the child was born or where the child now lives;
- ☐ Where an office of the agency that placed the child for adoption is located;
- ☐ Where an office of the department or public adoption agency that is investigating the petition is located;
- ☐ Where a placing birth parent or parents lived when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ Where a placing birth parent or parents live(s) when the petition was filed;
- ☐ Where the child was freed for adoption.

(If the child is a dependent of the court, the Adoption Request *must be filed in the county where the child was freed for adoption or the county where the adopting parent(s) reside(s). See Fam. Code, § 8714.)*

3 Type of adoption *(check one):*

- ☐ Agency *(name):* _____
  - ☐ Relative ☐ Nonrelative
- ☐ Joinder will be filed. ☐ Joinder is being filed at same time as this *Adoption Request*.
- ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent
  - ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):*

  _____
  - ☐ This adoption may be subject to the Hague Adoption Convention *(form ADOPT-216 must be filed with this request).*

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date →

Hearing is set for:

Date: _____

Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

3 ☐ Stepparent
☐ Stepparent adoption to confirm parentage. *(Select this option if you were married to or in a state-registered domestic partnership with the birth parent at the time the child was born **and** you remain in that union.)*

4 Information about the child
a. The child's new name will be: _____
b. ☐ Boy ☐ Girl
c. Date of birth: _____ Age: _____
d. Child's address *(if different from yours):*
Street: _____
City: _____ State: _____ Zip: _____
e. Place of birth *(if known):*
City: _____
State: _____ Country: _____
f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No
g. Date child was placed in your physical care: _____

5 Child's name before adoption *(Fill out ONLY if this is an independent, stepparent, or tribal customary adoption):*
_____

6 Does the child have a legal guardian? ☐ Yes ☐ No
(If yes, attach a copy of the Letters of Guardianship and fill out below):
a. Date guardianship ordered: _____
b. County: _____
c. Case number: _____

7 Is the child a dependent of the court? ☐ Yes ☐ No
(If yes, fill out below):
Juvenile case number: _____
County: _____

8 Child may have Indian ancestry: ☐ Yes ☐ No
a. Whether you answered "Yes" or "No," you must fill out and attach *Indian Child Inquiry Attachment* (form ICWA-010(A)) and *Parental Notification of Indian Status* (form ICWA-020) or other proof that ICWA inquiry has been completed in accordance with rule 5.481(a).
b. If you answered "Yes," you must also fill out and attach *Adoption of Indian Child* (form ADOPT-220) if, after notice, it is determined that ICWA does apply to the child.

9 Names of birth parents, if known:
a. Mother: _____ b. Father: _____

10 **If this is an agency adoption:**
a. I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that might be available.
☐ Yes ☐ No
b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived.
☐ Yes ☐ No *(If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived):*
_____
_____

10 c. This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption. ☐ Yes ☐ No

d. This is an adoption conducted under the requirements of the Hague Adoption Convention and the child will be moving or has already moved with the adopting parent(s) to another Hague Convention member country at the conclusion of this adoption. ☐ Yes ☐ No If yes, child will be moving or has moved to *(name of country):* _____ and adopting parent(s) ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

11 **If this is an independent adoption:**

a. A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.) ☐ Yes ☐ No

b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form. ☐ Yes ☐ No *(If no, list the name and relationship to child of each person who has not signed the agreement form):*

_____

c. I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption. ☐ Yes ☐ No

d. ☐ This is an independent adoption involving additional parent(s): ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights. ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

12 **If this is a stepparent adoption:**

a. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

b. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

c. The adopting parents were married on **or** The domestic partnership was registered on *(date):* _____. *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

d. ☐ I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth and we remain in that union.

See attached ☐ form ADOPT-205 or ☐ declaration describing the circumstances of the child's conception.

e. Completing the investigation or written report *(Choose one)*

☐ I will choose someone to do an investigation or written report. I understand that the person I choose must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency. I will pay this person or agency directly.

☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation.

13 ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

14 **Contact after adoption**

Contact After Adoption Agreement (*form ADOPT-310*) ☐ is attached ☐ will not be used

☐ will be filed at least 30 days before the adoption hearing ☐ is undecided at this time.

☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

15 **Consent for adoption is not necessary because *(complete all sections that apply to your adoption):***

a. ☐ The consent of the ☐ birth parent ☐ presumed father is not necessary because *(check the applicable reasons under Fam. Code, § 8606):*

(1) ☐ The parent has been judicially deprived of the custody and control of the child.

15 a. (2) ☐ The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.

(3) ☐ The parent has deserted the child without providing information to identify the child.

(4) ☐ The parent has relinquished the child under Family Code section 8700.

(5) ☐ The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. ☐ A court ended the parental rights of:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Enter the date of the court order ending parental rights and attach a copy of the order.)

c. ☐ The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Attach a copy of the order.)

d. ☐ I/We will ask the court to end the parental rights of *(attach copy of* Petition to Terminate Parental Rights *or* Application for Freedom From Parental Custody, *if filed):*

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

e. ☐ Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education for one year or more when able to do so. (Fam. Code, § 8604(b).)

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

f. ☐ The child has been abandoned as follows:

(1) ☐ The child has been left by the child's parent or parents with no way to identify the child.

(2) ☐ The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(3) ☐ One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child's support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes are checked, adopting parent must also check item 15(d) and file an Application for Freedom From Parental Custody. *See Fam. Code, § 7822(a).)*

g. ☐ The consent of the presumed father is not required because he did not become a presumed father before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a).)

15 h. ☐ Each of the following persons with parental rights has died:
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

16 **Suitability for adoption**
Each adopting parent:
a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as his or her own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

17 ☐ I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

☐ I/We ask the court to date its order approving the adoption as of an earlier date *(date):* _____ for the following reason (Fam. Code, § 8601.5):

_____

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

☐ This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

18 If a lawyer is representing you in this case, he or she must sign here:

Date: _____ _____ ▶ _____
Type or print lawyer's name *Signature of lawyer for adopting parent(s)*

19 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____
Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com*. Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

ADOPT-310 Contact After Adoption Agreement

☐ Original ☐ Change

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Your name(s):

a. _____

b. _____

Relationship to child: _____

Your address *(skip this if you have a lawyer)*

Street: _____

City: _____ State: _____ Zip: _____

Your phone number: _____

Your lawyer, (if you have one) *(name, address, phone number, and State Bar number):*

_____

_____

_____

2 Information about the child

a. Child's name (after adoption): _____

b. Date of birth: _____ Age: _____

c. Is the child a dependent of Juvenile Court? ☐ No ☐ Yes

If yes, Juvenile Court and Juvenile Case number:

County: _____ Case #: _____

d. *If the child has a lawyer, fill out below. If item 2c is yes, child must have a lawyer (Fam. Code, § 8714.7).*

Name of child's lawyer: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone number: _____ State Bar number: _____

3 The people below agree with the requesting party(ies) in (1) about contact with the child after adoption. *If the agreement is confidential, write "Confidential" instead of the person's name. If you need more space, attach a sheet of paper. Write "ADOPT-310, Item 3—Other Relatives" at the top.*

Name	Relationship to Child	Type of Contact *(circle all that apply)*: ☎ Telephone ✉ Letter Visits Share Info E-mail ? Other*
a.		☎ ✉ Visits Share Info E-mail ?
b.		☎ ✉ Visits Share Info E-mail ?
c.		☎ ✉ Visits Share Info E-mail ?
d.		☎ ✉ Visits Share Info E-mail ?
e.		☎ ✉ Visits Share Info E-mail ?
f.		☎ ✉ Visits Share Info E-mail ?
g.		☎ ✉ Visits Share Info E-mail ?

**Explain type of contact on a sheet of paper. Write "ADOPT-310, Item 3—Other Types of Contact" at the top.*

Number of pages attached: _____

Your name: _____ **Case Number:**

4 *If you have a signed, written agreement about Contact After Adoption, attach a copy.*
Number of pages attached: _____

5 The parties have discussed the reasons for continued contact between the child and the specified relatives or other parties, considering the best interests of the child.

Notice

1. After the judge signs the Adoption Order for this child, the adoption is final. It can never be cancelled or changed, even if anyone who signed this agreement:
- **Does not follow the agreement, and/or**
- **Files ADOPT-315 (to change, end, or enforce this agreement).**

2. Before this agreement can be changed by the court, all of the people who signed it have to try to fix any problems with it through a dispute resolution program, like mediation.

6 *Everyone involved in this agreement must sign below (including the child, if 12 or older, and the child's attorney).*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

If more relatives need to sign, attach a sheet of paper. Write "ADOPT-310, Item 6—Signatures of Other Relatives," at the top.
Number of pages attached: _____

Date: _____ _____
Judge (or Judicial Officer)

ADOPT-315 Request to: Enforce, Change, End Contact After Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Your name(s):

a. _____

b. _____

Relationship to child: _____

Your address *(skip this if you have a lawyer):*

Street: _____

City: _____ State: _____ Zip: _____

Your phone number: _____

Your lawyer, (if you have one) *(name, address, phone number, and State Bar number):*

_____

_____

_____

2 Child's name *(if known):*

Child's adopted name *(if known):* _____

Date of birth: _____ Age: _____

3 I/We want to *(check one):* ☐ Enforce ☐ Change ☐ End an existing Contact After Adoption Agreement.

The judge will not look at your request unless you and the other people who signed ADOPT-310 first try to come to an agreement using a dispute resolution program, like mediation.

4 *List all people who signed the original Contact After Adoption Agreement (form ADOPT-310).*
If the agreement was confidential, write "Confidential" instead of the person's name.

Name/Relationship to child:

a. _____

b. _____

c. _____

d. _____

Notice to people listed in 4 who are served with this form:
The person who filed this form is asking the court to enforce, change, or end your Contact After Adoption Agreement. If you do **not** agree with what the person is asking for, you need to file ADOPT-320 within 30 days after you receive this form.

5 *Attach to this request:*

- A copy of ADOPT-310 (Contact After Adoption Agreement)
- A copy of the signed, written agreement about Contact After Adoption, if there is one
- Proof of Service showing this form was served on each person in 4, along with a blank answer form (ADOPT-320)

Your name: _____ **Case Number:**

6 *If any person in (4) was not served, you must explain in writing why he or she was not served.*
Check below, if true:

a. ☐ I do not know the names of the other people who signed the original Contact After Adoption Agreement, so I could not serve them.

b. ☐ The other people who signed the original Contact After Adoption Agreement (ADOPT-310) agree with what I am asking in this request and have signed ADOPT-320.

If you want to give more explanation, attach a sheet of paper and write "ADOPT-315, Item 6" at the top.

7 Remember: The judge will not look at your request until all people who signed ADOPT-310 have tried to come to an agreement using mediation or other form of dispute resolution.

☐ I/We have tried to resolve these issues by using a dispute resolution program, like mediation.

☐ I have tried to fix these problems, but the other party refuses to participate in a dispute resolution program, like mediation. I am asking for a court date for the judge to review this case.

8 *Check one of the boxes below:*

I/We ask the court to:

a. ☐ Enforce ADOPT-310. *Explain how the original agreement has not been followed:*

_____

_____

_____

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce, Change, or End 310" at the top.

b. ☐ Change ADOPT-310. *Describe the changes you want and how these changes will be good for the child:*

_____

_____

_____

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce, Change, or End 310" at the top.

c. ☐ End ADOPT-310. *Explain why you want to end the agreement and how ending the agreement will be good for the child:*

_____

_____

_____

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce, Change, or End 310" at the top.

Number of pages attached: _____

9 I/We declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct, which means if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

ADOPT-320 Answer to Request to: Enforce, Change, End Contact After Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 This is my answer to the request to *(check one):*

☐ Enforce ☐ Change ☐ End

an existing Contact After Adoption Agreement.

a. Name(s) of person who filed ADOPT-315 and his or her relationship to the child:

b. I received a copy of the signed, written agreement, ADOPT-310.

2 Your name(s):

a. _____

b. _____

Relationship to child: _____

Your address *(skip this if you have a lawyer):*

Street: _____

City: _____ State: _____ Zip: _____

Your phone number: _____

Your lawyer, (if you have one) *(Name, address, phone number, and State Bar number):*

_____

_____

_____

3 Child's adopted name *(if you know):* _____

Date of birth: _____ Age: _____

Date of adoption *(if you know):* _____

4 *Check all that apply:*

a. ☐ I agree with the requests listed in ADOPT-315 and think the requests are in the child's best interests.

b. ☐ I do not agree with the requests in ADOPT-315 because:

_____

_____

_____

If you need more space, attach a sheet of paper and write "ADOPT-320, Item 4—Do Not Agree With 315" at the top.

Number of pages attached: _____

c. ☐ I/We have NOT tried to resolve these issues by using a dispute resolution program, like mediation.

d. ☐ I/We tried to fix these problems by using a dispute resolution program, like mediation, but were unable to reach an agreement.

Date: _____ _____ ▶ _____

Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____

Type or print your name and relationship to child *Sign your name*

ADOPT-325 Judge's Order to: Enforce, Change, End Contact After Adoption Agreement

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Your name(s) *(person(s) who asked for this order):*

a. _____

b. _____

Your address *(skip this if you have a lawyer):*

Street: _____

City: _____ State: _____ Zip: _____

Your phone number: _____

Your lawyer, (if you have one) *(Name, address, phone number, and State Bar number):*

_____

_____

_____

2 Adopted child's name:

Date of birth: _____ Age: _____

3 People present in court today *(date):* in:

Dept.: _____ Div.: _____ Rm.: _____

Judge: _____

☐ Adopting parent(s) ☐ Lawyer for adopting parent(s) ☐ Child ☐ Child's lawyer

☐ Parent keeping parental rights (stepparent/domestic partner):

☐ Other people present *(list name and relationship to child):*

a. _____ c. _____

b. _____ d. _____

☐ Not present: _____

Judge will fill out section below.

4 The judge has reviewed:

☐ ADOPT-310 ☐ ADOPT-315 ☐ ADOPT-320 ☐ Other evidence ☐ Testimony

☐ All people listed in ADOPT-315 have tried to come to an agreement using mediation or some other form of dispute resolution. (Fam. Code, § 8714.7.)

5 ☐ **Enforcement**

The judge finds and orders:

a. ☐ The Contact After Adoption Agreement is enforced. This means that everyone who signed the agreement must do what the agreement says.

b. ☐ The Contact After Adoption Agreement is not enforced because:

(1) ☐ The person who asked the judge to enforce the Agreement has not tried to solve the problem using a dispute resolution program, like mediation.

(2) ☐ Enforcing the agreement is not in the child's best interests.

(3) ☐ Other: _____

Your name: _____ **Case Number:**

Judge will fill out section below.

6 ☐ **Change or End the Agreement**

a. ☐ The judge **approves** the request to ☐ change ☐ end the Contact After Adoption Agreement because:
   (1) ☐ All people involved, including the child (if 12 or older), agreed in writing to the requests listed in ADOPT-315;
   (2) ☐ It is in the best interests of the child;
   (3) ☐ There have been important changes since the original agreement was approved; *and*
   (4) ☐ The applicant has tried to resolve the problem using a dispute resolution program, like mediation.

b. ☐ The judge **does not approve** the request to ☐ change ☐ end the contact After Adoption Agreement because:
   (1) ☐ It is not in the best interest of the child.
   (2) ☐ No important changes have happened since the original agreement was approved.
   (3) ☐ The applicant has not tried to resolve the problem using a dispute resolution program, like mediation.

c. ☐ The judge **approves** the request to ☐ change ☐ end the Contact After Adoption Agreement as amended. A new ADOPT-310 will be filed.

7 ☐ **More Time to Study or Evaluate**

a. ☐ The judge needs more time to make a decision.

b. ☐ The judge orders further study or evaluation of the issues in the request because there is clear and convincing evidence that:
   (1) ☐ It is the only way to protect or promote the child's best interest; *and*
   (2) ☐ It will not disturb the stability of the child's home

c. ☐ The study or evaluation must look at the following:
   (1) ☐ Whether the request(s) in ADOPT-315 will be good for the child
   (2) ☐ The child's wishes
   (3) ☐ The child's mental health
   (4) ☐ Other: _____

d. ☐ The study or evaluation will be done by *(individual or agency):* _____
   The people involved must cooperate with this individual or agency.

e. ☐ The cost of the study or evaluation and written report will be paid by
   name(s) of person to pay: _____
   relationship to child: _____

f. ☐ The judge and all people involved in this case will get a complete report by *(date):* _____

g. ☐ The judge will review the report and make a decision by: _____

h. ☐ The people involved in this case must return to court on *(date):* _____
   at *(time):* _____ ☐ a.m. ☐ p.m.

Date: _____

_____
Judge (or Judicial Officer)

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
1.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) by Saul Bercovitch, Assistant General Counsel	AM	**Form ADOPT-200:** Page 3, Item 12.e. should state: Select one of the two following choices: □I am electing to have the investigation and written report completed by a licensed clinical social worker, a licensed marriage and family therapist or a private licensed adoption agency. I understand that I am responsible for payment directly to the person or agency completing the investigation. □I request the court to assign an investigator and I understand the court may collect an investigation fee or I will be required to pay it directly to the investigator. **Form ADOPT-310:** On Page 2, the boxed "Notice" should be modified to duplicate the statutorily required bold face language in Fam. Code § 8616.4(e)(1), (2) and (3). The cited sections set forth warnings that are statutorily required to be in bold type in any Contact After Adoption Agreement (CAAA) and are as follows: (1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, including a sibling, an Indian tribe, or the child to follow the terms of this agreement or a later change to this agreement.	The committee agrees with this suggestion and has incorporated it, with some alterations, as written below. "(e) Completing the Investigation or Written Report *(Choose one)* ☐ I will choose someone to do an investigation or written report. I understand that the person I choose must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency. I will pay this person or agency directly. ☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation." The committee discussed this suggestion but does not recommend incorporating it. The committee determined that, although Family Code Section 8616.5(e) can be understood by most lawyers, it is not written in a way that can be understood by most laypersons. Developing forms that can be understood and used by laypersons, many of whom read at or below a 6th grade reading level, is a priority for the committee. For that reason, the committee prefers to maintain plain language throughout the form, including in this notice

	Commentator	Position	Comment	Committee Response
				provision. The committee believes that more court users will understand the form and the notice provision if they are written in plain language.
			(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child. (3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute. Since the statute requires those warnings to be included in all CAAA, the proposed language as currently written does not comply with the statute. Thus, if the required language is not included on the form, that could later be used as a basis to attack the validity of the agreement.	Other commentators offered differing opinions on the notice language. The committee revised the notice language based on some of the other comments received. The committee's response to comment number 5 includes a copy of the revised notice language.
			Item 4 in the same box should also be modified because, as written, the language suggests the term of the agreement continues beyond the adopted child reaching the age of majority unless it is changed or canceled by the adopted child. Instead, the language should be clear the terms of the agreement end when the child turns 18.	The committee discussed this suggestion and decided to remove the sentence in question. The committee determined that revising the sentence in the manner suggested might introduce confusion to the layperson who could mistakenly think that the adoption itself ends at age 18. Removing the current sentence removes the ambiguity that commentator is concerned about, while also avoiding new ambiguities that revising the sentence might cause.
			Form ADOPT-315: Page 1, Notice under Item 4: The third listed notice should be	The committee agrees with the suggestion and has

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			changed to "If you disagree with the requests in this form, you must file an ADOPT-320 within 30 days after receiving this form." This is to clarify any ambiguity, as the user is not in disagreement with the form, but with the request set forth in the form.	incorporated it with some modifications to improve the overall clarity of the instruction and make it more plain language. The committee now suggests the following language: "The person who filed this form is asking the court to enforce, change, or end your Contact After Adoption Agreement. If you do **not** agree with what the person is asking for, you need to file ADOPT-320 within 30 days after you receive this form."
			On page 2, Item 7, should include an additional option as follows:	The committee agrees with the suggestion and has incorporated it, with the following modifications that the committee feels improves readability and is more plain language.
			□I have attempted to resolve these issues, but the other party refuses to participate in a dispute resolution program, and I am requesting a court date for the judge to review this case. This is needed because sometimes parties are uncooperative and refuse to participate in mediation as required, so the form should allow for a party to notify the court of the issue and request the judge review the case. Otherwise, the party failing to comply can simply refuse mediation and there will be no recourse.	"□I have tried to fix these problems, but the other party refuses to participate in a dispute resolution program, like mediation. I am asking for a court date for the judge to review this case."
			Form ADOPT-320: Page 1, Item 4.c. should also be modified for the same reason stated above, and should provide:	The committee agrees with the suggestion and has incorporated it, with the following modifications that the committee feels improves readability and is more plain language.

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			□ I/we have tried to resolve these issues by using a dispute resolution program, but were unable to reach an agreement.	"□ I/we tried to fix these problems by using a dispute resolution program, like mediation, but were not able to reach an agreement."
			Form ADOPT-325:	
			On page 1, in Item 3 the language "parent keeping parental rights (stepparent/domestic partner)" should be modified to "Parent who retained parental rights (stepparent/domestic partner)." Since the matter is already finalized, use of the word "retaining" is inappropriate and potentially confusing.	The committee considered the suggestion but prefers retain the language as is. The suggestion refers to a portion of the form that is not being changed at this time and for which public comment was not being requested. The committee is not aware of any confusion being caused by the current wording of the portion of the form.
			On page 1, Item 5.a. should be modified to: □The Contact After Adoption Agreement is a legally enforceable agreement, therefore, the parties are ordered to comply with the terms of the Contact After Adoption Agreement as written.	The suggestion refers to a portion of the form that was not technically open to public comment. After considering the comment, however, the committee decided to incorporate the suggestion with modification. The committee believes that the modifications improve readability through use of plain language. The committee now recommends the following language: "□The Contact After Adoption Agreement is enforced. This means that everyone who signed the agreement must do what the agreement says."
			The purpose of this provision is to reflect the court's decision. The language alone that it is a "legally enforceable agreement" does not indicate a judicial finding or an accurate response to the person who is requesting that the agreement be enforced.	
2.	Celeste Liversidge Adoption Law Group	AM	*The committee determined that some of her comments submitted by Ms. Celeste Liversidge, of the Adoption Law Group involved suggestions for minor grammatical, formatting, or stylistic tweaks,	

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			as opposed to substantive changes. For any substantive comments, the committee included those comments in the comment chart and responded to them in a typical manner. For comments that focused only on minor grammatical, formatting, or stylistic tweaks, the committee chose not to include those in the comment chart. The committee did however, consider and review each of the minor suggested tweaks and incorporated many of them into the revised document. Her complete comments are shown in Attachment A.	
			AD310, page 2, #5 "considering the best interests of the child" should be modified to: "and have considered the best interests of the child before entering this agreement" Reasoning: Proposed language is grammatically incorrect; additionally, it the language used here should make it clear that the child's best interest has been considered at the time of entering into the agreement	The committee agrees with this suggestion and has incorporated it with alterations. The committee has revised the paragraph as follows: "The parties have discussed the reasons for continued contact between the child and the relatives or other parties listed in item 3. The parties have considered the best interests of the child before signing this agreement."
			AD310, page 2, #5 Notice #1 "After the judge signs the Adoption Request" should be modified to "After the judge signs the Adoption Order"… Reasoning: The judge does not sign the Adoption Request. This provision is supposed to refer to the Adoption Order.	The committee agrees with this suggestion and has incorporated it.
			#3 "all of the people who signed it have tried to fix any problems with it" should be modified to "all of the people who signed it have to try to "resolve" or "solve" any problems with it" Reasoning: Better word choice	The sentence referenced to in this suggestion does not appear on ADOPT-310. As the committee is unsure which form this comment might be referring to, the committee is unable to offer a further response at this time.

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			#4 "he or she can cancel any part of this agreement" should be modified to "he or she may cancel any part of this agreement" Reasoning: "can fix " is an incorrect use of the word in this context.	The sentenced referenced in this suggestion does not appear on ADOPT-310. As the committee is unsure which form this comment might be referring to, the committee is unable to offer a further response at this time.
			Need to add: "#5. The people who are adopting the child are required to file this agreement with the court before the adoption is finalized." Reasoning: Family Code 8714 requires that this form be filed with the petition for adoption	The sentenced referenced in this suggestion does not appear on ADOPT-310. As the committee is unsure which form this comment might be referring to, the committee is unable to offer a further response at this time.
			AD315, page 1, #3 "The judge will not look at your request unless" should be modified to "The judge will not consider your request unless" Reasoning: More appropriate/descriptive wording	The committee considered this suggestion but prefers to the current, more plain language wording.
			AD315, page 1, #4 Notice 3rd point "If you disagree with this form" should be modified to "If you disagree with this request" Reasoning: The user is not disagreeing with the form, but with the request set forth in the form.	The committee agrees with the suggestion and has incorporated it with some modifications to improve the overall clarity of the instruction and make it more plain language. The committee now suggests the following language: "The person who filed this form is asking the court to enforce, change, or end your Contact After Adoption Agreement. If you do **not** agree with what the person is asking for, you need to file ADOPT-320 within 30 days after you receive this form."
			AD315, page 2, #7 "The judge will not look at your request until all people who signed	The committee agrees with this suggestion and

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			ADOPT-310 have tried to come to an agreement using mediation or other forms of dispute resolution" should be modified to "The judge will not consider your request until all people who signed ADOPT-310 have tried to come to an agreement using a dispute resolution program, like mediation." Reasoning: More appropriate wording as to "consider"; The other alternative wording ("dispute resolution program, like mediation") is consistent with the way this provision is expressed in other places in both this form and in the companion forms.	has incorporated it.
			AD315, page 2, #8, (b) "Describe the changes you want and how these changes will be good for the child" should be modified to "Describe the changes you want and how these changes will be best for the child" Reasoning: ." Inappropriate word choice as to "good. Family Code sets forth the applicable standard as best interest, not just that the change would be good.	The committee believes that the current language is understandable to the general public and does not affect the judge's ability to make a determination of what is in the best interest of the child. The committee prefers to retain the language as is.
			AD315, page 2, #8, (c) "Explain why you want to end the agreement and how ending the agreement will be good for the child" should be modified to "Explain why you want to end the agreement and how ending the agreement will be best for the child" Reasoning: Inappropriate word choice as to "good." Family Code 8616.5(f) sets forth the applicable standard as best interest, not just that the change would be good. Should be consistent throughout the document and should accurately reflect the applicable standard.	The committee believes that the current language is understandable to the general public and does not affect the judge's ability to make a determination of what is in the best interest of the child. The committee prefers to retain the language as is.
			AD320, page 1, #3 "Date of adoption (if you know):" should be modified to "Date the adoption was finalized" Reasoning: The proposed wording will easily lead to confusion as to date child was placed for adoption v. date the final order was	The committee considered the suggestion but prefers retain the language as is. The suggestion refers to a portion of the form that is not being changed at this time and for which public

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			entered.	comment was not being requested. The committee is not aware of any confusion being caused by the current wording of the portion of the form.
			AD325, page 1, #3 "Parent keeping parental rights (stepparent/domestic partner)" should be modified to "Parent who retained parental rights (stepparent/domestic partner)" Reasoning: Since the matter is already finalized, use of the word "retaining " is inappropriate and potentially confusing.	The committee considered the suggestion but prefers retain the language as is. The suggestion refers to a portion of the form that is not being changed at this time and for which public comment was not being requested. The committee is not aware of any confusion being caused by the current wording of the portion of the form.
			A line should be added after "Not present:" Reasoning: User needs a line in order to provide the names of those not present, as the form requests.	The committee agrees with this suggestion and has incorporated it.
			AD325, page 1, #5, (a) "The Contact After Adoption Agreement is a legally enforceable agreement" should be modified to "The Contact After Adoption Agreement is enforced" Reasoning: The purpose of this provision is to reflect the court's decision. "Legally enforceable" does not indicate a judicial finding or an accurate response to the Petitioner who is requesting that the agreement be enforced.	The suggestion refers to a portion of the form that was not technically open to public comment. After considering the comment, however, the committee decided to incorporate the suggestion with modification. The committee believes that the modifications improve readability through use of plain language. The committee now recommends the following: "□The Contact After Adoption Agreement is enforced. This means that everyone who signed the agreement must do what the agreement says."
			AD325, page 1, #5, (b), (1) …"to enforce the Agreement has not tried to solve the problem	The committee agrees with the suggestion and has

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
			using mediation or similar method" should be modified to… "to enforce the Agreement has not tried to solve the problem using a dispute resolution program, like mediation."	incorporated it.
			AD325, page 2, #6 (a) (4) "The applicant has participated, or tried to participate, in an appropriate method to resolve the problem outside of court" should be changed to "the applicant has tried to resolve the problem using a dispute resolution program, like mediation." Reasoning: "dispute resolution program, like mediation" is consistent with the way this provision is expressed in other places in both this form and in the companion forms.	The committee agrees with this suggestion and has incorporated it.
			AD325, page 2, #6(b)(3) "The applicant has not participated, or tried to participate, in an appropriate method to resolve the problem outside of court, should be modified to: "The applicant has not tried to resolve the problem using a dispute resolution program, like mediation."	The committee agrees with the suggestion and has incorporated it with a minor modification. The new language recommended is: "The applicant has not tried to fix the problem using a dispute resolution program, like mediation".
			AD325, page 2, #7, (c), (1) "Whether the request(s) in ADOPT-315 will be good for the child" should be modified to "Whether the request(s) in ADOPT-315 will be best for the child" Reasoning: Reasoning: Inappropriate word choice as to "good." Family Code 8616.5(h) sets forth the applicable standard as best interest, not just that the change would be good. Language should be consistent throughout the document and should accurately reflect the correct standard. Proposed language is confusing and inconsistent with companion documents.	The committee has considered this request but prefers to retain the language as is.

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
3.	Superior Court of California, County of Orange Family Law and Juvenile Court Division Cynthia Beltran Administrative Analyst	N/I	We do not have local rules that would be affected by these changes. An effective date of three months would be sufficient time for implementation.	No Response Required
4.	Superior Court of California, County of San Diego Michael M. Roddy Executive Officer	AM	• If "reside" is being changed to "live" on the ADOPT-220, why not also change "Where the adopting parent(s) reside"? • ADOPT-310, page 2: The judge does not sign the Adoption Request. Change to Adoption Order. • The required warnings are listed in Family Code section 8616.5(e). The "plain language" warnings on the ADOPT-310 do not track the required warnings accurately, and phrases like "problems with it" introduce unnecessary ambiguity.	The committee agrees with this suggestion and has incorporated it. The committee agrees with this suggestion and has incorporated it. The committee discussed this suggestion but does not recommend incorporating it. The committee determined that, although Family Code Section 8616.5(e) can be understood by most lawyers, it is not written in a way that can be understood by most laypersons. Developing forms that can be understood and used by laypersons, many of whom read at or below a 6th grade reading level, is a priority for the committee. For that reason, the committee prefers to maintain plain language throughout the form, including in this notice provision. The committee believes that more court users will understand the form and the notice provision if they are written in plain language.

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
				Other commentators offered differing opinions on the notice language. The committee revised the notice language based on some of the other comments received. The committee's response to comment number 5 includes a copy of the revised notice language.
			• ADOPT-315, page 2: The "attach a sheet of paper" sentences all say Enforce, when they should say Enforce, Change, and End.	The committee agrees with this suggestion and has incorporated it.
			• ADOPT-325, page 2: still says "best interest" in two spots.	The committee agrees with this suggestion and has incorporated it.
5.	Orange County Bar Association Michael L. Baroni President	AM	Q) Are the proposed changes to the "Notice" in the form ADOPT-310 written in a way that would be understandable to a typical self-represented court user? A) Yes, but with one suggested modification. Under item number 2 of the "Notice" the language states "The adoption will be final even if the people who signed this agreement change their minds, go to court to enforce the agreement, or have other problems with it." If someone is unhappy with a court order or agreement then they can either seek to enforce it against the people who aren't complying, or they would seek to modify or terminate the order/agreement. Suggested modification of ADOPT-310 "Notice" box would be that item 2 be revised to read "The adoption will be final even if the people who signed this agreement change their minds, go to court to enforce/modify/terminate the agreement, or have other problems with it." The "other problems" may not require court action (such as the emotional reaction to the timeshare after adoption).	The committee partially agrees with these suggestions. The committee, however, received differing feedback from other commentators. The considered the feedback from this commentator and others in crafting the revised notice language below: **Notice** 1) After the judge signs the Adoption Order for this child, the adoption is final. It can never be cancelled or changed, even if anyone who signed this agreement: o Does not follow the agreement, and/or o Files ADOPT-315 (to change, end, or enforce this agreement).

RemSPR17: 17

Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments (Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325)

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

	Commentator	Position	Comment	Committee Response
				2) Before this agreement can be changed by the court, all of the people who signed it have to try to fix any problems with it through a dispute resolution program, like mediation.
6.	Superior Court of California, County of Riverside Susan D. Ryan Chief Deputy of Legal Services	A	*The commentator indicates agreement with the proposal.	No Response Required
7.	Superior Court of California, County of Los Angeles	A	*The commentator indicates agreement with the proposal.	No Response Required

Attachment A to Comment Chart
(Complete comments of Celeste Liversidge, Adoption Law Group)

SPR17 edits
AD200, page 3, #15
Should have less space after "presumed father."
Reasoning: Format error. The extended space is confusing for user.

AD310, page 1, Title
"Change" should be modified to: "Modified" or "Amended"
Reasoning: Better word choice. "Change" is not grammatically correct.

AD310, page 1, #2
"Child's name (after adoption)" should be changed to "Child's name after adoption
Reasoning: The parentheses serve no purpose.

AD310, page 1, #3
"The people below agree with the requesting party(ies) in (1)" should be modified to "The people below agree with the people listed in (1)"
Reasoning: Proposed language is confusing. Use of the word "Parties" is not consistent with the clear language intent.

In "Type of Contact" the house icon for home needs to be replaced with a regular house instead of a house and landscape.
Reasoning: It is difficult for the user to discern what the proposed icon is supposed to symbolize.

AD310, page 2, #5
"considering the best interests of the child" should be modified to: "and have considered the best interests of the child before entering this agreement"
Reasoning: Proposed language is grammatically incorrect; additionally, it the language used here should make it clear that the child's best interest has been considered at the time of entering into the agreement

AD310, page 2, #5 Notice
#1 "After the judge signs the Adoption Request" should be modified to "After the judge signs the Adoption Order"…
Reasoning: The judge does not sign the Adoption Request. This provision is supposed to refer to the Adoption Order.
#3 "all of the people who signed it have tried to fix any problems with it" should be modified to "all of the people who signed it have to try to "resolve" or "solve" any problems with it"
Reasoning: Better word choice
#4 "he or she can cancel any part of this agreement" should be modified to "he or she may cancel any part of this agreement"
Reasoning: "can fix " is an incorrect use of the word in this context.
Need to add: "#5. The people who are adopting the child are required to file this agreement with the court before the adoption is finalized."

Reasoning: Family Code 8714 requires that this form be filed with the petition for adoption

AD315, page 1, #3
"The judge will not look at your request unless" should be modified to "The judge will not consider your request unless"
Reasoning: More appropriate/descriptive wording

AD315, page 1, #4 Notice
3rd point "If you disagree with this form" should be modified to "If you disagree with this request"
Reasoning: The user is not disagreeing with the form, but with the request set forth in the form.

AD315 page 2, #5
3rd point should have a period at the end of the sentence.
Reasoning: Correct punctuation.

AD315, page 2, #7
"The judge will not look at your request until all people who signed ADOPT-310 have tried to come to an agreement using mediation or other forms of dispute resolution" should be modified to "The judge will not consider your request until all people who signed ADOPT-310 have tried to come to an agreement using a dispute resolution program, like mediation."
Reasoning: More appropriate wording as to "consider"; The other alternative wording ("dispute resolution program, like mediation") is consistent with the way this provision is expressed in other places in both this form and in the companion forms.

AD315, page 2, #8, (b)
"Describe the changes you want and how these changes will be good for the child" should be modified to "Describe the changes you want and how these changes will be best for the child"
Reasoning: ." Inappropriate word choice as to "good. Family Code sets forth the applicable standard as best interest, not just that the change would be good.

AD315, page 2, #8, (c)
"Explain why you want to end the agreement and how ending the agreement will be good for the child" should be modified to "Explain why you want to end the agreement and how ending the agreement will be best for the child"
Reasoning: Inappropriate word choice as to "good." Family Code 8616.5(f) sets forth the applicable standard as best interest, not just that the change would be good. Should be consistent throughout the document and should accurately reflect the applicable standard.

AD320, page 1, #1, (b)
"I received a copy of the signed, written agreement, ADOPT-310" should be modified to "I received a copy of the signed agreement about Contact After Adoption (ADOPT-310)"
Reasoning: Better sentence structure.

AD320, page 1, #3
"Date of adoption (*if you know)*:" should be modified to "Date the adoption was finalized"
Reasoning: The proposed wording will easily lead to confusion as to date child was placed for adoption v. date the final order was entered.

AD325, page 1, #3
"Parent keeping parental rights (stepparent/domestic partner)" should be modified to "Parent who retained parental rights (stepparent/domestic partner)"
Reasoning: Since the matter is already finalized, use of the word "retaining " is inappropriate and potentially confusing.

A line should be added after "Not present:"
Reasoning: User needs a line in order to provide the names of those not present, as the form requests.

AD325, page 1, #5, (a)
"The Contact After Adoption Agreement is a legally enforceable agreement" should be modified to "The Contact After Adoption Agreement is enforced"
Reasoning: The purpose of this provision is to reflect the court's decision. "Legally enforceable" does not indicate a judicial finding or an accurate response to the Petitioner who is requesting that the agreement be enforced.

AD325, page 1, #5, (b), (1)
…"to enforce the Agreement has not tried to solve the problem using mediation or similar method" should be modified to… "to enforce the Agreement has not tried to solve the problem using a dispute resolution program, like mediation."
AD325, page 1, #5, (b), (2)
"enforcing the agreement is not in the child's best interests" should be modified to "Enforcing the Agreement is not in the child's best interests."
Reasoning: Need for consistency with the immediately preceding provision by capitalizing the "A" in agreement.

AD325, page 2, #6, (a)
Need to reduce the gap after "end"
Reasoning: Format error. There are too many spaces here.

AD325, page 2, #6, (a), (1)
"All people involved, including the child (if 12 or older), agreed in writing"… should be modified to "All people involved, including the child (if 12 or older) have agreed in writing"…
Reasoning: Better sentence structure.

AD325, page 2, #6 (a) (4)

"The applicant has participated, or tried to participate, in an appropriate method to resolve the problem outside of court" should be changed to "the applicant has tried to resolve the problem using a dispute resolution program, like mediation."
Reasoning: "dispute resolution program, like mediation" is consistent with the way this provision is expressed in other places in both this form and in the companion forms.

AD325, page 2, #6, (b)
Need to reduce the gap after "end"
Reasoning: Format error. There are too many spaces here.

AD325, page 2, #6(b)(3)
"The applicant has not participated, or tried to participate, in an appropriate method to resolve the problem outside of court, should be modified to:
"The applicant has not tried to resolve the problem using a dispute resolution program, like mediation."

AD325, page 2, #7, (b)
"…further study or evaluation of the issues in the request…" should be modified to "…further study or evaluation of the issues in the case" or "raised by the request"
Reasoning: Better, more accurate wording

AD325, page 2, #7, (c)
"The study or evaluation must look at the following" should be modified to "The study or evaluation must consider the following"
Reasoning: Better, more accurate wording

AD325, page 2, #7, (c), (1)
"Whether the request(s) in ADOPT-315 will be good for the child" should be modified to "Whether the request(s) in ADOPT-315 will be best for the child"
Reasoning: Reasoning: Inappropriate word choice as to "good." Family Code 8616.5(h) sets forth the applicable standard as best interest, not just that the change would be good. Language should be consistent throughout the document and should accurately reflect the correct standard. Proposed language is confusing and inconsistent with companion documents.

AD325, page 2, #7, (f)
"The judge and all people involved in this case will get a complete report by" should be modified to "The judge and all people involved in this case will receive a completed report by"
Reasoning: Better, more accurately descriptive wording.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.372

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

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Dennis M. Perluss, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 12, 2017

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court–State Court Forum (forum) propose amendments to rule 5.372 governing discretionary transfer of title IV-D child support cases between state courts and tribal courts in cases of concurrent jurisdiction. The amendments would allow transfers from the tribal court to the state court, clarify the contents and procedures for motions to transfer, and modify the factors and procedures for ruling on motions to transfer. These proposed amendments are based on suggestions received from those involved in transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court – State Court Forum recommend that effective January 1, 2018, the Judicial Council amend rule 5.372 to:

1. Provide by the language in the title and subdivision (a) that a title IV-D child support case may be transferred between tribal and state courts in both directions. When adopted, the current rule had only envisioned a title IV-D child support case being transferred from the state court to the tribal court. However, the goal is to ensure that a title IV-D child support case will be in the jurisdiction (tribal or state) that is best able to serve the family and protect the best interests of the child.

2. Add new subdivision (i), which describes the state court procedure when a tribal court with concurrent jurisdiction decides it is in the child's best interest for the case to be heard in state court and stipulates that such transfers are exempt from the payment of any filing fees that might otherwise apply.

3. Revise subdivision (h) to add the exception in new subdivision (i), which authorizes the filing of a motion to transfer a case back to state court when a tribal court determines that it is not in the best interest of the child or the parties to retain jurisdiction.

4. In (e):

    - Allow the state court to suggest transfer to tribal court on its own motion should circumstances suggest to the court that tribal court jurisdiction may be in the child's best interest.
    - Require that certain information be included in the motion to transfer to tribal court. This information is fundamental to the court's determination of concurrent jurisdiction.
    - Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion.
    - Recognize a presumption of tribal court jurisdiction if the child involved in the case is a tribal member or eligible for tribal membership. This is consistent with legal principles that generally recognize tribal subject matter jurisdiction over children who are members or eligible for membership in the tribe.
    - Specify the time limit within which any objection to the transfer to tribal court must be brought.
    - Provide that the objecting party has the burden of proof to establish that there is good cause not to transfer the matter to tribal court. This is consistent with state implementation of the Indian Child Welfare Act of 1978 (ICWA).

5. In (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court.
- Specify that the court may not consider the perceived adequacy of the tribal justice system in determining whether to transfer the case. This is consistent with state and federal law under the ICWA.
- Permit the state court judge to contact the tribal court judge to resolve procedural issues consistent with procedures contained in the Uniform Child Custody Jurisdiction and Enforcement Act and the Tribal Court Civil Money Judgment Act.

6. Add an Advisory Committee Comment to address the issue of filing fees when a case is transferred from tribal court.

The text of the amended rules and the new and revised forms are attached at pages 6–8.

Previous Council Action

The Judicial Council adopted California Rules of Court, rule 5.372, effective January 1, 2014, in response to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state court to the tribal court when there is concurrent subject matter jurisdiction.

Rationale for Recommendation

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[1] as amended by the Balanced Budget Act of 1997,[2] authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok Tribe had comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the state court to the tribal court. Rule 5.372 was adopted to meet this need. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, rule 5.372 was drafted in anticipation that other tribes may develop such programs in the future.

[1] Pub.L. No. 104-193 (Aug. 21, 1996) 110 Stat. 2105.

[2] Pub.L. No. 105-33 (Aug. 5, 1997) 111 Stat. 251.

Since implementation of rule 5.372 on January 1, 2014, over 40 cases have been considered for transfer between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. The Yurok Tribe intends to seek transfer of cases currently under the jurisdiction of state court in the following counties: Lake, Mendocino, Shasta, Siskiyou, and Trinity. In addition, at least one other tribe located in Southern California is expected to soon begin handling title IV-D child support cases.

Representatives of the state Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state courts, and Judicial Council staff met to review the case transfer procedures at a cross-court educational exchange on October 26, 2016. Based on the experience with the transfers that have taken place so far, the participants made a number of suggestions to improve the transfer process, including amendments to rule 5.372 to streamline the process, reduce confusion, and ensure consistent and efficient use of court resources. The group recommended clarifying that transfers could happen both to and from a tribal court. As a family's circumstances change, a case that may have initially been best served by tribal court jurisdiction may transition to one that is best served by state court jurisdiction. The Full Faith and Credit for Child Support Orders Act mandates full faith and credit for child support orders between tribal and state courts, thereby contemplating movement in either direction. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders. The group also recommended revising the list of factors that the state court could consider when making a determination to transfer to tribal court. The original list of factors was drawn from a Wisconsin rule that governs the transfer of general civil matters where there is concurrent tribal and state court jurisdiction. Not all of those factors were relevant to the consideration of the more specific title IV-D child support case type. In particular, the nature of the action, the interests of the parties, and whether state or tribal law will apply are all the same in these child support cases. The inclusion of these on the list of factors to be considered was confusing and an inefficient use of court resources.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2017 comment session—from February 27 to April 28—to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court appointed special advocate programs, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues. Ten comments were received. Four commentators approved of the proposal. Four approved with proposed amendments, and two did not indicate whether they approved. A number of clarifying revisions were made in response to the comments. Subdivision 5.372(e)(2)(C) was revised to include receipt by the parents of tribal services as among the factors that could be considered when determining whether the tribal court has concurrent

jurisdiction. Subdivision 5.372(i)(3) was revised to replace the word may with must. Subdivision 5.37(e) was revised to include a deadline for objection to transfer.

In addition, subdivision (h) was revised and an Advisory Committee Comment was added to address the issue of filing fees when a title IV-D child support case is transferred from tribal court to a superior court. Several members of the committee expressed concern that without such provisions, transfers of eligible title IV-D child support cases from tribal court might be subject to filing fees, which would not apply were the cases initiated directly by a local child support agency.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal, because the rule clarifies the process and requirements for transfer of these title IV-D child support cases between tribal and superior courts.

Attachments and Links

1. Cal. Rules of Court, rule 5.372 at pages 6–8
2. Chart of comments, at pages 9–19

Rule 5.372 of the California Rules of Court is amended, effective January 1, 2018, to read:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Rule 5.372. Transfer of title IV-D cases between ~~to a~~ tribal court and state court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

(b)–(d) * * *

(e) Determination of concurrent jurisdiction by a superior court

(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases.

(2) The motion for transfer to a tribal court must include the following information:

(A) Whether the child is a tribal member or eligible for tribal membership;

(B) Whether one or both of the child's parents are tribal members or eligible for tribal membership;

(C) Whether one or both of the child's parents live on tribal lands or in tribal housing, work for the tribe, or receive tribal benefits or services;

(D) Whether there are other children of the obligor subject to child support obligations;

(E) Any other factor supporting the child's or parents' connection to the tribe.

(3) When ruling on a motion to transfer, the superior court must first make a threshold determination that concurrent jurisdiction exists. Evidence to support this determination may include:

(A) Evidence contained within the motion for transfer;

(B) Evidence agreed to by stipulation of the parties; and

(C) Other evidence submitted by the parties or by the tribe.

The court may request that the tribal child support agency or the tribal court submit information concerning the tribe's jurisdiction.

(4) There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for tribal membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected ~~in a timely manner~~ within 20 days after service of notice of the right to object referenced in subdivision (e)(1) above. On the filing of a timely objection to the transfer, the superior court must conduct a hearing on the record considering all the relevant factors set forth in (f). The objecting party has the burden of proof to establish good cause not to transfer to tribal court.

(f) Evidentiary considerations

(1) In making a determination on the ~~application~~ motion for case transfer, the superior court must consider:

~~(1) The nature of the action;~~

~~(2) The interests of the parties;~~

(A) The identities of the parties;

(B) The convenience of the parties and witnesses;

~~(5) Whether state or tribal law will apply;~~

(C) The remedy available in the superior court or tribal court; and

(D) Any other factors deemed necessary by the superior court.

(2) In making a determination on the motion for case transfer, the superior court may not consider the perceived adequacy of tribal justice systems.

(3) The superior court may, after notice to all parties, attempt to resolve any procedural issues by contacting the tribal court concerning a motion to

transfer. The superior court must allow the parties to participate in, and must prepare a record of, any communication made with the tribal court judge.

(g) Order on request to transfer

If ~~T~~the superior court denies the request for transfer, the court must state on the record the basis for denying the request. If the superior court grants the request for transfer, it must issue a final order on the request to transfer including a determination of whether concurrent jurisdiction exists.

(h) Proceedings after order granting transfer

Once the superior court has granted the application to transfer~~,~~ and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court within 20 days of confirmation that the tribal court has accepted jurisdiction. With the exception of a filing by a tribal court as described by subdivision (i) of this rule, the superior court may not accept any further filings in the state court action in relation to the issues of child support and custody that were transferred to the tribal court.

(i) Transfer of proceedings from tribal court

(1) If a tribal court determines that it is not in the best interest of the child or the parties for the tribal court to retain jurisdiction of a child support case, the tribe may, upon noticed motion to all parties and the state child support agency, file a motion with the superior court to transfer the case to the jurisdiction of the superior court along with copies of the tribal court's order transferring jurisdiction and the entire file.

(2) The superior court must notify the tribal court upon receipt of the materials and the date scheduled for the hearing of the motion to transfer.

(3) If the superior court has concurrent jurisdiction, it must not reject the case.

(4) No filing fee may be charged for the transfer of a title IV-D child support case from a tribal court.

Advisory Committee Comment

This rule applies only to title IV-D child support cases. In the normal course, transfers from tribal court are initiated by the local child support agencies. Under Government Code sections 6103.9 and 70672, local child support agencies are exempt from payment of filing fees. The rule makes it clear that this exemption also applies when an eligible case is being transferred from a tribal court.

SPR-17-18

Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

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

	Commentator	Position	Comment	Committee Response
1.	Burgess, Jennifer J., Program Manager, Yurok Child Support Services Humboldt County	AM	Suggest change of term/word used in Rule 5.372 (e)(2)(C) "Whether one or both of the child's parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits". Suggest/request change of word used from "benefit" to services. Services provides a broader description and is a more appropriate term than "benefits".	The proposal was revised in response to this comment to add "…or services."
2.	California Indian Legal Services, By Denise H. Bareilles, Senior Staff Attorney Humboldt County	A	**Recommendations** **(i) Transfer of proceedings from tribal court** 1. If a tribal court determines that it is not in the best interest of the child or the parties for the tribal court to retain jurisdiction of a child support case, the tribe may, upon noticed motion to all parties and the state child support agency, file a motion to transfer the case to the jurisdiction of the superior court along with copies of the tribal court's order transferring jurisdiction and the entire file. 2. The superior court must notify the tribal court upon receipt of the materials and the date scheduled for the hearing of the motion to transfer. 3. If the superior court has concurrent jurisdiction it may not reject the case. *Comment #1:* The provision above allows interpretation that the Motion for Case Transfer from tribal court to state court may be processed and litigated twice. Subparagraph 1 presumes that the Motion for Case Transfer is occurring in	The rule does not assume that there has been litigation on the issue in tribal court, it merely acknowledges that the tribal court will have had to give up jurisdiction over the case in order for the state court to resume jurisdiction. That is why there must be an order from the tribal court order

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

	Commentator	Position	Comment	Committee Response
			the tribal court and that a final tribal court order is being issued by the tribal court judge to transfer the case and related files to the state court. Subparagraph 2 also presumes that a Motion for Case Transfer is being filed in the state court. The motion should be heard in the court that last had jurisdiction over the child support matter. Subparagraph 1 should be modified to include that the tribal court must notify the state court of the date scheduled for the hearing of the motion for transfer, and this same language should be removed from subparagraph 2. Another option to clarify where the Motion for Case Transfer from tribal court to state court will be filed may be to keep the provision more general to allow both options, and then give the state and tribal Title IV-D agencies the ability to determine in an intergovernmental agreement where this motion would be filed. We are supportive of the proposed change based on clarifying in the rule that the Motion for Case Transfer from tribal court to state court is litigated once in either state or tribal court. **(h) Proceedings after order granting transfer** Once the superior court has granted the application to transfer, and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all	acknowledging that the case should go back to state court. The state court has no authority to order the tribal court to return the case. (*In re. M.M.* (2007) 154 Cal.App. 4th 897) No changes were made in response to this comment. It is not anticipated that the superior court would participate in the tribal court deliberations about whether the case should remain in tribal court or return to superior court. The goal is to ensure that if a case is no longer appropriate for tribal court jurisdiction it does not fall through the cracks and there is a mechanism to have it return to superior court jurisdiction.

	Commentator	Position	Comment	Committee Response
			pleadings and orders, to the clerk of the tribal court. With the exception of a filing by a tribal court as described by subdivision (i) of this rule, the superior court may not accept any further filings in the state court action in relation to the issues of child support and custody that were transferred to the tribal court. *Comment #2:* The above language would need to be reconciled based on the modified language in provision (i). **(e) Determination of concurrent jurisdiction by a superior court** (1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and post judgment cases. (2) The motion for transfer to a tribal court must include the following information: A. Whether the child is a tribal member or eligible for tribal membership; B. Whether one or both of the child's parents is a tribal member or eligible for tribal membership; C. Whether one or both of the child's parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits. D. Whether there are other children of the obligor subject to child support obligations; E. Any other factor supporting the child's or	No revisions were made in response to this comment because no revisions were made to (i).

	Commentator	Position	Comment	Committee Response
			parents' connection to the tribe. *Comment #3:* We are supportive of the proposed change with the following modification, Provision (2)(C) –Whether one or both of the child's parents lives on tribal lands, in tribal housing or communities, works for the tribe, or receives tribal services, benefits, or resources. *Comment #4:* California Rule of Court 5.372 was specifically written to apply to California tribes that are actively administering a Title IV-D agency and court. It is important to emphasize that there are tribes in California that exercise child support jurisdiction exclusively on tribal dollars without Title IV-D funds. Some of these tribes choose to operate in this manner so that they may apply tribal laws without being subject to federal Title IV-D regulation. There is a gap in the system for these non IV-D tribal courts. These courts may be garnishing wages for foreign enforcement but they are not included in this rule to support case transfers to their courts to allow them to work all aspects of the case, including modifications (i.e., transfer of continuing exclusive jurisdiction over the child support order). This is not good policy because there is an expectation of enforcement of foreign orders while at the same time not allowing the tribe to exercise its full jurisdiction over the child support matter. The non IV-D tribal court will have difficulty hearing a child support case that was initiated in the county system because it will be unclear as to which court has jurisdiction when a party thereafter petitions the tribal court to hear the matter.	Subdivision (e) (2) (C) was revised to reference both benefits or resources. As noted, rule 5.372 was written only to apply to Title IV-D child support cases. It is beyond the scope of this proposal to address non-Title IV-D child support cases.

SPR-17-18
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Conclusion While we did not comment on every proposed change, we do support all of them consistent to the above comments. The proposed changes promotes tribal self-governance, and provides additional clarity and efficiency in processing Title IV-D tribal child support case transfers between tribal and state courts.	
3.	Executive Committee of the Family Law Section of the State Bar of California By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California	A	The Executive Committee of the Family Law Section (FLEXCOM) supports the changes to California Rules of Court set out in this proposal. Please see below for our comments and suggestions. As for the specific inquiry, we believe that the proposed amendments appropriately address the stated purpose. Please consider the following recommendations: In 5.372(h), add a reasonable time limit by which the superior court clerk must deliver a copy of the entire file to the Tribal Court. This is to give priority to such cases in view of court backlogs and avoid any delays in addressing modification requests and enforcement of support orders in Tribal Courts (consider current delays in transfer of files when a motion to change venue is granted). In 5.372(i)(3), should it read ". . . ~~may~~ **shall** not reject the case."? If this is mandatory, then the language used should clearly convey that.	No response required. No response required. The proposal was revised in response to this comment. The proposal was revised to use "must" before "not" in response to this comment.
4.	Gloege, Naomi J., Rules Attorney, Aderant	NI	I am writing to comment on the proposed amendments to CRC 5.372, out for comment	

	Commentator	Position	Comment	Committee Response
			until 4/28/17, and proposed to be effective 1/1/18. According to SPR 17-18 Invitation to Comment, CRC 5.372(e) is being amended in part to "specify the time limit within which any objection to the transfer to tribal court must be brought." As proposed CRC 5.372(e)(4) will state in part as follows: "There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for trial membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after service of notice. …" It is not clear as written what specific notice triggers the 20 day deadline to object. Is it the "notice of right to object to transfer" or some other notice? As this may cause some confusion, I respectfully propose that the specific type of notice be identified in subdivision (e)(4) so that it is clear what notice triggers the objection deadline. For example, CRC 5.372(e)(4) could be amended to state in part as follows: ""There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for trial membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after	The proposal has been revised in response to this comment.

SPR-17-18
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			service of notice of the right to object to transfer. …" (Emphasis added). Thank you for your time and consideration.	
5.	Orange County Bar Association By Michael L. Baroni, President Orange County	AM	Does the rule appropriately address the stated issue? Yes, except for subdivision (f). If the issue is whether or not to transfer an action from the Superior Court to a Tribal Court then one of the Evidentiary Considertaions must be whether the child at issue is a tribal member or eligible for tribal membership. (See subdivision (e)(4) regarding the presumption for transfer). Suggested modification of Rule 5.372 would be to have the following language under Subdivision (f) (1) (C) "Whether the child(ren) at issue is/are member(s) of the tribe or eligible for tribal membership."	The issue of children's relationship to the tribe is central to the determination of whether or not the tribe has concurrent jurisdiction and must be considered by the superior court under subdivision (e)(2)(A) and does not need to be considered again under subdivision (f)(1).
6.	Superior Court of California, County of Los Anageles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit	AM	**Rule 5.372** Please consider including how much time the court should wait for acceptance of jurisdiction by the tribal court. (section (h)) The following changes are suggested in the interest of clarity and consistency. **(f) (1)** (page 7) - change the word "application" to "motion." Elsewhere in the rule "motions" are discussed but not "applications." **(f) (2)** (page 7) - change the word "application" to "motion." Same reason. **(i) (1)** (page 8) - to "may,…file a motion…."	The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this

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SPR-17-18
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			add "with the Superior Court."	comment
7.	Superior Court of California, County of Orange By Cynthia Beltran, Administrtive Analyst, Family Law and Juvenile Court	NI	Does this rule apply to all tribal and state courts? At a recent AB 1058 meeting, the understanding was that this rule only applied to transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.	Currently Yurok is the only tribe with a title IV-D program. To date the rule has only been used between the Yurok tribe and Del Norte and Humboldt superior courts. The rule itself is, however, of general application. If more tribes develop title IV-D child support programs or if Yurok begins seeking transfer from cases outside of Del Norte and Humboldt county, this rule would apply to those cases.
8.	Superior Court of California, County of Riverside By Susan D. Ryan, Chief Deputy of Legal Services	A	Does the proposal address the stated purpose? Yes. Would the proposal provide costs savings? No. What would the courts require in order to implement this proposal? The court would be required to train staff members (court services assistants, and supervisors), and draft new procedures. Would six months provide sufficient time for implementation? Six months would be sufficient for court implementation. However, tribal to court collaboration would require a lengthier implementation period to work out protocol with individual tribes. How well would this proposal work in courts of different sizes? Due to continued staffing shortages, these types of changes or additions to workload could lead to processing backlogs.	No response required.
9.	Superior Court of California, County of San Diego	A	Q: Does the proposal appropriately address	No response required.

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	Commentator	Position	Comment	Committee Response
	By Mike Rodd, Executive Officer		the stated purpose? Yes. Q: Would the proposal provide cost savings? If so, please quantify. The proposed rule change streamlines the process with specific requirements and instructions that are easy to follow. This should result in less confusion about how to handle these cases and result in expediency in court hearings and transfer of cases. Q: What would the courts require in order to implement this proposal? Forms to use for motions, orders, and notice of confirmation of acceptance of jurisdiction; training for judicial officers, courtroom clerks, and court operations clerks. Q: Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation? Only if forms mentioned above have been created and approved. Q: How well would this proposal work in small courts? Large courts?	

	Commentator	Position	Comment	Committee Response
			Should be the same for all courts affected.	
10.	Yurok Child Support Services By Jennifer J. Burgess, Program Manager	AM	Rule 5.372. Transfer of title IV-D cases between to a tribal court and state court While in agreement with all of the proposed changes to Rule 5.372, I do have a procedural concern regarding the proposed change of process in (h) Proceedings after order granting transfer. The proposed addition is in the first sentence. "Once the superior court has granted the application to transfer; and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court." I'm wondering if there will be a proposed process for court to court communication for the confirmation of the transfer process. I am aware there is a drafted, non-mandatory model Order After Hearing (FL 687) that have been put to use in Humboldt Superior Court for the transfer to tribal court process. This drafted format indicates the clerk to prepare and send the file directly to the tribal court. I'm wondering if there will possibly be a new mandatory transmittal form drafted and put into place by the Judicial Council to accommodate the process involved with confirmation between the courts, as outlined in the proposed change of section (h). Maybe something built similar to an FL-590A UIFSA Child Support Order Jurisdictional Attachment, but specific to Rule 5.372, inclusive of the fact that tribes are not required	There is no plan to formalize a process for court to court communication or to develop a form.

	Commentator	Position	Comment	Committee Response
			to adopt UIFSA. Also, possibly identifying the burden of transmittal regarding the form would be helpful. Meaning would the clerk's offices be transmitting this form as a court to court communication, or would the IV-D Agency be transmitting this form. Thank you for your attention to our comment and questions.	

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

Title
Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications

Rules, Forms, Standards, or Statutes Affected
Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; adopt form INT-140; revise form INT-110

Recommended by
Court Interpreters Advisory Panel
Hon. Brian L. McCabe, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 18, 2017

Contact
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Executive Summary

The Court Interpreters Advisory Panel (CIAP) recommends repealing the rule that establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered interpreters in criminal and juvenile cases and revoking the information form that describes these procedures. CIAP recommends replacing them with a new rule that generally addresses the appointment of spoken language interpreters in all cases and a new information form that addresses the procedures for appointment of provisionally qualified and temporary interpreters in all cases. Additional changes to the rule and revisions to the form regarding the qualifications of noncertified and nonregistered interpreters would encourage noncertified and nonregistered interpreters to pursue certified and registered status. CIAP also recommends adopting a new form regarding the temporary use of such interpreters. These changes would implement legislation that took effect January 1, 2015, clarify existing processes, and effectuate provisions in the *Strategic Plan for Language Access in the California Courts* (the Language Access Plan),

Recommendation

CIAP recommends that the Judicial Council, effective January 1, 2018:

1. Repeal California Rules of Court, rule 2.893 and adopt a new rule 2.893 that:
   a. Addresses appointment of spoken language interpreters in all case types;
   b. Establishes that the provisional qualification of interpreters in civil case types should follow the same rules and procedures, and be subject to the same standards, as provisional qualification in criminal and juvenile proceedings;
   c. Defines the various types of interpreters and separately addresses their use;
   d. Requires specified findings be made on the record when an interpreter is used to implement recent legislation;
   e. Clarifies that interpreters in both certified and registered languages are subject to the same rules and procedures for provisional qualification or temporary use;
   f. Clarifies the requirements and limitations for the temporary use of an interpreter; and
   g. Encourages prospective interpreters to become certified or registered without making it impossible for courts to get interpreters in hard-to-find, other-than-Spanish languages.

2. Revoke current *Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter in Criminal and Juvenile Delinquency Proceedings* (form INT-100-INFO) and adopt new *Procedures to Appoint a Noncertified or Nonregistered Spoken Language Interpreter as Either Provisionally Qualified or Temporary* (form INT-100-INFO) to reflect and implement the changes to rule 2.893.

3. Revise *Qualifications of a Noncertified or Nonregistered Interpreter (Provisional Qualifications by Order of Presiding Judge)* (form INT-110) to:
   a. Reflect and implement the changes to rule 2.893; and
   b. Clarify the difference between a provisionally qualified interpreter and a temporary interpreter.

4. Adopt *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-140), to clarify and separately address the use of temporary interpreters when a certified, registered, or provisionally qualified interpreter is not available.

The text of the amended and repealed rules, and the new, revised, and revoked forms are attached at pages 11-31.

Previous Council Action

Rule 2.893 was adopted as rule 984.2 effective January 1, 1996 and previously amended and renumbered effective January 1, 2007. As originally adopted it applied to interpreters in criminal and juvenile cases.

On November 29, 1995, through a circulating order, the Judicial Council modified language in the rule, to allow for the temporary use of interpreters when a certified, registered, or provisionally qualified interpreter is not available. This is important for establishing the Judicial Council's intentions for handling these two separate types of interpreters.

Rationale for Recommendation

The recommended changes to rule 2.893 and new and modified forms discussed below are required to implement recent legislative changes and are also responsive to concerns or problems that have been raised by judges, courtroom personnel, and interpreters. Because the recommended changes to rule 2.893 and form INT-100-INFO are so extensive, these changes are not shown with underlining, strikeouts, and shading. Instead, the committee recommends repealing the existing rule and revoking the existing form, and replacing them with a new rule and form.

Background

Existing statutes, rules, and forms address the provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal and juvenile cases. (See Gov. Code, § 68561.)

Gov. Code, § 68561 §§ (c) and (d) require the Judicial Council establish procedures and guidelines for appointing noncertified interpreters and for appointing all interpreters in non-designated languages. Rule 2.893 and its related body of forms are these procedures and guidelines.

Currently, rule 2.893 establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal cases and juvenile delinquency proceedings. *Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter in Criminal and Juvenile Delinquency Proceedings* (form INT-100-INFO) provides some guidance about these procedures and *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT-110), addresses the qualifications of noncertified and nonregistered interpreters.[1]

[1] Form INT-120, *Certification of Unavailability of a Certified or Registered Interpreter*, addresses the availability of certified or registered interpreters and the court's search for one. Since this relates to court operations, the Court Executives Advisory Committee will be reviewing the form and updates to form INT-120 are not part of this proposal.

Legislation that took effect January 1, 2015 (Assem. Bill 1657; Stats. 2014, ch. 721) added Government Code section 68092.1, which expanded the case types in which interpreters may be provided to include civil cases. The *Strategic Plan for Language Access in the California Courts* (the Language Access Plan),[2] which was adopted on January 22, 2015, also calls for an expansion of the provision of interpreter services into all case types by 2018. Additional legislation that took effect January 1, 2015 (Assem. Bill 2370; Stats. 2014, ch. 424) amended Government Code section 68561, which added requirements about what details must be included on the record whenever an interpreter, including a noncertified or nonregistered interpreter, is appointed. The rule and forms need to be updated to reflect these changes.

While most judicial officers, court staff, and limited English proficiency stakeholders are familiar with the "provisional qualification" components of rule 2.893 and its related forms, there is also a lesser understood provision for the use of an interpreter for a single event only—when absolutely needed—using a different standard. The current structure of the rule does not sufficiently distinguish between these two statuses and therefore has created confusion.

Although only three percent of all language interpretation in the courts is conducted by noncertified or nonregistered interpreters, the provisional qualification process is still of critical importance to the smooth operation of the courts. There is concern that some noncertified and nonregistered interpreters use the provisional qualification process as a way to continue to work in the courts without ever attempting to become certified or registered. The existing rule text does not identify any incentive within the provisional qualification process that would encourage the interpreter to pursue certified or registered status, nor does it provide a procedure for doing so.

Generally address the appointment of interpreters and apply procedures for provisionally qualifying interpreters in all case types

As part of implementing Assem. Bill 1657; Stats. 2014, ch. 721 which expands court interpreter services to civil case types, CIAP recommends that rule 2.893 be amended to address appointment of all interpreters, not just noncertified or nonregistered interpreters, in all case types, not just criminal and juvenile cases. CIAP also recommends that provisional qualification of interpreters in civil case types follow the same rules and procedures, and be subject to the same standards, as provisional qualification in criminal and juvenile proceedings. To do this, CIAP is recommending that rule 2.893, form INT-100-INFO, and form INT-110 be modified to encompass all case types. CIAP is also recommending amendments to the rule to make clear that noncertified and nonregistered interpreters are subject to the same set of requirements.

[2] The plan is available at *www.courts.ca.gov/documents/CLASP_report_060514.pdf*.

Add requirements for findings on the record

As noted above, Assem. Bill 2370; Stats. 2014, ch. 424 amended Government Code section 68561 to require specified findings be made on the record when an interpreter is used. CIAP recommends that rule 2.893 be amended to include these new requirements:

Subdivision (c) adds requirements for stating details on the record for the use of certified and registered interpreters, including the language to be interpreted, the interpreter's name, the interpreter's certification or registration number, a statement that the interpreter's identification has been verified, a statement that the interpreter is certified or registered to interpret in the language to be interpreted, and a statement that the interpreter was administered the interpreter's oath or has an oath on file with the court.

Subdivisions (d)(2)(D), (E), (F), and (G) add requirements for stating details on the record for the use of noncertified or nonregistered interpreters, including the name of the interpreter, that the interpreter is not certified or registered to interpret in the language to be interpreted, a finding that the interpreter is qualified to interpret in the proceeding as required under the provisional qualification or temporary-use guidelines, and a statement that the interpreter was administered the interpreter's oath.

Better distinguish between "provisionally qualified" and "temporary use"

The adoption of new form INT-140, *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter*, along with the restructuring of rule 2.893 and form INT-100-INFO, will help to clarify the requirements and limitations of a temporary use of an interpreter by defining the various types of interpreters and separately addressing their use. The text of the rule has been restructured to more clearly distinguish between provisional qualification and temporary use. Having two separate forms—one for the use of a provisionally qualified interpreter (form INT-110) and another for the temporary use of an interpreter (form INT-140)—will make it much easier for court staff to know which process to follow. In addition, each form cross-references the other. The form INT-140 process for the temporary use of an interpreter may be handled quickly in the courtroom for a single-use event, while the form INT-110 process is more involved and requires sign-off by the presiding judge.

Encourage prospective interpreters to become certified or registered

The recommended changes to rule 2.893 and form INT-110 include modifications that will encourage noncertified or nonregistered interpreters to continue on the path toward certified or registered status and become more competent as a court interpreter while protecting the courts' ability to access interpreters in the most hard-to-find languages. Currently, interpreters are provisionally qualified for six-month periods, and the provisional qualification process is overseen by the presiding judge of the court. The current maximum number of six-month periods are shorter for Spanish than for other languages. This proposal would not change any of the maximums or their exceptions, but it would add new requirements for interpreters requesting a second or subsequent six-month qualification period:

- **Subdivision (f)(4).** This new subdivision includes the following requirements for interpreters requesting their second six-month period of provisional qualification:
    - Must take the State of California Court Interpreter Written Exam at least once in the 12 calendar months leading up to their appointment for a second six-month period;
    - Must have taken the State of California's court interpreter ethics course for interpreters seeking appointment as a noncertified or nonregistered interpreter, or already be certified or registered in a different language from the one in which they are being appointed for a second six-month period; and
    - Must have taken the State of California's online court interpreter orientation course, or be certified or registered in a different language from the one in which they are being appointed.

- **Subdivision (f)(5).** This new subdivision includes the following requirements for interpreters requesting their third or subsequent six-month period of provisional qualification:
    - Must have taken and passed the State of California Court Interpreter Written Exam; and
    - Must have taken either the Bilingual Interpreting Exam or the relevant Oral Proficiency Exam for their language pairing at least once during the 12 calendar months leading up to the appointment.

While the committee believes these changes may increase the number of interpreters who seek certified or registered status, instead of remaining long-term provisionally qualified interpreters, they remain very aware of court concerns about accessing interpreters in hard-to-find languages. Therefore, interpreters in very rare or hard-to-find languages will not be required to meet these additional requirements. Subdivision (f)(7) provides that interpreters in languages with fewer than 25 people on the Judicial Council's master list of certified and registered interpreters (Master List) will not be subject to these new requirements. (For example, the requirements would currently apply to Spanish, Mandarin, Korean, French, Farsi, Vietnamese, and Russian interpreters, but would not apply to interpreters in very hard-to-find languages.) In addition, subdivision (f)(6) includes further protections to the supply of needed interpreters by carving out requirements related to taking the oral exams and by making clear that subdivision (f)(5)(b) will not apply to any interpreter who seeks appointment in a language pairing for which no exam is available. For example, this would currently apply to the Japanese-to-English pairing or to someone seeking appointment as a Spanish-to-indigenous language interpreter.

Other changes to form INT-110

Other recommended changes to form INT-110 include:

- Adding a check box to the first section of the form that an interpreter can use to indicate he or she works in a language, or language pairing, for which there is no testing.

- Adding items 2, 4(b) & (c); and 6(b) & (c) to help the court better assess an interpreter's preparations for court interpreting by looking at interpreter or translator credentials which the interpreter might hold and the time the interpreter has spent observing court, in legal training, working as an interpreter, or under the guidance of a certified or registered court interpreter mentor.
- Revising item 6(a) to include additional types of proceedings or events in which the interpreter may have worked during the previous six months.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposal was circulated for public comment between February 27, 2017, and April 28, 2017. Eight separate comments were received, representing more than a dozen organizations and courts. Two courts submitted join comments but were listed separately on the comment chart. Four of the nine commentators agreed with the proposal, three of the commentators agreed with the proposal with certain amendments and two commentators did not indicate their position. CIAP considered the comments and provisions of the Language Access Plan and made limited revisions to the rule and its related forms, as they were proposed. A chart summarizing the comments and the committee's responses is attached at pages 33-61.

One set of procedures to appoint interpreters in all case types

Most commentators noted their overall support for the proposal, which makes it so that only one set of procedures will apply to all case types whether they be criminal, juvenile, or civil.

Encourage prospective interpreters to become certified or registered

Most commentators noted their support for attempts to encourage noncertified and nonregistered interpreters to take steps towards achieving certified or registered status. Although certain questions were raised about how processes would be carried out, commentators were hopeful that requirements to test, take ethics courses, and take orientation courses would result in more certified and registered interpreters. CIAP made a few minor technical corrections and added one clarifying instruction to the form INT-100-INFO.

Length of provisional qualification periods

In considering likely court concerns about how this revised process might discourage interpreters from working in the courts, the committee considered lengthening the six-month periods of provisional qualification. The invitation to comment specifically identified this as an alternative that had been considered by the committee.

Two court commentators suggested lengthening the period of provisional qualification for languages with fewer than 25 interpreters or where no exams were available in the interpreter's language pairing. CIAP discussed different lengths for different languages and felt strongly that introducing a different set of processes for different languages would create confusion and burden for the courts. Additionally, CIAP wanted to make sure that interpreters would continue

to meet the requirements not related to testing, such as ethics training and online orientation courses, without adding to the length of time with which those requirements could be met.

In the end, the committee chose to stay with the existing six-month periods and believes that the exemption to meeting the new requirements in subdivision (f)(7) of the rule will create sufficient safeguards for the courts.

Requiring a database of provisionally qualified interpreters

As the committee considered the possible impacts of multiple requirements spread over multiple six-month periods of provisional qualification, they discussed the idea of creating a database that could aid in tracking provisional qualification status. The invitation to comment specifically identified this as an alternative that had been considered by the committee.

All court commentators responded that the creation of a statewide database to assist with tracking provisionally qualified interpreters would be helpful to the courts.

While the committee believed such a database might be useful, it did not feel that centralized tracking was required and was concerned about delaying the needed changes to the rule and to forms INT-100-INFO and INT-110 to await the development of such a database. The committee believed that the period-tracking questions and the signature under penalty of perjury elements on form INT-110 would be sufficient to ensure courts were accessing interpreters in a manner consistent with the updated rule.

CIAP staff has been made aware of the perceived usefulness of such a database and will be able to consider implementation if this report's recommendations are accepted.

The use of temporary interpreters

One commentator, representing 16 legal services or legal aid organizations, specifically suggested defining the term "brief, routine matter" in order to restrict the use of temporary interpreters and provided draft language. CIAP discussed the suggestions in detail and decided the overall package of changes to the rule and its related forms, together with new committee advisory comments, provided sufficient safeguards and information to protect LEP court users, parties, and court interests, including providing access to justice. Additionally, CIAP determined that the need to leave room for judicial discretion to consider sometimes-complex situations and make case-specific decisions outweighed the benefits of a rigid definition. CIAP opted for the inclusion of additional advisory committee comments, which are included in the recommended rule. This decision was made by a subcommittee vote of four to two.

The same commentator suggested adding additional obligations for a "knowing and express" waiver when an LEP party would be moving forward without a certified, registered, or provisionally qualified interpreter. CIAP reviewed the requirements for reporting on the record that a waiver was required with the use of a temporary interpreter, researched original historical records about when the temporary interpreter language was first introduced, considered the entire

package of changes to the rule and its related forms—including the new on-the-record reporting requirements—and felt that sufficient safeguards were in place without the "knowing and express" language. This decision was made by a unanimous subcommittee vote of four to zero.

Internal comments

CIAP staff had discussions with the staff of the Civil and Small Claims Advisory Committee and reported back to CIAP's Language Access Subcommittee related to possible specific inclusion in the rule of language related to small claims cases. CIAP was advised that proposed legislation related to eliminating the exclusion of requirements for certified or registered interpreters in small claims cases was in draft mode, and waiting until after any future related legislation took effect would be more appropriate in trying to draft related changes to rule 2.893 at this time.

Alternatives Considered

In addition to the alternatives considered in response to the public comments, several other alternatives were considered, as outlined below.

Establishing different provisional qualification standards for case types outside of criminal and juvenile

The committee considered whether a different provisional qualification standard would be appropriate outside of the criminal and juvenile case types. In consideration of the Language Access Plan, which specifically recommended the same level of qualification for different case types (Recommendation 8), and because no compelling arguments to support different qualification standards were raised, the committee decided to modify the process to cover all case types.

Not clarifying the use of temporary interpreters

The committee considered not making changes to rule 2.893 regarding the use of temporary interpreters. However, the committee believes the existing rule text creates significant confusion as to the applicability of form INT-110 when an interpreter is not going to be provisionally qualified. In the end, the committee determined that the recommended changes to the rule would provide the greatest clarity.

The committee considered making changes to the rule without creating the new form INT-140, which is specifically about one-time, temporary interpreters. The committee also considered modifying form INT-110 to have two sections: one related to provisional qualification and one related to temporary interpreters. After reviewing mockups of a split form INT-110, the committee determined that the greatest clarity is provided by the current recommendation for two separate forms; commentator response seemed to support this approach.

Not exempting interpreters who are provisionally qualified, or exempting interpreters when a number other than 25 are registered or certified in a language

The committee discussed applying the same requirements for the second and subsequent six-month provisional qualification periods to all interpreters regardless of language. There were

concerns that courts would then face insurmountable barriers to providing language access in certain rarely used languages. Applying the same requirements for testing, orientation classes, and ethics courses to all interpreters—even those working in languages with very few interpreting resources—would likely create hardships for courts, especially smaller and more remote courts. The committee decided to create exemptions for such situations.

In determining how best to balance court interests in accessing interpreters in hard-to-find languages with encouraging interpreters to pursue certified and registered status, the committee considered both higher and lower thresholds for the exemption. Based on the 25-interpreter minimum, the committee reviewed which languages would currently be subject to the second and third or subsequent six-month period requirements for provisional qualification and decided 25 was the best cutoff point. With 25 as the cutoff, interpreters in very rare or hard-to-find languages would not be required to meet the additional requirements.

Prospective interpreters in languages with 25 or more interpreters on the Master List already have more preparation resources available to them, including training opportunities, the possibility of seeking out a mentor, and additional on-the-job or volunteer experience.

Articulating the various types of triggers for provisional qualification may encourage all prospective interpreters to pursue certified or registered status. The detailed requirements in updated form INT-110 create a clear roadmap for the types of preparation that can have the greatest potential to assist interpreters in passing the qualifying exams for certified and registered status.

Implementation Requirements, Costs, and Operational Impacts

Implementation requirements, costs, and operational impacts are expected to be very limited. Commentators representing a number of courts around the state discussed implementation requirements, which included limited training needs and operational issues but none of them were presented as challenging. Commentators were divided as to whether or not 3.5 months would be sufficient time to implement the recommended changes. The Superior Court of Los Angeles County represents the largest court system in the state and submitted a comment that 3.5 months would be sufficient to implement the recommended changes. Other large courts, including Orange, Riverside, and San Diego suggested they might need six months to implement the recommended changes.

CIAP chose to move forward with a January 1, 2018 effective date and believes that is sufficient time for courts to implement the required changes. This is based on the premise that civil expansion is an idea that will be at least three years old by the effective date of the changes, the fact that the new form INT-140 does not create a new policy but only assists to clarify existing policies, as well as the Los Angeles court’s positive view of the timeframe.

The Trial Court Presiding Judges/Court Executives Advisory Committees’ Joint Rules Working Group reviewed the proposal and commented there would only be minor operational impacts but

believed certain modifications to the form INT-110 would assist interpreter coordinators around the state in their work and make it easier to define who is qualified when using a noncertified or nonregistered interpreter.

The recommended changes will require a limited amount of training. Impacts will most likely be concentrated on (1) the use of the new form INT-140, and (2) ensuring judicial officers and court staff are well-equipped to make appropriate decisions about the use of provisionally qualified versus temporary interpreters when a certified or registered interpreter is not available. Since the recommendation is introducing additional tools and clarification to help with existing policies, impacts are expected to be small.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal supports Goal I, Access, Fairness, and Diversity, of the Judicial Council's strategic plan. This goal emphasizes that all persons will have equal access to the courts and court proceedings and programs, and that court procedures will be fair and understandable to court users. Equal access depends on being able to understand the proceedings. This rule and form proposal requires the court to inform the public about how to request an interpreter in civil matters and helps courts plan for the need to provide interpreters in specific court proceedings. The proposal is directly in line with policy statement 9 of Goal I, which raises the need to "[i]mplement, enhance, and expand multilingual and culturally responsive programs, including … interpreter services."

Attachments and Links

1. New Cal. Rules of Court, rule 2.893, at pages 12–17
2. Repealed Cal. Rules of Court, rule 2.893, at pages 18–19
3. New Form INT-100-INFO, at pages 20–21
4. Revoked Form INT-100-INFO, at pages 22–24
5. Form INT-110, at pages 25–30
6. Form INT-140, at pages 31–32
7. Comment Chart, at pages 33-61

Rule 2.893 of the California Rules of Court is repealed and adopted, effective January 1, 2018, to read:

Rule 2.893. Appointment of interpreters in court proceedings

(a) Application

This rule applies to all trial court proceedings in which the court appoints an interpreter for a Limited English Proficient (LEP) person. This rule applies to spoken language interpreters in languages designated and not designated by the Judicial Council.

(b) Definitions

As used in this rule:

(1) "Designated language" means a language selected by the Judicial Council for the development of a certification program under Government Code section 68562;

(2) "Certified interpreter" means an interpreter who is certified by the Judicial Council to interpret a language designated by the Judicial Council under Government Code section 68560 et seq.;

(3) "Registered interpreter" means an interpreter in a language not designated by the Judicial Council, who is qualified by the court under the qualification procedures and guidelines adopted by the Judicial Council, and who has passed a minimum of an English fluency examination offered by a testing entity approved by the Judicial Council under Government Code section 68560 et seq.;

(4) "Noncertified interpreter" means an interpreter who is not certified by the Judicial Council to interpret a language designated by the Judicial Council under Government Code section 68560 et seq.;

(5) "Nonregistered interpreter" means an interpreter in a language not designated by the Judicial Council who has not been qualified under the qualification procedures and guidelines adopted by the Judicial Council under Government Code section 68560 et seq.;

(6) "Provisionally qualified" means an interpreter who is neither certified nor registered but has been qualified under the good cause and qualification procedures and guidelines adopted by the Judicial Council under Government Code section 68560 et seq.;

(7) "Temporary interpreter" means an interpreter who is not certified, registered, or provisionally qualified, but is used one time, in a brief, routine matter.

(c) Appointment of certified or registered interpreters

If a court appoints a certified or registered court interpreter, the judge in the proceeding must require the following to be stated on the record:

(1) The language to be interpreted;

(2) The name of the interpreter;

(3) The interpreter's current certification or registration number;

(4) A statement that the interpreter's identification has been verified as required by statute;

(5) A statement that the interpreter is certified or registered to interpret in the language to be interpreted; and

(6) A statement that the interpreter was administered the interpreter's oath or that he or she has an oath on file with the court.

(d) Appointment or use of noncertified or nonregistered interpreters

(1) *When permissible*

If after a diligent search a certified or registered interpreter is not available, the judge in the proceeding may either appoint a noncertified or nonregistered interpreter who has been provisionally qualified under (d)(3) or, in the limited circumstances specified in (d)(4), may use a noncertified or nonregistered interpreter who is not provisionally qualified.

(2) *Required record*

In all cases in which a noncertified or nonregistered interpreter is appointed or used, the judge in the proceeding must require the following to be stated on the record:

(A) The language to be interpreted;

(B) A finding that a certified or registered interpreter is not available and a statement regarding whether a *Certification of Unavailability of Certified or Registered Interpreter* (form INT-120) for the language to be interpreted is on file for this date with the court administrator;

(C) A finding that good cause exists to appoint a noncertified or nonregistered interpreter;

(D) The name of the interpreter;

(E) A statement that the interpreter is not certified or registered to interpret in the language to be interpreted;

(F) A finding that the interpreter is qualified to interpret in the proceeding as required in (d)(3) or (d)(4); and

(G) A statement that the interpreter was administered the interpreter's oath.

(3) *Provisional qualification*

(A) A noncertified or nonregistered interpreter is provisionally qualified if the presiding judge of the court or other judicial officer designated by the presiding judge:

(i) Finds the noncertified or nonregistered interpreter to be provisionally qualified following the *Procedures to Appoint a Noncertified or Nonregistered Spoken Language Interpreter as Either Provisionally Qualified or Temporary* (form INT-100-INFO); and

(ii) Signs an order allowing the interpreter to be considered for appointment on *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110). The period covered by this order may not exceed a maximum of six months.

(B) To appoint a provisionally qualified interpreter, in addition to the matters that must be stated on the record under (d)(2), the judge in the proceeding must state on the record:

(i) A finding that the interpreter is qualified to interpret the proceeding, following procedures adopted by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120);

(ii) A finding, if applicable, that good cause exists under (f)(1)(B) for the court to appoint the interpreter beyond the time ordinarily allowed in (f); and

(iii) If a party has objected to the appointment of the proposed interpreter or has waived the appointment of a certified or registered interpreter.

(4) *Temporary use*

At the request of an LEP person, a temporary interpreter may be used to prevent burdensome delay or in other unusual circumstances if:

(A) The judge in the proceeding finds on the record that:

(i) The LEP person has been informed of their right to an interpreter and has waived the appointment of a certified or registered interpreter or an interpreter who could be provisionally qualified by the presiding judge as provided in (d)(3);

(ii) Good cause exists to appoint an interpreter who is not certified, registered, or provisionally qualified; and

(iii) The interpreter is qualified to interpret that proceeding, following procedures adopted by the Judicial Council (see forms INT-100-INFO and INT-140).

(B) The use of an interpreter under this subdivision is limited to a single brief, routine matter before the court. The use of the interpreter in this circumstance may not be extended to subsequent proceedings without again following the procedure set forth in this subdivision.

(e) Appointment of intermediary interpreters working between two languages that do not include English

An interpreter who works as an intermediary between two languages that do not include English (a relay interpreter) is not eligible to become certified or registered. However, a relay interpreter can become provisionally qualified if the judge finds that he or she is qualified to interpret the proceeding following procedures adopted by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120). The limitations in (f) below do not apply to relay interpreters.

(f) Limit on appointment of provisionally qualified noncertified and nonregistered interpreters

(1) A noncertified or nonregistered interpreter who is provisionally qualified under (d)(3) may not interpret in any trial court for more than any four six-month periods, except in the following circumstances:

(A) A noncertified interpreter of Spanish may be allowed to interpret for no more than any two six-month periods in counties with a population greater than 80,000.

(B) A noncertified or nonregistered interpreter may be allowed to interpret more than any four six-month periods, or any two six-month periods for an interpreter of Spanish under (f)(1)(A), if the judge in the proceeding makes a specific finding on the record in each case in which the interpreter is sworn that good cause exists to appoint the interpreter, notwithstanding the interpreter's failure to achieve Judicial Council certification.

(2) Except as provided in (f)(3), each six-month period under (f)(1) begins on the date a presiding judge signs an order under (d)(3)(A)(ii) allowing the noncertified or nonregistered interpreter to be considered for appointment.

(3) If an interpreter is provisionally qualified under (d)(3) in more than one court at the same time, each six-month period runs concurrently for purposes of determining the maximum periods allowed in this subdivision.

(4) Beginning with the second six-month period under (f)(1), a noncertified or nonregistered interpreter may be appointed if he or she meets all of the following conditions:

(A) The interpreter has taken the State of California Court Interpreter Written Exam at least once during the 12 calendar months before the appointment;

(B) The interpreter has taken the State of California's court interpreter ethics course for interpreters seeking appointment as a noncertified or nonregistered interpreter, or is certified or registered in a different language from the one in which he or she is being appointed; and

(C) The interpreter has taken the State of California's online court interpreter orientation course, or is certified or registered in a different language from the one in which he or she is being appointed.

(5) Beginning with the third six-month period under (f)(1), a noncertified or nonregistered interpreter may be appointed if he or she meets all of the following conditions:

(A) The interpreter has taken and passed the State of California Court Interpreter Written Exam with such timing that he or she is eligible to take a Bilingual Interpreting Exam; and

(B) The interpreter has taken either the Bilingual Interpreting Exam or the relevant Oral Proficiency Exam(s) for his or her language pairing at least once during the 12 calendar months before the appointment.

(6) The restrictions in (f)(5)(B) do not apply to any interpreter who seeks appointment in a language pairing for which no exam is available.

(7) The restrictions in (f)(4) and (5) may be waived by the presiding judge for good cause whenever there are fewer than 25 certified or registered interpreters enrolled on the Judicial Council's statewide roster for the language requiring interpretation.

Advisory Committee Comment

Subdivisions (c) and (d)(2). When a court reporter is transcribing the proceedings, or an electronic recording is being made of the proceedings, a judge may satisfy the "on the record" requirement by stating the required details of the interpreter appointment in open court. If there is no court reporter and no electronic recording is being made, the "on the record" requirement may be satisfied by stating the required details of the interpreter appointment and documenting them in writing—such as in a minute order, the official clerk's minutes, a formal order, or even a handwritten document—that is entered in the case file.

Subdivision (d)(4). This provision is intended to allow for the one-time use of a noncertified or nonregistered interpreter who is not provisionally qualified to interpret for an LEP person in a courtroom event. This provision is not intended to be used to meet the extended or ongoing interpretation needs of LEP court users.

Subdivision (b)(7) and (d)(4). When determining whether the matter before the court is a "brief, routine matter" for which a noncertified or nonregistered interpreter who has not been provisionally qualified may be used, the judicial officer should consider the complexity of the matter at issue and likelihood of potential impacts on the LEP person's substantive rights, keeping in mind the consequences that could flow from inaccurate or incomplete interpretation of the proceedings.

Rule 2.893. Appointment of noncertified interpreters in criminal cases and juvenile delinquency proceedings

(a) Application

This rule applies to trial court proceedings in criminal cases and juvenile delinquency proceedings under Welfare and Institutions Code section 602 et seq. in which the court determines that an interpreter is required.

(b) Appointment of noncertified interpreters

An interpreter who is not certified by the Judicial Council to interpret a language designated by the Judicial Council under Government Code section 68560 et seq. may be appointed under Government Code section 68561(c) in a proceeding if:

(1) *Noncertified interpreter provisionally qualified*

(A) The presiding judge of the court, or other judicial officer designated by the presiding judge:

(i) Finds the noncertified interpreter to be provisionally qualified following the *Procedures and Guidelines to Appoint a Noncertified Interpreter in Criminal and Juvenile Delinquency Proceedings (Designated Languages)* (form IN-100); and

(ii) Signs an order allowing the interpreter to be considered for appointment on *Qualifications of a Noncertified Interpreter* (form IN-110); and

(B) The judge in the proceeding finds on the record that:

(i) Good cause exists to appoint the noncertified interpreter; and

(ii) The interpreter is qualified to interpret the proceeding, following procedures adopted by the Judicial Council (see forms IN-100, IN-110, and IN-120).

(C) Each order of the presiding judge under (b)(1) finding a noncertified interpreter to be provisionally qualified and allowing the interpreter to be considered for appointment in a proceeding is for a six-month period.

(2) *Noncertified interpreter not provisionally qualified*

(A) To prevent burdensome delay or in other unusual circumstances, at the request of the defendant, or of the minor in a juvenile delinquency proceeding, the judge in the proceeding may appoint a noncertified

~~interpreter who is not provisionally qualified under (b)(1) to interpret a brief, routine matter provided the judge, on the record:~~

~~(i) Indicates that the defendant or minor has waived the appointment of a certified interpreter and the appointment of an interpreter found provisionally qualified by the presiding judge;~~

~~(ii) Finds that good cause exists to appoint an interpreter who is neither certified nor provisionally qualified; and~~

~~(iii) Finds that the interpreter is qualified to interpret that proceeding.~~

~~(B) The findings and appointment under (b)(2)(A) made by the judge in the proceeding are effective only in that proceeding. The appointment must not be extended to subsequent proceedings without an additional waiver, findings, and appointment.~~

PROCEDURES TO APPOINT A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER PROVISIONALLY QUALIFIED OR TEMPORARY

The court is required to appoint a certified or registered interpreter. If a certified or registered interpreter is not available, the court may **provisionally qualify** (Cal. Rules of Court, rule 2.893(d)(3)) or **temporarily use** an interpreter (Cal. Rules of Court, rule 2.893(d)(4)). *These procedures include **different instructions** for provisional qualification and temporary use.*

How does the court appoint a potential noncertified or nonregistered interpreter?

- The court must determine if a certified or registered interpreter is expected to be available by reviewing and completing a *Certification of Unavailability of Certified or Registered Interpreter* (form **INT-120**). Form **INT-120** must be completed, signed, and filed on the day of the proceeding.
- The court must also determine if a noncertified or nonregistered interpreter is being temporarily used per rule 2.893(b)(7) and (d)(4), or if the interpreter needs to be provisionally qualified or is already provisionally qualified.

What is the process for provisionally qualifying an interpreter?

- To provisionally qualify an interpreter, the presiding judge or judicial designee must review the declaration on *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form **INT-110**) and sign the six-month Finding of Provisional Qualification and Order of the Presiding Judge.
- Requirements to provisionally qualify an interpreter are different during the first six-month period and subsequent six-month periods. The presiding judge or judicial designee should be careful to review whether the proposed interpreter has met those requirements under rule 2.893(f).

What is the process for temporary use of an interpreter?

- After the interpreter has completed and signed the Temporary Interpreter Declaration on *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form **INT-140**), the judge must review and sign the Finding of Qualification for a Single Proceeding.
- A separate form **INT-140** must be completed for each language and each usage of an interpreter.
- The judge's finding must include that the Limited English Proficient (LEP) person has waived the appointment of a certified or registered interpreter.
- Form **INT-140** is intended for a single, brief appearance before the court and may not be extended to subsequent proceedings without completing a new form **INT-140**.

What are the record-keeping requirements when using a noncertified or nonregistered interpreter?

- There are specific requirements as to **who** must make findings on the record and **what** details must be included whenever a noncertified or nonregistered interpreter is used. To learn more about these requirements in each situation, review rule 2.893(d)(2) and (d)(4)(A) of the California Rules of Court.
- File the completed *Certification of Unavailability of Certified or Registered Interpreter* (form **INT-120**) with the court on the day of the proceeding.
- Process the completed *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form **INT-110**) in accordance with the court's record-keeping procedures.
- Retain the completed *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form **INT-140**) in the case file, unless voire dire is used.

Form Adopted for Mandatory Use
Judicial Council of California
INT-100-INFO [New January 1, 2018]

Government Code, § 68560 et seq.;
Cal. Rules of Court, rule 2.893
www.courts.ca.gov

PROCEDURES TO APPOINT A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER PROVISIONALLY QUALIFIED OR TEMPORARY

What does an interpreter need to do to become provisionally qualified?

- Complete and sign under oath the *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form **INT-110**) and submit it to the court.
- Renew the declaration in form **INT-110** after the first six months *if* the interpreter remains uncertified or unregistered and provisionally qualified.
- If seeking provisional qualification in additional six-month periods, the interpreter must take the written court interpreter exam, required ethics courses, and/or relevant bilingual interpreting or oral proficiency exams. These requirements are detailed in rule 2.893 of the California Rules of Court.

PROCEDURES AND GUIDELINES TO APPOINT A NONCERTIFIED OR NONREGISTERED INTERPRETER IN CRIMINAL AND JUVENILE DELINQUENCY PROCEEDINGS

The court is required to appoint a certified interpreter to interpret a language designated by the Judicial Council (Gov. Code, section 68561) or a registered interpreter to interpret in a language not designated[1] by the Judicial Council. The court may appoint a noncertified interpreter *if* the court (1) on the record finds good cause to appoint a noncertified interpreter and finds the interpreter to be qualified and (2) follows the procedures adopted by the Judicial Council (Gov. Code, sections 68561(c), 68564(d) and (e); Cal. Rules of Court, rule 2.893). The court may appoint nonregistered interpreters only if (1) a registered interpreter is unavailable and (2) the good cause qualifications and procedures adopted by the Judicial Council under Government Code section 68561(c) have been followed. See Gov. Code, section 71802(b)(1) and (d).)

The following procedures are applicable in criminal proceedings and juvenile delinquency proceedings under Welfare and Institutions Code section 602 et seq.

1. The proposed interpreter:

a. Completes and signs under oath the form *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT -110).

b. Files the form with the court administrator.

c. Renews the declaration of *Qualifications of a Noncertified or Nonregistered Interpreter* after six months.

2. The court administrator or designee:

a. Reviews the proposed interpreter's declaration on *Qualifications of a Noncertified or Nonregistered Interpreter.*

b. Submits the proposed interpreter's declaration on *Qualifications of a Noncertified or Nonregistered Interpreter* to the presiding judge.

c. Sends a current copy of the *Qualifications of a Noncertified or Nonregistered Interpreter* (signed by the presiding judge within the past six months) to the courtroom.

d. Informs the presiding judge (form INT-110) whether the proposed interpreter is within or beyond the maximum provisional qualification period allowed by California Rules of Court, rule 2.893.

e. On the day of the proceeding, completes, signs, and files with the court a *Interpreter* (form INT-120). *Certification of Unavailability of Certified or Registered.*

f. Continues his or her efforts to obtain a certified or registered interpreter for the proceeding.

3. The presiding judge or judicial designee:

a. Reviews the declaration on *Qualifications of a Noncertified or Nonregistered Interpreter.*

b. May examine the proposed interpreter on his or her qualifications and may require additional information and documentation specified in the order.

c. Signs the six-month "Finding of Provisional Qualification and Order of the Presiding Judge" (form INT-110, p.4), if the presiding judge finds the proposed interpreter to be provisionally qualified to interpret in the court in the language specified.

d. Renews the "Finding of Provisional Qualification and Order of the Presiding Judge" after six months, *if* the interpreter remains uncertified or unregistered and provisionally qualified.

e. Makes a finding of good cause to allow a noncertified or nonregistered interpreter to interpret beyond the maximum provisional qualification period allowed by California Rules of Court, rule 2.893 (see form INT-110, p.4).

1 Languages are designated by the Judicial Council under Government Code section 68562.

PROCEDURES AND GUIDELINES TO APPOINT A NONCERTIFIED OR NONREGISTERED INTERPRETER IN CRIMINAL AND JUVENILE DELINQUENCY PROCEEDINGS

4. Judge at the proceeding:

a. May review the *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT -110) of the proposed interpreter.

b. May examine the proposed interpreter on his or her qualifications to interpret in the proceeding and may require additional information and documentation.

c. Makes a finding on the record that good cause exists to use the noncertified or nonregistered interpreter.

d. If applicable, finds on the record that good cause exists under California Rules of Court, rule 2.893 to appoint a noncertified or nonregistered interpreter who has exceeded the provisional qualification periods allowed by rule 2.893.

e. Finds on the record that the proposed interpreter is qualified to interpret the proceeding.

f. Continues the proceeding until a certified, registered, or better-qualified interpreter is available.

g. **OR** Informs the parties on the record that the proposed interpreter is not certified or registered.

h. May request a stipulation or waiver from the parties on the record to the appointment of the noncertified or nonregistered interpreter.

i. Rules on any objection to the appointment of the noncertified or nonregistered interpreter.

j. Appoints the proposed noncertified or nonregistered interpreter to interpret in the proceeding and may appoint the interpreter to remain in the proceeding on subsequent days.

5. Courtroom clerk:

a. Retains in the courtroom the interpreter's *Qualifications of a Noncertified or Nonregistered Interpreter.*

b. Records in the docket or minute order the information required by California Rules of Court, rule 2.893 as follows:

(1) The name of the interpreter;

(2) The language to be interpreted;

(3) The fact that the interpreter was administered the interpreter's oath;

(4) The fact that the interpreter is not certified or registered to interpret in the language to be interpreted;

(5) Whether a *Certification of Unavailability of Certified or Registered Interpreters* for the language to be interpreted is on file for this date with the court administrator;

(6) The court's finding that good cause exists for the court to appoint a noncertified or nonregistered interpreter;

(7) The court's finding that the interpreter is qualified to interpret in the proceeding;

(8) If applicable, the court's finding under rule 2.893 that good cause exists for the court to use a noncertified or nonregistered interpreter beyond the time allowed in rule 2.893; and

(9) If applicable, the objection or waiver of the defendant or minor under rule 2.893.

PROCEDURES AND GUIDELINES TO APPOINT A NONCERTIFIED OR NONREGISTERED INTERPRETER IN CRIMINAL AND JUVENILE DELINQUENCY PROCEEDINGS

INSTRUCTIONS FOR THE COURT'S FINDING OF GOOD CAUSE AND APPOINTMENT OF NONCERTIFIED OR NONREGISTERED INTERPRETER

Before the court appoints a noncertified or nonregistered interpreter, the court must make a good-cause finding on the record at the beginning of the proceeding (Gov. Code, sections 68561(c), 71802(b)(1) and (d)). The appointment and finding below states the elements required.

The court appoints the noncertified or nonregistered interpreter to interpret the stated language in the proceeding on today's date. *(At the discretion of the court, this interpreter may remain on a particular matter begun on today's date.)*

The court finds good cause to appoint the interpreter based on the certification of the interpreter coordinator[2] of his or her efforts to obtain an interpreter and that a certified or registered court interpreter is not available. The coordinator's certification is on file.

The court finds the noncertified or nonregistered interpreter to be qualified to interpret in this proceeding based on (1) the interpreter's declaration of qualifications to the presiding judge and (2) the presiding judge's order provisionally qualifying the interpreter, which are on file with the court administrator, and *(optional)* (3) this court's examination in this proceeding of the interpreter.

The appointed interpreter *(choose one):*

1. has **not** been appointed by any trial court beyond the period specified in California Rules of Court, rule 2.893 ***-OR-***
2. has been appointed by a trial court beyond the period specified in California Rules of Court, rule 2.893, and the court finds good cause exists under rule 2.893 to continue using the interpreter.

2 Person who is responsible for assigning interpreters to a court.

INTERPRETER NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: WORK NO. : E-MAIL ADDRESS: DRIVER'S LICENSE or STATE ID:	*FOR COURT USE ONLY* *(FILE WITH THE COURT ADMINISTRATOR)* DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	

QUALIFICATIONS OF A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER

This form is used to appoint a PROVISIONALLY QUALIFIED interpreter for a 6-month period under rule 2.893(d)(4), in one language.
If you are using a temporary interpreter in a single brief appearance only, use form INT-140.

LANGUAGE (list only one)

Mark which 6-month period applies to this interpreter: ☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5+

☐ **Within the period allowed by Cal. Rules of Court, rule 2.893**

☐ **Beyond the period allowed by Cal. Rules of Court, rule 2.893**

Please mark all that apply:

☐ Designated language: noncertified interpreter

☐ Nondesignated language: nonregistered interpreter

☐ Provisionally qualifying for a 6-month period

☐ Language with no certified or registered status available, either not working from English to another language (relay interpreter) or no certified exam available in the language pairing

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the interpreter should be considered by the court to determine whether the interpreter is appointed to interpret the stated language.

1. **Previous provisional qualification periods** *(since January 1996)*
   a. Since January 1, 1996, have you been provisionally qualified by a presiding judge in this court or any other court under Cal. Rules of Court, rule 2.893? (A period may not exceed 6-months. S*ee also p. 5)*:
      ☐ No
      ☐ Yes. For each period state:
      Beginning date: Court:
      Beginning date: Court:
      Beginning date: Court:
      Beginning date: Court:
      ☐ See attachment (for additional information)
   b. Since January 1, 1996, have you interpreted in any court without being provisionally qualified?
      ☐ No ☐ Yes *(explain, giving court names and dates):*

2. **Interpreter and translator credentials**
   Please list the two most relevant interpreter or translator credentials you currently hold, and which are in good standing (e.g., court interpreter certification from another state, in another language, or for the federal courts; ATA certification; community college certificate; etc.):

   Credential name: ID #:
   Language pair: Date of initial credential:
   Credential name: ID #:
   Language pair: Date of initial credential:

INTERPRETER *(name):*

3. **Interpreter examinations and evaluations (related to credentials you do not currently hold)**

   a. Have you taken the State of California Written Exam, Bilingual Interpreting Exam (BIE), or the Oral Proficiency Exam in English (OPE) and/or in the other language to be interpreted? Certain examination requirements apply after the first 6-month period of provisional qualification *(See page 5).* *(list all exams, date taken, and results):*

   ☐ None taken

   ☐ Yes *(fill in below):*

Exam/language:	(date):	What were the results?
Exam/language:	(date):	What were the results?
Exam/language:	(date):	What were the results?
Exam/language:	(date):	What were the results?

   ☐ See attachment (for additional information)

   b. Have you taken the Federal Court Interpreter Certification Examination?

   ☐ Yes *(dates):* What were the results?

   ☐ No *(check one):* ☐ Not taken ☐ Not given in the language specified above

   c. Have you taken a Court Interpreter Certification Examination from other states?

   ☐ Yes *(dates):* Give states and results of each:

   ☐ No *(check one):* ☐ Not taken ☐ Not given in the language specified above

   d. Have your interpreting skills been evaluated in any other way? ☐ Yes ☐ No

   If yes, which aspects of your skills were evaluated? *(check all that apply):*

   ☐ Interpreting modes:

   ☐ Consecutive ☐ Simultaneous ☐ Sight translation

   ☐ Other *(specify):*

   What languages?

   When were you evaluated?

   What were the results?

   Which authority evaluated your skills?

4. **Interpreting and translation training**

   a. Institutions attended: Year:

   Year:

   Year:

   b. Court interpreting observation *(please indicate number of hours you have observed court interpreters in the courtroom setting):*

   c. Legal/court interpreting training *(select one):*

   (1) ☐ 40 or more hours of training in legal interpreting in the last 2 years

   (2) ☐ 80 or more hours of training in legal interpreting in the last 4 years

   (3) ☐ Less legal training than either (1) or (2) during the identified time period

5. **Teaching experience**

   Do you have any language teaching experience? ☐ Yes ☐ No

   If yes, which languages?

   At what levels?

INTERPRETER *(name):*

6. **Interpreting experience**

a. Have you interpreted in any court or administrative proceedings? ☐ Yes ☐ No
Please indicate how many proceedings or events you have interpreted in the last 6 months for each type:

Criminal Traffic Juvenile Family

Civil Small Claims Unlawful Detainer Probate/Conservatorship

Dates *(if known):* List the last two counties you have worked in:

What languages?

Which modes of interpreting did you employ? *(check all that apply):*

☐ Consecutive ☐ Simultaneous ☐ Sight translation

b. Have you interpreted in any noncourt setting? ☐ Yes ☐ No
Please list *(medical, business, education, community, other):*

Number of events interpreted in the last 6 months:

Is your role as an interpreter compensated? ☐ Yes ☐ No

Approximate number of total days:

What languages?

Which modes of interpreting did you employ? *(check all that apply):*

☐ Consecutive ☐ Simultaneous ☐ Sight translation

c. Have you had 72 hours of legal interpreting experience with, or under the guidance of, a certified or registered court interpreter mentor (includes police interpreted work, depositions, etc., as well as mock trials and other court training simulations)?

☐ Yes ☐ No

7. **Translation**

a. Do you have any experience in written translation? ☐ Yes ☐ No
b. List types of documents:
c. What languages?

8. **Code of professional conduct/ethics *(Cal. Rule of Court, rule 2.890*)**

a. Have you had any training in professional ethics for court interpreters? ☐ Yes ☐ No
Please explain:

b. Have you taken the State of California's court interpreter ethics course for interpreters seeking provisional qualification?
☐ Yes *(date):* ☐ No
(Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)

c. Do you have a copy of the *Standards of Professional Conduct for Court Interpreters*? ☐ Yes ☐ No
d. Have you read, do you understand, and will you abide by the *Standards of Professional Conduct for Court Interpreters*?
☐ Yes ☐ No

9. **Training in legal terminology**

What training have you received in California legal terminology as required by Government Code section 68564?

INTERPRETER *(name):*

10. **Orientation to court interpreting**

a. Have you received training in criminal procedure? ☐ Yes ☐ No
Please describe:

b. Have you received training in civil procedure? ☐ Yes ☐ No
Please describe:

c. Have you taken the Judicial Council's online court interpreter orientation course? ☐ Yes *(date):* ☐ No

(Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)

11. **General education**

Highest level degree attained:

☐ N/A (No degree) ☐ High school ☐ Jr. college ☐ University ☐ Graduate degree ☐ Postgraduate

Name of institution:

Degree awarded: Year: Major:

Degree awarded: Year: Major:

12. **Language training**

a. How did you learn English? *(mark N/A if not interpreting in English):*

b. How did you learn the language to be interpreted?

c. In which languages were you educated?

Language *(specify):*	Elementary	Jr. high	High school	University
(1)	☐	☐	☐	☐
(2)	☐	☐	☐	☐

d. What languages ☐ are ☐ were spoken at home *(specify):*

13. **Disqualifications, decertifications, or criminal offenses**

a. Have you had any certifications that have lapsed or have you been disqualified from interpreting in any court or administrative hearing? ☐ Yes ☐ No

Please provide detail:

b. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? *(Do not include traffic infractions.)* ☐ Yes ☐ No

If yes, please explain:

INTERPRETER *(name):*

INTERPRETER'S DECLARATION

Once an interpreter is provisionally qualified in one court, the relevant 6-month period applies to all courts. Please complete this declaration based on the timing of your provisional qualification status in any California trial court.

(Check all that apply)

1. ☐ I am unable to become certified or registered because there are no exams in my language pairing.
2. ☐ I am 18 years of age or older.
3. ☐ I have **never** been provisionally qualified or appointed to interpret in any trial court under California Rules of Court, rule 2.893.
4. ☐ I have been provisionally qualified in a different court, and I am currently in my first 6-month period of provisional qualification with any California trial court.
5. ☐ I am in my second or subsequent 6-month period of provisional qualification, and I have met the specific testing and course requirements required under rule 2.893(f)(4) or (5).
6. ☐ **Noncertified interpreters only**

   I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

   a. ☐ I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893).

      (1) Two 6-month periods for noncertified Spanish interpreters in counties with a population greater than 80,000.

      (2) Four 6-month periods for noncertified Spanish interpreters in counties with a population less than 80,000.

      (3) Four 6-month periods for noncertified interpreters of designated languages other than Spanish.

   b. ☐ I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

7. ☐ **Nonregistered interpreters only**

   I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

   a. ☐ I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893):
      (1) Four 6-month periods for nonregistered interpreters.

   b. ☐ I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

I declare under penalty of perjury under the laws of the State of California that the information provided above and on the preceding pages is true and correct. I understand that any false or misleading statements disqualify me from being considered for interpreting assignments in the trial courts, in addition to other penalties provided by law.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PROSPECTIVE INTERPRETER)

INTERPRETER *(name):*

PROVISIONAL QUALIFICATION and ORDER OF THE PRESIDING JUDGE

(Gov. Code, §§ 68561(c) & (d), 68564(d) & (e), and 71802(b)(1) & (d))

1. **Interpreter** *(name)*:

2. **Language:**

3. **Finding:** For six months from the date of this order, the above-named interpreter is found to be provisionally qualified to be considered for appointment to interpret the language specified in any proceeding in this court, and

   a. ☐ has not exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

   b. ☐ has exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893, but good cause exists under rule 2.893 to continue appointing the interpreter.

   c. ☐ is in their second or greater 6-month provisional qualification period and has met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5).

   d. ☐ is in their second or greater 6-month provisional qualification period and has not met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5), but good cause exists under rule 2.893 to continue appointing the interpreter.

4. THE COURT ORDERS that the above-named interpreter may be considered for appointment by any judge of this court to interpret the specified language in any proceeding for which the judge in the proceeding finds the interpreter to be qualified. **This order expires six months from the date of signature.**

Date:

_____
(TYPE OR PRINT NAME)

_____
☐ PRESIDING JUDGE ☐ DESIGNATED JUDICIAL OFFICER

INTERPRETER NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: WORK NO. : E-MAIL ADDRESS:	*FOR COURT USE ONLY* *(FILE WITH THE COURT ADMINISTRATOR)* DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
TEMPORARY USE OF A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER	**CASE NUMBER:**

This form is used to establish the qualifications of a TEMPORARY INTERPRETER for the proceeding listed below. Temporary interpreters under Cal. Rules of Court, rule 2.893(d)(4) may be used in brief appearances such as to set a continued hearing date.

To appoint a provisionally qualified interpreter for a 6-month period, use form INT-110.

LANGUAGE *(list only one):*

DATE OF PROCEEDING:

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the temporary interpreter should be considered by the court to determine whether the interpreter may be used to interpret the stated language in the proceeding above.

1. **General education**

   Highest level degree attained:

   ☐ N/A (No degree) ☐ High school ☐ Jr. college ☐ University ☐ Graduate degree ☐ Postgraduate

   Name of institution:

   Degree awarded: Year: Major:

   Degree awarded: Year: Major:

2. **Language training**

   a. How did you learn English? *(mark N/A if not interpreting in English):*

   b. How did you learn the language to be interpreted?

   c. In which languages were you educated?

Language *(specify):*	Elementary	Jr. high	High school	University
(1)	☐	☐	☐	☐
(2)	☐	☐	☐	☐

   d. What languages ☐ are ☐ were spoken at home *(specify):*

   e. Have you ever been used as an interpreter in a court or administrative hearing? ☐ Yes ☐ No

   If yes, please explain:

Form Adopted for Optional Use
Judicial Council of California
INT-140 [New January 1, 2018]

Cal. Rules of Court, rule 2.893(b)(2)
www.courts.ca.gov

INTERPRETER *(name):*	**CASE NUMBER**:

3. **Disqualifications, decertifications, or criminal offenses**

   a. Have you had any certifications that have lapsed, or have you been disqualified from interpreting in any court or administrative hearing? ☐ Yes ☐ No

   Please provide detail:

   b. What is your relationship to the party? ☐ Acquainted ☐ Related ☐ Do not know party

   Please explain or provide detail:

   c. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? *(Do not include traffic infractions.)* ☐ Yes ☐ No

   If yes, please explain:

TEMPORARY INTERPRETER DECLARATION

I am 18 years of age or older and 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 PROSPECTIVE INTERPRETER)

FINDING OF QUALIFICATION FOR A SINGLE PROCEEDING

(Cal. Rules of Court, rule 2.893(d)(4))

1. **Finding: Under Cal. Rules of Court, rule 2.893(d)(4), good cause exists to use** the above-named temporary interpreter, who is found to be qualified to interpret THE PROCEEDING LISTED ABOVE and not for a 6-month period.

   Additionally, the judge has indicated on the record that **the limited English proficient (LEP) person has waived the appointment of a certified, registered, or provisionally qualified interpreter.**

2. THE COURT ORDERS that the above-named individual may be used to interpret the specified language for which the judge in the proceeding finds the temporary interpreter to be qualified. **This order expires at the conclusion of the listed proceeding.**

Date:

(TYPE OR PRINT NAME)

☐ JUDGE OF THE SUPERIOR COURT

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
1.	Carolyn Kim on behalf of: Asian Americans Advancing Justice – Los Angeles (Carolyn Kim) Asian Americans for Community Involvement (Melissa Luke) Asian Law Alliance (Richard Konda) Asian Pacific Islander Legal Outreach (Arati Vasan) California Rural Legal Assistance (Michael Meute) Center for the Pacific Asian Family (Debra Suh) Child Care Law Center (Patti Prunhuber) Kids in Need of Defense (Cory Smith) Korean Resource Center (Jenny Seon) Korean American Family Services (Connie Chung Joe) Law Foundation of Silicon Valley (Hilary Armstrong) Legal Aid Association of California (Salena Copeland) Legal Aid Foundation of Los Angeles (Joann Lee) Los Angeles Center for Law and Justice (Michelle Carey) San Diego Volunteer Lawyer Program (Amy Fitzpatrick) Thai Community Development Center (Panida Rzonca)	NI	To Whom It May Concern: We are writing on behalf of the undersigned groups to provide public comment to the Judicial Council as it considers changes to the rules and forms related to provisional qualification and temporary use of noncertified and nonregistered interpreters. Thank you for considering our comments regarding the effects of these proposed changes on California's Limited English Proficient (LEP) litigants. **I. Inclusion of all case types when provisionally qualifying interpreters** In light of the courts' welcome expansion of interpreters into all case types and the critical importance to California's court users of ensuring interpreter qualifications in all matters, we support the application of provisional qualification procedures for noncertified and nonregistered interpreters to all case types. In particular, we support the proposed change to California Rule of Court 2.893 to ensure that process and guidelines for provisional qualification of noncertified and nonregistered interpreters are the same for criminal and civil cases. The maintenance of two separate systems or standards for provisional qualification in civil and criminal matters would be confusing and inefficient for court staff and interpreters and would likely lead to unequal outcomes in terms of access for LEP litigants depending on the case type.	The committee notes the commentator's support for the proposal. No response required.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			II. Distinction between "provisional qualification" and "temporary use" We also welcome the Judicial Council's efforts to clarify and limit the role of "temporary use" interpreters through the proposed restructuring of rule 2.893 and the proposed modification of form INT-110 (for the use of a provisionally qualified interpreter) and adoption of INT-140 (for the temporary use of an interpreter), with an important caveat. The use of a qualified interpreter in all proceedings is the only way to fully ensure that an LEP court user's language access rights are protected. The use of anyone other than a certified, registered, or provisionally qualified interpreter to provide language assistance in any proceeding before the court raises serious access concerns for the LEP litigant. However, we also understand that in occasional, exceptional circumstances, a court user may wish to proceed on a one-time basis without a certified, registered or provisionally qualified interpreter, and there should be procedures in place to allow for the appointment of a temporary use interpreter in such rare cases. Proposed rule 2.893(d)(4) permits the temporary use of an individual who is not certified, registered, or provisionally qualified to interpret in a "brief, routine matter" if certain conditions	CIAP agrees that clarifying the distinction between *provisional qualification* and *temporary use* will be helpful to both the courts and the LEP court users, and agrees that the adoption of the INT-140 will be critical in the clarification process. CIAP also agrees that an additional advisory committee note could be helpful in explaining the use of temporary interpreters is not intended as an ongoing method of doing business for the courts but may be required upon consideration of a number of factors, and when certified, registered or provisionally qualified interpreters are not available. CIAP has included a note to that effect. CIAP disagrees that a very specific definition of "brief, routine matter" is necessary and instead continues to find it is critical to allow for judicial officer discretion on a case-by-case basis, for one

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			are met. We strongly recommend that "brief, routine matter" be defined or clarified in the proposed rule to avoid the potential overuse of this process. There is an understandable temptation for judicial officers and court staff to opt for the most streamlined process available, so safeguards must be in place to ensure that the definition of what is brief and routine does not expand into areas with potentially serious impacts on the substantive rights of LEP court users. We propose that the "brief, routine matters" referenced in the rule be limited to courtroom events that do not involve testimony or cross-examination, that typically last less than ten minutes, and that are not complex. This description should be included in the definition section or as an Advisory Committee Note to the proposed rule. A revision or Advisory Committee Note should include examples where a "temporary use" interpreter would be permitted, i.e., where the likelihood of potential impacts on an LEP litigant's substantive rights is lowest. One example of such an event would be the continuance of proceedings in order to locate a certified, registered, or provisionally qualified interpreter.	event only, as indicated in proposed Rule 2.893 and its expanded advisory committee comment together with the new INT-140 form. In order to maintain this critical judicial officer discretion, such as what might be required to implement a Temporary Restraining Order (TRO) for a limited number of days, even while *not* implementing one for a longer period of time, based on testimony facilitated by a temporary interpreter, it is imperative that blanket exclusions not be included in the rule or its definitions.
			We welcome the requirement in proposed rule 2.893(d)(4) that the LEP person make a	CIAP specifically disagrees with adding an obligation for a knowing waiver, because CIAP

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			knowing waiver of a certified, registered, or provisionally qualified interpreter before someone without these qualifications is permitted to interpret. We recommend that 2.893(d)(4)(A)(i) be amended to read: "The LEP person has been informed of his or her right to, and has waived the appointment of a certified or registered interpreter or an interpreter who could be provisionally qualified by the presiding judge as provided in (d)(3)." This would clarify that the LEP litigant in fact has the right to an interpreter with the stated qualifications, not just that one could be made available, a critical distinction that would help communicate the importance of the waiver to the LEP litigant.	believes the existing obligations to inform the LEP person and include the related court activity on the record is sufficient. However, CIAP has made clarifications to the structure of related waiver provisions for both temporary use and provisionally qualified interpreters, in order to help clarify what is required. CIAP reviewed the initial introduction to the rule of temporary use/temporary interpreter language in 1997 and believes the current proposal, which includes requirements to inform court users of a right to an interpreter and requirements to put any related waiver on the record. CIAP believes that the newly proposed struction for the rule (moving proposed section (d)(5) up to section (3)(B)(iii) clarifies that when the court is appointing a provisionally qualified interpreter, the affected court user may object to the appointment or waive their right to a certified or registered interpreter, while distinguishing that in case of the use of a temporary interpreter, the court may only go forward if the LEP court user has in fact waived their right to a certified, registered or provisionally qualified interpreter. In both cases whatever actions take place, the court must include them on the record.
			We appreciate the Judicial Council's efforts to improve access to interpreters for LEP court	The committee notes the commentator's support for the proposal, No response required.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			users in all case types. We believe that the above recommendations will enhance the courts' ability to protect the rights and interests of LEP court users in California to ensure that uniformly high quality language services are delivered in all court proceedings.	
2.	Orange County Bar Association Michael L. Baroni President	A	The proposal does appropriately address the four stated purposes.	The committee appreciates this information.
3.	State Bar of California, Standing Committee on the Delivery of Legal Services Sharon Djemal Chair, Office of Legal Services Standing Committee on the Delivery of Legal Services (SCDLS)	A	**Does the proposal appropriately address the stated purpose?** Yes. **Does the proposal appropriately address the four stated purposes?** Yes, however SCDLS is concerned about how courts that need interpretation will vet provisional or temporary use interpreters. **Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for courts to get interpreters in hard-to-find, other-than-Spanish languages?** Yes, when provisional status expires, interpreters will want to pursue certified or	The committee appreciates this information. CIAP believes that the additional questions in the INT – 110 will provide courts with a better roadmap of what to look for in a provisionally qualified interpreter. CIAP also believes a more clear separation of types of interpreter, through the addition of the INT – 140 form and the restructuring of Rule 2.893 will also help clarify what is, or is not, required for a temporary interpreter. The committee appreciates this information.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			registered status to continue to be contracted with the court.	
			Does the length of the individual provisional qualification periods seem too short, too long, or just right? The length seems too short depending on the court's calendar. A provisional interpreter may only be called upon a few times every six months. In that situation, being a provisional interpreter may not be worthwhile.	CIAP disagrees that the six-month period of provisional qualification is too short. The goal of provisional qualification is not for an interpreter to be used many times, but rather to only be used when a court is not able to find a certified or registered interpreter.
			Additional comments SCDLS suggests that with respect to temporary use interpreters, it would be helpful to specify what types of cases the temporary use interpreter can appear in such as a calendar hearing, hearing on merits of a case, etc.	CIAP disagrees that providing a list of specific types of cases is necessary and instead continues to find it is critical to allow for judicial officer discretion on a case-by-case basis, for one event only, as indicated in proposed Rule 2.893, CIAP's expanded advisory committee comment and the new INT – 140 form. The INT – 140 form provides the limited example of a continuance on its first page just below the header.
			In the rare instance that a court certified interpreter is not available because none exist in a particular language, it would be helpful if the courts have a defined system to vet provisional interpreters. Such a system could help reduce or avoid rescheduled court proceedings.	CIAP believes that the INT-100, INT-100 and INT-140 forms, together with the underlying Rule 2.893 provide a system to help courts vet potential interpreters when certified and registered interpreters are not available.
			Maintaining a database of provisional interpreters may be challenging. Since the provisional status is temporary for six months, it	CIAP will pass along the suggestion to Judicial Council staff regarding future development of a database of provisionally qualified interpreters.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			is possible that by the time the interpreter is needed, their status is already expired, or the court will not be able to determine whether or not the provisional interpreter is competent to interpret within the six month period. An interpreter that is not competent may waste the court's time and resources because the court will be billed for interpreter services and at the same time may have to continue hearings because interpretation is not adequate. And while the proposal will allow limited and non-English speakers to have interpretation, it is uncertain how well suited or competent the interpreter will be as the provisional or temporary interpreter does not need to pass the certification exams. Legal aid and pro bono legal services organizations serving higher populations of limited and non-English speakers will also be impacted. It is somewhat ambiguous as to what languages will be considered rare and not require a court certified interpreter. Please refer to the Strategic Plan for Language Access in the California Courts adopted by the Judicial Council in 2015 as there is good information on this topic.	
4.	Superior Court of California, County of Los Angeles	A	**Does the proposal appropriately address the four stated purposes?** Yes.	The committee appreciates this information.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			Does it also appropriately address the stated purpose for encouraging interpreters to pursue certified or registered status without making it unduly difficult for courts to get interpreters in hard-to-find, other-than-Spanish languages? Not necessarily. At Los Angeles Superior Court we currently require our provisionally qualified interpreters to renew their status every six months. We speak with them upon first contact and continually throughout the six months encouraging them to seek certified/registered status. Many times they cannot find a proper language school (Armenian, Arabic, etc.) or simply cannot afford the process. Additionally, the JCC does not regularly offer testing in the target languages and many independent contractors can make more money in the private sector.	CIAP shares the concern that training in other-than-Spanish (OTS) languages may have limited availability; however, training workshops are available in many languages and language – neutral trainings are increasing. CIAP believes that the carve-out for languages with fewer than 25 interpreters who are certified or registered will protect interpreters who may have the most difficulties in this regard. CIAP also believes that demand drives the market. If interpreters feel encouraged or are required to get training, this will improve the market availability of training in certain languages.
			What would implementation requirements be for courts? 1. Bench officer training on new requirements prior to implementation of INT-140 □ 600 bench officers o Supervising Judges communication □ Temporary judge program o Update TJP training material o Send communication re changes via email □ Revise and provide Bench Card for Judges – Working with Court Interpreters 2. Courtroom Staff training on process of INT-	The committee appreciates this information.

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	Commentator	Position	Comment	Committee Response
			140 vs. INT 110 □ 550 courtrooms □ 700 judicial assistants □ Email/staff communication meeting 3. Court wide advisement to management and staff □ Revision of Guide for Judicial Assistants – Working with Court Interpreters in the Courtroom 4. Docket entry language change in CMS **Would 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Yes. **Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? (Note: Such a database may be developed in the future, but is not a part of this proposal.)**	The committee appreciates this information. CIAP will pass along the suggestion to Judicial Council staff regarding future development of a database of provisionally qualified interpreters.
5.	Superior Court of California, County of Orange[1]	A	**Does the proposal appropriately address the four stated purposes?** See response to #2	See below

[1] The Superior Court of California, Counties of Orange and Riverside submitted comments jointly, however because their positions were different overall, and related to specific issues, we have included them here as separate commentators.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for court to get interpreters in hard-to-find, other-than-Spanish languages? This proposal may not encourage interpreters to pursue certified or registered status because the amendments mainly affect interpreters who are in the group in which language pairings do not have exams available (e.g. Japanese) or there are fewer than 25 certified or registered interpreters enrolled on the Judicial Council's statewide roster for the language requiring interpretation (e.g. Tagalog) and therefore the requirements can be waived. Also, our Court requests clarification on the following: • For interpreters who have been provisionally qualified prior to implementation of the amendment, would the time periods start over or continue counting by next in order? • What are the consequences to interpreters who do not comply with the requirements? • Could the trial courts still hire and provisionally qualify interpreters who attempted to pass the bilingual interpreting exam, but did not pass?	CIAP believes that the various requirements will still motivate interpreters by providing them with a roadmap of the kinds of activities that will better prepare them to be a court interpreter such as taking the online orientation class and preparing for and attempting to pass the exams. So even if an interpreter works in a language which is exempted from the requirements, they will still see those requirements when signing an INT- 110 and be able to review the INT- 110 and have an idea of what they should be doing to better prepare themselves. Additionally, while courts are not required to do so, they may request that certain repeating provisionally qualified interpreters (working in exempted languages) take steps to show their commitment to the interpreting profession and to bettering themselves as interpreters. As an example, a court may require a provisionally qualified interpreter who works in an exempted language to take the online orientation course, even though they are not required to do so. CIAP believes that in order to make sure everyone has the proper notice, a court does not need to

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	Commentator	Position	Comment	Committee Response
				begin counting the first provisional qualification period until after Rule 2.893 has been repealed and replaced.
			Does the length of the individual provisional qualification periods seem too short, too long, or just right? The length of provisional qualification periods seems appropriate for those interpreters who should obtain registered/certified status. However, our court would recommend extending the time frame to 1 year or until such time as an exam becomes available for those interpreters who cannot become registered/certified (e.g. interpreters who seek appointment in a language pairing for which no exam is available). For interpreters who work in language pairings for which there are fewer than 25 certified or registered interpreters enrolled on the Judicial Council's master list, the qualification periods are appropriate. Our Court also requests clarification on the following: "(f)(3) If an interpreter is provisionally qualified under (d)(3) in more than one court at the same time, each six-month period runs concurrently for purposes of determining the maximum periods allowed in this subdivision." • What if the courts do not provisionally qualify the interpreter on the same date? • Does this extend the date to when the last	CIAP disagrees with extending the timeframe to one year for interpreters that do not have an exam available in their language pairing. CIAP believes the shorter timeframe will encourage interpreters to meet other ongoing requirements for ethics or taking the online orientation workshop. Additionally, it may be too difficult to manage separate time requirements for different languages. • Courts do not need to provisionally qualify an interpreter on the same date for their six month time periods to run concurrently. The earliest start date for a six-month period would begin the clock. • No, the six-month periods are intended to run concurrently so that if a court provisionally qualifies an interpreter within a different court's existing six-month period, the interpreter in the second court may not have a complete six month period available to them with the second court. • Currently there is no way for courts to

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	Commentator	Position	Comment	Committee Response
			court qualified the interpreter? • Will each court be required to track waivers of the requirements?	track six-month provisional qualification periods between courts. Instead, the INT - 110 asked the interpreter to indicate which of their six-month periods applies to the particular interpreter. Additionally, on page 5 of the INT-110, as part of the interpreter's declaration (item number 5), the interpreter must indicate they have met the specific testing and course requirements required of them, based on which six-month period they are in.
			What would the implementation requirements be for courts? For example, training staff (please identify positon and expected hours of training), revising process and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Training of the following staff/Judicial Officers would be required: • Court Interpreter Coordinators: 2 hours • Court Interpreter Supervisor: 2 hours • Training of Civil and Family Law Courtroom clerks: 1 hour • Judicial Designee: unknown (TBD) • Judicial Officers: unknown (TBD) Revision of the following procedures would be required: • Court Interpreter Coordinators processes and procedures would need to be updated to reflect the new requirements New docket code and corresponding case	The committee appreciates this information.

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	Commentator	Position	Comment	Committee Response
			management system updates would be required for use of form INT-140 in order to capture minutes accurately and track usage data elements. **Would 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** No, 6 months may be a more realistic implementation/effective date. **Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court?** Yes **How well would this proposal work in courts of different sizes?** This proposal would work for a large court.	CIAP disagrees that more than 3.5 months from Judicial Council approval of this proposal until its effective date is required for implementation. While a number of commentators responded, responses were divided, with some courts suggesting the largest courts would need more time. The largest court in the state, Los Angeles, indicated that 3.5 months was sufficient time. As such, no change is being made to the January 1, 2018 effective date. CIAP will pass along the suggestions to Judicial Council staff regarding creation of a database of provisionally qualified interpreters for future development. The committee appreciates this information.

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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	Commentator	Position	Comment	Committee Response
			Comments on the Proposal as a Whole – Position on Proposal - AGREE WITH PROPOSED CHANGES On page 4 of 6 of the proposed form INT-110, the interrogatory reads: "What is your relationship to the party?" This court seeks further clarification on how this interrogatory should be answered when the provisional qualification is for a six month period during which time the interpreter may be appointed on multiple cases. Similarly, on page 6 of 6 where a case number and date of proceeding is requested. Can the interpreter answer "various" to this interrogatory?	CIAP agrees that both questions on the form INT–110 were not consistent with the six-month length of the provisional qualification. Both the question on page 4 and the items related to case number and date have been deleted.
			On page 6 of 6, this court recommends that a waiver option be added under item 3.d.	CIAP disagrees with the suggestion of including a waiver on page 6 of the INT-110 form. CIAP reviewed the form for the inclusion of a waiver option. The underlying rule already includes exceptions for languages with fewer than 25 certified/registered interpreters and did not believe an additional waiver was required.
			With regard to Form INT-140, this court is generally concerned about the unintended consequences of its use if it becomes a replacement for: 1. Not taking the necessary steps to identify language need at the earliest possible stage in the process; 2. Not making the efforts to locate a certified / registered / provisionally qualified interpreter, even same day; and 3. Not tracking the future language	A separate form INT-140 must be completed for each language and each usage of an interpreter. While the INT-140 form is itself new, the provisions which allow for a court to temporarily use an interpreter, who has not met all of the requirements for provisional qualification, are not new. CIAP believes its additional advisory committee notes will be helpful in explaining temporary interpreters are not intended as an

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			needs for the court user. Also it may increase labor concerns with the interpreter union if its use becomes too frequent and it may also have the consequence of not encouraging interpreters to become certified, registered or even provisionally qualified. But if it is used sparingly as the Bench Guide indicates for "brief and routine matters", "such as to set a continued hearing date" and only for the proceeding at hand, then this court is in favor of documenting interpreter use in this way, but generally cautions the possible expansion of the definition "brief and routine" matters. This court is also generally concerned with the delays and disruption this form may bring about to the courtroom process.	ongoing method of doing business for the courts, but something which may be required when considering a number of factors and when certified, registered or provisionally qualified interpreters are not available. CIAP believes that use of temporary interpreters will be limited due to the overall structure of the qualification process, including requirements for provisionally qualified interpreters. Additionally, CIAP believes that other processes and solutions need to be developed to focus on early identification of language access needs and that *not* adopting the INT–140 will not alleviate Orange's concern but only make tracking this type of situation more difficult and more invisible. CIAP disagrees this form will cause delays and disruption. Temporary use of interpreters should be limited as described in these comments. The INT – 140 is intended to help clarify when use of a temporary interpreter is proper, as opposed to the use of a provisionally qualified interpreter. While its use may not quicken or streamline courtroom decisions, CIAP does believe it will help to effectuate better decision-marking.
6.	Superior Court of California, County of Riverside	AM	**Does the proposal appropriately address the four stated purposes?** Yes	The committee appreciate this information.

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	Commentator	Position	Comment	Committee Response
			Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for court to get interpreters in hard-to-find, other-than-Spanish languages? Yes, however the perception is that with the new INT-140 form we are not required to locate a certified or registered interpreter to interpret for the proceeding when a the judge can "temporarily use an interpreter" for a same day hearing. How does this work when LAP emphasizes that we are to have certified, registered or provisionally qualified interpreters for all hearings? Therefore, we have the following questions: 1. Is the purpose/intent of the INT-140 form to not delay the proceedings when an interpreter request has not been made in advance or when an interpreter can't be provided for the hearing? If so, the INT-140 would make it easier than completing the entire INT-110 form. However, being that we have the ability to have a certified interpreter via United Language Group, telephonic services I don't know how appointing a temporary interpreter would be better than having a certified interpreter, when applicable. 2. If the INT-140 form can be done via voir dire as mentioned in the body of the form (page 1 boxed area), the form should read optional and	CIAP disagrees that the INT- 140 form creates the perception of no requirements for a certified, registered or provisionally qualified interpreter. The addition of the new form helps to clarify there are two processes and judicial education that will take place after the adoption of the new rule and form will further help to clarify the courts responsibility to always seek a certified or registered interpreter first. 1. The temporary interpreter provisions and INT-140 continue to provide a backup mechanism for providing an interpreter when a certified, registered or provisionally qualified interpreter cannot be found and, when considering all of the circumstances including burden on the LEP person and potential dangers to parties in the case etc.. There may be times when a court will know in advance, because another interpreter is not available but the hearing must go on, or there may be times when the INT-140 is necessary last minute. 2. CIAP agrees the INT-140 should be an optional form and has modified it accordingly.

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			not mandatory. 3. Question number 3 under the judge's order indicates that the party has waived a certified, registered or provisionally qualified interpreter, does this mean that the court will make this order after informing the party they may be able to have a certified/registered interpreter via telephonic services? Also, the proposal provides a waiver for those languages that have a small pool of interpreters or where no exam exists, which allows the court to continue to hire and therefore no impact. However, once all courts expand, 25 interpreters to cover statewide may still leave some courts counting on PQs that are local to assist their court to regardless of the requirements. **Does the length of the individual provisional qualification periods seem too short, too long, or just right?** A one-year time frame seems more appropriate for those languages that have no testing available. It may also be more reasonable for languages that there is testing available based on the likelihood that most would not pass a written and oral exam within a six-month timeframe. This would reduce administrative and judicial workload required with processing multiple applications.	3. Yes, the judge would need to complete the finding of qualification for a single proceeding on page 2 of the INT-140 after the LEP person has waived the appointment of a certified, registered or provisionally qualified interpreter. CIAP believes that if further expansion of court provided interpreters in all case types eventually leads to a situation where 25 interpreters is not the proper threshold for exceptions to the additional requirements to become provisionally qualified, then it will be possible to modify the rule at that time. However, CIAP believes that 25 is currently the proper threshold. CIAP disagrees that the six-month period of provisional qualification is too short. CIAP also believes there is value in continuing with six-month periods because courts are already familiar with this period of time in their current operations. The idea is not that an interpreter would complete both the written and oral exam within a six-month timeframe. The requirements suggest that an interpreter would take a written exam within the 12 months before the second or subsequent six-month period (f)(4)(A), but that same interpreter would not need to take their relevant oral exam

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				until their third six-month period (f)(5)(B). As such, CIAP believes the proposed language encourages progress along the testing path and discourages procrastination.
			What would the implementation requirements be for courts? For example, training staff (please identify positon and expected hours of training), revising process and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Training for all court staff, judges, procedures, tracking codes in the case management system. Training time varies from region to region. Supervisor: 2 hours Court Services Coordinators: 1 hour Courtroom Judicial Officers: 30 min each group x 14 (7 hours) Coordinator procedures would need to revised. Bench guides would need to be created/revised. IT staff would need to create new action codes.	The committee appreciates this information.
			Would 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No, at the minimum 6 months is needed.	CIAP disagrees that more than 3.5 months from Judicial Council approval of this proposal until its effective date is required for implementation. While a number of commentators responded, responses were divided, with some courts suggesting the largest courts would need more time. The largest court in the state, Los Angeles, indicated that 3.5 months was sufficient time. As such, no change is being made to the January 1, 2018 effective date.

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			Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? Yes, without a database there will be no accountability on the number of times an interpreter has been provisionally qualified. Therefore the court will not be able to monitor this process. This would also reduce time spent searching for rare language interpreters that have already been located by other courts.	CIAP disagrees that there will be no accountability on the number of times an interpreter has been provisionally qualified. CIAP believes the restructuring of the INT-110 form boosts accountability by making judicial officer as well as interpreter responsibility more clear and delineated. However, CIAP agrees that a database of provisionally qualified interpreters would be useful and would also reduce time spent searching for more hard-to-find language interpreters. CIAP will pass along the suggestions to Judicial Council staff regarding creation of a database of provisionally qualified interpreters for future development.
			How well would this proposal work in courts of different sizes? The proposal would work for all court sizes but would require more time to implement in larger courts.	CIAP disagrees that larger courts need more than 3.5 months from Judicial Council approval of this proposal until its effective date for implementation. The largest court in the state, Los Angeles, indicated that 3.5 months was sufficient time. As such, no change is being made to the January 1, 2018 effective date.

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	Commentator	Position	Comment	Committee Response
			Comments on the Proposal as a Whole – Position on Proposal – AGREE WITH PROPOSED CHANGES IF MODIFIED INT-100 INFO : It would be helpful to add the form numbers in bold by each section for the INT-120, INT-110 and INT-140. Under the last section of the INT-100 form "What are the record keeping requirements when using a non-certified or nonregistered interpreter?" Why does the court need to retain the completed INT-140 form in the case file if there is: 1. An option to approve by voir dire (as mentioned on the INT-140 form) 2. The findings will be made on the court record and 3. The process for the INT-140 is only for a one day proceeding? Maybe information can been added to reflect that when reviewing the form by voir dire, there is no need to retain a copy of the form. INT-110 – Although I understand the need to clarify on the INT-110 to not use this form if using an interpreter for a one-time appearance, and to use the INT140. However, I believe it can be miss leading to those interpreters completing the INT-110 form that courts are ok with using a "Temporary Interpreter". This may send mix messages about LAP and a perception	INT – 100-INFO: CIAP has made the recommended formatting changes. INT-100-INFO, last bullet first page: CIAP agrees with the comment and has made relevant changes to clarify the INT – 140 is not required when the court uses a voir dire process. INT-110- CIAP disagrees that the cross-referencing language on the INT 110 and INT 140 creates any disruptive misperception. Both forms reference the underlying rule and the INT – 100 – INFO spells everything out very clearly. Again, CIAP is not creating new substantive provisions regarding temporary interpreters but simply clarifying for the courts when it is appropriate to

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			that the courts are not requiring certified and registered interpreters for all hearings, as a result of the JC creating a form and guideline to allow non-certified / non-registered or provisionally qualified interpreters to interpret for a single proceeding. Maybe, instead of pointing to the INT-140 form, a modification can be made to the INT-100 INFO sheet to add information to clarify when to use the INT-140, by adding information to the first bullet, under the section for "What is the process for temporary use of an interpreter". The language can read: " After the court has determined that a certified/registered or provisionally qualified interpreter can't be made available and after the proposed interpreter has completed and signed the ……. INT-140 the judge must review and sign……for a single proceeding. Also, the INT-100 form can add the form numbers (INT-110 & INT-140) in bold in the section it refers to for reference instead of pointing to the INT-140 on the INT-110 form. On page 1 in the first box "Mark which 6-month period applies to this interpreter"- Add a 4th period and a 5+ period. Being that the 5th period puts the interpreter beyond the period allowed by 2.893, I think this is helpful for staff and the bench to have this information at a glance on the first page. On page 3 of 6, 8b- Add "If no, Please explain reason" This would provide the judicial officer	use one and helping to better distinguish between them and provisionally qualified interpreters. Further, CIAP disagrees with the recommended change to the INT – 100 – INFO form because the very first substantive words on the page specifically address the need to appoint a certified or registered interpreter and only turn to provisionally qualified or temporary interpreters when the required types are not available. CIAP believes the proposed language is sufficiently clear. INT-110: on page 1, the recommended changes have been made. Page 3 of six, 8B – CIAP declined to make the recommended change because there is no relevant

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			with some explanation as to why the interpreter has not followed through (e.g. Interpreter out of country, etc.)	explanation that would meet the Rule 2.893 requirements. If a prospective provisionally qualified interpreter is otherwise required to take the specified ethics course, during a six-month period that it is required, they would not be able to be provisionally qualified unless they work in a language which qualifies for an exception.
			On page 3 of 6 under Question 3- Add language regarding the testing requirements to inform the interpreter of the oral and written exam requirements after the first 6 month period. Also add a section for Interpreter to explain why testing has not been completed (e.g. test no longer being offered, etc.) This will help judge understand why this has not been completed.	Page 2 (sic) of 6, Question 3- CIAP has added the recommended language regarding exam requirements, however, CIAP disagrees with adding the language related to *not* completing the exam requirements for the same reasons listed in the response paragraph immediately preceding this one.
			On page 4 of 6 of the proposed form INT-110, the interrogatory reads: "What is your relationship to the party?" This court seeks further clarification on how this interrogatory should be answered when the provisional qualification is for a six month period during which time the interpreter may be appointed on multiple cases.	Page 4 of 6- CIAP agrees with the comments and has deleted the noted interrogatory.
			Similarly, on page 6 of 6 where a case number and date of proceeding is requested. Can the interpreter answer "various" to this interrogatory or it would be helpful to eliminate the case number and date of proceeding fields as this form can be used for several case numbers and proceedings.	Page 6 of 6 – CIAP agrees with the comments and has deleted both the case number and date of proceeding.

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			INT-140 The bottom of the INT-140 should read optional and not mandatory as there is an option in the body of the form to allow the questions to be asked in writing or by voir dire. The mandatory part is that questions need to be asked of the proposed interpreter for temporary use but can be covered in the INT-100 form. Another option to not using the INT-140 form is to have the judge make a finding on the record as to the information on the INT-200 form "Foreign Language Interpreters Duties – Civil and Small Claims (for noncertified and nonregistered interpreters)….. that the proposed temporary interpreter has reviewed the INT200 form and has accepted the duties and responsibilities as referenced in the INT-200 and can interpret for that hearing only. This would eliminate the need for another form altogether and the recommended guideline information can be noted on the INT-100 INFO form as to this process.	INT – 140 CIAP agrees and has changed the form to "optional" since it can be completed in writing or by voir dire. Further, CIAP considered instead making the change is related to the INT-200 but did not believe that to be the best path since there is a possibility that the INT-200 might be retired in the near future after possible legislation related to small claims cases and the provision of interpreters.
7.	Superior Court of California, County of San Bernardino	N/I	**Does the proposal appropriately address the four stated purposes?** Regarding the INT-110, the proposal continues to allow courts to make appointment decisions if there is good cause, regardless of how a prospective interpreter answers the additional questions. Our court would request clarification about the implications of a court's decision to appoint an experienced interpreter who has not	There are no implications for a court's decision to appoint an experienced interpreter who has not taken or passed exams over an inexperienced interpreter who passed some exams or achieved higher scores than an experienced interpreter. The INT- 110 collects a great deal of information about prospective provisionally qualified interpreter's training and abilities, as well as test scores. It is up to each court to determine,

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			taken or passed exams over an inexperienced interpreter who has passed some exams or achieved higher scores than the experienced interpreter.	considering all of the available information, if it is appropriate to use a particular provisionally qualified interpreter.
			Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for court to get interpreters in hard-to-find, other-than-Spanish languages? Regarding the INT-110, the proposal continues to allow courts to make appointment decisions if there is good cause, regardless of how a prospective interpreter answers the additional questions. Our court would request clarification about the implications of a court's decision to appoint an experienced interpreter who has not taken or passed exams over an inexperienced interpreter who has passed some exams or achieved higher scores than the experienced interpreter.	See response above.
			Does the length of the individual provisional qualification periods seem too short, too long, or just right? Although a one-year timeframe is more reasonable for languages with fewer than 25 interpreters, having two different periods for the same process could be confusing. Our court would ask whether an interpreter's provisional qualification status and/or the administrator's	CIAP agrees that having two different periods for the same process would be confusing and has retained the six-month periods. Once an interpreter has been provisionally qualified for a six-month period, they would not be impacted during that period should the 25-interpreter threshold be crossed. However, if they were to be provisionally qualified for a

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Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
			due diligence declaration (INT120) would be impacted if the number of interpreters reaches the 25interpreter threshold while an interpreter holds provisional qualification status.	subsequent six-month period the court would need to consider the number of interpreters available on the list in the particular language at that time.
			What would the implementation requirements be for courts? For example, training staff (please identify positon and expected hours of training), revising process and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. □ Initial training for coordinators and supervisors would take about 2 hours. Judicial assistants, supervisors, managers would need about 1 hour per group. Judicial officers are difficult to gather courtwide, and could require multiple periods of 1 hour. □ Court Interpreter Coordinators procedures and manuals would need to be updated to reflect the new requirements □ Case management system codes and procedure updates would be required for use and tracking via INT-140.	The committee appreciates this information.
			Would 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No, Please extend to at least 6 months.	CIAP disagrees that more than 3.5 months from Judicial Council approval of this proposal until its effective date is required for implementation. While a number of commentators responded, responses were divided with some courts suggesting the largest courts would need more time. The largest court in the state, Los Angeles,

SPR17-20

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
				indicated that 3.5 months was sufficient time. As such, no change is being made to the January 1, 2018 effective date.
			Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? Yes, and it should include the provisional qualification periods and all contact information.	CIAP will pass along the suggestion to Judicial Council staff regarding future development of a database of provisionally qualified interpreters.
			How well would this proposal work in courts of different sizes? The proposal works for large courts.	The committee appreciates this information.
8.	Superior Court of California, County of San Diego Mike Roddy Court Executive Officer	AM	General Comments: INT-110 – Page 4 of 6, #13. b. reads "What is your relationship to the Party?" This question should be removed. INT-110 is designed to provisionally qualify an interpreter for a six-month period during which time the interpreter may be appointed on multiple cases. INT-110 – Page 6 of 6, #1. reads "Case number:" This question should be removed. INT-110 is designed to provisionally qualify an interpreter for a six-month period during which time the interpreter may be appointed on multiple cases. INT-110 – Page 6 of 6, #2. reads "Date of Proceeding:" This question should be removed.	Page 4 of 6, #13. b. CIAP agrees and has deleted the question. Page 6 of 6, #1. CIAP agrees and has removed the specified language. Page 6 of 6, #2. CIAP agrees and has removed the specified language.

SPR17-20

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
			INT110 is designed to provisionally qualify an interpreter for a six-month period during which time the interpreter may be appointed on multiple cases.	
			Does the proposal appropriately address the four stated purposes? Yes.	The committee appreciates this information.
			Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for courts to get interpreters in hard-to-find, other-than-Spanish languages? Yes.	The committee appreciates this information.
			Does the length of the individual provisional qualification periods seem too short, too long, or just right? The length appears appropriate provided that the tests and courses required to qualify in subsequent six month periods are offered on a regular basis.	The committee appreciates this information.
			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	The committee appreciates this information.

SPR17-20

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
			systems? Updating training materials and internal policies/procedures, notifying staff, and adding new forms/codes into case management systems. Training time: □ Court interpreter coordinators – two hours □ Courtroom clerks – two hours □ Judicial officers – unknown	
			Would 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. Six months would be a more realistic timeframe to update procedures and case management systems and train staff.	CIAP disagrees that more than 3.5 months from Judicial Council approval of this proposal until its effective date is required for implementation. While a number of commentators responded, responses were divided with some courts suggesting the largest courts would need more time. The largest court in the state, Los Angeles, indicated that 3.5 months was sufficient time. As such, no change is being made to the January 1, 2018 effective date.
			Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? (Note: Such a database may be developed in the future, but is not a part of this proposal.) Yes, with a tracking system maintained by Judicial Council.	CIAP will pass along the suggestions to Judicial Council staff regarding creation of a database of provisionally qualified interpreters for future development.

SPR17-20

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT 140

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

	Commentator	Position	Comment	Committee Response
			How well would this proposal work in courts of different sizes? The proposal would be helpful for larger courts. A subsequent effect of interpreters becoming certified or registered in specific languages and hired as court interpreters, will further reduce the pool of qualified interpreters and will impact smaller courts	CIAP finds the comment interesting as related to the possibility that an increase in certified and registered interpreters, itself, might reduce the pool of interpreters for smaller courts. CIAP believes it is more important to encourage interpreters to become certified and registered rather than try to protect an unqualified pool for use by smaller courts.
9.	TCPJAC/CEAC Joint Rules Subcommittee	AM	General Comment: The modified version of Form 110 and additional new Form 140 provide better clarification. Suggested Modification: The JRS recommends adding the following statement on Form INT-110 under section 1.b. Please see the yellow highlighted area on the attached form. "Please Note: A period may not exceed 6 months." The JRS notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources – This proposal will require additional/minimal training for courtroom clerk staff in the courtroom to ensure they use the form. The modifications to the form 110 will assist the Interpreter Coordinators in their work as it will make it easier to define who is qualified as a non-certified or nonregistered interpreter. • Increases court staff workload – The JRS estimates the proposal will result in a minimal increase in staff workload.	CIAP has made the recommended modification to Form INT-110. The committee appreciates this information.

To add a page number, you click in the box with the # below

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 July 27–28, 2017

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 4.102 and 8.25; revise forms CR-110/JV-790 and CR-112/JV-792; revise Uniform Bail and Penalty Schedules 2017 Edition

Recommended by
Judicial Council staff
Susan R. McMullan, Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
September 1, 2017

Date of Report
July 12, 2017

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court, Judicial Council forms, and the Uniform Bail and Penalty Schedules resulting from typographical errors and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective September 1, 2017:

1. Amend rule 8.25(c)(4) to change the text reference from "(2)" to "(3)."

2. Amend rule 4.102 to omit an inoperative telephone number, "(415) 865-7611."

3. Amend *Uniform Bail and Penalty Schedules 2017 Edition* to make the following technical changes:

   a. In the Preface, section VIII (page x), under the column heading "Traffic Violator School and Correction Total With Proof," change the sample calculations from "(VC 27360.5(a)) ($490)" to "(VC 27360.5(a)) ($415)" and "TOTAL $742" to "TOTAL $667."

   b. Amend Uniform Bail and Penalty Schedule: Traffic Infraction Schedule/Entry for Vehicle Code section 23153 to reflect subdivision (e) was relettered to subdivision (f) effective January 1, 2017.

   c. In the Traffic Infraction Fixed Penalty Schedule entry for Vehicle Code section 21655.1(a) (page 10), change the DMV Points from "0" to "1."

   d. In the Traffic Infraction Fixed Penalty Schedule entry for Vehicle Code section 31540(b) (page 30), change the Total Bail/Fee from "#REF!" to "197."

   e. In the Traffic Misdemeanor Bail and Penalty Schedule subheading (page 42), change "(*See Preface, Section III(B))" to "(*See Preface, Section III)."

4. Revise *Order for Victim Restitution,* forms CR-110/JV-790 (item 3(b)), and *Instructions: Order for Victim Restitution,* forms CR-112/JV-792 (item K(b)), to change the organization name from "Victim Compensation and Government Claims Board" to "California Victim Compensation Board," effective July 1, 2016, as a result of Senate Bill 836 (Stats. 2016, ch. 31).

Copies of the revised rules and forms are attached at pages 4–8, and a link to the *Uniform Bail and Penalty Schedules 2017 Edition* is provided under Attachments and Links.

Previous Council Action

Although the Judicial Council has acted on these rules, forms, and the bail and penalty schedules previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules, forms, and the bail and penalty schedules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 4.102 and 8.25 at page 4
2. Forms CR-110/JV-790 and CR-112/JV-792 at pages 5–8
3. *Uniform Bail and Penalty Schedules 2017 Edition*, *www.courts.ca.gov/documents/2017-JC-BAIL.pdf*

Rules 4.102 and 8.25 of the California Rules of Court are amended, effective January 1, 2018, to read:

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

* * *

Note:
Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:
Criminal Justice Services
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
~~(415) 865-7611~~
or
www.courts.ca.gov/7532.htm

Rule 8.25. Service, filing, and filing fees

(a)–(b) * * *

(c) Filing fees

(1)–(3) * * *

(4) If the party fails to take the action specified in a notice given under ~~(2)~~(3), the reviewing court may strike the document, but may vacate the striking of the document for good cause.

ATTORNEY OR PERSON WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER FOR VICTIM RESTITUTION	CASE NUMBER:

1. a. ☐ On *(date):* defendant *(name):* was convicted of a crime that entitles the victim to restitution.

   b. ☐ On *(date):* child *(name):* was found to be a person described in Welfare and Institutions Code section 602, which entitles the victim to restitution. ☐ Wardship is terminated.

   c. ☐ Parents or guardians jointly and severally liable *(name each):*

   d. ☐ Co-offenders found jointly and severally liable *(name each):*

2. Evidence was presented that the victim named below suffered losses as a result of defendant's/child's conduct. Defendant/child was informed of his or her right to a judicial determination of the amount of restitution and
   a. ☐ a hearing was conducted.
   b. ☐ stipulated to the amount of restitution to be ordered.
   c. ☐ waived a hearing.

3. **THE COURT ORDERS** defendant/child to pay restitution to
   a. ☐ the victim *(name):* in the amount of: $
   b. ☐ the California Victim Compensation Board, to reimburse payments to the victim from the Restitution Fund, in the amount of: $
   c. ☐ plus interest at 10 percent per year from the date of ☐ loss **or** ☐ sentencing.
   d. ☐ plus attorney fees and collection costs in the sum of:$
   e. ☐ plus an administrative fee not to exceed 15 percent of the restitution owed (Pen. Code, § 1203.1(*l*)).

Form Approved for Optional Use
Judicial Council of California
CR-110/JV-790 [Rev. January 1, 2018]

Penal Code, §§ 1202.4(f), 1203.1(*l*), 1214;
Welfare and Institutions Code, § 730.6(h), (i), (q);
Civil Code, § 1714.1; Code of Civil Procedure, § 674(a)(7)
www.courts.ca.gov

CASE NAME:	CASE NUMBER:

4. The amount of restitution includes
   a. ☐ the value of property stolen or damaged.
   b. ☐ medical expenses.
   c. ☐ lost wages or profits
      (1) ☐ incurred by the victim due to injury.
      (2) ☐ of the victim's parent(s) or guardian(s) (if victim is a child) incurred while caring for the injured child.
      (3) ☐ incurred by the victim due to time spent as a witness or in assisting police or prosecution.
      (4) ☐ of the victim's parent(s) or guardian(s) (if victim is a child) due to time spent as a witness or in assisting police or prosecution.
   d. ☐ noneconomic losses (felony violations of Pen. Code, § 288 only).
   e. ☐ Other *(specify):*

Date:

JUDICIAL OFFICER

NOTICE TO VICTIMS

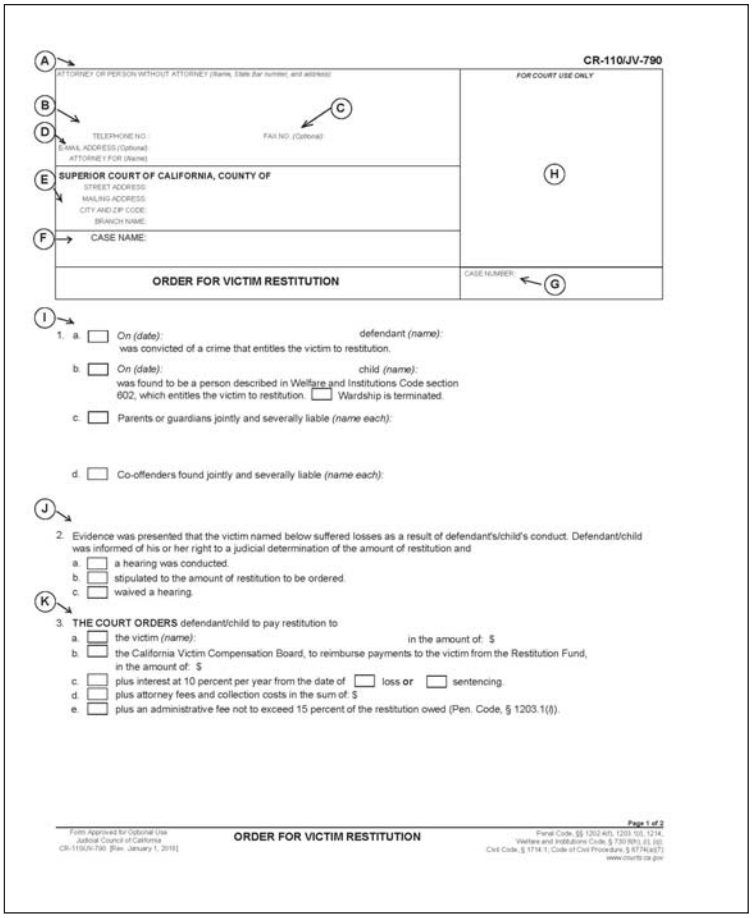
PENAL CODE SECTION 1214 PROVIDES THAT ONCE A DOLLAR AMOUNT OF RESTITUTION HAS BEEN ORDERED, THE ORDER IS THEN ENFORCEABLE AS IF IT WERE, AND IN THE SAME MANNER AS, A CIVIL JUDGMENT. ALTHOUGH THE CLERK OF THE COURT IS NOT ALLOWED TO GIVE LEGAL ADVICE, YOU ARE ENTITLED TO ALL RESOURCES AVAILABLE UNDER THE LAW TO OBTAIN OTHER INFORMATION TO ASSIST IN ENFORCING THE ORDER.

THIS ORDER DOES NOT EXPIRE UNDER PENAL CODE SECTION 1214(d).

YOU MUST FILE A SATISFACTION OF JUDGMENT WITH THE COURT WHEN THIS ORDER IS SATISFIED, AS REQUIRED BY PENAL CODE SECTION 1214(b).

YOU ARE ENTITLED TO A CERTIFIED COPY OF THIS ORDER UPON REQUEST, AS REQUIRED BY PENAL CODE SECTION 1214(b) AND WELFARE AND INSTITUTIONS CODE SECTION 730.7(c).

INSTRUCTIONS: ORDER FOR VICTIM RESTITUTION


CR-110/JV-790

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

FOR COURT USE ONLY

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

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

CASE NAME:

ORDER FOR VICTIM RESTITUTION

CASE NUMBER:

1. a. ☐ On (date): defendant (name):
was convicted of a crime that entitles the victim to restitution.
b. ☐ On (date): child (name):
was found to be a person described in Welfare and Institutions Code section 602, which entitles the victim to restitution. ☐ Wardship is terminated.
c. ☐ Parents or guardians jointly and severally liable (name each):
d. ☐ Co-offenders found jointly and severally liable (name each):

2. Evidence was presented that the victim named below suffered losses as a result of defendant's/child's conduct. Defendant/child was informed of his or her right to a judicial determination of the amount of restitution and
a. ☐ a hearing was conducted.
b. ☐ stipulated to the amount of restitution to be ordered.
c. ☐ waived a hearing.

3. THE COURT ORDERS defendant/child to pay restitution to
a. ☐ the victim (name): in the amount of: $
b. ☐ the California Victim Compensation Board, to reimburse payments to the victim from the Restitution Fund, in the amount of: $
c. ☐ plus interest at 10 percent per year from the date of ☐ loss or ☐ sentencing.
d. ☐ plus attorney fees and collection costs in the sum of: $
e. ☐ plus an administrative fee not to exceed 15 percent of the restitution owed (Pen. Code, § 1203.1(l)).

Page 1 of 2

Form Approved for Optional Use
Judicial Council of California
CR-110/JV-790 [Rev. January 1, 2018]

ORDER FOR VICTIM RESTITUTION

Penal Code, §§ 1202.4(f), 1203.1(l), 1214; Welfare and Institutions Code, § 730.6(h), (i), (o); Civil Code, § 1714.1; Code of Civil Procedure, § 677.6(a)(7)
www.courts.ca.gov

A. Attorney or Person Without Attorney
Write the name of your attorney. If you are representing yourself, your name goes here.

B. Telephone Number
Your telephone number goes here. You may also give a number where the court can leave a message for you.

C. Fax Number
You may write in your fax number here or you may leave this line blank.

D. E-mail Address
You may write in your e-mail address here or you may leave this line blank.

E. Name and Address of Court
Ask the clerk of your court for this information, including the court's address.

F. Case Name
Use the assigned case name. Example: *In re John D.* or *People of the State of California v. Doe.*

G. Case Number
Write the assigned case number in this space. You need to write this number at the top of every page of this form.

H. For Court Use Only
Leave blank. After this form is filed, the clerk will stamp this box on the copies so everyone knows they are copies of an official court document.

I. Order for Restitution
a. If the person was convicted in criminal court, write in the date of the defendant's conviction and the defendant's name.
b. In cases where a child has been found to be a person described in Welfare and Institutions Code section 602, check item b and fill in the date of the hearing and the child's name.
c. If the parents or guardians are jointly and severally liable, write the names in the space provided.
d. If co-offenders were found jointly and severally liable, write the names in the space provided.

This section must be completed by either you or the court. A separate order and abstract of judgment should be completed for each defendant or child ward found guilty of an offense.

J. Judicial Determination of Restitution
The defendant or child has a right to a restitution hearing. The hearing can be waived if the defendant or child agrees to give up his or her right to have a hearing. The amount of restitution may also be stipulated if the amount of restitution to be ordered is agreed to by all parties and the judge makes an order for the amount based on an agreement by all parties. It is very important to check the appropriate boxes to indicate whether the defendant or child has had a hearing or has waived the hearing. If you do not have all of the relevant information to complete this section, then the court should complete it for you.

K. Restitution Ordered to Pay
a. If the court ordered the offender to pay you, write your name as the victim and the amount of restitution ordered by the court. Make sure the amount of restitution is not left blank or "to be determined." A dollar amount must be listed for the order to be enforceable.
b. Check this box if the court ordered the California Victim Compensation Board to receive reimbursement for funds previously paid to you or your service provider by the Restitution Fund. Make sure the amount of reimbursement is not left blank or "to be determined." A dollar amount must be listed for the order to be enforceable.

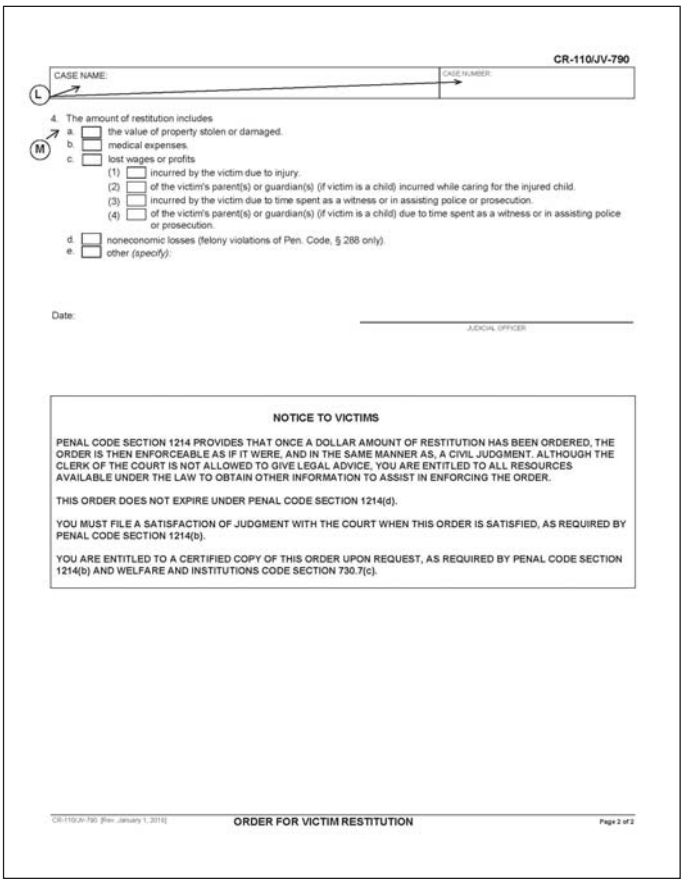
Form Approved for Optional Use
Judicial Council of California
CR-112/JV-792 [Rev. January 1, 2018]

L. Case Name and Number

Use the case name and case number that you wrote on the front of the form.

M. Amount of Restitution

Check the applicable boxes a through e that specify why the restitution was ordered. Example: If the court ordered that you collect medical expenses and lost wages, check boxes 4b and 4c. If the amount of restitution includes something that is not listed, check box 4e and briefly specify what additional costs are covered.



CR-110/JV-790

CASE NAME: CASE NUMBER:

L

M

4. The amount of restitution includes
   a. ☐ the value of property stolen or damaged.
   b. ☐ medical expenses.
   c. ☐ lost wages or profits
      (1) ☐ incurred by the victim due to injury.
      (2) ☐ of the victim's parent(s) or guardian(s) (if victim is a child) incurred while caring for the injured child.
      (3) ☐ incurred by the victim due to time spent as a witness or in assisting police or prosecution.
      (4) ☐ of the victim's parent(s) or guardian(s) (if victim is a child) due to time spent as a witness or in assisting police or prosecution.
   d. ☐ noneconomic losses (felony violations of Pen. Code, § 288 only).
   e. ☐ other *(specify)*:

Date:

JUDICIAL OFFICER

NOTICE TO VICTIMS

PENAL CODE SECTION 1214 PROVIDES THAT ONCE A DOLLAR AMOUNT OF RESTITUTION HAS BEEN ORDERED, THE ORDER IS THEN ENFORCEABLE AS IF IT WERE, AND IN THE SAME MANNER AS, A CIVIL JUDGMENT. ALTHOUGH THE CLERK OF THE COURT IS NOT ALLOWED TO GIVE LEGAL ADVICE, YOU ARE ENTITLED TO ALL RESOURCES AVAILABLE UNDER THE LAW TO OBTAIN OTHER INFORMATION TO ASSIST IN ENFORCING THE ORDER.

THIS ORDER DOES NOT EXPIRE UNDER PENAL CODE SECTION 1214(d).

YOU MUST FILE A SATISFACTION OF JUDGMENT WITH THE COURT WHEN THIS ORDER IS SATISFIED, AS REQUIRED BY PENAL CODE SECTION 1214(b).

YOU ARE ENTITLED TO A CERTIFIED COPY OF THIS ORDER UPON REQUEST, AS REQUIRED BY PENAL CODE SECTION 1214(b) AND WELFARE AND INSTITUTIONS CODE SECTION 730.7(c).

CR-110/JV-790 [Rev. January 1, 2018] ORDER FOR VICTIM RESTITUTION Page 2 of 2

Order for Victim Restitution (form CR-110/JV-790) is the court order or judgment directing the offender to repay you for any losses that you suffered because of the offense. Once this judgment is entered in the court records, you may use it to collect the money you are owed from the offender. If the court does not give you a certified copy of the order, ask the clerk for one and check to make sure the judgment is entered. If the offender does not pay you, you have several options, including getting the offender to pay you voluntarily, getting more information about the offender, and collecting from the offender's property. If you choose to try to collect from the value of real estate owned by the offender, you will need to record an abstract of the judgment with the county recorder in the county where the property is located. For more information about this process, see *Abstract of Judgment—Restitution* (form CR-111/JV-791) and *Instructions: Abstract of Judgment—Restitution* (form CR-113/JV-793). For more information about this and other options for collecting your restitution judgment, see the California Courts Online Self-Help Center at *www.courts.ca.gov/1014.htm*.

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 September 14–15, 2017

Title
Rules and Forms: Technical Changes to Title of Supreme and Appellate Court Clerks

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028

Recommended by
Judicial Council staff
Bruce Greenlee, Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1, 2018

Date of Report
July 19, 2017

Contact
Bruce Greenlee, 415-865-7698
bruce.greenlee@jud.ca.gov

Executive Summary

Recent legislation changes the title of the clerk or clerk/administrator of the Supreme Court and courts of appeal to "clerk/executive officer." Judicial Council staff recommends making conforming revisions to the clerk's title everywhere it appears in the rules of court.

Recommendation

Judicial Council staff recommends that the council, effective January 1, 2018, amend Cal. Rules of Court, rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028, to change the title "Court of Appeals clerk" or "Court of Appeals clerk/administrator" to "clerk/executive officer of the Court of Appeal," and to change the title "Supreme Court

clerk" or "Supreme Court clerk/administrator" to ."clerk/executive officer of the Supreme Court" everywhere they appear in these rules

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor revisions unrelated to any prior action.

Rationale for Recommendation

On June 28, 2017, the Governor signed into law Assembly Bill 452.[1] This legislation amended the Government Code and several other statutes, effective January 1, 2018, to change the name of the clerk/administrator of the Supreme Court and the courts of appeal to "clerk/executive officer." The changes to these rules simply conform the rules of court to the new title enacted in AB 452. Conforming changes were also made to the appellate advisory committee comments to the appellate rules.

Comments, Alternatives Considered, and Policy Implications

This proposal did not circulate for public comment because it is noncontroversial, involves technical revisions, and is therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

The proposal has no policy implications.

Implementation Requirements, Costs, and Operational Impacts

Any operational impacts will be minor. Because the proposed change is only to revise the clerk's position title, case management systems are unlikely to need updating to implement it.

Attachments and Links

1. Cal. Rules of Court, rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028, at pages 3–*26*
2. Link A: Assembly Bill 452, h*ttp://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB452*

[1] Stats 2017, ch. 36.

Rules 8.36, 8.100, 8.212, 8.248, 8.256, 8.264, 8.272, 8.278, 8.336, 8.500, 8.508, 8.512, 8.528, 8.532, 8.540, 8.857, 8.600, 8.619, 8.630, 8.634, 8.887, 8.1005, 8.1007, 8.1018, 10.40, 10.62, 10.67, 10.102, 10.104, 10.452, 10.471, 10.472, 10.481, 10.1004, 10.1008, 10.1020, and 10.1028 of the California Rules of Court are amended, effective January 1, 2018, to read:

Rule 8.36. Substituting parties; substituting or withdrawing attorneys

(a)-(b) * * *

(c) Withdrawing attorney

(1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

(3) In all appeals and in original proceedings related to a superior court proceeding, the reviewing court clerk must notify the superior court of any ruling on the motion.

(4) If the motion is filed in any proceeding pending in the Supreme Court after grant of review, the clerk/executive officer of the Supreme Court ~~clerk~~ must also notify the Court of Appeal of any ruling on the motion.

Rule 8.100. Filing the appeal

(a) * * *

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the $775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee may be paid by check or money order payable to "Clerk/Executive Officer, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt. The fee may also be paid by any method permitted by the court pursuant to rules 2.258 and 8.78.

(2) The appellant must also deposit $100 with the superior court clerk as required under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit.

(3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver of fees and costs.

(c)–(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

~~**Subdivision (b).** In the interest of consistency, subdivision (b)(1) recommends a preferred wording—"Clerk, Court of Appeal"—for the name of the payee of checks or money orders for the filing fee. The provision is not mandatory.~~

Subdivision (c)(2). * * *

Subdivision (e). * * *

Rule 8.212. Service and filing of briefs

(a) * * *

(b) * * *

(c) Service

(1) * * *

(2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each brief must be submitted to the Court of Appeal. For purposes of this requirement, the term "brief" does not include a petition for rehearing or an answer thereto.

(A)–(B) * * *

(C) If it would cause undue hardship for the party filing the brief to submit an electronic copy of the brief to the Court of Appeal, the party may instead serve four paper copies of the brief on the Supreme Court. If the

brief discloses material contained in a sealed or conditionally sealed record, the party serving the brief must comply with rule 8.46(f) and attach a cover sheet that contains the information required by rule 8.204(b)(10). The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice, the clerk/executive officer of the Supreme Court ~~clerk~~ must keep all copies of the unredacted brief under seal.

(3) * * *

Rule 8.248. Prehearing conference

(a)–(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (d). If a prehearing conference is ordered before the due date of the appellant's opening brief, the time to file the brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] sends notice that the conference is *concluded"* (italics added). This provision is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Whether or not the conference concludes on the date it begins, subdivision (d) requires the clerk/executive officer of the Court of Appeal ~~clerk~~ to send the parties a notice that the conference is concluded. This provision is intended to facilitate the calculation of the new briefing due dates.

Rule 8.256. Oral argument and submission of the cause

(a) * * *

(b) Notice of argument

The clerk/executive officer of the Court of Appeal ~~clerk~~ must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk/executive officer must immediately notify the parties by telephone or other expeditious method.

(c)–(e) * * *

Rule 8.264. Filing, finality, and modification of decision

(a) Filing the decision

(1) The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly file all opinions and orders of the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(2) * * *

(b) * * *

(c) Modification of decision

(1) A reviewing court may modify a decision until the decision is final in that court. If the ~~clerk's~~ office of the clerk/executive officer is closed on the date of finality, the court may modify the decision on the next day the ~~clerk's~~ office is open.

(2) * * *

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files a copy of a consent in the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the consent. The clerk/executive officer must send one filed-endorsed copy of the consent to the superior court with the remittitur.

Rule 8.272. Remittitur

(a) * * *

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) The clerk/executive officer of the Court of Appeal ~~clerk~~ must issue a remittitur immediately after the Supreme Court denies review, or the period for granting review expires, or the court dismisses review under rule 8.528(b); and

(B) The clerk/executive officer must send the lower court or tribunal the Court of Appeal remittitur and a filed-endorsed copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) On receiving the Supreme Court remittitur, the clerk/executive officer of the Court of Appeal ~~clerk~~ must issue a remittitur immediately if there will be no further proceedings in the Court of Appeal; and

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a filed-endorsed copy of the Supreme Court opinion or order.

(c) * * *

(d) Notice

(1) The remittitur is deemed issued when the clerk/executive officer enters it in the record. The clerk/executive officer must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

(2) If, without requiring further proceedings in the trial court, the decision changes the length of a state prison sentence, applicable credits, or the maximum permissible confinement to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, the clerk/executive officer must send a copy of the remittitur and opinion or order to either the Department of Corrections and Rehabilitation or the Division of Juvenile Justice.

Rule 8.278. Costs on appeal

(a) * * *

(b) Judgment for costs

(1) The clerk/executive officer of the Court of Appeal ~~clerk~~ must enter on the record, and insert in the remittitur, a judgment awarding costs to the prevailing party under (a)(2) or as directed by the court under (a)(3), (a)(4), or (a)(5).

(2) If the clerk/executive officer fails to enter judgment for costs, the court may recall the remittitur for correction on its own motion, or on a party's motion made not later than 30 days after the remittitur issues.

(c)–(d) * * *

Rule 8.336. Preparing, certifying, and sending the record

(a)–(g) * * *

(h) Supervision of preparation of record

Each clerk/executive officer of the Court of Appeal ~~clerk~~, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

Rule 8.500. Petition for review

(a)–(d) * * *

(e) Time to serve and file

(1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court. For purposes of this rule, the date of finality is not extended if it falls on a day on which the ~~clerk's~~ office of the clerk/executive officer is closed.

(2) * * *

(3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the clerk/executive officer of the Supreme Court ~~clerk~~ must accept it and file it on the day after finality.

(4) –(5) * * *

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and the clerk/executive officer of the Court of Appeal ~~clerk~~.

(2) * * *

(3) The clerk/executive officer of the Supreme Court ~~clerk~~ must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (e). * * *

Subdivision (f). The general requirements relating to service of documents in the appellate courts are established by rule 8.25. Subdivision (f)(1) requires that the petition (but not an answer or reply) be served on the clerk/executive officer of the Court of Appeal ~~clerk~~. To assist litigants, (f)(1) also states explicitly what is impliedly required by rule 8.212(c), i.e., that the petition must also be served on the superior court clerk (for delivery to the trial judge).

Rule 8.508. Petition for review to exhaust state remedies

(a)–(b) * * *

(c) Service

The petition must be served on the clerk/executive officer of the Court of Appeal ~~clerk~~ but need not be served on the superior court clerk.

Rule 8.512. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly send the record to the Supreme Court. If the petition is denied, the

clerk/executive officer of the Supreme Court ~~clerk~~ must promptly return the record to the Court of Appeal if the record was transmitted in paper form.

(b) * * *

(c) Review on the court's own motion

(1) If no petition for review is filed, the Supreme Court may, on its own motion, order review of a Court of Appeal decision within 30 days after the decision is final in that court. Before the 30-day period or any extension expires, the Supreme Court may order one or more extensions to a date not later than 90 days after the decision is final in the Court of Appeal. If any such period ends on a day on which the ~~clerk's~~ office of the clerk/executive officer is closed, the court may order review on its own motion on the next day the ~~clerk's~~ office is open.

(2) * * *

(d) * * *

Rule 8.528. Disposition

(a) * * *

(b) Dismissal of review

(1) The Supreme Court may dismiss review. The clerk/executive officer of the Supreme Court ~~clerk~~ must promptly send an order dismissing review to all parties and the Court of Appeal.

(2) When the Court of Appeal receives an order dismissing review, the decision of that court is final and its clerk/executive officer must promptly issue a remittitur or take other appropriate action.

(3) * * *

(c)–(f) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). An earlier version of this rule purported to limit Supreme Court *dismissals of review* to cases in which the court had "improvidently" granted review. In practice, however, the court may dismiss review for a variety of other reasons. For example, after the court decides a "lead" case, its current practice is to dismiss review in any pending companion case (i.e., a "grant and hold" matter under rule 8.512(c)) that appears correctly decided in light of the lead case and presents no additional issue requiring resolution by the Supreme Court or the Court of Appeal. The Supreme Court may also dismiss review when a supervening event renders the case moot for any reason, e.g., when the parties reach a settlement, when a party seeking personal relief dies, or when the court orders review to construe a statute that is then repealed before the court can act. Reflecting this practice, the Supreme Court now dismisses review—even in the rare case in which the grant of review was arguably "improvident"—by an order that says simply that "review is dismissed."

An order of review ipso facto transfers jurisdiction of the cause to the Supreme Court. By the same token, an order dismissing review ipso facto retransfers jurisdiction to the Court of Appeal. The Court of Appeal has no discretion to exercise after the Supreme Court dismisses review: the clerk/executive officer of the Supreme Court ~~clerk~~ must promptly send the dismissal order to the Court of Appeal; when the clerk/executive officer of the Court of Appeal ~~clerk~~ files that order, the Court of Appeal decision immediately becomes final.

If the decision of the Court of Appeal made final by (b)(2) requires issuance of a remittitur under rule 8.272(a), the clerk/executive officer must issue the remittitur; if the decision does not require issuance of a remittitur—e.g., if the decision is an interlocutory order (see rule 8.500(a)(1))—the clerk/executive officer must take whatever action is appropriate in the circumstances.

Subdivision (d). * * *

Subdivision (e). * * *

Rule 8.532. Filing, finality, and modification of decision

(a) Filing the decision

The clerk/executive officer of the Supreme Court ~~clerk~~ must promptly file all opinions and orders issued by the court and promptly send copies showing the filing date to the parties and, when relevant, to the lower court or tribunal.

(b)–(c) * * *

Rule 8.540. Remittitur

(a) * * *

(b) Clerk's duties

(1) The clerk must issue a remittitur when a decision of the court is final. The remittitur is deemed issued when the clerk enters it in the record.

(2) After review of a Court of Appeal decision, the clerk/executive officer of the Supreme Court ~~clerk~~ must address the remittitur to the Court of Appeal and send that court a copy of the remittitur and a filed-endorsed copy of the Supreme Court opinion or order. The clerk must send two copies of any document sent in paper form.

(3) After a decision in an appeal from a judgment of death or in a cause transferred to the court under rule 8.552, the clerk must send the remittitur and a filed-endorsed copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) The clerk must comply with the requirements of rule 8.272(d).

(c)–(f) * * *

Rule 8.600. In general

(a)–(c) * * *

(d) Supervising preparation of record

The clerk/executive officer of the Supreme Court ~~clerk~~, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(e) * * *

Rule 8.619. Certifying the trial record for completeness

(a)–(g) * * *

(h) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the clerk/executive officer of the Supreme Court ~~clerk~~.

Rule 8.630. Briefs by parties and amicus curiae

(a)–(b) * * *

(c) Time to file

(1) Except as provided in (2), the times to file briefs in an appeal from a judgment of death are as follows:

(A) The appellant's opening brief must be served and filed within 210 days after the record is certified as complete or the superior court clerk delivers the completed record to the defendant's appellate counsel, whichever is later. The clerk/executive officer of the Supreme Court ~~clerk~~ must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the appellant's opening brief.

(B) The respondent's brief must be served and filed within 120 days after the appellant's opening brief is filed. The clerk/executive officer of the Supreme Court ~~clerk~~ must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the respondent's brief.

(C) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (A) and (B) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages.

(D) The appellant must serve and file a reply brief, if any, within 60 days after the respondent files its brief.

(2) In any appeal from a judgment of death imposed after a trial that began before January 1, 1997, the time to file briefs is governed by rule 8.360(c).

(3) The Chief Justice may extend the time to serve and file a brief for good cause.

(d)–(h) * * *

Rule 8.634. Transmitting exhibits; augmenting the record in the Supreme Court

(a) * * *

(b) Time to file notice of designation

No party may file a notice designating exhibits under rule 8.224(a) until the clerk/executive officer of the Supreme Court ~~clerk~~ notifies the parties of the time and place of oral argument.

(c) * * *

Rule 8.887. Decisions

(a)–(b) * * *

(c) Opinions certified for publication

(1) * * *

(2) When the opinion is certified for publication, the clerk must immediately send:

(A) * * *

(B) One copy to the Court of Appeal for the district. The copy must bear the notation "This opinion has been certified for publication in the Official Reports. It is being sent to assist the Court of Appeal in deciding whether to order the case transferred to the court on the court's own motion under rules 8.1000–8.1018." The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly file that copy or make a docket entry showing its receipt.

Rule 8.1005. Certification for transfer by the appellate division

(a)–(d) * * *

(e) Superior court clerk's duties

(1) If the appellate division orders a case certified for transfer, the clerk must promptly send a copy of the certification order to the clerk/executive officer of the Court of Appeal ~~clerk~~, the parties, and, in a criminal case, the Attorney General.

(2) * * *

Rule 8.1007. Transmitting record to Court of Appeal

(a) Clerks' duties

(1) * * *

(2) The clerk/executive officer of the Court of Appeal ~~clerk~~ must promptly notify the parties when the clerk files the record.

**(b) * * *

Rule 8.1018. Finality and remittitur

(a)–(b) * * *

(c) When the Court of Appeal issues a decision

If the Court of Appeal issues a decision on a case it has ordered transferred from the appellate division of the superior court, filing, finality, and modification of that decision are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk/executive officer must address the remittitur to the appellate division and send that court a copy of the remittitur and a filed-endorsed copy of the Court of Appeal opinion or order. If the remittitur and opinion are sent in paper format, two copies must be sent. On receipt of the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(d) Documents to be returned

When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the ~~Court of Appeal~~ clerk/executive officer must return to the appellate division any part of the record sent nonelectronically to the Court of Appeal under rule 8.1007 and any exhibits that were sent nonelectronically.

Rule 10.40. Appellate Advisory Committee

(a)–(b) * * *

(c) Membership

The committee must include at least one member from each of the following categories:

(1)–(3) * * *

(4) Supreme Court clerk/executive officer ~~administrator~~;

(5) Appellate court clerk/executive officer ~~administrator~~;

(6)–(11) * * *

Rule 10.62. Court Facilities Advisory Committee

(a) * * *

(b) Membership

The committee must include at least one member from each of the following categories:

(1) * * *

(2) Appellate court clerk/executive officer ~~administrator~~;

(3)–(7) * * *

The committee also includes the chair and vice-chair of the Trial Court Facility Modification Advisory Committee, as non-voting members.

Rule 10.67. Judicial Branch Workers' Compensation Program Advisory Committee

(a)–(b) * * *

(c) Membership

The advisory committee consists of persons from trial courts and state judicial branch entities knowledgeable about workers' compensation matters, including court executive officers, appellate court clerks/executive officers, and human resources professionals.

Rule 10.102. Acceptance of gifts

(a) * * *

(b) Delegation of authority

The Administrative Director may delegate the authority to accept gifts to the following, under any guidelines established by the Administrative Director:

(1) * * *

(2) The clerk/executive officer ~~administrator~~ of a Court of Appeal, for gifts to that ~~a~~ Court of Appeal;

(3) The clerk executive officer of the Supreme Court, for gifts to the Supreme Court; and

(4) * * *

Rule 10.104. Limitation on contracting with former employees

(a)–(b) * * *

(c) Policymaking position

"Policymaking position" includes:

(1) * * *

(2) In an appellate court, the clerk/executive officer ~~administrator~~ and any other position designated by the court as a policymaking position; and

(3) * * *

(d) * * *

Rule 10.452. Minimum education requirements, expectations, and recommendations

(a)–(c) * * *

(d) Responsibilities of Chief Justice and administrative presiding justices

The Chief Justice and each administrative presiding justice:

(1) Must grant sufficient leave to Supreme Court and Court of Appeal justices, the clerk/executive officer ~~administrator~~, and the managing attorney to enable

them to complete the minimum education requirements stated in rules 10.461, 10.471, and 10.472, respectively;

(2) To the extent compatible with the efficient administration of justice, must grant to all justices, the clerk/executive officer ~~administrator~~, and the managing attorney sufficient leave to participate in education programs consistent with the education recommendations stated in rules 10.469 and 10.479. After a justice has completed any new justice education required under rule 10.461 or after a justice has completed the first year on the bench, the Chief Justice or the administrative presiding justice should grant each justice at least eight court days per calendar year to participate in continuing education relating to the justice's responsibilities;

(3) In addition to the educational leave required under (d)(1)–(2), should grant leave to a justice, clerk/executive officer ~~administrator~~, or managing attorney to serve on education committees and as a faculty member at education programs when the individual's services have been requested for these purposes by Judicial Council staff, the California Judges Association, or the court. If a court's calendar would not be adversely affected, the court should grant additional leave for a justice, the clerk/ executive officer ~~administrator~~, or the managing attorney to serve on an educational committee or as a faculty member for judicial branch education;

(4) Should establish an education plan for his or her court to facilitate the involvement of justices, the clerk/executive officer ~~administrator~~, and the managing attorney as both participants and faculty in education activities;

(5) Must ensure that justices, the clerk/executive officer ~~administrator~~, and the managing attorney are reimbursed by their court in accordance with the travel policies issued by the Judicial Council for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The Chief Justice or the administrative presiding justice may approve reimbursement of travel expenses incurred by justices, the clerk/executive officer ~~administrator~~, and the managing attorney in attending out-of-state education programs as a participant; and

(6) * * *

(e) * * *

(f) Responsibilities of Supreme Court and Court of Appeal justices, clerks/executive officers ~~administrator~~, managing attorneys, and supervisors

Each court's justices, clerk/executive officer ~~administrator~~, managing attorney, and supervisors:

(1)–(4) * * *

(5) Must ensure that supervisors and other court personnel are reimbursed by their court in accordance with the travel policies issued by the Judicial Council for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The clerk/executive officer ~~administrator~~ or the managing attorney may approve reimbursement of travel expenses incurred by supervisors and other court personnel in attending out-of-state education programs as a participant.

(g) * * *

Rule 10.471. Minimum education requirements for Supreme Court and Court of Appeal clerks/executive officers ~~administrators~~

(a) Applicability

All clerks/executive officers of the California Supreme Court and Courts of Appeal ~~clerk/administrators~~ must complete these minimum education requirements. All clerks/executive officers ~~administrator~~ should participate in more education than is required, related to each individual's responsibilities and in accordance with the education recommendations set forth in rule 10.479.

(b) Hours-based requirement

(1) Each clerk/executive officer ~~administrator~~ must complete 30 hours of continuing education every three years beginning on the following date:

(A) For a new clerk/executive officer ~~administrator~~, the first three-year period begins on January 1 of the year following his or her hire.

(B) For all other clerks/executive officers ~~administrator~~, the first three-year period begins on January 1, 2008.

(2) The following education applies toward the required 30 hours of continuing education:

(A) * * *

(B) Each hour of participation in traditional (live, face-to-face) education; distance education such as broadcasts, videoconferences, and online coursework; faculty service; and self-directed study counts toward the requirement on an hour-for-hour basis. Each clerk/executive officer ~~administrator~~ must complete at least half of his or her continuing education hours requirement as a participant in traditional (live, face-to-face) education. The clerk/executive officer ~~administrator~~ may complete the balance of his or her education hours requirement through any other means with no limitation on any particular type of education.

(C) A clerk/executive officer ~~administrator~~ who serves as faculty by teaching legal or judicial education to a legal or judicial audience may apply education hours as faculty service. Credit for faculty service counts toward the continuing education requirement in the same manner as all other types of education—on an hour-for-hour basis.

(c) Extension of time

(1) * * *

(2) If the Chief Justice or the administrative presiding justice grants a request for an extension of time, the clerk/ executive officer ~~administrator~~, in consultation with the Chief Justice or the administrative presiding justice, must also pursue interim means of obtaining relevant educational content.

(3) An extension of time to complete the hours-based requirement does not affect the timing of the clerk's/executive officer ~~administrator~~'s next three-year period.

(d) Record of participation; statement of completion

Each clerk/executive officer ~~administrator~~ is responsible for:

(1)–(3) * * *

Rule 10.472. Minimum education requirements for Supreme Court and Court of Appeal managing attorneys, supervisors, and other personnel

(a) * * *

(b) Content-based requirements

(1)–(2) * * *

(3) The clerk/executive officer ~~administrator~~, the managing attorney, or the employee's supervisor may determine the appropriate content, delivery mechanism, and length of orientation based on the needs and role of each individual employee.

(c) Hours-based requirements

(1) * * *

(2) Each court employee who is not a managing attorney, supervisor, or appellate judicial attorney must complete 8 hours of continuing education every two years, with the exception of employees who do not provide court administrative or operational services. Those employees are not subject to the continuing education hours-based requirement but must complete any education or training required by law and any other education required by the clerk/executive officer ~~administrator~~.

(3) * * *

(4) Any education offered by an approved provider (see rule 10.481(a)) and any other education, including education taken to satisfy a statutory, rules-based, or other education requirement, that is approved by the clerk/executive officer ~~administrator~~, the managing attorney, or the employee's supervisor as meeting the criteria listed in rule 10.481(b) applies toward the orientation education required under (b) and the continuing education required under (c)(1) and (2).

(5)–(6) * * *

(7) The clerk/executive officer ~~administrator~~, the managing attorney, or the employee's supervisor may require supervisors and other court personnel to participate in specific courses or to participate in education in a specific subject matter area as part of their continuing education.

(d) Extension of time

(1) For good cause, a justice (for that justice's chambers staff), the managing attorney, the clerk/executive officer ~~administrator~~, or a supervisor, if delegated by the clerk/executive officer ~~administrator~~, or the employee's supervisor may grant a six-month extension of time to complete the education requirements in this rule.

(2) If the justice, managing attorney, clerk/executive officer ~~administrator~~, or supervisor grants a request for an extension of time, the managing attorney, supervisor, or employee who made the request, in consultation with the justice, managing attorney, clerk/executive officer ~~administrator~~, or supervisor, must also pursue interim means of obtaining relevant educational content.

(3) * * *

**(e) * * *

Rule 10.481. Approved providers; approved course criteria

(a) * * *

(b) Approved education criteria

Education is not limited to the approved providers referred to in (a). Any education from another provider that is approved by the Chief Justice, the administrative presiding justice, or the presiding judge as meeting the criteria listed below may be applied toward the continuing education expectations and requirements for justices, judges, and subordinate judicial officers or requirements for clerks/executive officers ~~administrator~~ or court executive officers. Similarly, any education from another provider that is approved by the clerk/executive officer ~~administrator~~, the court executive officer, or the employee's supervisor as meeting the criteria listed below may be applied toward the orientation or continuing education requirements for managers, supervisors, and other employees or the content-based or continuing education requirements for probate court investigators, probate attorneys, and probate examiners in rule 10.478.

(1)–(2) * * *

Rule 10.1004. Court of Appeal administrative presiding justice

(a)–(b) * * *

(c) Duties

The administrative presiding justice must perform any duties delegated by a majority of the justices in the district with the Chief Justice's concurrence. In addition, the administrative presiding justice has responsibility for the following matters:

(1) *Personnel*

The administrative presiding justice has general direction and supervision of the clerk/executive officer ~~administrator~~ and all court employees except those assigned to a particular justice or division;

(2)–(7) * * *

(d) * * *

Rule 10.1008. Courts of Appeal with more than one division

Appeals and original proceedings filed in a Court of Appeal with more than one division, or transferred to such a court without designation of a division, may be assigned to divisions in a way that will equalize the distribution of business among them. The clerk/executive officer of the Court of Appeal ~~clerk~~ must keep records showing the divisions in which cases and proceedings are pending.

Rule 10.1020. Reviewing court clerk/executive officer ~~administrator~~

(a) Selection

A reviewing court may employ a clerk/executive officer ~~administrator~~ selected in accordance with procedures adopted by the court.

(b) Responsibilities

Acting under the general direction and supervision of the administrative presiding justice, the clerk/executive officer ~~administrator~~ is responsible for planning, organizing, coordinating, and directing, with full authority and accountability, the management of the ~~clerk's~~ office of the clerk/executive officer and all nonjudicial support activities in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, and maximizes the use of judicial and other resources.

(c) Duties

Under the direction of the administrative presiding justice, the clerk/executive officer ~~administrator~~ has the following duties:

(1) *Personnel*

The clerk/executive officer ~~administrator~~ directs and supervises all court employees assigned to the clerk/executive officer ~~administrator~~ or by the administrative presiding justice and ensures that the court receives a full range of human resources support;

(2) *Budget*

The clerk/executive officer ~~administrator~~ develops, administers, and monitors the court budget and develops practices and procedures to ensure that annual expenditures are within the budget;

(3) *Contracts*

The clerk/executive officer ~~administrator~~ negotiates contracts on the court's behalf in accord with established contracting procedures and applicable laws;

(4) *Calendar management*

The clerk/executive officer ~~administrator~~ employs and supervises efficient calendar and caseflow management, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;

(5) *Technology*

The clerk/executive officer ~~administrator~~ coordinates technological and automated systems activities to assist the court;

(6) *Facilities*

The clerk/executive officer ~~administrator~~ coordinates facilities, space planning, court security, and business services support, including the purchase and management of equipment and supplies;

(7) *Records*

The clerk/executive officer ~~administrator~~ creates and manages uniform record-keeping systems, collecting data on pending and completed judicial business and the court's internal operation as the court and Judicial Council require;

(8) *Recommendations*

The clerk/executive officer ~~administrator~~ identifies problems and recommends policy, procedural, and administrative changes to the court;

(9) *Public relations*

The clerk/executive officer ~~administrator~~ represents the court to internal and external customers—including the other branches of government—on issues pertaining to the court;

(10) *Liaison*

The clerk/executive officer ~~administrator~~ acts as liaison with other governmental agencies;

(11) *Committees*

The clerk/executive officer ~~administrator~~ provides staff for judicial committees;

(12) *Administration*

The clerk/executive officer ~~administrator~~ develops and implements administrative and operational programs and policies for the court and the ~~clerk's~~ office of the clerk/executive officer; and

(13) *Other*

The clerk/executive officer ~~administrator~~ performs other duties as the administrative presiding justice directs.

(d) Geographically separate divisions

Under the general oversight of the clerk/executive officer ~~administrator~~, an assistant clerk/executive officer ~~administrator~~ of a geographically separate division has responsibility for the nonjudicial support activities of that division.

Rule 10.1028. Preservation and destruction of Court of Appeal records

(a)–(b) * * *

(c) Permanent records

The clerk/executive officer of the Court of Appeal ~~clerk~~ must permanently keep the court's minutes and a register of appeals and original proceedings.

(d) Time to keep other records

(1) Except as provided in (2), the clerk/executive officer 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/executive officer must keep the original reporter's transcript for 20 years after the decision becomes final.