



# JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS  
COMMITTEE

[www.courts.ca.gov/ruprometings.htm](http://www.courts.ca.gov/ruprometings.htm)  
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## RULES AND PROJECTS COMMITTEE

### OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

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**Date:** Thursday, April 5, 2018  
**Time:** 12:10 a.m.to 2:10 p.m.  
**Location:** Conference Call  
**Public Call-In Number** 1-877-820-7831/Listen Only Passcode:8083403

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Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

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#### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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##### Call to Order and Roll Call

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#### II. DISCUSSION AND POSSIBLE ACTION ITEMS

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##### JUDICIAL ADMINISTRATION

###### Item 01 (Deferred)

**Judicial Administration:** Change to Advisory Committee Membership Requirements (amend rule 10.64) (Action required – approval for circulation)

Presenter: Lucy Fogarty

###### Item 02 (Deferred)

**Judicial Administration:** New rule of court for inclusion in Title 1 (adopt rule ) (Action required— approval for circulation)

Presenter: ~~Diana Glick~~

**Item 40**

**Jury Service: Permanent Medical Excuse** (adopt Cal. Rules of Court, rule 2.1009) (Action required – approval for circulation for comment)

Presenter: Daniel Pone

**APPELLATE**

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**Item 03**

**Appellate Procedure: Finality of Appellate Division Decisions** (amend rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005) (Action required – approval for circulation for comment)

Presenter: Sarah Abbott

**Item 04**

**Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases** (approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke form APP-014 and replace with APP-014) (Action required – approval for circulation for comment)

Presenter: Gabrielle Selden and Christy Simons

**Item 05**

**Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases** (revise forms APP-102, APP-110, CR-132, CR-134, and CR-142) (Action required – approval for circulation for comment)

Presenter: Christy Simons

**Item 06**

**Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal** (amend, rules 8.45, 8.46, and 8.47) (Action required – approval for circulation for comment)

Presenter: Ingrid Leverett

**CIVIL**

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**Item 07**

**Civil Forms: Gender Discrimination Notice** (adopt GDC-001) (Action required – approval for circulation for comment)

Presenters: Susan McMullan

**Item 08**

**Civil Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer** (revise forms CIV-140 and CIV-141) (Action required – approval for circulation for comment)

Presenters: Susan McMullan

**Item 09**

**Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database** (amend rule 3.2300; revise form MC-1000) (Action required – approval for circulation for comment)

Presenters: Susan McMullan

**Item 10**

**Civil Forms: Confidential Information Form Under Civil Code § 1708.85** (revise form MC-125) (Action required – approval for circulation for comment)

Presenters: Sarah Abbott

**Item 11**

**Judicial Council Sponsored Legislation: Limited Civil Cases: Legislative Amendments** Reflecting Recommendations of Futures Commission and one Rule of Court (amend rule) ((Action required – approval for circulation for comment)

Presenters: Anne Ronan

**CRIMINAL**

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**Item 12**

**Criminal Procedure: Multicounty Incarceration and Supervision** (amend rule 4.452) (Action required – approval for circulation for comment)

Presenter: Kimberly DaSilva

**Item 13**

**Criminal Procedure: Petition for Writ of Habeas Corpus** (revise form MC-275) (Action required – approval for circulation for comment)

Presenter: Kimberly DaSilva

**Item 14**

**Criminal Justice Realignment: Petition and Order for Dismissal** (revise forms CR-180 and CR-181) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf

**Item 15**

**Criminal Procedure: Procedure to petition for vacating conviction (human trafficking victim)** (approve forms CR-407, CR-408) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf

**Item 16**

**Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings** (amend rule 4.130) (Action required – approval for circulation for comment)

Presenter Eve Hershcopf

**Item 17**

**Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2)** (adopt rule 4.131) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf

**Item 18**

**Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f** (approve forms CR-404 and CR-405) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf

**Item 19**

**Criminal Procedure: Petition to Seal Arrest and Related Records** (approve forms CR-409, CR-409-INFO, and CR-410) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf



## **FAMILY AND JUVENILE**

### **Item 20**

**Family Law: Changes to Continuance Rule and Forms** (amend rule 5.94; revise form FL-303, FL-306, approve forms FL-302-INFO, FL-306-INFO, FL-308, and FL-309; revoke form FL-307 and replace with FL-307) (Action required – approval for circulation for comment)

Presenter: Gabrielle Selden

### **Item 21**

**Family Law: Income and Expense Declaration** (revise form FL-150) (Action required – approval for circulation for comment)

Presenter: Gabrielle Selden

### **Item 22**

**Family Law: Transfer of Jurisdiction** (adopt rule 5.97) (Action required – approval for circulation for comment)

Presenter: Tracy Kenny

### **Item 23**

**Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f** (adopt forms JV-742 and JV-743) (Action required – approval for circulation for comment)

Presenter: Nicole Giacinti

### **Item 24**

**Juvenile Law: Vacatur of Convictions Related to Human Trafficking and Preservation of Extended Foster Care Eligibility** (amend rules 5.812, 5.903, and 5.906; adopt rule 5.811; revise forms JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683; approve forms JV-748 and JV-749) (Action required – approval for circulation for comment)

Presenter: Nicole Giacinti

### **Item 25**

**Juvenile Law: Electronic Filing and Service in Juvenile Court Matters (Implementation of AB 976)** (amend rules 5.504, 5.522, 5.524, 5.534, 5.538, 5.565, 5.570, 5.590, 5.640, 5.695, 5.700, 5.726, 5.727, 5.728, and 5.906; adopt rule 5.523; revise forms EFS-005-JV/JV-141, JV-221, JV-282, JV-310, JV-326, JV-326-INFO, and JV-510) (Action required – approval for circulation for comment)

Presenter: Diana Glick

**Item 26**

**Juvenile Law: School Notification of Delinquency Court Adjudication** (amend form JV-690)  
(Action required – approval for circulation for comment)

Presenter: Daniel Richardson

**Item 27**

**Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court** (amend rules 5.678, 5.690, 5.695, and 5.708; repeal rule 5.526) (Action required – approval for circulation for comment)

Presenter: Kerry Doyle

**Item 28**

**Juvenile Law: Intercounty Placements** (amend rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556) (Action required – approval for circulation for comment)

Presenter: Kerry Doyle

**Item 29**

**Juvenile Law: Guardianship Forms** (revise forms JV-330 and JV-350) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

**INTERPRETERS**

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**Item 30**

**Court Interpreters Advisory Panel** (repeal and replace Rule of Court 2.891; adopt accompanying California Court Interpreter Credential Review Procedures) (Action required – approval for circulation for comment)

Presenter: Sonia Sierra Wolf and Rick Feldstein

**PROBATE**

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**Item 31**

**Probate Conservatorship: Major Neurocognitive Disorder** (revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, GC-385) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

**Item 32** (Deferred)

~~**Probate Guardianship: Response to Petition** (revise forms GC-211 and GC-212) (Action required – approval for circulation for comment)~~

~~Presenter: Corby Sturges~~

**Item 33**

**Probate Guardianship and Conservatorship: Qualifications and Training of Appointed Counsel** (amend rule 7.1101; revise forms GC-010 and GC-011) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

**PROTECTIVE ORDERS**

**Item 34** (Deferred)

~~**Protective Orders: Rules on Clets/Registration of Canadian Domestic Violence Protective Orders** (amend rule 1.51 and propose new form DV-630 to implement requirements of SB-204) (Action required – approval for circulation for comment)~~

~~Presenters: Greg Tanaka, Frances Ho, Sarah Abbott and Patrick O'Donnell~~

**Item 35** (Deferred)

~~**Protective Orders: Protecting Information of People Under 18 Years Old** (Action required – approval for circulation for comment)~~

~~Presenters: Frances Ho, Patrick O'Donnell and Anne Ronan~~

**TECHNOLOGY**

**Item 36**

**Technology: Rules Modernization Project** (amend rules 2.250, 2.251, 2.255, and 2.257) (Action required – approval for circulation for comment)

Presenter: Andrea Jaramillo

**Item 37**

**Technology: Remote Access to Electronic Records** (adopt rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503) (Action required – approval for circulation for comment)

Presenter: Andrea Jaramillo

**Item 38**

**Technology: Rules Modernization Project** (adopt form EFS-006) (Action required – approval for circulation for comment)

Presenter: Andrea Jaramillo

**TRIBAL COURT STATE COURT FORUM**

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**Item 39**

**Indian Child Welfare Act: Waiver of Certain *Pro Hac Vice* Requirements for Attorneys Representing Tribes in Indian Child Welfare Act cases** (amend rule 9.40) (Action required – approval for circulation for comment)

Presenter: Ann Gilmour

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**III. ADJOURNMENT**

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**Adjourn**

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** Thursday, April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):  
Judicial Council: Change to Advisory Committee Membership Requirements

*Committee or other entity submitting the proposal:*  
Trial Court Budget Advisory Committee

*Staff contact (name, phone and e-mail):* Brandy Sanborn, (415) 865-7195, [brandy.sanborn@jud.ca.gov](mailto:brandy.sanborn@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Approved by E&P in December 2017.

Project description from annual agenda: Not listed as a project, pertains to committee's membership. See below for excerpt from annual agenda:

\*Lead staff and Judicial Council Budget Services leadership would like to propose a change to California Rules of Court, rule 10.64(c)(1) to define "presiding judge" as a current presiding judge or a past presiding judge within the last 10 years (i.e., not "an immediate past presiding judge") for new appointments. Existing members are eligible to be reappointed regardless of the time since they were a presiding judge or past presiding judge. This proposal will be presented to Rules and Projects Committee for consideration.

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

N/A

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

# JUDICIAL COUNCIL OF CALIFORNIA

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

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## INVITATION TO COMMENT

**SPR18-01**

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Title Judicial Council: Change to Advisory Committee Membership Requirements	Action Requested Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 10.64	Proposed Effective Date January 1, 2019
Proposed by Trial Court Budget Advisory Committee Hon. Jonathan B. Conklin, Chair	Contact Brandy Sanborn, 415-865-7195 brandy.sanborn@jud.ca.gov

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### Executive Summary and Origin

The Trial Court Budget Advisory Committee proposes amending the rule that governs that committee to broaden its membership definition of “presiding judge.” Under the existing rule, only a current or immediate past presiding judge is eligible for membership. The proposal would redefine a “presiding judge” to mean a current presiding judge or one who has served within six years of the year of the appointment as a committee member. In addition, it would extend eligibility for reappointment to an existing presiding or past presiding judge member. Finally, it would limit the Judicial Council’s nonvoting members to the chief administrative officer and the director of Budget Services, thus removing the chief of staff and chief operating officer.

### The Proposal

The proposed amendment to rule 10.64 of the California Rules of Court, which would change the Trial Court Budget Advisory Committee’s membership definition of “presiding judge,” responds to identified concerns and helps advance Judicial Council goals and objectives, as explained below. The proposed amendment to rule 10.64 would:

- Allow presiding judges who have served during the last six years of the year of the appointment as a committee member to be eligible as new members. This will expand the candidate pool of judges who are knowledgeable and experienced in budget matters for potential participation.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.*

- Allow the reappointment of current presiding or past presiding judge members. This would permit active members who are well versed in current budget issues and projects to stay on, maintaining momentum and avoiding loss of time and expertise when members circulate off the committee.
- Limit the nonvoting members to Judicial Council leadership with direct oversight of Budget Services.
- Increase the pool from which to draw nomination submissions. This would be advantageous because the nominations process has lately resulted in low submissions from current and immediate past presiding judges.

### **Alternatives Considered**

A rule change is recommended over an alternative such as educating new members because of the time and resources an education session can require—especially significant during budget crises.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal will result in no additional costs to the courts or Judicial Council staff.

### **Attachments and Links**

1. Cal. Rules of Court, rule 10.64, at page 3

Rule 10.64 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 10.64. Trial Court Budget Advisory Committee**

2  
3 **(a)–(b)** \* \* \*

4  
5 **(c) Membership**

6  
7 (1) The advisory committee consists of an equal number of trial court presiding  
8 judges and court executive officers reflecting diverse aspects of state trial  
9 courts, including urban, suburban, and rural locales; the size and adequacy of  
10 budgets; and the number of authorized judgeships. For purposes of this rule,  
11 “presiding judge” means a current presiding judge or ~~an immediate past a~~  
12 judge who has served as a presiding judge within six years of the year of the  
13 appointment as a committee member. An existing presiding judge or past  
14 presiding judge member is eligible to be reappointed.

15  
16 (2)–(3) \* \* \*

17  
18 (4) Notwithstanding rule 10.31(e), a presiding judge is qualified to complete his  
19 or her term on the advisory committee even if his or her term as presiding  
20 judge of a trial court ends.

21  
22 (5) The Judicial Council’s ~~chief of staff~~, chief administrative officer, ~~chief~~  
23 ~~operating officer~~, and director of Finance Budget Services serve as ~~non-~~  
24 ~~voting~~ nonvoting members.



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Finality of Appellate Division Decisions (Amend Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Sarah Abbott, 415-865-7687, sarah.abbott@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Oct. 24, 2017

Project description from annual agenda: Item 4: Rules regarding deadlines and finality in appellate division matters. Consider whether to recommend amendments to the rules to address problems with timing of notice of appellate division decisions.

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

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

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## INVITATION TO COMMENT

**SPR18-03**

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Title	Action Requested
Appellate Procedure: Finality of Appellate Division Decisions	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005	January 1, 2019
Proposed by	Contact
Appellate Advisory Committee	Sarah Abbott, 415-865-7687
Hon. Louis R. Mauro, Chair	<a href="mailto:sarah.abbott@jud.ca.gov">sarah.abbott@jud.ca.gov</a>

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### Executive Summary and Origin

The Appellate Advisory Committee proposes amendments to several rules of court relating to the finality of appellate division decisions. The amendments are intended to ensure that parties have sufficient time after receiving notice of appellate division decisions to prepare and file applications for certification for transfer and petitions for rehearing before the time the appellate division loses jurisdiction. This proposal is in response to suggestions from the presiding judge of an appellate division and a member of this committee.

### Background

In general, the rules governing timing and procedure in the appellate division largely mirror corresponding Court of Appeal rules as they relate to deadlines and finality. For example, in both the appellate division and the Court of Appeal, most decisions become final 30 days after they are filed and litigants have 15 days from the date the decision is filed to file a petition for rehearing.<sup>1</sup> Creating a parallel structure between the two sets of rules was a significant priority when the appellate division rules were repealed and replaced in full in 2008.<sup>2</sup>

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<sup>1</sup> See Cal. Rules of Court, rules 8.888(a)(1) and 8.264(b)(1) (decisions final 30 days after filing); rules 8.889(b)(1) and 8.268(b)(1) (petition for rehearing due no later than 15 days after decision filed, with exceptions).

<sup>2</sup> See Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Rules and Forms for the Superior Court Appellate Divisions* (Feb. 6, 2008), p. 8, [www.courts.ca.gov/documents/022208item7.pdf](http://www.courts.ca.gov/documents/022208item7.pdf) (“In developing its proposed revisions to the appellate division rules, the advisory committee therefore took as its starting premise that the language of the Court of Appeal rules should be used as a model for revisions to equivalent provisions in the

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

However, it has been reported that certain operational differences between the appellate division and the Court of Appeal warrant amendment of the rules governing the finality of appellate division opinions. Specifically, in the Court of Appeal, parties generally receive immediate electronic notification when decisions are filed and then have 15 days to prepare a petition for rehearing<sup>3</sup> or 40 days to prepare a petition for review.<sup>4</sup> In the appellate division, an application for certification to transfer to the Court of Appeal (the functional equivalent of a petition for review) and a petition for rehearing are likewise due 15 days after the decision is filed.<sup>5</sup> However, unlike in the Court of Appeal, there is no immediate electronic notification when an appellate division decision is filed and instead filed decisions are generally sent by mail.

Some litigants in the appellate division feel that under the current rules there is insufficient time to prepare and file applications for certification for transfer and petitions for rehearing before the time the appellate division loses jurisdiction (i.e., 30 days after the opinion is filed) because:

- Litigants are unfamiliar with the procedure for preparing applications for certification for transfer;
- Most superior courts notify the parties by mail; and
- Despite rule 8.887(b) requiring the court clerk to “promptly” file and send all opinions and orders, there are often delays in mailing those decisions.

## **The Proposal**

To remedy this timing issue, the committee is proposing to amend rules 8.887, 8.888, 8.889, 8.935, 9.976, and 8.1005 to require the court clerk to send appellate division opinions on the date they are filed and to modify the trigger for finality of appellate division opinions from the date of filing to the date the opinion is sent. This would ensure that litigants are not prejudiced due to appellate division decisions not being sent by the clerk in a timely manner.

## **Alternatives Considered**

The committee also considered not making any changes to these rules, but concluded that the proposed amendments would help ensure that litigants have sufficient time to prepare and file applications for certification for transfer and petitions for rehearing before the time that the appellate division loses jurisdiction.

The committee also considered a proposal to amend the rules to change the trigger for finality of appellate division opinions certified for publication from the date of the publication order to the

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appellate division rules”). However, where appropriate to account for substantive differences between proceedings in the appellate divisions and in the Court of Appeal and to keep appellate division matters as simple as possible, not all of the existing appellate division rules mirror the corresponding rules governing the Court of Appeal. *Ibid.*

<sup>3</sup> See Cal. Rules of Court, rule 8.268(b)(1).

<sup>4</sup> See Cal. Rules of Court, rule 8.500(e).

<sup>5</sup> See Cal. Rules of Court, rules 8.1005(b) and 8.889(b)(1).

date that such decisions are posted on the court’s website. This would remedy a perceived timing issue with respect to public notice of published appellate division opinions. The committee decided not to recommend these amendments because the timing issue may be resolved by an operational change.

### **Implementation Requirements, Costs, and Operational Impacts**

No appreciable implementation requirements, costs, or operational impacts are anticipated. However, some training will be required to ensure that court clerks send appellate division opinions on the date they are filed.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- If the amendments to rules 8.887(b), 8.935(a)(1), and 8.976(a) are implemented and court clerks are required to send opinions on the same day they are filed, are the other amendments still beneficial?
- To clarify the date an opinion or order is *sent*, should rules 8.887, 8.888, 8.935, and 8.976 require the trial court clerk to *serve* all opinions and orders?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Is it feasible for court clerks to send appellate division opinions on the same day they are filed, electronically when permissible?
- What are the impediments to court clerks providing parties with immediate electronic notice of appellate division opinions as is done in the Court of Appeal?
- Under the proposed procedure in the appellate division, will the Court of Appeal be able to determine the date a decision or order was sent?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005, pages 4–7

Rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 8.887. Decisions**

2  
3 (a) \* \* \*

4  
5 (b) **Filing the decision**

6  
7 The appellate division clerk must promptly file all opinions and orders of the court  
8 and ~~promptly on the same day~~ send copies (by e-mail where permissible under rule  
9 2.251) showing the filing date to the parties and, when relevant, to the trial court.

10  
11 (c) \* \* \*

12  
13  
14 **Rule 8.888. Finality and modification of decision**

15  
16 (a) **Finality of decision**

17  
18 (1) Except as otherwise provided in this rule, an appellate division decision,  
19 including an order dismissing an appeal involuntarily, is final 30 days after  
20 the decision is ~~filed~~ sent by the court clerk to the parties.

21  
22 (2) If the appellate division certifies a written opinion for publication or partial  
23 publication after its decision is filed and before its decision becomes final in  
24 that court, the finality period runs from the ~~filing date of~~ the order for  
25 publication is sent by the court clerk to the parties.

26  
27 (3) \* \* \*

28  
29 (b) **Modification of judgment**

30  
31 (1) \* \* \*

32  
33 (2) An order modifying a decision must state whether it changes the appellate  
34 judgment. A modification that does not change the appellate judgment does  
35 not extend the finality date of the decision. If a modification changes the  
36 appellate judgment, the finality period runs from the ~~filing date of~~ the  
37 modification order is sent by the court clerk to the parties.

38  
39 (c) \* \* \*

1 **Rule 8.889. Rehearing**

2  
3 (a) \* \* \*

4  
5 (b) **Petition and answer**

6  
7 (1) A party may serve and file a petition for rehearing within 15 days after the  
8 following is sent by the court clerk to the parties, whichever is later:

9  
10 (A) The decision ~~is filed~~;

11  
12 (B) A publication order restarting the finality period under rule 8.888(a)(2),  
13 if the party has not already filed a petition for rehearing;

14  
15 (C) A modification order changing the appellate judgment under rule  
16 8.888(b); or

17  
18 (D) ~~The filing of~~ A consent filed under rule 8.888(c).

19  
20 (2)–(4) \* \* \*

21  
22 (c)–(d) \* \* \*

23  
24  
25 **Rule 8.935. Filing, finality, and modification of decisions; rehearing; remittitur**

26  
27 (a) **Filing of decision**

28  
29 (1) The appellate division clerk must promptly file all opinions and orders of the  
30 court and ~~promptly on the same day~~ send copies (by e-mail where  
31 permissible under rule 2.251) showing the filing date to the parties and, when  
32 relevant, to the trial court.

33  
34 (2) \* \* \*

35  
36 (b) **Finality of decision**

37  
38 (1) \* \* \*

39  
40 (2) Except as otherwise provided in (3), all other appellate division decisions in a  
41 writ proceeding are final 30 days after the decision is ~~filed~~ sent by the court  
42 clerk to the parties.

1 (3) \* \* \*

2

3 (c)–(e) \* \* \*

4

5

6 **Rule 8.976. Filing, finality, and modification of decisions; remittitur**

7

8 **(a) Filing of decision**

9

10 The appellate division clerk must promptly file all opinions and orders in  
11 proceedings under this chapter and ~~promptly~~ on the same day send copies (by  
12 e-mail where permissible under rule 2.251) showing the filing date to the parties  
13 and, when relevant, to the small claims court.

14

15 **(b) Finality of decision**

16

17 (1) \* \* \*

18

19 (2) Except as otherwise provided in (3), all other decisions in a writ proceeding  
20 under this chapter are final 30 days after the decision is ~~filed~~ sent by the court  
21 clerk to the parties.

22

23 (3) \* \* \*

24

25 (c)–(d) \* \* \*

26

27

28 **Rule 8.1005. Certification for transfer by the appellate division**

29

30 (a) \* \* \*

31

32 **(b) Application for certification**

33

34 (1) A party may serve and file an application asking the appellate division to  
35 certify a case for transfer at any time after the record on appeal is filed in the  
36 appellate division but no later than 15 days after the following is sent by the  
37 court clerk to the parties:

38

39 (A) The decision ~~is filed~~;

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41 (B) A publication order restarting the finality period under rule 8.888(a)(2);

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(C) A modification order changing the appellate judgment under rule 8.888(b); or

(D) ~~The filing of~~ A consent filed under rule 8.888(c).

(2)–(5) \* \* \*

**(c)–(e)** \* \* \*



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure and Family Law: Settled Statements in Unlimited Civil Cases (Approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-001 and replace with APP-001-INFO; revoke form APP-014 and replace with APP-014)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee and Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7694, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov) and Gabrielle Selden, 415-865-8085, [gabrielle.selden@jud.ca.gov](mailto:gabrielle.selden@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017 (Appellate Advisory Committee) and October 24, 2017 (Family and Juvenile Law Advisory Committee)

Project description from annual agenda:

Appellate Advisory Committee: Consider whether to recommend revisions to forms used in preparing settled statements. The suggestions were submitted as comments on Invitation to Comment SPR17-01, Settled Statements in Unlimited Civil Cases. The Family and Juvenile Law Advisory Committee will take the lead on two suggested forms revisions that pertain to family law appeals.

Family and Juvenile Law Advisory Committee: Work with the Appellate Advisory Committee on the development of rules and forms regarding appellate procedures related to juvenile and family law proceedings. For 2018 this may include a family law specific form for preparing a Proposed Statement on Appeal

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-04**

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Title

Appellate Procedure and Family Law: Settled  
Statements in Unlimited Civil Cases

Action Requested

Review and submit comments by June 8, 2018

Proposed Rules, Forms, Standards, or Statutes

Approve forms APP-014A, APP-014-INFO,  
APP-020, APP-022, APP-025; revise forms  
APP-003, APP-010; revoke form APP-001  
and replace with APP-001-INFO; revoke and  
replace form APP-014

Proposed Effective Date

January 1, 2019

Contact

Christy Simons, 415-865-7694  
[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

As Proposed by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Gabrielle D. Selden, 415-865-8085

[gabrielle.selden@jud.ca.gov](mailto:gabrielle.selden@jud.ca.gov)

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

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### Executive Summary and Origin

To facilitate use of the settled statement procedure in unlimited civil cases, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose new forms and revisions to existing forms for litigants and courts to use in preparing and certifying settled statements. This proposal is based on comments received last year in response to the Appellate Advisory Committee's invitation to comment on proposed changes to the settled statement rule and forms.

### Background

Effective January 1, 2018, the Judicial Council amended rule 8.137 of the California Rules of Court to permit an appellant to use the settled statement procedure without filing a motion if the trial court proceedings were not recorded by a court reporter or the appellant received a fee

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

waiver.<sup>1</sup> The council also approved new, optional *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) to help litigants, and particularly self-represented litigants, prepare their proposed written record of the oral proceedings, and revised *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to conform to the rule change.

The Appellate Advisory Committee received a number of comments on last year’s proposal that raised issues and expressed concerns that were beyond the scope of that proposal. Based on these comments, the committee identified several potential projects for future rules cycles, including further simplifying the rule and forms, developing new forms, and working with the Family and Juvenile Law Advisory Committee on whether to develop a separate settled statement form or modify the current form for family law proceedings.

## **The Proposal**

### **Overview**

This proposal is responsive to the comments and is intended to further the goal of reducing the burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. The new and revised forms are intended to help parties—and particularly self-represented litigants—better understand the settled statement procedure, how to complete the proposed settled statement form, how to seek a court order to use a settled statement, and how to navigate the appeals process generally. These changes are also intended to make proposed settled statements easier for trial judges to review and to facilitate the process for certifying settled statements.

### **Proposed new forms**

Proposed new *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) would update and expand on existing form APP-001 of the same title and is intended to replace that form. This new form is based on the parallel form for use in appellate division cases, *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO). The new form includes the following changes:

- Reformatted to be more user-friendly and easy to follow;
- Relabeled as “-INFO” to signify that it is an information sheet;
- Separate sections addressed to the appellant and the respondent;
- Expanded information on how to serve and file documents;
- A new section on whether a notice of appeal stays enforcement of a judgment;
- An expanded description of the record on appeal and the options for providing a record of the documents and oral proceedings; and
- A new section describing oral argument and subsequent procedures.

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<sup>1</sup> Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Settled Statements in Unlimited Civil Cases* (July 14, 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5390625&GUID=6B4BE734-A3A1-443F-9855-B82D8508466C>.

The committees are proposing major changes to existing *Appellant's Proposed Settled Statement on Appeal* (form APP-014), including:

- Standard formatting consistent with other unlimited civil forms, and the instructions moved to a more comprehensive information sheet, resulting in a shorter settled statement form;
- Removal of the space for describing the dispute so that appellants are not required to summarize information trial court judges already possess or can access through the case file;
- Removal of the requirement that an appellant describe how he or she was harmed by a legal error because such legal analysis is not required in a settled statement;
- Summaries of witness testimony no longer limited to matters that involved a trial. Many family law matters are heard in law-and-motion proceedings and involve witness testimony;
- Space for describing *party* testimony and evidence; an attachment (form APP-014A) has been created for any additional party and *all nonparty* witness testimony and evidence. In many family law proceedings, only the parties testify and present evidence;
- Simplified space for describing motions, now placed after the summaries of testimony and evidence; and
- A new item for summarizing any relevant jury instructions.

Because of the extent of these changes, the committees are proposing revoking the existing form and replacing it with a new version of the form incorporating these changes.

*Other Party and Nonparty Witness Testimony and Evidence Attachment* (form APP-014A) is an attachment for summarizing party testimony and evidence that will not fit in the space on form APP-014, and all nonparty testimony and evidence. The formatting is identical to the party testimony and evidence sections in form APP-014.

*Information Sheet for Proposed Settled Statement* (form APP-014-INFO), in plain language format, is consistent with other appellate information sheets. In addition to providing expanded instructions for completing each section of the settled statement form, the information sheet includes definitions of legal terms, the time for filing the form, a description of the process of reviewing and proposing amendments to the settled statement prior to certification, and resources for finding general information on the appeals process.

*Response to Appellant's Proposed Settled Statement* (form APP-020) would assist the respondent in responding to the appellant's proposed settled statement. The respondent would be able to use the form to indicate agreement with appellant's proposed statement or request amendments.

*Order on Proposed Settled Statement* (form APP-022) is based on the current order form used in limited civil cases (*Order Concerning Appellant's Proposed Statement on Appeal (Limited Civil Case)*, form APP-105). It would allow the trial court judge to order certification of the statement, the preparation of a reporter's transcript, or corrections or modifications to the appellant's

proposed settled statement. There is space to specify any necessary corrections and any missing content required by rule 8.137. It also includes space for the court to indicate the date by which the appellant must serve and file a corrected proposed statement.

*Appellant's Motion to Use a Settled Statement* (form APP-025) is intended for use by appellants who wish to use a settled statement but are not automatically entitled to do so under rule 8.137 and must seek a court order. The form walks the appellant through the requirements for the motion and provides space for the necessary information.

### **Proposed changes to existing forms**

*Appellant's Notice Designating Record on Appeal (Unlimited Civil)* (form APP-003) would be revised to be more understandable and easier to complete as suggested in comments on the 2017 proposal. Of note, it includes a notice in the caption advising appellants to read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO).

*Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) would contain minor revisions to conform to content changes in form APP-003.

### **Alternatives Considered**

The committees considered making no changes and, with respect to each proposed new form, not proposing that form. However, based on (1) the complexity and difficulty of the settled statement process for litigants and courts, (2) the increasing number of civil proceedings that are not reported by a court reporter, and (3) the increasing number of self-represented litigants for whom the settled statement process is the only way to create a record of the oral proceedings, the committees concluded that it would be best to propose all of these new forms and modifications to existing forms in an effort to make the process less burdensome.

The Family and Juvenile Law Advisory Committee considered proposing to amend rule 8.137 to delete the requirement that a settled statement must contain a statement of the points the appellant is raising on appeal (rule 8.137(d)(1)). However, in light of the potential far-reaching effects of amending the rule, and to allow sufficient time to consider this and any other potential amendments, the committees decided to include review of the rule in a future rules cycle as part of ongoing work to improve the settled statement process.

The committees also considered keeping form APP-014 in plain language format, but determined that the standard format was preferable, given that other unlimited civil appellate forms are in that format, and presented better options for organizing and presenting streamlined and simplified content.

Finally, the Family and Juvenile Law Advisory Committee considered creating a separate series of settled statement forms for use in family law proceedings. The committees agreed that it was preferable to have one set of forms for settled statements, if possible, because all unlimited civil appeals forms are in the APP series; a separate set of forms for one process in one case type is

generally disfavored; and separate forms could create confusion. The Family and Juvenile Law Advisory Committee concluded that separate forms for family law proceedings were unnecessary; the general unlimited civil forms could be modified to work for family law cases as well as for the other unlimited civil case types.

### **Implementation Requirements, Costs, and Operational Impacts**

The committees anticipate that courts may incur costs to revise forms, add a new order into the case management system, and train staff regarding the new and revised forms. However, the committees expect that the changes will save resources by making the settled statement process easier to understand and access for the parties and less burdensome for the courts.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would the forms work well in all types of unlimited civil cases?
- Does moving nonparty testimony and evidence to an attachment improve form APP-014?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Forms APP-001-INFO, APP-003, APP-010, APP-014, APP-014A, APP-014-INFO, APP-020, APP-022, and APP-025, at pages 6–48

**APP-001-INFO** Information on Appeal Procedures for Unlimited Civil Cases**GENERAL INFORMATION****1 What does this information sheet cover?**

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than \$25,000, as well as other types of cases, such as those filed in family court, probate court, and juvenile court.

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 13.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should:

- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).
- Read the local rules and find out about self-help resources for the district in which you filed your appeal at [www.courts.ca.gov/courts-of-appeal.htm](http://www.courts.ca.gov/courts-of-appeal.htm).
- Visit the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-appeals.htm](http://www.courts.ca.gov/selfhelp-appeals.htm).

**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 an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. The lower court—called the "trial court" in this information sheet—is the superior court.**

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)
- *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](http://www.courts.ca.gov/forms).

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate court'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.

**The Court of Appeal generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of the following errors was made:**

- **Prejudicial error:** The appellant (the party who is appealing) may ask the Court of Appeal 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"). It 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 Court of Appeal presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the Court of Appeal that an error was made and that the error was harmful.
- **No substantial evidence:** The appellant may also ask the Court of Appeal to determine if there was no substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision. The Court of Appeal generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were believable.



**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 an unlimited 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 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](http://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 an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 13 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 904.1 lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- 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 904.1 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 (Unlimited Civil Case)* (form APP-002) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 send (by mail or electronically) 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. Unless you are filing electronically, 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 *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**9** Is there a deadline to serve and file my notice of appeal?

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 calendar 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.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 calendar days after entry of judgment (generally, the date the judgment is file-stamped).

**This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the Court of Appeal will not be able to consider your appeal.**

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a “cross-appeal.”

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 calendar days after the clerk of the superior court mails notice of the first appeal, whichever is later. A party that wishes to cross-appeal may use *Notice of Appeal/ Cross-Appeal (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited civil case.

**10** Do I have to pay a fee to file a notice of 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 an unlimited civil case in the current Statewide Civil Fee Schedule at [www.courts.ca.gov/7646.htm](http://www.courts.ca.gov/7646.htm) (see the “Appeal and Writ Related Fees” section near the end of the schedule.)

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](http://www.courts.ca.gov/forms). You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.



**11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?**

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at [www.leginfo.ca.gov/faces/codes.xhtml](http://www.leginfo.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, if the trial court denies your request for a stay, you can apply to the Court of Appeal 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?**

Within 15 days after the trial court clerk mails a notice that a notice of appeal has been filed in an unlimited civil case, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules 8.100 and 8.104 of the California Rules of Court.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal. You can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

You must serve and file this notice designating the record on appeal within 10 calendar 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 send (by mail or electronically) 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. Unless you are filing electronically, 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 *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](http://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 the documents filed in the trial court (other than exhibits);
- A record of what was said in the trial court (this is called the “oral proceedings”); and
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court.

Read below for more information about these parts of the record.

**a. Record of the documents filed in the trial court**

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the Court of Appeal:

- A *clerk’s transcript* or an *appendix*,
- The original *trial court file*, or
- An *agreed statement*.

Read below for more information about these options.

**(1) Clerk’s transcript or appendix**

**Description:** A clerk’s transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule 8.124).

**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 or appendix. These documents are listed in rule 8.122(b) and rule 8.124(b) of the California Rules of Court and in *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).

**Clerk’s transcript.** If you want any documents other than those listed in rule 8.122(b) 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-003 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 three things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial 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.court.ca.gov/forms](http://www.court.ca.gov/forms). The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial 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 Court of Appeal 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.



**Appendix:** If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk’s transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.124 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. The appellant’s appendix or a joint appendix must be served and filed with the appellant’s opening brief. See (15) for information about the brief.

## (2) Trial court file

**When available:** If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk’s transcript as a record of documents filed in the trial court (see rule 8.128 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 Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial 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.court.ca.gov/forms](http://www.court.ca.gov/forms). The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial 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 number the pages and send the file and a list of the documents in the file to the Court of Appeal. 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 and number the pages.

## (3) Agreed statement

**Description:** An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

**When available:** If you and the respondent agree to this, you can use an agreed statement instead of a clerk’s transcript as a record of documents filed in the trial court. 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. (See rule 8.122(b) of the California Rules of Court.)

If you choose this alternative, you must file with your notice designating the record on appeal either the agreed statement or a written agreement with the respondent (a “stipulation”), stating that you are trying to agree on a statement.



Within the next 30 days, you must then file the agreed statement or tell the trial court that you were unable to agree on a statement and file a new notice designating the record.

## b. Record of what was said in the trial court (the “oral proceedings”)

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the “oral proceedings”). You do not *have* to send the Court of Appeal a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the Court of Appeal to consider what was said in the trial court, the Court of Appeal will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the Court of Appeal will presume there was substantial evidence unless it has 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 Court of Appeal. **If the Court of Appeal does not receive this record, you may forfeit your arguments on appeal, or the Court of Appeal may make presumptions in favor of the judgment or order.**

In an unlimited civil case, you can use *Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial 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-003 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

- If you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called a “*reporter’s transcript*.”
- You can use an *agreed statement*.
- You can use a *settled statement*.

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 8.130 of the California Rules of Court establishes the requirements relating to reporter’s transcripts.

**When available:** If a court reporter was present 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 Court of Appeal. A court reporter will not have been present unless you or another party in your case made specific arrangements to have a court reporter present. If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

**Contents:** If you elect to use a reporter’s transcript, you must identify by date (this is called “designating”) what proceedings you want to be included in the reporter’s transcript. You can use the same form you used to tell the court you wanted to use a reporter’s transcript—*Appellant’s Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003)—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 Court of Appeal.

**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 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 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. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at [www.courtreportersboard.ca.gov/consumers/index.shtml#rtf](http://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 settled statement, 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 Court of Appeal 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) Agreed statement

**Description:** An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

**When available:** If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, 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 a reporter's transcript, if it is available.

**Contents:** An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal 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 calendar days you must either file the agreed statement or tell the trial court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

## (3) Settled statement

**Description:** A settled statement 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, referees, hearing officers, and temporary judges).

**When available:** Under rule 8.137 of the California Rules of Court, you can choose (elect) to use a settled statement as the record of the oral



proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

**Contents:** A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or order you are appealing attached to the settled statement.

**Preparing a proposed settled statement:** If you elect to use a settled statement, you must prepare a proposed settled statement. You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed statement. You can get the form at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement 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](http://www.courts.ca.gov/rules).)

***Serving and filing a proposed settled statement:***

You must serve and file the proposed statement within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the proposed settled 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 settled statement has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 settled 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. Unless you are filing electronically, 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 *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](http://www.courts.ca.gov/selfhelp-serving.htm).



**Respondent's review:** The respondent has 20 calendar days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called “amendments”) to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter’s transcript instead of proceeding with a settled statement.

**Review of appellant’s proposed settled statement:** If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent’s proposed amendments. 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. For more information, see rule 8.137(f) of the California Rules of Court. See also rule 8.140, which explains the consequences for a party’s failure to make corrections that are ordered to be made to the proposed statement.

**Request for hearing to review proposed settled statement:** No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, 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. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

**Additional review procedures:** If there is no hearing after the respondent proposes changes to the settled statement, and 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. See rule 8.140, which explains the consequences for a party’s failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 calendar days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement. The judge then reviews the modified or corrected statement and any proposed modifications. If the judge decides that further corrections or modifications are necessary, the review process described above takes place again.

**Completion and certification:** If the judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement as an accurate summary of the evidence and testimony of each witness relevant to the issues you indicated you are raising on appeal.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge’s certification of the statement.

**Sending settled statement to the Court of Appeal:** Once the trial court judge certifies the statement or the trial court receives the parties’ stipulation, the trial court clerk will send the statement to the Court of Appeal as required under rule 8.150 of the California Rules of Court.





**c. Exhibits**

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule 8.224 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 Court of Appeal, 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 Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

**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 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited 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.htm](http://www.courts.ca.gov/rules.htm).

**Contents and format of briefs:** If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain the legal errors you believe were 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. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of appellant's opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules 8.40 and 8.204 of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

**Serving and filing:** You must serve and file your opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.124. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, 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.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://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 60 calendar days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension (see rule 8.63 for information about extensions of time). You can use *Application for Extension of Time to File Brief (Civil Case)* (form APP-006) to ask the court for an extension.

**If you do not file your brief by the deadline set by the Court of Appeal, 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 must respond by serving and filing a respondent's 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?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

## 18 What is "oral argument"?

"Oral argument" is the parties' chance to orally explain their arguments to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer. Read rule 8.256 for more information.

## 19 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

## 20 What should I do if I want to give up my appeal?

If you do not want to continue with your appeal, you must notify the court. If the record has not yet been filed in the Court of Appeal, file *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.

If the record has already been filed in the Court of Appeal, file *Request for Dismissal of Appeal (Civil Case)* (form APP-007) in the Court of Appeal.



**INFORMATION FOR THE RESPONDENT**

This part 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 an unlimited 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, but there may be consequences if you do nothing. 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 an unlimited 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](http://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 (Unlimited Civil Case)* (form APP-002) to file this notice in an unlimited 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 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves 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, but there may be consequences if you do nothing. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record;
- Participate in preparing the record; *or*
- Ask for a copy of the record.

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question **13** above. Then read below for what your options are when the appellant has chosen that form of the record.

**a. Clerk's transcript or appendix**

**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 calendar 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. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.



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 trial 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](http://www.courts.ca.gov/forms). The trial 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.

**Appendix:** If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 5–6 for more information about preparing an appendix.

### **b. Reporter's transcript**

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) for this purpose.

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 payment for this cost (and a fee for the trial court) or one of the

substitutes allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 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. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at [www.courtreportersboard.ca.gov/consumers/index.shtml#trf](http://www.courtreportersboard.ca.gov/consumers/index.shtml#trf).

The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

### **c. Agreed statement**

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 calendar days after the appellant files its notice of appeal. See rule 8.134 of the California Rules of Court.

### **d. Settled statement**

If the appellant elects to use a settled statement (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed settled statement to review. You will have 20 calendar days from the date the appellant served you this proposed statement to serve and file either:

- Suggested changes (called "amendments") that you think are needed to make sure that the settled statement provides an accurate summary of the evidence and testimony of each witness relevant to the issues the appellant is raising on appeal (see page 10 of this form and rule 8.137 (e)–(h) for more information about the amendment process); or



- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are choosing to provide a reporter's transcript, at your expense, instead of proceeding with a settled statement (see rule 8.137(e)(2) for the requirements for choosing to provide a reporter's transcript).

Have somebody over 18 years old mail, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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. Unless you are filing electronically, 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 *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

## 25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal. When the Court of Appeal receives this record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

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 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited 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](http://www.courts.ca.gov/rules.htm).

The appellant serves and files the first brief, called an “appellant's opening brief.” You must 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, personally 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 (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) 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 Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, 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 *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://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 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You can use *Application for Extension of Time to File Brief (Unlimited Civil Case)* (form APP-006) 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 Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, 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 calendar days to reply to your brief.

## 26 What happens after all the briefs have been filed?

After 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 orally explain their arguments to Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to “waive” oral argument. If all parties waive oral argument, the justices will decide the appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court. Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in the appeal or ask the justices if they have any questions you could answer.

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about the appeal. The clerk of the court will send you a notice of the Court of Appeal's decision.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03-01-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>		
RE: Appeal filed on (date):		SUPERIOR COURT CASE NUMBER:  COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

## 1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I choose 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 (item 4) on pages 2 and 3 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 rules 3.50–3.58; or
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. (Use Request to Waive Court Fees (form FW-001) 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 (agree) 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 choose to proceed (you must check a or b below):

- a.  WITHOUT a record of the oral proceedings (what was said) 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 deciding whether an error was made in the superior court proceedings.

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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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 (item 5) on pages 3 and 4 of this form.*) I have (*check all that apply*):
    - (a)  Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit 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 under rule 8.130(b)(3)(A) 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 stipulated (agreed) in writing 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, and fill out the settled statement section (item 6) on page 4.*)
    - (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 I have an order waiving fees and costs.
    - (c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (*You must serve and file the motion required under rule 8.137(b) at the same time that you file this form.*)

**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE COURT OF APPEAL**

I request that the clerk transmit to the Court of Appeal 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*):

<b>Title of Administrative Proceeding</b>	<b>Date or Dates</b>
---	----------------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

(*You must complete this section if you checked item 1a above indicating that you choose 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.

<b>Document Title and Description</b>	<b>Date of Filing</b>
---------------------------------------	-----------------------

- (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:
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**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 in the transcript the following documents that were filed in the superior court proceeding. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

See additional pages. *(Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start 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)			

See additional pages. *(Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start 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 choose 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. **Format of the reporter's transcript**

I request that the reporters provide *(check one)*:

- (1)  My copy of the reporter's transcript in electronic format.
- (2)  My copy of the reporter's transcript in paper format.
- (3)  My copy of the reporter's transcript in electronic format and a second copy in paper format.

*(Code Civ. Proc., § 271.)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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**5. b. Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (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)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. *(Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start 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 choose 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), 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)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

See additional pages. *(Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start 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) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.)* Points are set forth:  Below  On a separate page labeled "Attachment 7."

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶  
\_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>01-04-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before you fill out this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

**1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has chosen to use a clerk's transcript under rule 8.122.

- a.  **Additional documents.** (If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		

See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 1(a)," and start with number (4).)

- b.  **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those exhibits here.)

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			

See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number (4).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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1. c.  **Copy of clerk's transcript.** I request a copy of the clerk's transcript. (Check (1) or (2).)
- (1)  I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2)  I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a)  An order granting a waiver of court fees and costs under rules 3.50–3.58; or
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has chosen to use a reporter's transcript under rule 8.130.

- a.  **Designation of additional proceedings.** (If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)
- (1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (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?
(a)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)						<input type="checkbox"/> Yes <input type="checkbox"/> No

- See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 2a(1)," and start with letter (h).)

CASE NAME:	SUPERIOR COURT CASE NUMBER:
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2. a. (2) **Deposit for additional proceedings.**I have (*check a, b, c, or d*):

- (a)  Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit 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 under rule 8.130(b)(3)(A) for (*check either (i) or (ii)*):
- (i)  All of the designated proceedings.
- (ii)  Part of the designated proceedings.
- (d)  Attached a certified transcript under rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

- (1)  I request a copy of the reporter's transcript.
- (2)  I request that the reporters provide (*check (a), (b), or (c)*):
- (a)  My copy of the reporter's transcript in electronic format.
- (b)  My copy of the reporter's transcript in paper format.
- (c)  My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

*(Code Civ. Proc., § 271.)*

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)\_\_\_\_\_  
(SIGNATURE OF RESPONDENT OR ATTORNEY)

PARTY WITHOUT ATTORNEY OR ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE:                      ZIP CODE:  FAX NO.:	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03-19-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
<b>APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>  <input type="checkbox"/> _____ Amended <i>(If applicable, specify 1st, 2nd, 3rd, etc. amended form.)</i>		SUPERIOR COURT CASE NUMBER:  COURT OF APPEAL CASE NUMBER:
RE: Appeal filed on (date):		
<b>Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>		

**1. PRELIMINARY INFORMATION**

- a. I am appealing (check one):     an order filed on     a judgment entered on (date): \_\_\_\_\_
- b. On (date): \_\_\_\_\_, I filed a notice of appeal. A copy of the judgment or order I am appealing is attached.
- c. On (date): \_\_\_\_\_, (check the one that applies):
- (1)  I filed a notice designating the record on appeal, choosing to use a settled statement.
- (2)  The court sent me     I was served with    an order granting my request to use a settled statement.
- d.  On (date): \_\_\_\_\_, the court ordered me to modify or correct my proposed settled statement.

**2. REASONS FOR YOUR APPEAL**

*(Check all that apply and describe the error or errors you believe were made that are the reasons for this appeal.)*

- a.  **No substantial evidence.** There was no substantial evidence that supported the judgment or order that I am appealing.  
*(Explain why you think the judgment or order was not supported by substantial evidence).*

[Attachment 2a](#)

- b.  **Errors.** The following error or errors about either the law or court procedure affected the outcome of the case.  
*(Describe each error.)*

[Attachment 2b](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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**3. SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**

a. Did any of the parties testify at the trial or hearing?  Yes  No

*(Specify the name of the party who testified and the date on which the party testified. Then, write a complete and accurate summary of what each party said that is relevant to the reasons you gave in item 2 for this appeal (for example, what the party said in response to questions asked by his or her own attorney, the other party (or the attorney), and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.)*

(1) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_.

Summary:

[Attachment 3a\(1\)](#)

- (a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes *(Specify in item 3b.)*
- (b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes *(Specify in item 3c.)*
- (c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony?  No  Yes *(Specify in item 3d.)*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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3. a. (2) Name of party: \_\_\_\_\_ testified on (date): \_\_\_\_\_.

Summary:

[Attachment 3a\(2\)](#)

(a) Did a party (or attorney) make an objection to this party's testimony?  No  Yes (Specify in item 3b.)

(b) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3c.)

(c) During this party's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove this party's testimony?  No  Yes (Specify in item 3d.)

(3) Was there testimony from other parties?  No  Yes

(If you answered yes, fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A).)



PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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3. b. **Objections to a party's testimony relevant to the appeal**

*(Indicate which party's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)*

[Attachment 3b](#)

- c. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits presented by each party. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the exhibits.)*

[Attachment 3c](#)

- d. **Exhibits (documents, records, or materials) relevant to the appeal *not* allowed to be used as evidence to support or disprove a party's testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the items.)*

[Attachment 3d](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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#### 4. SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE

Was there testimony from another party or nonparty witnesses that is relevant to the reasons for the appeal?

No (Skip to item 5.)  Yes (Fill out and attach to this form Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A.)

#### 5. TRIAL COURT'S FINDINGS

a. Did the judge make findings at the hearing or trial in the case?  No  Yes (Complete item 5b.)  
(A judge makes a "finding" when he or she decides that something is a fact, is true, or is relevant.)

b. What are the findings that the judge made that are relevant to the reasons for the appeal?

[Attachment 5](#)

#### 6. SUMMARY OF MOTIONS

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a motion or motions?  
 Yes (Fill out b.)  No (Skip to item 7.)

b. Describe the motion. (State which party made the motion. Then, write a complete and accurate summary of what was said (any testimony and arguments) and what the court decided (whether the court granted or denied the motion).)

[Attachment 6](#)

#### 7. SUMMARY OF JURY INSTRUCTIONS

a. Are any of your reasons for appeal based on your disagreement with the court's ruling on a jury instruction or instructions?  
 Yes (Fill out b.)  No (Skip to item 8.)

b. Identify the jury instruction and the party that requested it. (Summarize what the parties said (arguments or objections) and what the court decided (whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified it before giving it to the jury). Describe any modifications the court made to the instruction.)

[Attachment 7](#)

#### 8. ORDER OR JUDGMENT YOU ARE APPEALING

Attach a copy of the order or judgment you are appealing.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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### OTHER PARTY AND NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE ATTACHMENT

Use this form as an attachment to *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) if other parties or non party witnesses provided testimony relevant to the reasons you are appealing the order or judgment in the case.

- Specify the name of any other party or nonparty witnesses who testified at the trial or hearing and other information specified below.
- Write a complete and accurate summary of what each person said that is relevant to the reasons for this appeal (for example, in response to questions asked by any of the parties (or attorneys) and/or the court). Include only what was actually said; do not comment or give your opinion about what was said.

#### 1. SUMMARY OF TESTIMONY AND EVIDENCE

- a. Name: \_\_\_\_\_  a party  a nonparty witness in the case  
 testified on behalf of (*specify*):  petitioner/plaintiff  respondent/defendant  other parent/party  
 on (*date*): \_\_\_\_\_.

Summary:

[Attachment 1a](#)

- (1) Did a party (or attorney) make an objection to this person's testimony?  No  Yes (*Specify in item 2.*)
- (2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 3.*)
- (3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 4.*)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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b. Name: \_\_\_\_\_  a party  a nonparty witness in the case testified on behalf of (*specify*):  petitioner/plaintiff  respondent/defendant  other parent/party on (*date*): \_\_\_\_\_.

Summary:

[Attachment 1b](#)

- (1) Did a party (or attorney) make an objection to this person's testimony?  No  Yes (*Specify in item 2.*)
- (2) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge allowed to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 3.*)
- (3) During this person's testimony, were any exhibits (documents, records, or other materials) relevant to the appeal presented that the judge *did not* allow to be used as evidence to support or disprove the testimony?  No  Yes (*Specify in item 4.*)

c. Was there testimony from other parties or other nonparty witnesses?  No  Yes

*(If you answered yes, fill out and attach to this form another Other Party and Nonparty Witness Testimony and Evidence Attachment (form APP-014A) or provide information in another document, such as Attachment to Judicial Council Form (form MC-025), labeled as Attachment 1c.)*

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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2. **Objections to the other party's or nonparty witness's testimony relevant to the appeal**

*(Indicate which person's testimony was objected to and specify the objection. Also indicate whether the court "sustained the objection" (prevented the party from saying something) or "overruled the objection" (allowed the party to make a statement) and include any explanation given by the court.)*

“”

[Attachment 2](#)

3. **Exhibits (documents, records, or other materials) relevant to the appeal allowed to be used as evidence to support or disprove the testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the exhibits.)*

[Attachment 3](#)

4. **Exhibits (documents, records, other materials) relevant to the appeal not allowed to be used as evidence to support or disprove the testimony.** *(Write a complete and accurate summary of the exhibits. Include any objections and the court's ruling on those objections. Do not comment or give your opinion about the items.)*

[Attachment 4](#)

**1 What information does this form provide?**

This information tells you how to fill out *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014). It includes:

- Instructions for appellant to complete form APP-014; and
- Definitions of legal terms, deadlines for filing and serving form APP-014, and the process for asking the court to certify your proposed settled statement for use in the Court of Appeal.

This information is also helpful for respondents who are completing *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020).

More information for the appellant and respondent about the settled statement process is found in *Information on Appeal Procedures for Unlimited Civil Cases* (form [APP-001-INFO](#)). Read items 13b(3) and 24d.

**2 Where can I find general information about the appeals process?**

For general information about the appeals process, read *Information on Appeal Procedures for Unlimited Civil Cases* (form [APP-001-INFO](#)) (family law cases are one type of unlimited civil case). To learn more, you may also:

- Visit the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-appeals.htm](http://www.courts.ca.gov/selfhelp-appeals.htm).
- Find out about self-help resources for the district in which you filed your appeal, at [www.courts.ca.gov/courtsofappeal.htm](http://www.courts.ca.gov/courtsofappeal.htm).
- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).
- Consult with a lawyer. Find a lawyer through your local bar association, the State Bar of California at [www.calbar.ca.gov](http://www.calbar.ca.gov), or the Lawyer Referral Services at 1-866-442-2529.

**3 What is a settled statement?**

A settled statement is a summary of the oral (spoken) trial court proceedings that is approved by the trial court judge who conducted those proceedings. The Court of Appeal will rely on this statement in deciding your case.

The appellant is responsible for preparing a proposed settled statement.

**4 When can I use a settled statement?**

You may use a settled statement as the record of the oral (spoken) trial court proceedings for an appeal if:

- The trial or hearing was not reported by a court reporter; or
- You have an order waiving your court fees and costs; or
- The court orders that you can use a settled statement instead of a court reporter's transcript.

**5 What must be included in a proposed settled statement?**

The proposed settled statement must include all of the following:

- A statement of the reasons for your appeal (see item **10**);
- A summary of the evidence and testimony of each witness that relates to the reasons for your appeal; and
- A copy of the judgment or order being appealed (must be attached to the settled statement).

You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed settled statement.

**6 What is the deadline to file the form?**

File the original form in the trial court:

- At the same time you file *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) or within **30 days** of that date;  
**OR**
- Within 30 days of the date that the court sends, or a party serves, an order granting your motion to use a settled statement, if applicable.

**APP-014-INFO****Information Sheet for Proposed Settled Statement****7 What is the meaning of these words that are found in form APP-014 and this information sheet?**

**Evidence:** Any proof legally presented at a hearing or trial through witnesses, records, or exhibits.

**Substantial evidence:** Evidence that is reasonable, believable, and of solid value. It is not just any evidence. The focus is on the quality—not the quantity—of evidence needed to support a legal conclusion.

**Findings:** A decision by a judge that something is a fact or is true or is relevant.

**Judgment:** The final determination of the rights of the parties in an action or proceeding.

**Objection.** A formal protest made by a party about what a party or witness says at the trial or hearing or about any exhibits or other evidence that the other side tries to introduce during a trial or hearing.

**Order.** A decision made by a judicial officer on an issue that is raised by a party in a lawsuit.

**Rulings on objections.** A ruling is a judge’s decision on a party’s objection to a witness’s testimony, exhibits, or other evidence at the trial or hearing. The judge can “sustain” the objection or “overrule” the objection.

If the judge *sustains* the objection, the judge is agreeing with the objection and will not consider that part of the testimony or evidence that is being objected to.

If the judge *overrules* the objection, the judge is disagreeing with the objection, and will allow the evidence to be introduced.

**8 How do I complete the caption (the top part of the form)?**

**Name and contact information.** If you have a lawyer for the appeal, your lawyer will fill out the form. If you do not have a lawyer for the appeal, write your name and provide your contact information in the first part of the caption.

**Court address.** Complete the address for the superior court where your case is filed.

**Party names.** Write the names of the parties in the case. *Note for Domestic Violence Restraining Order cases:* If you are appealing a Domestic Violence Restraining Order, write your name next to Plaintiff/Petitioner if you are the Protected Person on the restraining order. Write your name next to Defendant/Respondent if you are the Restrained Person on the restraining order.

**Amended statement.** If the court ordered you to amend (make changes to) a proposed settled statement, check the box under the name of the form. Then, on the line that follows the check box, write whether this is the first, second, third, fourth, etc. time you are amending the proposed settled statement.

**Filing date of notice of appeal.** Finally, fill in the date your appeal was filed, as well as the superior court case number and Court of Appeal case number.

**9 How do I complete item 1, “Preliminary Information”?**

In item 1 of form APP-014, check the boxes that apply and provide the dates requested.

**10 How do I complete item 2, “Reasons for Your Appeal”?**

In item 2 of APP-014, describe the errors (mistakes) you believe were made at the hearing or trial. For example:

*No substantial evidence*

You might argue that there was no substantial evidence that supported the judgment or order that you are appealing. (See item **7** of this information sheet for the definition of substantial evidence.)

**APP-014-INFO****Information Sheet for Proposed Settled Statement***Error*

You might argue that an error or errors about the law or court procedure affected the outcome of the trial or hearing. This can include an argument that the court made a ruling that is based on a mistake about the facts of the case or about the law.

Before you complete this item, you should understand that the Court of Appeal will reverse the order or judgment you are appealing only if the error affected the outcome of the case. (“Reverse” means to change the trial court’s decision.)

If you need more space to describe the reasons for your appeal, check the box labeled, “Attachment 2a” and/or “Attachment 2b.” Then attach a separate page or pages (you can use form MC-025) to continue describing the reasons for your appeal).

**YOUR ARGUMENTS/REASONS CAN BE BECAUSE:**

There was no substantial evidence that supported the judgment or order.

There was an error or errors about either the law or court procedure.

Examples are that the court:

- (1) misinterpreted the law;
- (2) wrongly ruled on an objection; or
- (3) gave an incorrect jury instruction.

**YOUR ARGUMENTS/REASONS CANNOT BE TO:**

Present your case all over again to the Court of Appeal;

Present new evidence or new witnesses to the Court of Appeal;

Generally complain about the judge or a lawyer; or

Explain to the Court of Appeal that a witness did not tell the truth at the trial.

**11 How do I complete item 3, “Summary of the Parties’ Testimony and Other Evidence”?**

Indicate in item 3 of form APP-014 if a *party* in the case gave testimony at the trial or hearing. Item 3 provides space to summarize the testimony that is relevant to the reasons you gave in item 2 for this appeal.

After summarizing the testimony, indicate if there were any objections to the testimony and exhibits relevant to the appeal that the judge allowed, or did not allow, to be used as evidence to support or disprove the party’s testimony. If you answer yes to any of the questions following each party’s testimony, complete the corresponding item on page 4.

If you need more space to describe the testimony or evidence, check the box below the summary of the testimony (for example, “Attachment 3a(1)”). Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment “APP-014, Attachment 3a(1)” if you are continuing to summarize the testimony of the party named in item 3a(1).

If more than two parties provided testimony, complete *Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)* (form APP-014A) and attach it to form APP-014.

**12 How do I complete item 4, “Summary of Nonparty Witness Testimony and Other Evidence”?**

If nonparty witnesses (persons other than the parties in the case) provided testimony at the trial or hearing that is relevant to the reasons for your appeal, you will need to provide the information and attach it to form APP-014.

You may use *Other Party and Nonparty Witness Testimony and Other Evidence Attachment (Unlimited Civil Case)* (form APP-014A) for this purpose.



**APP-014-INFO****Information Sheet for Proposed Settled Statement****13 How do I complete item 5, “Trial Court’s Findings”?**

Indicate if the judge made any findings (decisions about the facts or the law) that are relevant to your reasons in item 2 of form APP-014 for this appeal. (See item **7** for the definition of findings.)

If you need more space to describe the trial court's findings, check the box “Attachment 5.” Then, attach a separate page or pages (you can use form MC-025) to continue the summary. Label the attachment “APP-014, Attachment 5.”

**14 How do I complete item 6, “Summary of Motions”?**

If the trial court’s ruling on a motion is relevant to your reasons in item 2 of form APP-014 for this appeal, describe the motion. Include which party made the motion, what was said by the parties and the court about the motion, whether the trial court granted or denied the motion, and what the court said in ruling on the motion.

**15 How do I complete item 7, “Summary of Jury Instructions”?**

If one of your reasons in item 2 of form APP-014 for this appeal is a challenge to a jury instruction, indicate which instruction you are challenging and which party requested it. Also state whether the court gave the instruction to the jury, refused to give the instruction to the jury, or modified the instruction before giving it to the jury. If an instruction was given orally rather than in writing, provide the language of the oral instruction. And if an instruction was modified, describe how the instruction was modified.

**16 Attach order or judgment and make copies**

When you have finished your proposed settled statement:

- Attach a copy of the order or judgment you are appealing;
- Make one copy of the proposed settled statement and attachments for each party in your case; and
- Keep a copy for your records.

**17 Have all parties in the case served**

Have each party in your case served with a copy of the complete proposed settled statement with attachments.

For information about serving your documents:

- See *Information Sheet for Proof of Service* (form APP-009-INFO); and
- Go to the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**18 File the proof of service forms with the court**

You can file the forms in person, by mail, or e-filing (if available) in the court that made the order or judgment you are appealing.

Ask the court clerk to stamp the extra copy for your records to show that the original was filed.

**19 Respondent's options**

The respondent has 20 calendar days from the date you serve your proposed settled statement to serve and file either:

- Proposed amendments (changes) to the proposed settled statement. Use *Response to Appellant’s Proposed Settled Statement (Unlimited Civil Case)* (form APP-020) to request changes; or
- A notice choosing to provide a reporter’s transcript instead of a settled statement. This option is available if the oral proceedings in the trial court were reported by a court reporter.

**20 Review process**

If the respondent proposes changes, the trial court judge then reviews both your proposed settled statement and the respondent's proposed amendments.

If the proposed settled statement does not need any corrections or modifications, the trial court judge will certify the statement as an accurate summary of the testimony and evidence relevant to the reasons for the appeal.

*Changes made to the settled statement*

If corrections or modifications are needed, and the judge makes the amendments to the statement, the amended statement will be sent to you and the respondent for your review.

If the judge orders you (the appellant) to make the corrections or modifications to the statement, you must serve and file an amended proposed settled statement within the time ordered by the judge.

*Resolving disagreements*

If you or the respondent disagree with anything in the amended proposed settled statement, the parties have 10 calendar days from the date the amended statement is sent to serve and file proposed amendments to the amended proposed settled statement.

The judge then reviews any proposed amendments and decides if any further changes to the proposed settled statement are necessary.

If corrections and modifications are needed, the process of review and proposing amendments as described in this section must be repeated.

**21 Certification**

Once the trial court judge decides that no further changes are needed, the judge will certify the statement as an accurate summary of the testimony and evidence relevant to the reasons for the appeal. The trial court clerk will send the settled statement to the Court of Appeal.

PARTY WITHOUT ATTORNEY OR ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE:                      ZIP CODE:  FAX NO.:	<b>FOR COURT USE ONLY</b>   <b>DRAFT- NOT APPROVED BY THE JUDICIAL COUNCIL 03-20-2018</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		SUPERIOR COURT CASE NUMBER:
<p style="text-align: center;"><b>RESPONSE TO APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b></p> <input type="checkbox"/> _____ Amended (If applicable, specify 1st, 2nd, 3rd, etc. amended form.)		COURT OF APPEAL CASE NUMBER:
<p><b>Notice: Use this form to prepare a response to Appellant's Proposed Settled Statement (form APP-014). For more information, read Information on Appeals Procedures in Unlimited Civil Cases (form APP-001-INFO) and Information Sheet for Proposed Settled Statement (form APP-014-INFO).</b></p> <p><b>Important! Do not use this form if you elect to provide a reporter's transcript instead of proceeding with a settled statement.</b></p>		

**1. SUMMARY OF THE PARTIES' TESTIMONY AND OTHER EVIDENCE**

- a.  I do not request changes to item 3 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 3 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (specify):

- c.  I request the above changes for the following reasons (specify):

[Attachment 1](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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2. **SUMMARY OF NONPARTY WITNESS TESTIMONY AND OTHER EVIDENCE**

- a.  I do not request changes to item 4 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 4 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

- c.  I request the above changes for the following reasons (*specify*):

[Attachment 2](#)

3. **TRIAL COURT'S FINDINGS**

- a.  I do not request changes to item 5 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014)
- b.  I request the following changes to item 5 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

- c.  I request the above changes for the following reasons (*specify*):

[Attachment 3](#)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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**4. SUMMARY OF MOTIONS**

- a.  I do not request changes to item 6 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014).
- b.  I request the following changes to item 6 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

c.  I request the above changes for the following reasons (*specify*):

[Attachment 4](#)

**5. SUMMARY OF JURY INSTRUCTIONS**

- a.  I do not request changes to item 7 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014)
- b.  I request the following changes to item 7 of *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) (*specify*):

c.  I request the above changes for the following reasons (*specify*):

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

[Attachment 5](#)

PARTY WITHOUT ATTORNEY OR ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.:  STATE:                      ZIP CODE:  FAX NO.:	<b>FOR COURT USE ONLY</b>  <b>DRAFT- NOT APPROVED BY THE JUDICIAL COUNCIL 03-20-18</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
<p style="text-align: center;"><b>ORDER ON APPELLANT'S PROPOSED SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b></p> <p style="text-align: center;"> <input type="checkbox"/> _____ Amended  <i>(If applicable, specify 1st, 2nd, 3rd, etc. amended order.)</i> </p>		SUPERIOR COURT CASE NUMBER:
		COURT OF APPEAL CASE NUMBER:

## 1. The court has received and reviewed the following:

- a.  *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014)  \_\_\_\_\_ Amended filed by the appellant on (date):
- b.  *Response to Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-020)  \_\_\_\_\_ Amended filed by the respondent on (date):
- c.  Other (specify):

## 2. The court makes the following order:

- a.  *Certification.* The court certifies that the statement proposed by the appellant in 1a is an accurate summary of the testimony and other evidence that is relevant to the appellant's reasons for the appeal. The court settles the statement and certifies that it is ready to be sent to the Court of Appeal.
- b.  *Court reporter transcript required.* The trial court proceedings in this case were reported by a court reporter. Instead of correcting the settled statement, the court orders under rule 8.137(f)(2) of the California Rules of Court that a transcript be prepared as the record of these proceedings. (Check the court's local rules to make sure the court has a rule providing that this option is available.)
- c.  *Corrections required.* Corrections are needed for the settled statement proposed by the appellant to be an accurate summary of the evidence and testimony for the issues the court addressed in the order or judgment being appealed.
- (1)  A modified settled statement is attached to this order.
- (2)  The appellant is ordered to prepare a settled statement incorporating the modifications listed below and to serve and file the modified statement.
- (a)
- (b)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	SUPERIOR COURT CASE NUMBER	COURT OF APPEAL CASE NUMBER
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2. c. (2) Court orders (*continued*):

(c)

(d)

(e)

(3)  *Additional corrections required.* More corrections than could be listed above were needed in order for the settled statement proposed by the appellant to be an accurate summary of the testimony and other evidence that is relevant to the issues the appellant indicated are the reasons for this appeal. A list of required modifications is attached. The appellant is ordered to prepare a statement incorporating these modifications and serve and file the modified statement.

d.  *Material required for the proposed settled statement to comply with rule 8.137.*

(1)  The proposed settled statement does not contain the following material required by rule 8.137.

(2) The appellant is ordered to prepare a new proposed settled statement that includes this material.

e.  The new proposed settled statement must be served and filed by (*date*):

f.  Other orders are specified below:

Date: \_\_\_\_\_



\_\_\_\_\_  
SIGNATURE OF TRIAL COURT JUDICIAL OFFICER

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):	<b>DRAFT</b>  <b>03-21-2018</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>APPELLANT'S MOTION TO USE A SETTLED STATEMENT (UNLIMITED CIVIL CASE)</b>	SUPERIOR COURT CASE NUMBER:
RE: Appeal filed on (date):	COURT OF APPEAL CASE NUMBER (if known):

**INSTRUCTIONS TO APPELLANT**

- Use this form to request a court order to use a settled statement instead of a reporter's transcript of the trial court oral proceedings for an appeal.
- Serve and file this motion at the same time that you file your notice designating the record on appeal.
- File both forms in the superior court, not the Court of Appeal.

**NOTICE OF HEARING**

1. TO (name(s)): \_\_\_\_\_  
 Petitioner  Respondent  Other Parent/Party  Other (specify):

**2. A COURT HEARING WILL BE HELD AS FOLLOWS:**

a. Date:	Time:	Dept.:	Room:
b. Address of court	<input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify):		

3. **WARNING to the person served with this motion:** The court may make the requested order without you if you do not file a response opposing the motion, serve a copy on the other party or parties at least nine court days before the hearing, and appear at the hearing.

**4. PROCEEDINGS**

I request that the following proceedings in the trial 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 proceeding (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 reported the proceedings (if any and 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?
a.					<input type="checkbox"/> Yes <input type="checkbox"/> No
b.					<input type="checkbox"/> Yes <input type="checkbox"/> No
c.					<input type="checkbox"/> Yes <input type="checkbox"/> No
d.					<input type="checkbox"/> Yes <input type="checkbox"/> No

Additional proceedings are listed on a separate page or pages. (At the top of each page, write "Attachment 4" and begin with letter e.)



CASE NAME:

SUPERIOR COURT CASE NUMBER:

**5. REASON FOR ALLOWING USE OF SETTLED STATEMENT***You must support your motion to use a settled statement by showing one or more of the following:*

- a.  A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court (*explain*):
- b.  The oral proceedings requested in item 4 cannot be transcribed because:
- c.  I do not have a fee waiver, but I am unable to pay for the reporter's transcript and funds are not available from the Transcript Reimbursement Fund (see rule 8.130(c)) (*explain*):

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

 \_\_\_\_\_  
(SIGNATURE OF APPELLANT OR ATTORNEY)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases (Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7694, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Consider revisions to various appellate division forms to make them clearer and easier to use.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

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### SPR18-05

Title	Action Requested
Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate Division Cases	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms APP-102, APP-110, CR-132, CR-134, and CR-142	January 1, 2019
Proposed by	Contact
Appellate Advisory Committee	Christy Simons, 415-865-7694
Hon. Louis R. Mauro, Chair	christy.simons@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee proposes revising several of the Judicial Council forms for filing notices of appeal and notices designating the record on appeal in appellate division matters. The revisions are intended to provide more complete and accurate information, make corrections, and clarify various items. This proposal is based on suggestions from the Superior Court of Los Angeles County.

### The Proposal

The proposed revisions to each form are described below.

#### **Notice of Appeal/Cross-Appeal (Limited Civil Case) (form APP-102)**

- Provide a check box in item 1 to allow the user to indicate that there is more than one appellant and include an instruction to attach a separate page listing the additional appellants; and
- Clarify the requirement in item 4 for serving and filing *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), including the potential penalty for failing to do so.

#### **Respondent's Notice Designating Record on Appeal (Limited Civil Case) (form APP-110)**

- Add references to the appellate division rule regarding fee waivers in item 4;

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

- Expand and reorganize the section regarding the reporter’s transcript (item 5a) to include the option of attaching a certified transcript and more fully describe the options for paying for the transcript or applying for payment through the Transcript Reimbursement Fund;
- Reword the formatting options for the reporter’s transcript to be consistent with recently amended Code of Civil Procedure section 271;
- Expand the section regarding a transcript from an official electronic recording (item 5b) to allow the respondent to designate additional proceedings to be included in the transcript, consistent with *Appellant’s Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103); and
- Add a heading to the payment options for a copy of the transcript and specify the penalty for failing to pay.

***Notice of Appeal (Misdemeanor) (form CR-132)***

- Add a heading for appellant’s contact information;
- Clarify the section regarding appellant’s lawyer (item 1c) to request contact information for the attorney who represented the appellant in the trial court, add check boxes to indicate whether this attorney is representing the appellant on appeal, and reference another item number on the form if court-appointed counsel is being requested;
- Add to the section regarding the record on appeal (item 3) the potential penalties under rule 8.874 for failing to file on time the notice regarding the record on appeal; and
- Reorganize and rephrase the section regarding a court-appointed lawyer (item 4) to clarify the text and to highlight the forms that should be attached to the notice of appeal.

***Notice Regarding Record on Appeal (Misdemeanor) (form CR-134)***

- Add a heading for appellant’s contact information;
- Clarify the section regarding appellant’s lawyer (item 1c) to request contact information for the attorney who represented the appellant in the trial court, and add check boxes to indicate whether this attorney is representing the appellant on appeal;
- Add to the section regarding a reporter’s transcript (item 5a) the option of filing a certified transcript, and the requirement to pay for the reporter’s transcript within 10 days of receiving the court reporter’s estimate of the cost;
- Replace references to “a free reporter’s transcript” in the items indicating a request for a waiver of costs with new references to “a reporter’s transcript at no cost to you” (item 5a(3)(b)), “a transcript at no cost to you” (item 5b(2)(b)), and “a copy of the official electronic recording at no cost to you” (item 5c(2)(b)); and
- Add to the section regarding a statement on appeal (item 5d) the additional penalty under rule 8.874 that the court may appoint new counsel if the defendant’s appointed counsel fails to file the proposed statement on time.

***Notice of Appeal and Record on Appeal (Infraction) (form CR-142)***

- Add a heading for appellant’s contact information;

- Clarify the section regarding appellant’s lawyer (item 1c) to request contact information for the attorney who represented the appellant in the trial court, and add check boxes to indicate whether this attorney is representing the appellant on appeal;
- Set forth, in the section regarding a statement on appeal (item 5a), the circumstance under which the proposed statement must be served on the prosecuting attorney and the potential penalty for failing to file the proposed statement on time; and
- Expand and reorganize the section regarding the reporter’s transcript (item 5d) to describe more fully the options for paying for the transcript and to include the option of filing a certified transcript.

### **Alternatives Considered**

The committee considered not proposing these revisions. The committee concluded, however, that the revisions would be helpful in providing correct and complete information and better guidance for litigants at the beginning of the appeal process. This, in turn, would reduce burdens on the courts that result from improperly completed forms and defaults due to failing to take required steps to procure the record on appeal.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal is not expected to result in new costs, operational impacts, or implementation challenges, but the committee would appreciate comments regarding these issues.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Forms APP-102, APP-110, CR-132, CR-134, and CR-142, at pages 4–21

Clerk stamps date here when form is filed.

**DRAFT****02-09-2018****Not approved by  
the Judicial Council****Instructions**

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

The clerk will fill in the number below

**Appellate Division Case Number:****1 Your Information**

- a. Name of appellant (the party who is filing this appeal):

Check here if more than one appellant and attach a separate page or pages listing the other appellants and their contact information. At the top of each page, write "APP-102, item 1a."

- b. Appellant's contact information (
- skip this if the appellant has a lawyer for this appeal*
- ):

Street address: \_\_\_\_\_

<i>Street</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Mailing address ( <i>if different</i> ): _____			

<i>Street</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
---------------	-------------	--------------	------------

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: \_\_\_\_\_

<i>Street</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
Mailing address ( <i>if different</i> ): _____			

<i>Street</i>	<i>City</i>	<i>State</i>	<i>Zip</i>
---------------	-------------	--------------	------------

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**2** This is (*check a or b*):

- a.  The first appeal in this case.
- b.  A cross-appeal (an appeal filed after the first appeal in this case (*complete (1), (2), and (3)*)).
- (1) The notice of appeal in the first appeal was filed on (*fill in the date that the other party filed its notice of appeal in this case*): \_\_\_\_\_
- (2) The trial court clerk served notice of the first appeal on (*fill in the date that the clerk served the notice of the other party's appeal in this case*): \_\_\_\_\_
- (3) The appellate division case number for the first appeal is (*fill in the appellate division case number of the other party's appeal, if you know it*): \_\_\_\_\_

**3** Judgment or Order You Are AppealingI am/My client is appealing (*check a or b*):

- a.  The final judgment in the trial court case identified in the box on page 1 of this form.  
The date the trial court entered this judgment was (*fill in the date*): \_\_\_\_\_
- b.  Other:
- (1)  An order made after final judgment in the case.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (2)  An order changing or refusing to change the place of trial (venue).  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (3)  An order granting a motion to quash service of summons.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (4)  An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (5)  An order granting a new trial.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (6)  An order denying a motion for judgment notwithstanding the verdict.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_
- (7)  An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.  
The date the trial court entered this order was (*fill in the date*): \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

**3** (continued)

(8)  An order appointing a receiver.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_

(9)  Other action (please describe and indicate the date the trial court took the action you are appealing):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4 Record Preparation Election**

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

If you are filing the first appeal in this case, you must serve and file a notice in the trial court designating the record on appeal. You may use Appellant’s Notice Designating Record on Appeal (Limited Civil Case) (form APP-103). Check a or b:

- a.  I will serve and file a notice designating the record on appeal together with this notice of appeal.
- b.  I will serve and file a notice designating the record on appeal later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not file the notice designating the record on time, the court may dismiss my appeal.

**REMINDER:** Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

▶ \_\_\_\_\_  
Signature of appellant/cross-appellant or attorney



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

Clerk stamps date here when form is filed.

**DRAFT****2018-02-13****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](http://www.courts.ca.gov/forms).
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

**Superior Court of California, County of**

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

**Trial Court Case Number:****Trial Court Case Name:**

You fill in the appellate division case number (if you know it):

**Appellate Division Case Number:****1 Your Information**

- a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: \_\_\_\_\_

- b. Respondent’s contact information (*skip this if the respondent has a lawyer for this appeal*):

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

- c. Respondent’s lawyer (*skip this if the respondent does not have a lawyer for this appeal*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State ZipMailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**Information About the Appeal**

- ② On (fill in the date): \_\_\_\_\_ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.
- ③ On (fill in the date): \_\_\_\_\_ the appellant filed an appellant’s notice designating the record on appeal.

**Record of the Documents Filed in the Trial Court**

- ④ The appellant elected (chose) to use a clerk’s transcript under rule 8.832 as the record of the documents filed in the trial court.
- a.  **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk’s transcript, you must identify those documents here.*

**(1) Documents**

- In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed).*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-110, item 4a(1).”*

**(2) Exhibits**

- I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number [such as Plaintiff’s #1 or Defendant’s A] and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write “APP-110, item 4a(2).”*



4 (continued)

- b.  **Copy of clerk’s transcript.** I request a copy of the clerk’s transcript. *(Check and complete (1) or (2).)*
  - (1)  I will pay the trial court clerk for this transcript myself when I receive the clerk’s estimate of the costs of the transcript.
  - (2)  I am asking that a copy of the clerk’s transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58 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.)*

**Record of Oral Proceedings in the Trial Court**

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete only one of the following below—a, b, or c):*

- a.  **Reporter’s Transcript.** The appellant elected to use a reporter’s transcript under rule 8.834 as the record of the oral proceedings in the trial court.
  - (1)  **Designation of additional proceedings to be included in the reporter’s transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter’s transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter’s transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Description	Reporter’s Name	Prev. prepared?
(a)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(b)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(c)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(d)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(e)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(f)				<input type="checkbox"/> Yes <input type="checkbox"/> No
(g)				<input type="checkbox"/> Yes <input type="checkbox"/> No

Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-110, item 5a(1).”



5 a. (continued)

(2)  **Certified transcripts.** I have attached to this *Respondent'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.

(3) **Copy of reporter's transcript.** I request a copy of the reporter's transcript.

(a)  I will pay for the reporter's transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will:

(i)  Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of \$50 for the trial court to hold this deposit in trust. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(ii)  Pay the reporter directly and 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 requirement, I will not receive a copy of the transcript.

(b)  I am unable to afford the cost of the reporter's transcript and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund. I understand that within 90 days of filing my application, I must file with the trial court a copy of the provisional approval of my application or pay for the reporter's transcript as provided in (a). I understand that if I do not comply, I will not receive a copy of the transcript.

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

(a)  Electronic format only.

(b)  Paper format only.

(c)  Electronic format and a second copy of the reporter's transcript in paper format.

OR

b.  **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b).

(1)  **Designation of additional proceedings to be included in the transcript.** (If you want any proceedings in addition to the proceedings designated by the appellant to be included in the transcript, you must identify those proceedings here.)

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the transcript. (You must 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.)

5 b. (1) (continued)

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

Check here if you need more space to describe any proceeding or to list other proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-110, item 5b(1)."

(2) Copy of the transcript. (Check and complete (a) or (b).)

- (a)  I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript. I understand that if I do not pay for the transcript, I will not receive a copy.
- (b)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. (Check (i) or (ii) and submit the appropriate 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

- c.  **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. (Check and complete (1) or (2).)
  - (1)  I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.
  - (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. (Check (a) or (b) and submit the appropriate document):
    - (a)  An order granting a waiver of the cost under rules 3.50–3.58 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.)

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of respondent or attorney

*Clerk stamps date here when form is filed.*

**DRAFT**

**2018-02-13**

**Not approved by  
the Judicial Council**

**Instructions**

- This form is only for appealing in a **misdemeanor case**. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

*You fill in the name and street address of the court that issued the judgment or order you are appealing:*

**Superior Court of California, County of**

*You fill in the number and name of the trial court case in which you are appealing the judgment or order:*

**Trial Court Case Number:**  
  
**Trial Court Case Name:**

*You fill in the appellate division case number (if you know it):*

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

b. Appellant’s contact information (required):

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

c. Appellant’s lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

*If court-appointed counsel on appeal is being requested, see item 4.*

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**2 Judgment or Order You Are Appealing**

I am/My client is appealing (*check one*):

- a.  The final judgment of conviction in this case (Pen. Code, § 1466(b)(1)).
  - I am/My client is contesting only the conditions of the probation.
- b.  The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Pen. Code, § 1466(b)(1)).
  - An order modifying the conditions of probation.
  - Other(*describe the action you are appealing and give the date the trial court took the action*):  
\_\_\_\_\_
- c.  The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Pen. Code, § 1538.5(j)).
- d.  Other action (*describe the action you are appealing and give the date the trial court took the action*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3 Record on Appeal**

(*See form CR-131-INFO for information about the record on appeal.*)

- a.  I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).
- b.  I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either (1) 20 days after I file this notice of appeal or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings. In addition, if I do not file the notice on time, the court may appoint new counsel or dismiss my appeal.


**4 Court-Appointed Lawyer**

- a. Do you/Does your client want to be represented by a court-appointed lawyer in this appeal? (*Answer yes or no.*)
  - Yes. Complete and attach *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133).
  - No.
- b. Were you/Was your client represented by the public defender or other court-appointed lawyer in the trial court? (*Answer yes or no.*)
  - Yes.
  - No. If you answered yes to 4a, complete and attach *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210).

**REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.**

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Signature of appellant or attorney*

*Clerk stamps date here when form is filed.*

**DRAFT**

**2018-02-13**

**Not approved by  
the Judicial Council**

**Instructions**

- This form is only for giving the court notice about the record on appeal in a **misdemeanor case**.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).
- This form can be filed with your notice of appeal. If it is not filed with your notice of appeal, this form must be filed within either:
  - (1) 20 days after you file your notice of appeal, or, if it is later
  - (2) 10 days after the court appoints a lawyer to represent you on appeal (if you file a request for a court-appointed lawyer within 20 days after you file your notice of appeal).
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court where you filed your notice of appeal. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

*You fill in the name and street address of the court that issued the judgment or order you are appealing:*

**Superior Court of California, County of**

*You fill in the number and name of the trial court case in which you are appealing the judgment or order:*

**Trial Court Case Number:**

**Trial Court Case Name:**

*You fill in the appellate division case number (if you know it):*

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

b. Appellant’s contact information (required):

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

c. Appellant’s lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_





**Information About Your Appeal**

② On (fill in the date): \_\_\_\_\_ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

**Your Choices About the Record on Appeal**

**Stipulation for Limited Record**

③  The respondent and I/my client have agreed (“stipulated”) under rule 8.860 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached.

**Record of Oral Proceedings**

*You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.*

④ I elect (choose)/My client elects to proceed (check a or b):  
a.  WITHOUT a record of the oral proceedings in the trial court (skip item ⑤; sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): \_\_\_\_\_

b.  WITH a record of the oral proceedings in the trial court (complete item ⑤ below). I understand that if I elect (choose) to proceed WITH a record of the oral proceeding in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): \_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one— a, b, c, or d*):

- a.  **Reporter's Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a reporter's transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1), (2) or (3).)*
- (1)  Within 10 days of when I receive the court reporter's estimate of the cost of this transcript, I will file a certified transcript of all the proceedings required by rule 8.865 and that complies with rule 8.144.
- (2)  I will pay the trial court clerk's office for the reporter's transcript myself within 10 days of when I receive the court reporter's estimate of the costs of this transcript. Alternatively, I will pay the reporter directly and file with the trial court a written waiver of deposit signed by the reporter. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (3)  I am asking that the reporter's transcript be prepared at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a reporter's transcript at no cost to you.*)

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (*You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a transcript at no cost to you.*)



Trial Court Case Name: \_\_\_\_\_

5 (continued)

**OR**


- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk’s office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost.
- (a)  I was represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case.
- (b)  I was not represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case, but I have completed and attached *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a copy of the official electronic recording at no cost to you.)

**OR**

- d.  **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-131-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).)
- (1)  I have attached my proposed statement on appeal to this notice. (If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Misdemeanor) (form CR-135) to prepare and file this proposed statement. You can get form CR-135 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may appoint new counsel or dismiss my appeal.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

 \_\_\_\_\_  
Signature of appellant or attorney

*Clerk stamps date here when form is filed.*

**DRAFT**

**2018-02-13**

**Not approved by the Judicial Council**

**Instructions**

- This form is only for appealing in an **infraction** case, such as a case about a traffic ticket. You can get other forms for appealing in a civil or misdemeanor case at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must file this form **no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.902(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk’s office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

*You fill in the name and street address of the court that issued the judgment or order you are appealing:*

**Superior Court of California, County of**

*You fill in the number and name of the trial court case in which you are appealing the judgment or order:*

**Trial Court Case Number:**  
  
**Trial Court Case Name:**

*The clerk will fill in the number below:*

**Appellate Division Case Number:**

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

Name: \_\_\_\_\_

b. Appellant’s contact information (required):

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

c. Appellant’s lawyer in the trial court proceedings:

The lawyer filling out this form  is  is not representing the appellant in this appeal.

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street City State Zip*

Mailing address (if different): \_\_\_\_\_  
*Street City State Zip*

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_



**2 Judgment or Order You Are Appealing**

I am/My client is appealing (check a, b, or c):

- a.  the final judgment of conviction in the case (Pen. Code, § 1466(b)(1)).  
The trial court issued (rendered) this judgment on (fill in the date): \_\_\_\_\_
- b.  an order made by the trial court after judgment that affects an important (substantial) right of mine/my client (Pen. Code, § 1466(b)(2)).  
The trial court issued (rendered) this order on (fill in the date): \_\_\_\_\_
- c.  Other (describe the action you are appealing and indicate the date the trial court took the action):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Your Choices About the Record on Appeal**

**Stipulation for Limited Record**

- 3  The respondent and I/my client have agreed (“stipulated”) under rule 8.910 that parts of the normal record on appeal are not required for proper determination of this appeal. A copy of our stipulation identifying those parts of the record that are not required is attached. (At the top of each page write “CR-142, item 3.”)

**Record of Oral Proceedings**

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the “oral proceedings”). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether an error was made in those proceedings.

- 4 I elect (choose)/My client elects to proceed (check a or b):
  - a.  WITHOUT a record of the oral proceedings in the trial court (skip item 5); sign and date this form). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.  
(Write initials here): \_\_\_\_\_
  - b.  WITH a record of the oral proceedings in the trial court (complete item 5 below). I understand that if I elect (choose) to proceed with a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.  
(Write initials here): \_\_\_\_\_

- 5 I want to use the following record of what was said in the trial court proceedings in my case (check and complete only one—a, b, c, or d):
  - a.  **Statement on Appeal.** A statement on appeal is a summary of the trial court proceedings approved by the trial court. See form CR-141-INFO for information about preparing a proposed statement. (Check and complete (1) or (2).)



**5** (continued)

- (1)  I have attached my proposed statement on appeal to this notice. *(If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Infraction) (form CR-143) to prepare and file this proposed statement. You can get form CR-143 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).)*
- (2)  I have NOT attached my proposed statement on appeal to this notice. I understand that I must serve the prosecuting attorney if the prosecuting attorney appeared in the case 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 proceed on the clerk's transcript only.

**OR**

- b.  **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of a transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this transcript myself. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.
- (2)  I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free transcript.)*

**OR**

- c.  **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division permitting the use of the official electronic recording itself as the record of the court proceedings, and you and the respondent (the prosecuting agency) have agreed (stipulated) that you want to use the recording itself as the record of what was said in your case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the respondent to this notice. (Check and complete (1) or (2).)*
- (1)  I will pay the trial court clerk's office for this official electronic recording myself. I understand that if I do not pay for this recording, it will not be provided to the appellate division.
- (2)  I am asking that this official electronic recording be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). *(You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a free copy of the official electronic recording.)*



5 (continued)

OR

- d.  **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. Some courts also have local rules that establish procedures for determining whether only a portion of the reporter’s transcript or a different form of the record will be sufficient for an effective appeal. Check with the trial court to see if it has such a local rule.*

Within 10 days of receiving the court reporter’s estimate of the cost of preparing the reporter’s transcript, I will (check and complete one of the following):

- (1)  File with the trial court a certified transcript of all the proceedings required by rule 8.918.
- (2)  Pay for the transcript myself by depositing with the trial court an amount equal to the estimated cost of the transcript.
- (3)  Pay the reporter directly and file with the trial court a written waiver of the deposit that is signed by the reporter.
- (4)  Request a reporter’s transcript at no cost. I am asking that this transcript be provided at no cost to me because I cannot afford to pay this cost. I have completed and attached *Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210). (You can get form MC-210 at any courthouse or county law library or online at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms). The court will review this form to decide if you are eligible for a reporter’s transcript at no cost to you.)

I understand that if I do not pay for this transcript and I am not eligible for a reporter’s transcript at no cost, the reporter’s transcript will not be prepared and provided to the appellate division.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name

\_\_\_\_\_  
Signature of appellant or attorney

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Rules Modernization: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal (Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Ingrid Leverett, (415) 865-8031, [Ingrid.Leverett@jud.ca.gov](mailto:Ingrid.Leverett@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business.

Sealed and confidential material: Rules for the handling of sealed or confidential materials that are submitted electronically.

Return of lodged electronic records: The trial court rules modernization changes made in 2016 amended rules 2.551(b) and 2.577(d)(4) to give the moving party ten days after a motion to seal is denied to notify the court if the party wants the record to be filed unsealed. If the clerk does not receive notification in ten days, the clerk must return the record, if lodged in paper form, or permanently delete it if lodged in electronic form. The 2016 rule changes also amended rule 3.1302 to allow the court to maintain other lodged materials--and if the court chooses not to do so, to require that they be returned, if on paper, or permanently deleted, if electronic, with a notice of the destruction sent to the party before destruction of the electronic record.

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

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



# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR18-06**

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Title	Action Requested
Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.45, 8.46, and 8.47	January 1, 2019
Proposed by	Contact
Appellate Advisory Committee	Ingrid Leverett
Hon. Louis R. Mauro, Chair	415-865-8031 phone Ingrid.Leverett@jud.ca.gov

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### **Executive Summary and Origin**

As part of the Rules Modernization Project,<sup>1</sup> the Appellate Advisory Committee recommends amending the rules to establish procedures for handling sealed and confidential materials submitted electronically in the Court of Appeal. The proposed amendments encompass the court's return of lodged electronic records submitted in connection with a motion to seal.

### **Background**

Existing appellate rules require Court of Appeal clerks to return records that were lodged with the court in paper form if a sealing request is denied. (See Cal. Rules of Court, rules 8.46, 8.47.) These rules do not address what must happen if the lodged material is in electronic form. Until recently, the trial courts faced this same issue. The Judicial Council revised the relevant trial court rules relating to sealed records such that they now address the disposition of electronic records lodged with the court in connection with a sealing request that is denied.

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<sup>1</sup> The Rules Modernization Project is a collaborative effort led by the Information Technology Advisory Committee, working together with several advisory committees with subject matter expertise, to comprehensively review and modernize the California Rules of Court to be consistent with and foster modern e-business practices. Over a two-year period, this work resulted in technical rule amendments to address language in the rules that was incompatible with statutes and rules governing electronic filing and service, and substantive rule amendments to promote electronic filing, electronic service, and modern e-business practices. These rule amendments took effect January 1, 2016, and January 1, 2017.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

The trial court rules also require the secure transmission of sealed and confidential records. This requirement is included only in certain narrow provisions of the parallel appellate rules.

The existing trial and appellate rules both provide that records a party is seeking to file under seal remain conditionally under seal pending the court's resolution of the sealing request. However, the appellate rules do not provide guidance on how to transmit to the reviewing court and preserve the confidentiality of records that are the subject of a challenge to a trial court's order denying a motion or application to seal.

Finally, existing appellate rules lack clarity concerning how a litigant who lodges a confidential, unredacted record with the appellate court must identify the particular material within the record that is confidential.

The proposal is intended to address these issues.

### **The Proposal**

The purpose of the proposal is to amend the appellate rules relating to sealed and confidential records so as to (1) harmonize them with parallel trial court rules governing electronic records submitted in connection with a motion or application to seal; (2) make these appellate rules internally consistent; and (3) address the transmission and handling of records in a proceeding challenging a trial court's order denying a motion to seal.

Specifically, the proposal would:

- Provide for the disposition of a lodged electronic record when the court denies a motion or application to seal. The moving party would have 10 days after the denial of the application or motion to seal in which to notify the clerk to file a lodged record unsealed. Otherwise, the clerk must return the lodged record to the moving party if it is in paper form or delete the lodged record if it is in electronic form. The new proposed language would appear in rule 8.46(d)(7), rule 8.46(f)(3)(D), rule 8.47(b)(3)(D), and rule 8.47(c)(2)(D).
- Add language requiring that sealed, conditionally sealed, and confidential records be transmitted to the reviewing court in a secure manner that preserves the confidentiality of the record. This requirement is included in the trial court rule and in rule 8.47. The new proposed language would appear in rules 8.45(d)(1) and 8.46(f)(3)(B).
- Clarify procedures for transmitting, conditionally sealing, and returning or deleting a record that is the subject of challenge to a trial court order denying a motion or application to seal. The new proposed language appears in new subdivision (e) of rule 8.46.

- Clarify the procedure for lodging an unredacted version of a record in connection with an appellate filing by requiring that the confidential material within the record be identified as such in the filing. This proposed language would appear in rule 8.46(f)(2)(B) and (f)(3)(B), and rule 8.47(b)(3)(C)(ii).
- Make other minor changes in language and punctuation intended to clarify the rules.

### **Alternatives Considered**

The committee considered not proposing these amendments. The committee concluded that these changes were necessary to (1) give guidance and direction to litigants, (2) harmonize the appellate court rules with existing trial court rules governing the same subject matter, and (3) make the appellate court rules internally consistent regarding the handling of sealed and confidential records.

The committee also considered whether to revise the rule governing appellate motions generally—rule 8.54—to harmonize it with parallel trial court rule 3.1302. Rule 3.1302 governs the place and manner of filing in support of noticed motions; it includes requirements for lodged materials. It provides that the trial court may retain lodged material but, if the trial court decides not to do so, requires that the trial court delete material lodged in the trial court in connection with a motion after notice of the impending deletion is sent to the lodging party. The committee did not recommend making any changes to rule 8.54.

### **Implementation Requirements, Costs, and Operational Impacts**

If adopted, the proposal may impose some cost on the appellate court in the form of training clerks to delete lodged, unredacted electronic records in the event that the court denies a motion or application to seal and the lodging party fails to instruct the court to file an unsealed version of a record. Beyond this training cost, the proposal is not expected to result in significant new costs or changes to operations in the Court of Appeal, nor to give rise to any implementation challenges.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is new subdivision (e) of rule 8.46—addressing a record that is the subject of an appeal or original proceeding challenging a trial court’s ruling denying a motion or application to seal that record—helpful, and does it provide sufficient guidance?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### Attachments

Cal. Rules of Court, rules 8.45, 8.46, and 8.47

Rules 8.45, 8.46, and 8.47 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 1. General Provisions**

6  
7 **Article 3. Sealed and Confidential Records**

8  
9  
10 **Rule 8.45. General provisions**

11  
12 **(a)–(c) \* \* \***

13  
14 **(d) Transmission of and access to sealed and confidential records**

15  
16 (1) A sealed or confidential record must be transmitted in a secure manner that  
17 preserves the confidentiality of the record.

18  
19 ~~(1)~~(2) Unless otherwise provided by ~~(2)–(4)~~ ~~(3)–(5)~~ or other law or court order, a  
20 sealed or confidential record that is part of the record on appeal or the  
21 supporting documents or other records accompanying a motion, petition for a  
22 writ of habeas corpus, other writ petition, or other filing in the reviewing  
23 court must be transmitted only to the reviewing court and the party or parties  
24 who had access to the record in the trial court or other proceedings under  
25 review and may be examined only by the reviewing court and that party or  
26 parties. If a party’s attorney but not the party had access to the record in the  
27 trial court or other proceedings under review, only the party’s attorney may  
28 examine the record.

29  
30 ~~(2)~~(3) Except as provided in ~~(3)~~ (4), if the record is a reporter’s transcript or any  
31 document related to any in-camera hearing from which a party was excluded  
32 in the trial court, the record must be transmitted to and examined by only the  
33 reviewing court and the party or parties who participated in the in-camera  
34 hearing.

35  
36 ~~(3)~~(4) A reporter’s transcript or any document related to an in-camera hearing  
37 concerning a confidential informant under Evidence Code sections 1041–  
38 1042 must be transmitted only to the reviewing court.

39

1           ~~(4)~~(5) A probation report must be transmitted only to the reviewing court and to  
2           appellate counsel for the People and the defendant who was the subject of the  
3           report.  
4

### 5   Advisory Committee Comment 6

7   **Subdivision (a).** \* \* \*

8  
9   **Subdivision (b)(5).** \* \* \*

10  
11   **Subdivisions (c) and (d).** \* \* \*

12  
13   **Subdivision (c)(1)(C).** \* \* \*

14  
15   **Subdivision (c)(2).** \* \* \*

16  
17   **Subdivision (c)(3).** \* \* \*

18  
19   **Subdivision (d).** \* \* \*

20  
21   **Subdivision (d)~~(1)~~(2) and ~~(2)~~ (3).** Because the term “party” includes any attorney of record for  
22   that party, under rule 8.10(3), when a party who had access to a record in the trial court or other  
23   proceedings under review or who participated in an in-camera hearing—such as a *Marsden*  
24   hearing in a criminal or juvenile proceeding—is represented by appellate counsel, the confidential  
25   record or transcript must be transmitted to that party’s appellate counsel. Under rules 8.336(g)(2)  
26   and 8.409(e)(2), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the  
27   appellant or the respondent—is not represented by appellate counsel when the clerk’s and  
28   reporter’s transcripts are certified as correct, the clerk must send the copy of the transcripts that  
29   would go to appellate counsel, including confidential records such as transcripts of *Marsden*  
30   hearings, to the district appellate project.  
31

32   **Subdivision (d)~~(4)~~(5).** This rule limits to whom a copy of a probation report is transmitted based  
33   on the provisions of Penal Code section 1203.05, which limit who may inspect or copy probation  
34   reports.  
35

### 36   **Rule 8.46. Sealed records**

37  
38   **(a)–(c)** \* \* \*

39  
40   **(d) Record not filed in the trial court; motion or application to file under seal**

41  
42    **(1)–(6)** \* \* \*

- 1 (7) If the court denies the motion or application to seal the record, ~~the clerk must~~  
2 ~~not place the lodged record in the case file but must return it to the submitting~~  
3 ~~party unless that party notifies the clerk in writing that the record is to be~~  
4 ~~filed. Unless otherwise ordered by the court, the submitting party must notify~~  
5 ~~the clerk within 10 days after the order denying the motion or application~~ the  
6 lodging party may notify the court that the lodged record is to be filed  
7 unsealed. This notification must be received within 10 days of the order  
8 denying the motion or application to seal, unless otherwise ordered by the  
9 court. On receipt of this notification, the clerk must unseal and file the record.  
10 If the lodging party does not notify the court within 10 days of the order, the  
11 clerk must (1) return the lodged record to the lodging party if it is in paper  
12 form, or (2) permanently delete the lodged record if it is in electronic form.  
13  
14 (8) An order sealing the record must direct the sealing of only those documents  
15 and pages or, if reasonably practical, portions of those documents and pages,  
16 that contain the material that needs to be placed under seal. All other portions  
17 of each document or page must be included in the public file.  
18  
19 (9) Unless the sealing order provides otherwise, it prohibits the parties from  
20 disclosing the contents of any materials that have been sealed in anything that  
21 is subsequently publicly filed.  
22

23 **(e) Challenge to an order denying a motion or application to seal a record**

24  
25 Notwithstanding the provisions in (d)(1)–(2), when an appeal or original  
26 proceeding challenges an order denying a motion or application to seal a record, the  
27 appellant or petitioner must lodge the subject record labeled as conditionally under  
28 seal in the reviewing court as provided in (d)(3)–(5), and the reviewing court must  
29 maintain the record conditionally under seal during the pendency of the appeal or  
30 original proceeding. Once the reviewing court’s decision on the appeal or original  
31 proceeding becomes final, the clerk must (1) return the lodged record to the lodging  
32 party if it is in paper form, or (2) permanently delete the lodged record if it is in  
33 electronic form.  
34

35 **(e)(f) Unsealing a record in the reviewing court**

36  
37 (1)–(2) \* \* \*

- 38  
39 (3) If the reviewing court proposes to order a record unsealed on its own motion,  
40 the court must send notice to the parties stating the reason for unsealing the  
41 record. Unless otherwise ordered by the court, any party may serve and file  
42 an opposition within 10 days after the notice is sent, and any other party may  
43 serve and file a response within 5 days after an opposition is filed.

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(4)–(7) \* \* \*

**(f)(g) Disclosure of nonpublic material in public filings prohibited**

(1) \* \* \*

(2) If it is necessary to disclose material contained in a sealed record in a filing in the reviewing court, two versions must be filed:

(A) \* \* \*

(B) An unredacted version. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as “May Not Be Examined Without Court Order—Contains material from sealed record.” Sealed material disclosed in this version must be identified as such in the filing and accompanied by a citation to the court order sealing that material.

(C) \* \* \*

(3) If it is necessary to disclose material contained in a conditionally sealed record in a filing in the reviewing court:

(A) A public redacted version must be filed. The cover of this version must identify it as “Public—Redacts material from conditionally sealed record.” In juvenile cases, the cover of the redacted version must identify it as “Redacted version—Redacts material from conditionally sealed record.”

(B) An unredacted version must be lodged. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of this version, and if applicable the envelope or other container, must identify it as “May Not Be Examined Without Court Order—Contains material from conditionally sealed record.” Conditionally sealed material disclosed in this version must be identified as such in the filing.

(C) Unless the court orders otherwise, any party who had access to the conditionally sealed record in the trial court or other proceedings under review must be served with both the unredacted version of all papers as



1 well as the redacted version. Other parties must be served with only the  
2 public redacted version.

- 3
- 4 (D) If the court denies the motion or application to seal the record, ~~the clerk~~  
5 ~~must not place the unredacted version lodged under (B) in the case file~~  
6 ~~but must return it to the party who filed the application or motion to~~  
7 ~~seal unless that party notifies the clerk that the record is to be publicly~~  
8 ~~filed, as provided in (d)(7) the party who filed the motion or application~~  
9 may notify the court that the unredacted version lodged under (B) is to  
10 be filed unsealed. This notification must be received within 10 days of  
11 the order denying the motion or application to seal, unless otherwise  
12 ordered by the court. On receipt of this notification, the clerk must  
13 unseal and file the lodged unredacted version. If the party who filed the  
14 motion or application does not notify the court within 10 days of the  
15 order, the clerk must (1) return the lodged unredacted version to the  
16 lodging party if it is in paper form, or (2) permanently delete the lodged  
17 unredacted version if it is in electronic form.

18

19 **Rule 8.47. Confidential records**

20

21 (a) \* \* \*

22

23 (b) **Records of *Marsden* hearings and other in-camera proceedings**

24

25 (1) \* \* \*

26

27 (2) Except as provided in (3), if the defendant raises a *Marsden* issue or an issue  
28 related to another in-camera hearing covered by this rule in a brief, petition,  
29 or other filing in the reviewing court, the following procedures apply:

30

31 (A) The brief, including any portion that discloses matters contained in the  
32 transcript of the in-camera hearing, and other documents filed or lodged  
33 in connection with the hearing, must be filed publicly. The requirement  
34 to publicly file this brief does not apply in juvenile cases; rule 8.401  
35 governs the format of and access to such briefs in juvenile cases.

36

37 (B) The People may serve and file an application requesting a copy of the  
38 reporter's transcript of, and documents filed or lodged by a defendant  
39 in connection with, the in-camera hearing.

40

41 (C) \* \* \*

1 (D) If the defendant does not timely serve and file opposition to the  
2 application, the reviewing court clerk must send to the People a copy of  
3 the reporter’s transcript of, and documents filed or lodged by a  
4 defendant in connection with, the in-camera hearing.  
5

6 (3) A defendant may serve and file a motion or application in the reviewing court  
7 requesting permission to file under seal a brief, petition, or other filing that  
8 raises a *Marsden* issue or an issue related to another in-camera hearing  
9 covered by this subdivision, and requesting an order maintaining the  
10 confidentiality of the relevant material from the reporter’s transcript of, or  
11 documents filed or lodged in connection with, the in-camera hearing.  
12

13 (A) \* \* \*

14  
15 (B) The declaration accompanying the motion or application must contain  
16 facts sufficient to justify an order maintaining the confidentiality of the  
17 relevant material from the reporter’s transcript of, or documents filed or  
18 lodged in connection with, the in-camera hearing and sealing of the  
19 brief, petition, or other filing.  
20

21 (C) At the time the motion or application is filed, the defendant must:

22  
23 (i) \* \* \*

24  
25 (ii) Lodge an unredacted version of the brief, petition, or other filing  
26 that he or she is requesting be filed under seal. The filing must be  
27 transmitted in a secure manner that preserves the confidentiality  
28 of the filing being lodged. If this version is in paper format, it  
29 must be placed in a sealed envelope or other appropriate sealed  
30 container. The cover of the unredacted version of the document,  
31 and if applicable the envelope or other container, must identify it  
32 as “May Not Be Examined Without Court Order—Contains  
33 material from conditionally sealed record.” Conditionally sealed  
34 material disclosed in this version must be identified as such in the  
35 filing.  
36

37 (D) If the court denies the motion or application to file the brief, petition, or  
38 other filing under seal, ~~the clerk must not place the unredacted brief,~~  
39 ~~petition, or other filing lodged under (C)(ii) in the case file but must~~  
40 ~~return it to the defendant unless the defendant notifies the clerk in~~  
41 ~~writing that it is to be filed. Unless otherwise ordered by the court, the~~  
42 ~~defendant must notify the clerk within 10 days after the order denying~~  
43 ~~the motion or application~~ the defendant may notify the court that the

1                    unredacted brief, petition, or other filing lodged under (C)(ii) is to be  
2                    filed unsealed. This notification must be received within 10 days of the  
3                    order denying the motion or application to file the brief, petition, or  
4                    other filing under seal, unless otherwise ordered by the court. On  
5                    receipt of this notification, the clerk must unseal and file the lodged  
6                    unredacted brief, petition, or other filing. If the defendant does not  
7                    notify the court within 10 days of the order, the clerk must (1) return  
8                    the lodged unredacted brief, petition, or other filing to the defendant if  
9                    it is in paper form, or (2) permanently delete the lodged unredacted  
10                   brief, petition, or other filing if it is in electronic form.

11  
12    **(c) Other confidential records**

13  
14    Except as otherwise provided by law or order of the reviewing court:

15  
16    (1)    \* \* \*

17  
18    (2)    To maintain the confidentiality of material contained in a confidential record,  
19           if it is necessary to disclose such material in a filing in the reviewing court, a  
20           party may serve and file a motion or application in the reviewing court  
21           requesting permission for the filing to be under seal.

22  
23           (A)–(C) \* \* \*

24  
25           (D)    If the court denies the motion or application to file the brief, petition, or  
26           other filing under seal, ~~the clerk must not place the unredacted brief,~~  
27           ~~petition, or other filing lodged under (C)(ii) in the case file but must~~  
28           ~~return it to the lodging party unless the party notifies the clerk in~~  
29           ~~writing that it is to be filed. Unless otherwise ordered by the court, the~~  
30           ~~party must notify the clerk within 10 days after the order denying the~~  
31           ~~motion or application~~ the party who filed the motion or application may  
32           notify the court that the unredacted brief, petition, or other filing lodged  
33           under (C)(ii) is to be filed unsealed. This notification must be received  
34           within 10 days of the order denying the motion or application to file the  
35           brief, petition, or other filing under seal, unless otherwise ordered by  
36           the court. On receipt of this notification, the clerk must unseal and file  
37           the lodged unredacted brief, petition, or other filing. If the party who  
38           filed the motion or application does not notify the court within 10 days  
39           of the order, the clerk must (1) return the lodged unredacted brief,  
40           petition, or other filing to the lodging party if it is in paper form, or (2)  
41           permanently delete the lodged unredacted brief, petition, or other filing  
42           if it is in electronic form.

**Advisory Committee Comment**

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**Subdivisions (a) and (c).** \* \* \*

**Subdivision (c)(1).** \* \* \*

**Subdivision (c)(2).** Note that when a record has been sealed by court order, rule 8.46~~(f)~~(g)(2) requires a party to file redacted (public) and unredacted (sealed) versions of any filing that discloses material from the sealed record; it does not require the party to make a motion or application for permission to do so. By contrast, this rule requires court permission before redacted (public) and unredacted (sealed) filings may be made to prevent disclosure of material from confidential records.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Forms: Gender Discrimination Notice

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Assembly Bill 1615 requires notices be sent out in advance of filing claims based on consumer's being charged different prices for similar services. Council is mandated to publish the notice in several languages.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-07**

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Title	Action Requested
Civil Forms: Gender Discrimination Notice	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form GDC-001	January 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Susan R. McMullan, 415-865-7990 <a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>

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### **Executive Summary and Origin**

Recent legislation requires the Judicial Council to adopt, no later than January 1, 2019, a written advisory notice to be used by a plaintiff's attorney with each demand letter or complaint alleging gender discrimination in pricing. The Civil and Small Claims Advisory Committee proposes adopting a new form to comply with the legislation.

Assembly Bill 1615 (Stats. 2017, ch. 156) added the Small Business Gender Discrimination in Services Compliance Act to division 1 of the Civil Code. It defines a "gender discrimination in pricing services claim" as a civil claim based on an alleged price difference in similar services charged to a person because of the person's gender. Among its provisions is Civil Code section 55.62, which requires the Judicial Council to adopt a written advisory notice to be used by a plaintiff's attorney to comply with that statute's provisions, including the requirement that a notice accompany each demand letter or complaint. The text of the notice is set out in Civil Code section 55.62(c).

### **The Proposal**

The text of the notice in section 55.62(c) is set out verbatim in the proposed new form, *Advisory Notice to Defendant* (form GDC-001). The form matches the paragraph structure and uppercase text of the notice in the statute. Thus, several paragraphs begin with uppercase text; for example, the third paragraph begins "YOU HAVE IMPORTANT LEGAL OBLIGATIONS." The only change to the statutory language is at the end of the first paragraph, where the statute refers to viewing the form on the "Judicial Council Internet Web site, at [www.courts.ca.gov](http://www.courts.ca.gov)." On the proposed form, the name of the website was changed to the "judicial branch website" for

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

accuracy and conformance to Judicial Council style. The form will be made available in several languages as required by section 55.62.

### **Alternatives Considered**

The advisory committee did not consider any alternatives as this notice is required by statute.

### **Implementation Requirements, Costs, and Operational Impacts**

There are no implementation requirements, costs, or operational impacts because the form is to be given by a plaintiff's attorney to a defendant or potential defendant; it is not to be filed in court.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

### **Attachments and Links**

1. Form GDC-001, at pages 3–4
2. Assembly Bill 1615,

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1615](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1615)

**STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT  
ADVISORY INFORMATION FOR BUSINESSES**

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This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the judicial branch website, at [www.courts.ca.gov](http://www.courts.ca.gov).

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that you have discriminated, with respect to the price charged for services of similar or like kind, against a person because of that person's gender.

**YOU HAVE IMPORTANT LEGAL OBLIGATIONS.** State law requires that businesses charge the same price for the same services, or services of the same or similar kind, regardless of the customer's gender. In addition, state law requires that certain business establishments clearly and conspicuously disclose to their customers in writing the pricing for each standard service provided. The posting requirement applies to the following businesses:

- (1) Tailors or businesses providing aftermarket clothing alterations.
- (2) Barbers or hair salons.
- (3) Dry cleaners and laundries providing services to individuals.

**YOU HAVE IMPORTANT LEGAL RIGHTS.** The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You have the right to seek assistance or advice about this demand letter or complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

**ADDITIONAL THINGS YOU SHOULD KNOW:**

**WHEN YOU CAN AND CANNOT CHARGE DIFFERENT PRICES:** The Gender Tax Repeal Act of 1995 (California Civil Code Section 51.6) prohibits a business from charging a different price for the same service because of the gender of the person receiving the service. However, you may charge different prices based specifically upon the amount of time, difficulty, or cost of providing the services.



## **ADVISORY NOTICE TO DEFENDANT**

### **STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUSINESSES**

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**POSTING PRICES:** The Gender Tax Repeal Act of 1995 also requires that certain businesses clearly disclose to the customer in writing the price of each standard service provided. This pricing disclosure is required for the following businesses: tailors or businesses providing aftermarket clothing alterations; barbers or hair salons; dry cleaners and laundries providing service to individuals. The price list must be posted in a place where customers will likely see it and it must be in no less than 14-point boldface font. A business must also provide a written copy of the prices to the customer if one is requested by the customer. Finally, a business must clearly and conspicuously display a sign, in no less than 24-point font, that reads:

“CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON'S GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST.”

**RIGHT TO CORRECT A POSTING VIOLATION ONLY:** If you receive a written notice claiming that you have failed to properly post any of the above information, you have 30 days to correct the violation. If you fail to correct the violation you will be liable for a civil penalty of \$1,000. (Note that the 30-day period to correct applies only to posting violations, not to discriminatory pricing violations.)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Assembly Bill 644 requires attorneys to meet and confer prior to filing motions to strike or judgments on the pleadings, and to file declarations with the court that the requirements have been met, or that more time is needed, similar to the requirements relating to demurrers, for which parties may use forms CIV-140 and CIV-141. Those forms should be revised to apply to these additional motions as well. The invitation to comment on the forms will seek the information RUPRO requested be gathered as to how helpful courts are finding the current forms. Form CIV-140 language should also be revised to more closely conform to the statutory provisions regarding deadlines.

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

N/A

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-08

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Title	Action Requested
Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CIV-140 and CIV-141	January 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Ann I. Jones, Chair	<a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>

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### Executive Summary and Origin

Recent legislation added to and amended the Code of Civil Procedure to require a meet-and-confer session before a party can file a motion to strike a pleading or a motion for judgment on the pleadings, and to provide for an automatic extension of time if the parties are unable to meet and confer within the time allowed. The Civil and Small Claims Advisory Committee proposes revising two optional forms, one to implement the meet-and-confer requirements and the other to be used to obtain an automatic 30-day extension of time to file a motion to strike a pleading or a motion for judgment on the pleadings when the parties were unable to meet before the due date of the motion.

### The Proposal

Among other changes, Assembly Bill 644 (Stats. 2017, ch. 273) added Code of Civil Procedure<sup>1</sup> sections 435.5 and 439, respectively, to require that before filing a motion to strike or a motion for judgment on the pleadings, the moving party must meet and confer with the party who filed the pleading that is subject to the motion to strike or motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the objections to be raised in the motion.

For a motion to strike, the meet-and-confer session must occur at least five days before the date a motion to strike must be filed. Under section 435(b)(1), a motion to strike must be filed within the time allowed to respond to a pleading. A 30-day extension of time to file the motion is

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

automatically granted by the filing of a declaration seeking the extension no later than the date the motion to strike must be filed.

For a motion for judgment on the pleadings, the meet-and-confer session must occur “at least five days before the date a motion for judgment on the pleadings is filed.” (Code Civ. Proc., § 439(a)(2).) The last date that a motion for judgment on the pleadings may be filed is governed by section 438(e) and is based on when the action was first set for trial and when a pretrial conference order was entered. A 30-day extension of time to file the motion is automatically granted by the filing of a declaration seeking the extension no later than “the date the motion for judgment on the pleadings must be filed.”

These two optional forms were adopted effective January 1, 2017, to provide declarations for a demurring party to use when seeking an automatic 30-day extension of time to file a demurrer and to demonstrate compliance with the meet-and-confer requirements of Code of Civil Procedure section 430.41(a), which addresses the filing of demurrers. The forms would be revised to serve the same purposes—an automatic extension of time for filing and a demonstration of compliance with new meet-and-confer requirements—for parties filing a motion to strike a pleading or a motion for judgment on the pleadings, consistent with new sections 435.5 and 439. In addition, a technical correction would be made to form CIV-140, item 1, which currently reads, “At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer.” Because section 430.41(a) does not require five days between an unsuccessful meet-and-confer session and the filing of a demurrer, item 1 would be revised to replace “At least five days before filing the demurrer” with “At least five days before the date a responsive pleading was due to be filed.”

***Declaration of Demurring or Moving Party Regarding Meet and Confer (form CIV-140)***

The form provides check boxes for the demurring or moving party to indicate to which pleading the party is demurring or moving to strike or moving for judgment on, and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer or motion, whether the meeting was by telephone or in person, and that the parties did not reach an agreement resolving the objections raised in the demurrer or motion; or (2) that the party who filed the pleading failed to respond to a request to meet and confer or otherwise failed to meet and confer in good faith.

***Declaration of Demurring or Moving Party in Support of Automatic Extension (form CIV-141)***

Currently this form is for a demurring party to state under penalty of perjury that he or she made a good faith attempt to meet and confer with the party that filed the pleading at least five days before the date the responsive pleading was due. It would be revised to be used by a party moving to strike or moving for judgment on the pleadings to state under penalty of perjury that he or she made a good faith attempt to meet and confer with the party that filed the pleading at least five days before the date the responsive pleading was due (for a motion to strike) and at

least five days before a motion for judgment on the pleadings must be filed.<sup>2</sup> It includes space for the moving party to describe the reasons why the parties could not meet and confer before the initial due date for the responsive pleading or before the motion for judgment on the pleadings must be filed. The extension is automatic, provided the party seeking the extension files a declaration on or before the relevant filing date. (Code Civ. Proc., §§ 435.5 (a)(2) and 439(a)(2).)

### **Alternatives Considered**

The advisory committee considered not recommending revisions to expand the use of the two proposed forms beyond demurrers, but decided that it made sense to expand them as legislation expanded the meet-and-confer requirements to motions to strike or for judgment on the pleadings. The committee believes they will be useful to educate parties on the new meet-and-confer requirements and make it easier for courts to find that the requirements had been met.

### **Implementation Requirements, Costs, and Operational Impacts**

The advisory committee believes that any implementation requirements, costs, or operational impacts would be minimal. The forms are proposed to be optional, and provide the necessary information and statements that must be included when a party files a motion to strike or motion for judgment on the pleadings, or seeks an extension to do so. They will help ensure that the moving party provides the necessary information. Courts will incur minor one-time costs and operational impacts in training staff and adding the new forms to case management systems.

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<sup>2</sup> A motion for judgment on the pleadings must be made no later than 30 days after whichever of the following occurred later: the action was first set for trial, or a pretrial conference order was entered. (Code Civ. Proc., § 438(e).)

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- With current forms CIV-140 and CIV-141, have courts been receiving sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions? Should the forms be revised to require additional information, such as the amount of time spent in the meet-and-confer session, the number of causes of action discussed, or other detailed information?

The advisory committee also seeks comments from courts on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Forms CIV-140 and CIV-141, at pages 5–6.
2. Link A: Assembly Bill 644, at

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB644](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB644)

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): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
Plaintiff/Petitioner: Defendant/Respondent:		
<b>DECLARATION OF DEMURRING OR MOVING PARTY REGARDING MEET AND CONFER</b>		CASE NUMBER: _____

To the party filing a demurrer, motion to strike, or motion for judgment on the pleadings: This form must be filed with the demurrer, motion to strike, or motion for judgment on the pleadings.

(Name of party): \_\_\_\_\_ was served with

a complaint     an amended complaint     a cross-complaint

an answer     other (specify): \_\_\_\_\_

in the above-titled action and is filing a  demurrer     motion to strike     motion for judgment on the pleadings

**DECLARATION** (Choose either (1) or (2) below.)

(1)  At least five days before the date a responsive pleading was due to be filed (if I am filing a demurrer or motion to strike) or at least five days before filing a motion for judgment on the pleadings (if I am filing a motion for judgment on the pleadings), I met and conferred with the party who filed the pleading  by telephone  in person and we did not reach an agreement resolving the matters raised by the demurrer, motion to strike, or motion for judgment on the pleadings.

(2)  The party who filed the pleading subject to demurrer, motion to strike, or motion for judgment on the pleadings failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

*If you would like to provide additional information, please use form MC-031 Attached Declaration.*

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

Date: \_\_\_\_\_

\_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY)

 \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>DECLARATION OF DEMURRING OR MOVING PARTY</b> <b>IN SUPPORT OF AUTOMATIC EXTENSION</b>	CASE NUMBER:

(Name of party): \_\_\_\_\_ was served with

- a complaint   
  an amended complaint   
  a cross-complaint  
 an answer   
  other (specify): \_\_\_\_\_

in the above-titled action.

For a demurrer or motion to strike, a responsive pleading is due on (date): \_\_\_\_\_

**DECLARATION**

I intend to file a demurrer, motion to strike, or motion for judgment on the pleadings in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am responding to at least five days before the date when the responsive pleading is due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure sections 430.41, 435.5, or 439, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading or motion for judgment on the pleadings.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). I was unable to meet with that party because: (The reasons may be filed why the parties could not meet and confer are set forth):

- below   
  on form MC-031, Attached Declaration

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

Date: \_\_\_\_\_

\_\_\_\_\_  \_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Susan R. McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2018

Project description from annual agenda: New legislation, effective January 1, 2017, established a procedure for a person designated in a shared gang database who has contested that designation with the local law enforcement agency and whose challenge has been denied to bring an action in the superior court. New procedural rules and a form were developed on an expedited basis to enable members of the public to utilize the procedure and the courts to implement the legislation. Clean up legislation (Assembly Bill 90) requires some further revision to the rules and forms to conform to law. Comments received in a post-adoption circulation will be addressed at the same time.

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

N/A

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

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR18-09**

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Title	Action Requested
Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.2300; revise form MC-1000	January 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990
Anne I. Jones, Chair	<a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>

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### Executive Summary and Origin

Recent legislation amended statutes relating to criminal gang databases and the process that authorizes challenges to a law enforcement agency's inclusion of a person in a shared gang database. The Civil and Small Claims Advisory Committee proposes amending the rule of court and revising the Judicial Council form that address a petition for a superior court to review a law enforcement agency's denial of a request for removal from a shared gang database to reflect this legislation.

### Background

The State of California currently maintains a "CalGang" system of databases that contains information about approximately 150,000 individuals designated by law enforcement as suspected gang members, associates, or affiliates.<sup>1</sup> According to the August 22, 2016, Senate Floor Analysis of Assembly Bill 2298, the CalGang system contains data "including name, address, description, social security number, and race or ethnicity" of individuals in the database.<sup>2</sup> The database is widely accessed by law enforcement officers for various reasons including "to determine who should be served with civil gang injunctions, given gang sentences and targeted for saturation policing."<sup>3</sup>

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<sup>1</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2298 (2015–2016 Reg. Sess.), available at [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160AB2298](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298).

<sup>2</sup> *Id.* at p. 5.

<sup>3</sup> *Id.* at p. 6.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

In response to concerns about the accuracy and secrecy of the CalGang database system, the Legislature enacted Penal Code section 186.34, effective January 1, 2014, requiring that before a law enforcement agency designates a person who is under 18 years of age as a suspected gang member, associate, or affiliate, or otherwise identifies the person in a shared gang database, the agency must provide written notice and the basis for the proposed designation to the person and his or her parent or guardian, unless providing this notice would compromise an active criminal investigation or compromise the health or safety of the minor. (Pen. Code, § 186.34(b).) If the law enforcement agency sends such a notice, the minor or his or her parent or guardian may contest the designation with the law enforcement agency. (Pen. Code, § 186.34(e).)

AB 2298 also enacted section 186.35 to provide the right to a judicial review of a law enforcement agency's denial of a contested designation and procedures for seeking review. Section 186.35, at the time of its enactment, stated that a person may seek this judicial review by "filing an appeal" in the superior court. It also provided that the procedure for judicial review of a law enforcement agency's denial is a "limited civil case."

As discussed below, new legislation — Assembly Bill 90 (Stats. 2017, ch. 695) — made some changes to this statutory scheme.

### **Prior Circulation**

A proposal to adopt rule 3.2300 and approve *Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) was approved by the Judicial Council on January 20, 2017, without a public comment period. The proposal thereafter circulated for comment from February 27 to April 28, 2017. The comments received inform the changes in this proposal.

### **The Proposal**

AB 90, among other changes, amended Penal Code section 186.35 to recast, as a petition process rather than an "appeal," the superior court review in which a person may challenge a law enforcement agency's denial of a request to be removed from the gang database. It also deleted the provision designating this proceeding as a limited civil case and added a provision stating that is not a criminal case.

Some of the changes made to section 186.35 have already been incorporated into rule 3.2300 as technical amendments. Effective January 1, 2018, the rule was amended in response to the statutory change recognizing that a request to be removed from the gang database<sup>4</sup> does not always result in a decision from the law enforcement agency denying the request; the request may be deemed denied. This occurs when the law enforcement agency fails to provide a verification of its decision within 30 days of the submission of the written documentation contesting the designation.

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<sup>4</sup> The process of requesting removal from the gang database is also referred to as contesting the designation.

This proposal would amend rule 3.2300 and revise *Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) to conform to the other changes made by AB 90 and further clarify the petition process. Specifically, rule 3.2300 would be amended to:

- Refer to form MC-1000 by its proposed revised name, using the word “Petition” rather than “Request”;
- Require that a petition for review of a denial of a request to be removed from the gang database that is not on form MC-1000 must include in the petition’s name the words “Gang Database Review”;
- Provide that a person filing a petition for review must file either (1) the law enforcement agency’s written verification of the decision denying the request, or, if none was received, (2) a copy of the request and written documentation that was submitted to the law enforcement agency contesting the designation;
- Add the qualifying language “if assigned” to the requirement that the court case number be included on the first page of the record because a petitioner could file his or her part of the record with the petition and before a case number is assigned; and
- Switch the word order for clarity in subdivisions (e)(1)(C) and (e)(3)(A)(ii) as follows: “documents . . . that are ~~sealed or~~ confidential under Welfare and Institutions Code section 827 or have been sealed.”

*Request for Review of Denial of Request to Remove Name From Gang Database* (form MC-1000) would be revised to:

- Change the form name by replacing the first “Request” with “Petition” and change the text of the form accordingly by replacing “request” with “petition” where appropriate;
- In item 2, add a place for the petitioner to check that the law enforcement agency did not respond to the request and to indicate how and when the request was served;
- In the instructions section, include what to do if the request to be removed was deemed denied and a review of the decision is sought;
- In the instructions section, add “civil” before clerk’s office so the petitioner knows where to file the form (the committee would particularly appreciate comments on this proposed change); and
- Incorporate other minor edits for accuracy and clarity.

## **Alternatives Considered**

Based on comments received when the initial proposal to adopt rule 3.2300 and approve form MC-1000 was circulated, the advisory committee considered amending rule 3.2300 to remove the detailed requirements on the format and length of the argument in support of the petition. Though the specific requirements on format and length of the argument in rule 3.2300(f)(3) are also required by rules 2.109 and 2.111—rules governing all papers filed in the trial court—they are repeated in subdivision (f)(3) to assist self-represented litigants who may not know to consult these rules and might file papers that do not comply with the format and length requirements. For these reasons, the advisory committee decided that the requirements should remain in the rule.

One commenter recommended that the council develop a form for a person listed in the gang database (or his or her parent or guardian if a minor) to submit to a law enforcement agency to contest the designation. The advisory committee determined that this is outside its purview.

Two commenters addressed specific practices for protecting the privacy of juvenile records. One suggested that rule 3.2300(e)(1)(c), which currently provides that “If the record contains any documents that are part of a juvenile case file or are sealed or confidential under Welfare and Institutions Code section 827, the law enforcement agency must include a coversheet that states “Confidential Filing – Juvenile Case File Enclosed” be amended to require the law enforcement agency to include an envelope marked “Sealed and Confidential Filing Enclosed” that may be sealed by the court after it has reviewed the record in its entirety.

Another commenter recommended including the police report as a separate item in the subdivision governing the juvenile case file (subd. (e)(1)(C)) and indicating that the police report, though confidential, is not required to be sealed. Advisory committee staff consulted with staff from the Family and Juvenile Law Advisory Committee and concluded that the first comment concerns a matter that can be left to local court practices and that rule 3.2300(e)(1)(C) is intended to be narrowly tailored to juvenile court records. The text of subdivisions (e)(1)(C) and (e)(3)(A)(ii), however, have been amended for clarity, as discussed in the bullet on page 3.

For other alternatives the advisory committee is considering, please see the box titled Request for Specific Comments.

## **Implementation Requirements, Costs, and Operational Impacts**

The amended rule and revised form are intended to comply with statutory changes and to continue to provide an efficient, clear process for courts to manage petitions for review of denials of request to remove names from the gang database. Expected costs result from the legislation and are limited to training, possible case management system updates, and the production of new forms.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Rule 3.2300(e)(3)(F) requires that the record be bound on the left margin. Is this necessary and helpful for courts, or do courts file records with a two-hole punch at the top?
- Rule 3.2300(e)(4) requires that a court notify the law enforcement agency of its failure to timely file the record, which means that a clerk must identify all petitions for review of denial of request to be removed from a gang database and determine when the record is due. Is there anything that could be added to the rule text to make this easier?
- Should a petition filed by an attorney that is not on form MC-1000 use the same name as that form (*Petition for Review of Denial of Request to Remove Name From Gang Database*) or is it sufficient if the petition simply includes “Gang Database Review” in its name?
- On form MC-1000, is the description of requirements of rule 3.2300(c) under “Notice to the Clerk:” helpful or can it be removed?
- In the instructions on page 2 of form MC-1000, is it helpful to direct filers to take or mail the form to the “civil” clerk’s office?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 3.2300, at pages 6–9
2. Form MC-1000, *Petition for Review of Denial of Request to Remove Name From Gang Database*, at pages 10–11

Rule 3.2300 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency**  
2 **denial of request to remove name from shared gang database**

3  
4 (a)–(c) \* \* \*

5  
6 (d) **Petition**

7  
8 (1) *Form*

9  
10 (A) Except as provided in (i) and (ii), ~~Request~~ *Petition for Review of Denial*  
11 *of Request to Remove Name From Gang Database* (form MC-1000)  
12 must be used to seek review under Penal Code section 186.35 of a law  
13 enforcement agency’s decision denying a request to remove a person’s  
14 name from a shared gang database.

15  
16 (i) A petition filed by an attorney need not be on form MC-1000.  
17 For good cause the court may also accept a petition from a  
18 nonattorney that is not on form MC-1000.

19  
20 (ii) Any petition that is not on form MC-1000 must contain the  
21 information specified in form MC-1000 and must include in its  
22 name the words “Gang Database Review.”

23  
24 (B) The person seeking review must attach to the petition under (A) either:

25  
26 (i) The law enforcement agency’s written verification, if one was  
27 received, of its decision denying the person’s request under Penal  
28 Code section 186.34 to remove his or her name—or, if the  
29 request was filed by a parent or guardian on behalf of a child  
30 under 18, the name of the child—from the shared gang database;  
31 or

32  
33 (ii) If the law enforcement agency did not provide a written  
34 verification responding to the person’s request under Penal Code  
35 section 186.34 within 30 days of submission of the request, a  
36 copy of the request and written documentation contesting the  
37 designation submitted to the law enforcement agency.

38  
39 (2) *Time for filing*

40  
41 The petition must be filed within the time frame specified in Penal Code  
42 section 186.35(b).

43  
44 (3) *Where to file*

45  
46 The petition must be filed in either the superior court of the county in which

1 the law enforcement agency is located or, if the person filing the petition  
2 resides in California, in the superior court of the county in which that person  
3 resides.

4  
5 (4) *Fee*

6  
7 The fee for filing the petition is \$25, as specified in Government Code  
8 section 70615.

9  
10 (5) *Service*

11 A copy of the petition with the attachment required under (1)(B) must be  
12 served either personally or by mail on the law enforcement agency, as  
13 provided in Code of Civil Procedure sections 1011–1013a. Proof of this  
14 service must be filed in the superior court with the petition.  
15

16  
17 (e) **Record**

18  
19 (1) *Filing*

20  
21 (A) The law enforcement agency must serve the record on the person filing  
22 the petition and must file the record in the superior court in which the  
23 petition was filed.

24  
25 (B) The record must be served and filed within 15 days after the date the  
26 petition is served on the law enforcement agency as required by  
27 subdivision (d)(5) of this rule.

28  
29 (C) If the record contains any documents that are part of a juvenile case file  
30 or are ~~sealed or~~ confidential under Welfare and Institutions Code  
31 section 827 or have been sealed, the law enforcement agency must  
32 include a coversheet that states “Confidential Filing – Juvenile Case  
33 File Enclosed.”  
34

35 (D) The procedures set out in rules 2.550 and 2.551 apply to any record  
36 sought to be filed under seal in a proceeding under this rule.  
37

38 (2) *Contents*

39  
40 The record is limited to the documents required by Penal Code section  
41 186.35(c).  
42

43 (3) *Format*

44  
45 (A) The cover or first page of the record must:  
46



- 1 (i) Clearly identify it as the record in the case;  
2  
3 (ii) Clearly indicate if the record includes any documents that are  
4 ~~sealed or~~ confidential under Welfare and Institutions Code  
5 section 827 or have been sealed;  
6  
7 (iii) State the title and court number of the case; and  
8  
9 (iv) Include the name, mailing address, telephone number, fax  
10 number (if available), e-mail address (if available), and California  
11 State Bar number (if applicable) of the attorney or other person  
12 filing the record on behalf of the law enforcement agency. The  
13 court will use this as the name, mailing address, telephone  
14 number, fax number, and e-mail address of record for the agency  
15 unless the agency informs the court otherwise in writing.  
16  
17 (B) All documents in the record must have a page size of 8.5 by 11 inches;  
18  
19 (C) The text must be reproduced as legibly as printed matter;  
20  
21 (D) The contents must be arranged chronologically;  
22  
23 (E) The pages must be consecutively numbered; and  
24  
25 (F) The record must be bound on the left margin.  
26

27 (4) *Failure to file the record*  
28

29 If the law enforcement agency does not timely file the required record, the  
30 superior court clerk must serve the law enforcement agency with a notice  
31 indicating that the agency must file the record within five court days of  
32 service of the clerks notice or the court may order the law enforcement  
33 agency to remove the name of the person from the shared gang database.  
34

35 (f) **Written argument**  
36

37 (1) *Contents*  
38

- 39 (A) The person filing the petition may include in the petition or separately  
40 serve and file a written argument about why, based on the record  
41 specified in Penal Code section 186.35(c), the law enforcement agency  
42 has failed to establish by clear and convincing evidence the active gang  
43 membership, associate status, or affiliate status of the person so  
44 designated or to be so designated by the law enforcement agency in the  
45 shared gang database.  
46

- 1 (B) The law enforcement agency may serve and file a written argument  
2 about why, based on the record specified in Penal Code section  
3 186.35(c), it has established by clear and convincing evidence the  
4 active gang membership, associate status, or affiliate status of the  
5 person.  
6  
7 (C) If an argument refers to something in the record, it must provide the  
8 page number of the record where that thing appears or, if the record has  
9 not yet been filed, the page number of the relevant document.  
10  
11 (D) Except for any required attachment to a petition, when an argument is  
12 included in the petition, nothing may be attached to an argument and an  
13 argument must not refer to any evidence that is not in the record.  
14

15 (2) *Time to serve and file*

16  
17 Any written argument must be served and filed within 15 days after the date  
18 the record is served.  
19

20 (3) *Format and length of argument*

21 (A) The cover or first page of any argument must:

- 22 (i) Clearly identify it as the argument of the person filing the petition  
23 or of the law enforcement agency;  
24  
25 (ii) State the title and, if assigned, court number of the case; and  
26  
27 (iii) Include the name, mailing address, telephone number, fax  
28 number (if available), e-mail address (if available), and California  
29 State Bar number (if applicable) of the attorney or other person  
30 filing the argument.  
31  
32

33 (B) An argument must not exceed 10 pages.

34 (C) The pages must be consecutively numbered.  
35

36  
37  
38 (g)-(i) \* \* \*  
39

Petition for Review of Denial of Request to Remove Name From Gang Database

Clerk stamps date here when form is filed.

DRAFT Not Approved by the Judicial Council

Instructions: Please read the instructions on the back of this form before completing and filing this form.

Notice to the Clerk: This petition is filed under Penal Code section 186.35 and California Rules of Court, rule 3.2300. Rule 3.2300(c) requires the presiding judge of each superior court to designate one or more judges to hear such petitions. This request must be submitted to a judge designated under rule 3.2300(c).

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Name of Person Filing This Petition:

- I am: [ ] The person whose name is in the gang database. [ ] The parent or guardian of the child under 18 whose name is in the gang database.

Your lawyer in this case (if you have one):

Name: State Bar No.:

Firm Name:

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer, give your information.)

Address:

City: State: Zip:

Telephone: Fax: E-Mail:

2 Decision You Are Requesting Be Reviewed

I am seeking review of the following law enforcement agency's denial of my request under Penal Code section 186.34 to remove my name or the name of my child or ward from a shared gang database. (Complete a. or b.)

Name of law enforcement agency:

Address:

City: State: Zip:

- [ ] a. The decision denying the request was served on me/my client by the law enforcement agency: [ ] By personal delivery [ ] By mail on (date:)

You must attach a copy of the written verification denying your request.

- [ ] b. The agency did not respond to my request, which I submitted in writing:

[ ] By personal delivery [ ] By mail on (date:)

You must attach a copy of your request and written documentation contesting your designation.

3 Reason for This Petition for Review

I am seeking review of the denial of my request on the basis that the law enforcement agency has not established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person whose name I requested be removed from the shared gang database.

4 Written Argument

- [ ] I have attached my written argument about why, based on the record specified in Penal Code section 186.35(b), the law enforcement agency has failed to establish by clear and convincing evidence the gang membership, associate status, or affiliate status of the person whose name I requested be removed from the street gang database.

NOTE: You are not required to submit written argument. If you wish to submit written argument, you can either include that argument in this petition or serve and file the argument separately within 15 days after the law enforcement agency serves and files the record in this proceeding. Please see rule 3.2300(f) for information about submitting written argument.



**5 Request for or Waiver of Oral Argument**

I understand oral argument can be requested in this case. I  am  am not requesting oral argument.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
*Signature*

**Instructions**

This form is only for seeking review by a court of a local law enforcement agency's written **or deemed** denial of a request under Penal Code section 186.34 to remove an individual's name from a shared gang database.

You must serve and file this form **no later than 90 calendar days** after either (1) the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34 to remove your name from a shared gang database or, if you are the parent or guardian of a child under 18 whose name is in the gang database, the child's name, or (2) the date your request was deemed denied under Penal Code section 186.34 (e). **If your petition is late, your request will be dismissed.**

**To serve and file this form, complete the following steps:**

**1. Fill out this form**

**In the second box on the right-hand side:** Fill in the name of the county for the superior court where you plan to file the petition and the street address for the court (see rule 3.2300(d)(3) for information about where to file this form).

**In Item 1:**

Fill in your name.

Check the box to indicate if you are the person whose name is in the gang database or that person's parent or guardian.

Fill in the name and firm name of your lawyer, if you have one.

Fill in your lawyer's contact information, or if you do not have a lawyer, your contact information.

**In Item 2:**

Fill in the name and address of the law enforcement agency whose decision you are petitioning the court to review.

**(a) If you received a written decision from the law enforcement agency denying your request to remove your name or the name of your child or ward from the gang database, attach a copy to the form. (b) If you did not receive a decision, and your request was deemed denied, be sure to complete the date and way in which you submitted the request.**

**In Item 4:**

Check whether or not you are attaching written argument to this request.

**In Item 5:**

Indicate whether or not you want to have oral argument on your petition or whether you want to give up (waive) oral argument, and have the court decide the case without oral argument.

**At the end of the form:**

Print and sign your name and fill in the date you signed the form.

**2. Make copies of the form**

Make a copy of the completed form for your records and **one** for the law enforcement agency.

**3. Serve the form**

Serve a copy of the completed form and **any** required attachment on the law enforcement agency 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 at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**4. File the form**

Take or mail the original completed form with a copy of the law enforcement agency decision attached and proof of service on the law enforcement agency to the **civil** clerk's office of the court where you are filing this form. 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.

Pay the \$25 filing fee and file this form, or if you are unable to pay this fee, file a request to waive court fees (form FW-001) in the court.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Revise Confidential Information Form under Civil Code § 1708.85 (MC-125)

*Committee or other entity submitting the proposal:*

Civil and Small Claims Committee

*Staff contact (name, phone and e-mail): Sarah Abbott, 415-865-7687, sarah.abbott@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Oct. 24, 2017

Project description from annual agenda: Item 6: Confidentiality in Cyber Retaliation Cases

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-10

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Title	Action Requested
Forms: Confidential Information Form Under Civil Code Section 1708.85	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form MC-125	January 1, 2019
Proposed by	Contact
Civil and Small Claims Advisory Committee	Sarah Abbott, Legal Services
Hon. Ann I. Jones, Chair	415-865-7687 phone sarah.abbott@jud.ca.gov

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### Executive Summary and Origin

The committee proposes revising *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125) to reflect recent amendments to California Civil Code section 1708.85. The amendments provide that the Judicial Council adopt or revise rules or forms to reflect the new law as appropriate by January 1, 2019.

### Background

Civil Code section 1708.85 was enacted in 2015 to create a private right of action for the wrongful distribution of sexually explicit materials, and provided that a plaintiff may file the action using a pseudonym and exclude or redact from all pleadings and documents filed in the action other “identifying characteristics” of the plaintiff.<sup>1</sup> Form MC-125 was originally adopted to comport with the statutory language of Assembly Bill 2643, which mandated that the council adopt a confidential information form for the parties to file in cases brought under Civil Code section 1708.85 when confidential identifying characteristics were excluded or redacted from the pleadings and the plaintiff proceeded using a pseudonym. The statute and form became operative July 1, 2015.

On January 1, 2018, Civil Code section 1708.75 was amended to require that, in cases where a plaintiff proceeds using a pseudonym, “[a]ll other parties and their agents and attorneys shall use this pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public.”<sup>2</sup> The

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<sup>1</sup> Civ. Code, § 1708.85(f)(1).

<sup>2</sup> Civ. Code, § 1708.85(f)(2)(A).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

amended statute also requires that, in cases where a plaintiff proceeds using a pseudonym, “[a]ny party filing a pleading, discovery document, or other document in the action shall exclude or redact any identifying characteristics of the plaintiff” from those documents, except for a confidential information form filed pursuant to the statute.<sup>3</sup> The amended statute further requires that “[a] party excluding or redacting identifying characteristics as provided in this section shall file with the court and serve upon all other parties a confidential information form that includes the plaintiff’s name and other identifying characteristics excluded or redacted. The court shall keep the plaintiff’s name and excluded or redacted characteristics confidential.”<sup>4</sup> The amendments also added “discovery documents” to the list of documents that are to be worded so as to protect the name and identifying information of the plaintiff.<sup>5</sup> Finally, the amended statute includes a more expansive definition of the term “identifying characteristics” than the prior version and creates a definition for the term “online identifiers” contained therein.<sup>6</sup>

The amended statute mandates that the Judicial Council, by January 1, 2019, adopt or revise as appropriate rules and forms in order to implement the amendments described above.<sup>7</sup>

## **The Proposal**

The Civil and Small Claims Advisory Committee is proposing revisions to *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125) to comply with the expanded mandate of California Civil Code section 1708.85(j).

Existing form MC-125 is broadly worded such that it can be filed with either a complaint or “other” document.<sup>8</sup> However, the instructions on the form are being expanded in light of the recent statutory amendments. For example, Instruction item 4 of form MC-125 provides that: “‘Identifying characteristics’ that may be redacted include, but are not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background. See Civil Code section 1708.85(f)(3).” This instruction on the current form appears to make the redaction or exclusion of identifying characteristics permissive rather than mandatory. The statute as amended makes redaction or exclusion of identifying characteristics mandatory by all parties if the plaintiff is

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<sup>3</sup> Civ. Code, § 1708.85(f)(2)(B)(i).

<sup>4</sup> Civ. Code, § 1708.85(f)(2)(B)(ii).

<sup>5</sup> Civ. Code, § 1708.85(f)(2)(C).

<sup>6</sup> Civ. Code, § 1708.85(f)(3).

<sup>7</sup> Civ. Code, § 1708.85(j).

<sup>8</sup> When it was created in 2015, form MC-125 was deliberately worded for use by all parties, even though the statute as originally enacted only expressly mandated that a plaintiff proceeding using a pseudonym and excluding or redacting identifying characteristics file with the court and serve upon the defendant a confidential information form. The Judicial Council concluded that, because the statute required the defendant or other parties also to ensure that confidential identifying characteristics not be included in documents filed with the court, and placed the responsibility for redacting such information with the parties, the form should be available for use by defendants and other parties as well as by the plaintiff.

proceeding under a pseudonym.<sup>9</sup> Therefore, in the proposed form, the phrase “may be” has been replaced with “plaintiff may, and all other parties must” in Instruction item 4. Similar revisions have been made to Instruction items 1 and 3.

Further, Instruction item 4 on the proposed form has been revised to incorporate the amended definition of “identifying characteristics” and to include a reference to the newly enacted definition of “online identifiers” contained therein.<sup>10</sup>

### **Alternatives Considered**

In reviewing form MC-125, the committee concluded that no changes to the existing form were *required* to implement the amendments to Civil Code section 1708.85 and therefore considered making no changes to the form. However, the committee concluded that the proposed changes to Instruction items 1, 3, and 4 would make the form clearer for litigants.

Alternate revisions to the form were also considered. In light of the statutory amendments clarifying that form MC-125 is to be used by all parties excluding or redacting information in cases where a plaintiff is proceeding under a pseudonym—and that form MC-125 may accompany many different types of documents filed by various parties within a single case—the committee also considered revising item 2 of the form to require more detail about the identity of the filing party and the name of the document with which the form is being filed. While the committee concluded that such a revision is not necessary to implement the statute, it is asking for specific comments as to whether such a revision would be helpful to the courts.

Because the amendments added “discovery documents” to the list of documents that are to be worded so as to protect the name and identifying information of the plaintiff, the committee also considered the alternative of either developing another form or revising form MC-125 in some way for use with discovery documents. The committee concluded that existing form MC-125 is suitable for use with discovery documents.

### **Implementation Requirements, Costs, and Operational Impacts**

Because Civil Code section 1708.85 and form MC-125 have been operative for several years, there is unlikely to be significant training required for court clerks and judicial officers regarding the revised form. Moreover, because “[t]he responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court rests solely with the parties and their attorneys,”<sup>11</sup> it is up to the parties and not the court to familiarize themselves with the amended definition of “identifying characteristics” and comply with the use of the revised form.

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<sup>9</sup> See Civ. Code, § 1708.85((f)(2)(B)(i) (“Any party filing a pleading, discovery document or other document in the action shall exclude or redact any identifying characteristics . . .”); Civ. Code, § 1708.85((f)(2)(B)(ii) (“A party excluding or redacting identifying characteristics as provided in this section shall file with the court and serve on all other parties a confidential information form . . .”).

<sup>10</sup> Civ. Code, § 1708.85((f)(3).

<sup>11</sup> Civ. Code, § 1708.85(f)(4).



## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Do the proposed revisions to form MC-125 appropriately implement the amendments to Civil Code section 1708.85?
- Should an item be added to form MC-125 that requires a party filing the document to include more detail about the identity of the filing party and more specific information about the document with which the form is being filed?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Form MC-125, at pages 5–6

2. Link A: Civ. Code, § 1708.85, as amended, is available at

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1708.85&lawCode=CIV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1708.85&lawCode=CIV)

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR <i>(name or pseudonym)</i> :	STATE BAR NO:   STATE:                      ZIP CODE:  FAX NO.:	FOR COURT USE ONLY     <b>DRAFT</b> <b>03/19/18</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
SHORT TITLE:		
<b>CONFIDENTIAL INFORMATION FORM UNDER CIVIL CODE SECTION 1708.85</b>		CASE NUMBER:
<b>TO COURT CLERK: THIS FORM IS CONFIDENTIAL</b>		

INSTRUCTIONS FOR FILER ARE ON BACK

- This action includes a claim under Civil Code section 1708.85.
- The document with which this form is being filed is a
  - complaint.
  - other *(describe)*:
- Name of Plaintiff** *(complete if being filed with complaint)*
  - Plaintiff did not use a pseudonym in the complaint.
  - Plaintiff used a pseudonym in the complaint *(complete the following for each plaintiff for whom a pseudonym was used)*.

Pseudonym used

True name of plaintiff

4. **Redacted Information** *(complete for any pleading or document that includes redactions)*

	LOCATION OF REDACTION <i>(page and line where the redaction occurs)</i>	INFORMATION REDACTED <i>(text that has been redacted)</i>
1.		
2.		
3.		

Continued on next page.

SHORT TITLE:	CASE NUMBER:
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	LOCATION OF REDACTION <i>(page and line where the redaction occurs)</i>	INFORMATION REDACTED <i>(text that has been redacted)</i>
4.		
5.		
6.		
7.		

Additional pages are attached. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_ (TYPE OR PRINT NAME)  \_\_\_\_\_ (SIGNATURE)

**INSTRUCTIONS**

*(Note: This form may be used only in cases brought under Civil Code section 1708.85.)*

- To protect personal privacy issues, parties who bring an action under Civil Code section 1708.85 for distribution of sexually explicit material may use a pseudonym in place of the true name of the plaintiff and may exclude or redact from all pleadings and documents other identifying characteristics. See Civil Code, section 1708.85(f)(1). **In such cases**, papers filed by other parties **must** be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation. See Civil Code, section 1708.85(f)(2).
- A plaintiff who uses a pseudonym must file this confidential information form with the court at the time of filing the complaint, with items 2 and 3 completed, in order to provide his or her true name to the court. Plaintiff must also serve the form on defendant along with the complaint and summons. Counsel for a party filing under a pseudonym may provide the pseudonym for the name of the represented party in the attorney/party information box at the top of the form.
- Any party **required to redact** identifying characteristics from any pleading or document filed with the court other than a complaint **must** file with the court and serve on all parties this confidential information form, with items 2 and 4 completed, providing any identifying characteristics that have been redacted from the pleading or document and stating where the information was redacted.
- "Identifying characteristics" that the plaintiff may and all other parties **must** redact include, but are not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background, telephone number, Email address, social media profiles, online identifiers, contact information, or any other information, including images of the plaintiff, from which the plaintiff's identity can be discerned. See Civil Code section 1708.85(f)(3). (See Civ. Code, §1708.85(f)(3)(B) for a list of "online identifiers.")
- If more space is needed to describe all the redactions in a pleading or document, form MC-025 may be attached, with information provided in the same format as in item 4.
- A copy of this form should be completed each time a pleading or document redacted under Civil Code section 1708.85 is filed and should be served and filed along with the redacted document.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Judicial-Council Sponsored Legislation: Limited Civil Cases and Unlawful Detainers (Amend Code of Civil Procedure, §§ 85, 86, 86.1, 91,95, 96, 630.20, 630.28, 630.29, and 630.30; amend Cal. Rules of Court, rule 3.1546).

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Anne M Ronan, 415-865-8933, [anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 10/24/17

Project description from annual agenda:

New Civil Tiers and Streamlined Litigation

Priority 1 [at direction of Chief Justice]

Project Summary: Assess and develop recommendations as outlined in Report of the Commission on Future of California's Court System (Futures Commission) for:

- Advancing a legislative proposal for increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000, and creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
- Developing streamlined methods for litigating and managing all types of civil cases

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

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

This is the first step in implementing the recommendations of the Futures Commission relating to new civil tiers and streamlined litigation. While the committee is continuing to work on the complexities of the new intermediate tier recommended in the Futures Report, it decided to move forward at the same time with the recommendations focused on limited civil cases. This will allow some of the more straightforward recommendations to move forward more quickly, instead of having to wait while the details of the more complex recommendations are being worked out. The attached ITC reflects that decision, and proposes statutory amendments (plus one rule amendment) necessary to implement the recommendations to raise the jurisdictional amount for limited civil cases to \$50,000, and to include unlawful detainer cases with other limited civil cases within the provisions of the mandatory expedited jury trial (mandatory EJT) statutes.

PCLC will be reviewing the legislative aspects of the proposal. Should the amendments to the mandatory EJT statute be enacted, to include unlawful detainer actions, then the rule re mandatory EJT would also need to be amended. The advisory committee would like to circulate that rule amendment at the same time as the legislative amendment, so the public can comment on both at once. This will save time and allow the rule to be approved more quickly if the legislation goes forward. Moving it forward to the Judicial Council would, of course, be conditioned on the legislation actually being enacted.

The advisory committee is expecting some opposition to both the proposal to increase limited civil case jurisdiction amounts and the proposal to include UDs in mandatory EJTs and other limited civil procedures. There was some dissent on the committee, but the large majority agreed we should move forward with the ITC, particularly since these proposals are part of the Futures Commission recommendations the Chief directed the advisory committee to develop a proposal for. The concerns raised are discussed in the section on alternatives, and reflected in the specific questions raised for comments at the end of the ITC. No concerns were raised about the rule proposal, which all agreed would be needed if the legislation is enacted.

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## INVITATION TO COMMENT SPR18-11

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Title	Action Requested
Judicial Council–Sponsored Legislation: Limited Civil Cases and Unlawful Detainers	Review and submit comments by Monday, June 11, 2018
Proposed Rules, Forms, Standards, or Statutes Amend Code Civ. Proc., §§ 85, 86, 86.1, 91, 95, 96, 630.20, 630.28, 630.29, and 630.30; amend Cal. Rules of Court, rule 3.1546.	Proposed Effective Date January 1, 2020
Proposed by Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Contact Anne M. Ronan, 415-865-8933 <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a>

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### Executive Summary and Origin

This proposal from the Civil and Small Claims Advisory Committee would increase the jurisdictional amount of limited civil cases from \$25,000 to \$50,000 and would include unlawful detainer within that jurisdictional amount in all procedures applicable to limited civil cases, including mandatory expedited jury trials (EJTs). The proposal is based on the recommendations of the Commission on the Future of California’s Court System (Futures Commission).

### Background

The Futures Commission report, issued in May 2017, included recommendations for improving the litigation and adjudication of civil cases. These recommendations included increasing the jurisdictional limit of the limited civil case tier, developing an intermediate tier of cases with claims of higher value than that of limited cases, and streamline litigation within both tiers in several ways, including changing how and how much discovery is to be generally permitted. The Chief Justice directed the Civil and Small Claims Advisory Committee to develop legislative proposals to implement these recommendations of the Futures Commission.

Full consideration of all the recommendations from the Futures Commission relating to civil procedures, including development of a new intermediate civil tier and revised discovery rules for both the limited and the intermediate cases, is underway. This proposal represents a first step in implementing the recommendations, focusing solely on the recommendations relating to the jurisdictional amount of the limited civil case tier and the place of unlawful detainer cases within

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

that tier. The advisory committee concluded that the efficiencies to be obtained from these proposals need not await the full development of all the recommendations in the report.

## **The Proposal**

The proposal consists of several amendments to the Code of Civil Procedure, which would be sponsored by the Judicial Council, plus one amendment to the California Rules of Court, approval of which would be conditioned on the enactment of the legislative proposal. The proposal and the rationale behind it are described below.

### **Increased jurisdictional amount**

This proposal would increase the jurisdictional amount of limited civil cases from \$25,000 to \$50,000. In developing this recommendation, the Futures Commission took into account the changes in the value of the dollar since the jurisdictional amount for limited civil cases (previously, for municipal courts) was last increased in 1986. As a result of inflation, a case worth \$25,000 in 1986 was worth \$55,000 in 2017.<sup>1</sup>

The Futures Commission noted that increasing the jurisdictional amount would result in more cases coming within the ambit of the existing economic litigation procedures that apply in limited civil cases. These simplified procedures could decrease the cost of litigation while increasing the public's access to the courts in these cases.<sup>2</sup> This would be true even without further amending the existing procedures for such cases.<sup>3</sup> Currently, economic litigation procedures simplify the trial and pretrial processes and limit discovery, thereby reducing the costs of litigation. Special demurrers are eliminated and motions to strike limited. Discovery by each party is limited to 35 written discovery requests in total, one deposition, disclosure of expert witnesses, and other limited discovery as set out in the limited civil cases statutes. Plaintiffs have the option to use a case questionnaire to elicit an exchange of fundamental factual information about the case. Either party may request pretrial exchanges of witness and exhibit lists, and parties may offer trial testimony in the form of affidavits or declarations under penalty of perjury. (See Code Civ. Proc., §§ 90–98.)<sup>4</sup>

The Futures Commission further noted that changing the jurisdictional limit for limited cases could also result in efficiencies for the courts. Because more cases would be subject to the provisions now in effect for limited cases, in-person case management conferences would not be required (see Cal. Rules of Court, rule 3.722(e)) for those cases, and generally mandatory

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<sup>1</sup> Jud. Branch of Cal., *Commission on the Future of California's Court System: Report to the Chief Justice* (Futures Commission report) (2017), p. 20. This value was calculated using the CPI Inflation Calculator from the Bureau of Labor Statistics.

<sup>2</sup> Futures Commission report, p. 23.

<sup>3</sup> The Futures Commission has recommended some additional changes to the procedures for limited cases, including amending the procedures for discovery in limited cases, for example, but the advisory committee will be considering those procedural changes when it considers similar changes recommended for larger cases.

<sup>4</sup> Futures Commission report, note 9 of chapter 1, p. 45.

expedited jury trial rules would apply to them, resulting in smaller juries and less time for jury selection and deliberation. (Code Civ. Proc., § 630.02.)<sup>5</sup>

### **Unlawful detainers as limited civil cases**

As noted above, most limited civil cases are subject to mandatory expedited jury trials. (Code Civ. Proc., § 630.02.) Unlawful detainer<sup>6</sup> actions—although generally within the jurisdiction of the limited civil case tier—are currently exempted from the economic litigation pretrial procedures of limited civil cases and from mandatory EJT. The Futures Commission noted that this is so even though more jury trials are held in those types of cases than in any other type of limited civil case.<sup>7</sup> The commission concluded that including these cases under the provisions of the mandatory EJT statute would make trials in unlawful detainers less costly for the parties and more efficient for the courts.<sup>8</sup> The advisory committee agrees. Moreover, the rule of court regarding mandatory expedited jury trials starts by providing that all cases subject to mandatory EJT are subject to the pretrial procedures for limited civil actions. (Rule 3.1546(a).) In following the recommendations of the Futures Commission, this proposal would remove the exemptions for unlawful detainer cases from the statutes setting out the limited civil pretrial procedures as well as from the statutes providing for mandatory EJT.

### **Specific statutes and rules to be amended**

To implement the changes described above, the attached proposal would amend the following statutes and rules.

***Amendments to the limited civil economic litigation procedures.*** Proposed amendments throughout sections 85, 86, and 86.1 of the Code of Civil Procedure<sup>9</sup> would replace the dollar amount \$25,000 with \$50,000.<sup>10</sup>

Section 91 is proposed to be amended in two places. The proposed amendment to subdivision (b) would delete the exemption for unlawful detainers. In addition, a new subdivision (d) is proposed to be added, immediately following the provision allowing a party to move to be withdrawn from the economic litigation procedures, providing for a shorter time frame for making the motion in

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<sup>5</sup> Futures Commission report, p. 23.

<sup>6</sup> The phrase *unlawful detainer* is used here to represent all proceedings under chapter 4 (commencing with section 1159) of title 3 of part 3 of the Code of Civil Procedure.

<sup>7</sup> Futures Commission report, p. 25. Judicial Branch Statistical Information System reports show that almost half of the limited civil cases reported as disposed by jury trial are unlawful detainer cases.

<sup>8</sup> Futures Commission report, p. 25.

<sup>9</sup> All references to statutes are to the Code of Civil Procedure unless otherwise noted. All references to rules are to the California Rules of Court.

<sup>10</sup> No other changes would be made to limited civil case jurisdiction. For example, cases seeking permanent injunctions, determination of title to real property, modification of child or spousal support, and most declaratory relief are all now—and will continue to be—unlimited civil cases, no matter the value placed on such relief. Similarly, any cases that are statutorily exempt from limited civil jurisdiction, such as family law cases and probate proceedings, would continue to be exempt.

unlawful detainer actions. This is consistent with existing procedures in unlawful detainers which generally provide for shorter time for notice of motions, given the expedited nature of the proceedings. For example, section 1170.7 provides for five days' notice for summary judgment motions in unlawful detainers, and section 1170.8 provides for five days' notice for discovery motions in such actions. Rule 3.1347 provides for opposition either orally at hearing or in writing at least one court day in advance of hearing. Similar timing provisions have been included here as proposed subdivision (d).<sup>11</sup>

Proposed amendments to section 95 would provide for a shorter time frame in unlawful detainer cases for the noticed motion authorized by the statute.

Proposed amendments to section 96 similarly would provide a shorter time frame for requesting a pretrial statement and for the exchange of such statements. The suggested time frame is based on the provision in section 1170.5 that a trial in an unlawful detainer case is to be set no more than 20 days after the request for trial, once the case is at issue.

***Amendments to the mandatory expedited jury trial statutes.*** Proposed amendments to section 630.20 would remove the subdivision that exempts unlawful detainers from the mandate of an expedited jury trial. No other substantive amendments have been proposed to the section.

Proposed amendments to sections 630.28 and 630.29 would allow for amendment of the rules of court relating to making motions to opt out of mandatory EJTs (a shorter time frame needs to be added for unlawful detainers).<sup>12</sup>

A proposed amendment to section 630.30, the sunset provision, would eliminate the sunset for mandatory EJTs generally, but would add a sunset of the proposed revocation of the unlawful detainer exemption to allow for time to evaluate the impact of making unlawful detainer proceedings subject to these statutes.<sup>13</sup>

***Amendments to rules of court regarding pretrial procedures for mandatory EJTs.*** The proposed amendment to rule 3.1546 includes new paragraph (4) of subdivision (c) to address timing of a request to opt out, and any objection thereto in unlawful detainer cases. Generally, the time for making such a request is at least 45 days before the date set for trial, with a response due within 15 days. Because unlawful detainer trials are set in an expedited fashion, this time

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<sup>11</sup> If this legislation is enacted, the advisory committee will develop rules to ensure timely service of such motions and of any written oppositions.

<sup>12</sup> A proposed amendment to the mandatory EJT rules is being circulated with this legislative proposal, so that it can be adopted by the council without delay if the legislation is enacted.

<sup>13</sup> The advisory committee notes that under the current law, all the mandatory EJT statutes will sunset by the time the proposed amendment to those statutes goes into effect unless some other legislative action is taken before July 1, 2019. A bill is currently pending at the Legislature to eliminate this sunset. See Assembly Bill 3248.



frame has been adjusted for such cases. This rule change would only be recommended if the legislative proposal is enacted.

In addition, because this rule will need to be amended for the above purpose, the committee proposes amending it at the same time to eliminate obsolete provisions originally included in the rule to address how to apply opt-out timing in cases that were already on file at the time the law providing for mandatory EJTs became operative. These provisions of the rule are somewhat confusing because the time frame to which they apply has passed. (See proposed deletions to paragraph (2) of subdivision (c) and of the advisory committee comment.)

## **Alternatives Considered**

### **Jurisdictional limit of \$50,000**

Because the Civil and Small Claims Advisory Committee has been directed by the Chief Justice to develop a legislative proposal to implement certain recommendations of the Futures Commission, the advisory committee did not consider the alternative of not making this proposal. The committee did consider, however, the alternative of delaying this proposal until it has developed all the details of a larger proposal, enveloping all the recommendations regarding limited civil cases, developing a new intermediate tier, and making significant changes to the way discovery is handled in both sets of cases. However, because the other recommendations are complex and will take a longer time to develop than this first set, the committee decided to move forward with this set of proposals first. The committee will continue to work on the other recommendations in the Futures Commission report, with the goal of having a further set of proposals ready to circulate in the next comment cycle.

Within the committee, some members supported increasing the limited case jurisdiction only with respect to those cases with claims between \$25,000 and \$50,000 that involved simple issues and limited numbers of parties. Those members pointed out that some cases within that dollar range, such as certain employment cases, may include claims that involve complex issues and multiple parties and thus may be inappropriate for litigating within the more streamlined procedures and limited discovery that apply to limited civil cases. Most of the members concluded, however, that such cases could be handled appropriately either by a party's moving under section 91 to withdraw from the streamlined procedures on the grounds that litigating the case under them is not practicable, moving under section 96 for leave to conduct additional discovery, or showing good cause for not using the mandatory expedited jury trial (should it be applicable to the case) under section 630.20(b)(9). The committee also considered the concern that some employment cases with lost earnings within the limited case jurisdictional amount include claims for emotional damages that may go over the \$50,000 limit, but noted that in such cases, as in personal injury cases, a plaintiff may plead the case and complete the civil cover sheet in such a way that the case will be filed as an unlimited civil case.

### **Unlawful detainer actions**

The advisory committee, in developing proposed legislation to implement the recommendation of the Futures Commission to treat unlawful detainers like other limited civil cases and include them within the mandatory EJT provisions, considered concerns raised by certain members of

the committee that, even when unlawful detainers are simple, they have very high stakes, with the defendant potentially facing homelessness. These committee members suggested that, given these stakes, unlawful detainer actions should not be subject to mandatory expedited jury trials or the more limited discovery procedures generally applicable in limited civil cases. The majority of the committee noted, however, that mandatory EJT procedures provide five hours per side for voir dire and trial, which, with only eight jurors, should generally be sufficient for limited civil cases. They also noted that parties could ask to opt out of the mandatory EJT if they had good cause for a longer trial. Ultimately, the majority of the committee decided that the proposal to include unlawful detainer proceedings in mandatory EJTs, as recommended in the Futures Report, should be circulated for comment.

In addition, while considering how limited civil case procedures would apply to unlawful detainer proceedings, the committee considered the alternative of amending the limited case statutes to provide for a shorter time frame for discovery in such cases. The committee concluded that it need not recommend that the council sponsor legislation to amend section 94 (listing the discovery that may be conducted in limited civil cases) because the statute does not include any timing provisions. The advisory committee notes that the statutes authorizing most of the types of discovery listed in section 94 already provide shorter time frames for making and responding to the discovery requests in unlawful detainer proceedings.<sup>14</sup>

The committee further notes, however, that no such special provisions relating to unlawful detainer cases have are currently in the statutes relating to the disclosure of expert witnesses (sections 2034.220 and 2034.230), which section 94 also expressly includes in the discovery allowed in limited civil cases. The committee decided not to include an amendment to those sections to address the timeframe in this proposal, but asks that commenters consider whether such an amendment would be appropriate and, if so, in what form it should be.

### **Implementation Requirements, Costs, and Operational Impacts**

The primary impacts of this proposal would be: (1) more cases in the limited tier, and (2) more trials held as mandatory EJTs. The former is likely to result in loss of filing fee revenues because more cases can be filed under the lower filing fee of limited cases, as discussed below. The latter is likely to result in savings for courts, with smaller jury pools required in more cases. This should provide significant court economies in unlawful detainer cases, which constitute a significant portion of limited civil jury trials. There will also be training costs, however, and potentially costs to change computerized case management programs to include unlawful detainers as EJTs.

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<sup>14</sup> For most of the types of discovery listed in section 94, statutory provisions provide that discovery requests in unlawful detainer proceedings may be served 5 days after service of process (rather than after 20 days, in other cases) and must be responded to within 10 (rather than 30) days. See § 2025.270 (depositions), §§ 2030.010 and 2030.260 (interrogatories), §§ 2031.020 and 2031.260 (requests for inspection of documents), and §§ 2033.020 and 2033.250 (requests for admission).

The Futures Commission noted that with no change to the filing fee structure, the creation of this tier could result in some loss of revenue from filing fees. Currently, the filing fee for higher-value limited cases is \$65 less than for unlimited cases. With more cases filed as limited civil cases, fewer will be filed as unlimited cases, resulting in a loss of revenue from filing fees. Some idea of the impact of changes in the jurisdictional amount can be gathered from the impact of previous changes. When the jurisdictional amount for municipal court cases was tripled from \$5,000 to \$15,000 effective July 1, 1979, approximately 8 to 10 percent more municipal court cases were filed the next year. When the jurisdictional amount was increased from \$15,000 to \$25,000 effective January 1, 1986, the impact was a 3 to 4 percent increase in municipal court filings. (See *Judicial Council Report on Raising Municipal Court Jurisdiction and Economic Litigation from \$25,000 to \$50,000*, October 24, 1995, at pp. 3, 10–11.) This data suggests that doubling the jurisdictional amount from \$25,000 to \$50,000 might result in an increase of 5 to 7 percent of cases being filed as limited cases.<sup>15</sup> This point will require further analysis to determine the most likely fiscal impact.

The advisory committee notes that the proposal should have no impact on distribution of funds to law libraries. Law libraries receive a substantial amount of their funding from first paper filing fees in civil actions.<sup>16</sup> The distributions to the law library fund are a set amount per filing; the total amount differs from county to county, but within each county it does not change based on whether the case is characterized as limited or unlimited. (See Bus. & Prof. Code, § 6321(a).)

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<sup>15</sup> Futures Commission report, p. 47. The Judicial Council’s *2017 Court Statistics Report* shows that 352,562 limited civil cases were filed in fiscal year 2016.

<sup>16</sup> The required distributions of the filing fees in civil cases are stated in Government Code sections 68085.3 (distribution of filing fees in unlimited cases, family law matters, and general probate cases) and 68085.4 (distribution of filing fees in limited cases, guardianships, and probates of small value estates). Both statutes contain the same provision for distributions for law libraries, at subdivision (b)(1): “To the county law library fund, the amount described in Sections 6321 and 6322.1 of the Business and Professions Code.”

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the increase in the limited civil case jurisdictional amount in Code of Civil Procedure sections 85, 86, and 86.1 to \$50,000 be a blanket increase, as proposed here, or should exceptions be made for some cases with demands between \$25,000 and \$50,000? If there should be exceptions, what would they include or how would they be defined?
- Can unlawful detainer jury trials generally be completed within the time frames of the mandatory expedited jury trial statutes (Code Civ. Proc., § 630.23)? Is it appropriate to handle them under those provisions?
- Should Code of Civil Procedure sections 2034.220 and 2034.230 regarding the disclosure of the identity of expert witnesses be amended to provide a shorter time frame for making and responding to requests for such disclosure in unlawful detainer proceedings?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 10 weeks from the enactment of the proposed legislation until its effective date provide sufficient time for implementation? Or should additional time be requested?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Text of proposed amended Code of Civil Procedure sections 85, 86, 86.1, 91, 95, 96, 630.20, 630.28, 630.29, and 630.30, at pages 9–15
2. Text of proposed amended Cal. Rules of Court, rule 3.1546, at pages 16–17

Code of Civil Procedure sections 85, 86, 86.1, 91, 95, 96, 630.20, 630.28, 630.29, and 630.30 would be amended, effective January 1, 2020, to read:

1 **85.**

2 An action or special proceeding shall be treated as a limited civil case if all of the  
3 following conditions are satisfied, and, notwithstanding any statute that classifies an  
4 action or special proceeding as a limited civil case, an action or special proceeding shall  
5 not be treated as a limited civil case unless all of the following conditions are satisfied:

6  
7 (a) The amount in controversy does not exceed ~~twenty-five~~ fifty thousand dollars  
8 (~~\$25,000~~ \$50,000). As used in this section, “amount in controversy” means the amount of  
9 the demand, or the recovery sought, or the value of the property, or the amount of the  
10 lien, that is in controversy in the action, exclusive of attorneys’ fees, interest, and costs.

11  
12 (b) The relief sought is a type that may be granted in a limited civil case.

13  
14 (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is  
15 exclusively of a type described in one or more statutes that classify an action or special  
16 proceeding as a limited civil case or that provide that an action or special proceeding is  
17 within the original jurisdiction of the municipal court, including, but not limited to, the  
18 following provisions:

19 (1) Section 798.61 or 798.88 of the Civil Code.

20 (2) Section 1719 of the Civil Code.

21 (3) Section 3342.5 of the Civil Code.

22 (4) Section 86.

23 (5) Section 86.1.

24 (6) Section 1710.20.

25 (7) Section 7581 of the Food and Agricultural Code.

26 (8) Section 12647 of the Food and Agricultural Code.

27 (9) Section 27601 of the Food and Agricultural Code.

28 (10) Section 31503 of the Food and Agricultural Code.

29 (11) Section 31621 of the Food and Agricultural Code.

30 (12) Section 52514 of the Food and Agricultural Code.

31 (13) Section 53564 of the Food and Agricultural Code.

32 (14) Section 53069.4 of the Government Code.

33 (15) Section 53075.6 of the Government Code.

34 (16) Section 53075.61 of the Government Code.

35 (17) Section 5411.5 of the Public Utilities Code.

36 (18) Section 9872.1 of the Vehicle Code.

37 (19) Section 10751 of the Vehicle Code.

38 (20) Section 14607.6 of the Vehicle Code.

39 (21) Section 40230 of the Vehicle Code.

40 (22) Section 40256 of the Vehicle Code.

41

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

1 **86.**

2 (a) The following civil cases and proceedings are limited civil cases:

3  
4 (1) A case at law in which the demand, exclusive of interest, or the value of the property  
5 in controversy amounts to ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000) or less.

6 This paragraph does not apply to a case that involves the legality of any tax, impost,  
7 assessment, toll, or municipal fine, except an action to enforce payment of delinquent  
8 unsecured personal property taxes if the legality of the tax is not contested by the  
9 defendant.

10  
11 (2) An action for dissolution of partnership where the total assets of the partnership do  
12 not exceed ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000); an action of interpleader  
13 where the amount of money or the value of the property involved does not exceed fifty  
14 thousand dollars (~~\$25,000~~ \$50,000).

15  
16 (3) An action to cancel or rescind a contract when the relief is sought in connection with  
17 an action to recover money not exceeding ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~  
18 \$50,000) or property of a value not exceeding ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~  
19 \$50,000), paid or delivered under, or in consideration of, the contract; an action to revise  
20 a contract where the relief is sought in an action upon the contract if the action otherwise  
21 is a limited civil case.

22  
23 (4) A proceeding in forcible entry or forcible or unlawful detainer where the whole  
24 amount of damages claimed is ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000) or  
25 less.

26  
27 (5) An action to enforce and foreclose a lien on personal property where the amount of  
28 the lien is ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000) or less.

29  
30 (6) An action to enforce and foreclose, or a petition to release, a lien arising under  
31 Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil  
32 Code, or to enforce and foreclose an assessment lien on a common interest development  
33 as defined in Section 4100 or 6534 of the Civil Code, where the amount of the liens is  
34 ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000) or less. However, if an action to  
35 enforce the lien affects property that is also affected by a similar pending action that is  
36 not a limited civil case, or if the total amount of liens sought to be foreclosed against the  
37 same property aggregates an amount in excess of ~~twenty-five~~ fifty thousand dollars  
38 (~~\$25,000~~ \$50,000), the action is not a limited civil case.

39  
40 (7) An action for declaratory relief when brought pursuant to either of the following:  
41

1 (A) By way of cross-complaint as to a right of indemnity with respect to the relief  
2 demanded in the complaint or a cross-complaint in an action or proceeding that is  
3 otherwise a limited civil case.

4  
5 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and client,  
6 pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the  
7 Business and Professions Code, where the amount in controversy is ~~twenty-five~~ fifty  
8 thousand dollars (~~\$25,000~~ \$50,000) or less.

9  
10 (8) An action to issue a temporary restraining order or preliminary injunction; to take an  
11 account, where necessary to preserve the property or rights of any party to a limited civil  
12 case; to make any order or perform any act, pursuant to Title 9 (commencing with  
13 Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a  
14 receiver pursuant to Section 564 in a limited civil case; to determine title to personal  
15 property seized in a limited civil case.

16  
17 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6 of  
18 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to  
19 enforce the liability of the debtor of a judgment debtor where the interest claimed  
20 adversely is of a value not exceeding ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ 50,000)  
21 or the debt denied does not exceed ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000).

22  
23 (10) An arbitration-related petition filed pursuant to either of the following:

24  
25 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except  
26 for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the  
27 Insurance Code, if the petition is filed before the arbitration award becomes final and the  
28 matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9),  
29 inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes  
30 final and the amount of the award and all other rulings, pronouncements, and decisions  
31 made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

32 (B) To confirm, correct, or vacate a fee arbitration award between an attorney and client  
33 that is binding or has become binding, pursuant to Article 13 (commencing with Section  
34 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the  
35 arbitration award is ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000) or less.

36  
37 (b) The following cases in equity are limited civil cases:

38  
39 (1) A case to try title to personal property when the amount involved is not more than  
40 ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~ \$50,000).

1 (2) A case when equity is pleaded as a defensive matter in any case that is otherwise a  
2 limited civil case.

3  
4 (3) A case to vacate a judgment or order of the court obtained in a limited civil case  
5 through extrinsic fraud, mistake, inadvertence, or excusable neglect.

6  
7 **86.1.**

8 An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of  
9 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and  
10 Safety Code) is a limited civil case if civil penalties are not sought or amount to ~~twenty-~~  
11 five fifty thousand dollars (~~\$25,000~~ \$50,000) or less.

12  
13 **91.**

14 (a) Except as otherwise provided in this section, the provisions of this article apply to  
15 every limited civil case.

16  
17 (b) The provisions of this article do not apply to any action under Chapter 5.5  
18 (commencing with Section 116.110) ~~or any proceeding under Chapter 4 (commencing~~  
19 ~~with Section 1159) of Title 3 of Part 3.~~

20  
21 (c) Any action may, upon noticed motion, be withdrawn from the provisions of this  
22 article, upon a showing that it is impractical to prosecute or defend the action within the  
23 limitations of these provisions.

24  
25 (d) Notwithstanding (c), when such a motion is made in an unlawful detainer action or  
26 other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3,  
27 such motion may be made on 5 days' notice, with any opposition to be made either orally  
28 at the hearing or, if in writing, served and filed one court day before the hearing.

29  
30 **95.**

31 (a) The court may, on noticed motion and subject to such terms and conditions as are just,  
32 authorize a party to conduct additional discovery, but only upon a showing that the  
33 moving party will be unable to prosecute or defend the action effectively without the  
34 additional discovery. In making a determination under this section, the court shall take  
35 into account whether the moving party has used all applicable discovery in good faith,  
36 and whether the party has attempted to secure the additional discovery by stipulation or  
37 by means other than formal discovery.

38  
39 (b) Notwithstanding (a), when such a motion is made in an unlawful detainer action or  
40 other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3,  
41 such motion may be made on 5 days' notice, with any opposition to be made either orally  
42 at the hearing or, if in writing, served and filed one court day before the hearing.



1 ~~(b)~~ (c) The parties may stipulate to additional discovery.

2  
3 **96.**

4 (a) Any party may serve on any other party a request in substantially the following form:

5 TO: \_\_\_\_\_,

6 attorney for: \_\_\_\_\_

7 You are requested to serve on the undersigned, within 20 days, a statement of: the names  
8 and addresses of witnesses (OTHER THAN A PARTY WHO IS AN INDIVIDUAL) you  
9 intend to call at trial; a description of physical evidence you intend to offer; and a  
10 description and copies of documentary evidence you intend to offer or, if the documents  
11 are not available to you, a description of them. Witnesses and evidence that will be used  
12 only for impeachment need not be included. YOU WILL NOT BE PERMITTED TO  
13 CALL ANY WITNESS, OR INTRODUCE ANY EVIDENCE, NOT INCLUDED IN  
14 THE STATEMENT SERVED IN RESPONSE TO THIS REQUEST, EXCEPT AS  
15 OTHERWISE PROVIDED BY LAW.

16  
17 (b) The request shall be served no more than 45 days or less than 30 days prior to the date  
18 first set for trial, unless otherwise ordered.

19  
20 (c) A statement responding to the request shall be served within 20 days from the service  
21 of the request.

22  
23 (d) Notwithstanding (a), (b), and (c), when such a statement is requested in an unlawful  
24 detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of  
25 Title 3 of Part 3, the request shall be served no more than 20 days or less than 10 days  
26 prior to the date first set for trial, unless otherwise ordered, and a statement responding to  
27 the request shall be served within 5 days from service of the request. The content of the  
28 request in (a) must be amended to reflect this time for response.

29  
30 ~~(d)~~ (e) No additional, amended or late statement is permitted except by written stipulation  
31 or unless ordered for good cause on noticed motion.

32  
33 ~~(e)~~ (f) No request or statement served under this section shall be filed, unless otherwise  
34 ordered.

35  
36 ~~(f)~~ (g) The clerk shall furnish forms for requests under this rule.

37  
38 ~~(g)~~ (h) The time for performing acts required under this section shall be computed as  
39 provided by law, including Section 1013.

40  
41 **630.20.**

42 (a) Except as provided in subdivisions (b) ~~and (c)~~, an action or special proceeding treated  
43 as a limited civil case pursuant to Article 1 (commencing with Section 85) of Chapter 5.1

1 of Title 1 of Part 1, including an action or special proceeding initially filed as a limited  
2 civil case or remanded as one thereafter, shall be conducted as a mandatory expedited  
3 jury trial pursuant to this chapter.

4  
5 (b) Either party may opt out of the mandatory expedited jury trial procedures if any of the  
6 following criteria is met:

7 (1) Punitive damages are sought.

8 (2) Damages in excess of insurance policy limits are sought.

9 (3) A party's insurer is providing a legal defense subject to a reservation of rights.

10 (4) The case involves a claim reportable to a governmental entity.

11 (5) The case involves a claim of moral turpitude that may affect an individual's  
12 professional licensing.

13 (6) The case involves claims of intentional conduct.

14 (7) The case has been reclassified as unlimited pursuant to Section 403.020.

15 (8) The complaint contains a demand for attorney's fees, unless those fees are sought  
16 pursuant to Section 1717 of the Civil Code.

17 (9) The judge finds good cause exists for the action not to proceed under the rules of this  
18 chapter. Good cause includes, but is not limited to, a showing that a party needs more  
19 than five hours to present or defend the action and that the parties have been unable to  
20 stipulate to additional time.

21  
22 ~~(e) This chapter does not apply to a proceeding in forcible entry or forcible or unlawful~~  
23 ~~detainer.~~

24  
25 ~~(d)~~ (c) A judgment in a limited civil case conducted as a mandatory expedited jury trial  
26 may be appealed to the appellate division of the superior court in which the case was  
27 tried.

28  
29 **630.28.**

30 The Judicial Council shall, on or before January 1, ~~2016~~ 2020, adopt rules and forms to  
31 establish uniform procedures implementing the provisions of this chapter, including, rules  
32 for the following:

33  
34 (a) Pretrial exchanges and submissions.

35  
36 (b) Pretrial conferences.

37  
38 (c) Opt-out procedures pursuant to subdivision (b) of Section 630.20, including opt out  
39 procedures in unlawful detainer actions or other proceeding under Chapter 4  
40 (commencing with Section 1159) of Title 3 of Part 3.

41  
42 (d) Presentation of evidence and testimony.

43

1 (e) Any other procedures necessary to implement the provisions of this chapter.

2

3 **630.29.**

4 Sections 630.20 to ~~630.27, inclusive~~, shall become operative on January 1, ~~2016~~ 2020.

5

6 **630.30**

7 ~~This chapter shall remain in effect only until July 1, 2019, and as of that date is repealed,~~

8 ~~unless a later enacted statute, that is enacted before July 1, 2019, deletes or extends that~~

9 ~~date.~~ The revocation of section 630.20(c) shall last only until January 1, 2024, and as of

10 that date is reinstated unless a later enacted statute, that is enacted before January 1, 2024,

11 deletes or extends that date.

Rule 3.1546 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 3.1546. Pretrial procedures for mandatory expedited jury trials**

2  
3 **(a)–(b) \* \* \***

4  
5 **(c) Opting out of mandatory expedited jury trial procedures**

6  
7 (1) Parties seeking to opt out of mandatory expedited jury trial procedures on  
8 grounds stated in Code of Civil Procedure section 630.20(b) must file a  
9 *Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form  
10 EJT-003).

11  
12 (2) Except on a showing of good cause, the request to opt out must be served and  
13 filed at least 45 days before the initial trial date ~~or, in cases in which the date~~  
14 ~~first set for trial occurred before July 1, 2016, 45 days before the first trial~~  
15 ~~date after July 1, 2016.~~

16  
17 (3) Except on a showing of good cause, any objection to the request must be  
18 served and filed within 15 days after the date of service of the request, on an  
19 *Objection to Request to Opt Out of Mandatory Expedited Jury Trial*  
20 *Procedures* (form EJT-004).

21  
22 (4) Notwithstanding (2) and (3), in unlawful detainer actions or other  
23 proceedings under chapter 4 (commencing with section 1159) of title 3 of  
24 part 3 of the Code of Civil Procedure, except on a showing of good cause, the  
25 request to opt out must be served and filed at least 10 days before the date  
26 first set for trial, and any objection to the request must be served and filed  
27 within 5 days after the date of service on the request.

28  
29 ~~(4)~~(5) If the grounds on which a party or parties have opted out of mandatory  
30 expedited jury trial procedures no longer apply to a case, the parties must  
31 promptly inform the court, and the case may be tried as a mandatory  
32 expedited jury trial.

33  
34 **(d) \* \* \***

35  
36 **Advisory Committee Comment**

37  
38 ~~Because Code of Civil Procedure section 630.20, which becomes operative July 1, 2016,~~  
39 ~~applies to cases already on file and possibly already set for trial, as well as cases filed~~  
40 ~~after the statutory provisions go into effect, the deadlines in rule 3.1546(c) for opt outs~~  
41 ~~and objections may be problematic as applied to cases set for trial within the first couple~~  
42 ~~of months after the rule goes into effect. It is expected that the good cause provisions~~

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- 1 ~~within the rules regarding deadlines, along with judicious use of continuances as~~
- 2 ~~appropriate, will be liberally used to permit courts to manage those cases fairly,~~
- 3 ~~appropriately, and efficiently.~~

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Multicounty Incarceration and Supervision  
Amend Cal. Rules of Court, rule 4.452

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Kim DaSilva, 415-865-4534

*kimberly.dasilva@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 10/24/2017

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-12**

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Title	Action Requested
Criminal Procedure: Multicounty Incarceration and Supervision	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.452	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Kimberly DaSilva, Attorney
Hon. Tricia Ann Bigelow, Chair	415-865-7995 kimberly.dasilva@jud.ca.gov

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### Executive Summary and Origin

Senate Bill 670 (Jackson; Stats. 2017, ch. 287) amended Penal Code section 1170(h),<sup>1</sup> effective January 1, 2018, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. SB 670 also amended section 1170.3, requiring the Judicial Council to adopt rules of court providing criteria for the consideration of trial judges at the time of sentencing when determining the county or counties of incarceration and supervision. This proposal would implement section 1170.3 by amending California Rules of Court, rule 4.452 to guide the second or subsequent court when determining the county or counties of supervision.

### Background

Under the 2011 Realignment Legislation (Realignment; Assem. Bill 109, Stats. 2011, ch. 15), when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department unless the court finds, in the interests of justice, that suspension is not appropriate in a particular case. (§ 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (§ 1170(h)(5)(B).) Realignment also created “postrelease community supervision,” whereby certain offenders being released from state prison are supervised by a local county supervision agency. (§§ 3450–3465.)

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<sup>1</sup> All further statutory references are to the Penal Code.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Last year the Judicial Council sponsored SB 670, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent or consecutive to another judgment or judgments previously imposed pursuant to section 1170(h) in another county or counties. Although counties carry the cost and burdens of local incarceration and supervision, until SB 670, Realignment was silent on the issue of sentences from multiple jurisdictions. Section 1170.1, which governs multiple-count and multiple-case sentencing for commitments to state prison and county jail, and rule 4.452 require courts rendering second or subsequent judgments under section 1170(h) to “resentence” the defendant to a single aggregate term.

SB 670 amended section 1170 by adding subdivision (h)(6), which requires the following:

When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, *the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision* of the defendant.

(§ 1170(h)(6), italics added.) The Judicial Council must adopt rules of court to implement the new law. The rules must provide criteria for the second or subsequent court to consider when determining the counties of incarceration and supervision. (§ 1170.3(a)(7).)

### **The Proposal**

This proposal would implement section 1170.3 by amending rule 4.452 to instruct courts on multiple-county sentencing under section 1170(h) by adding the following:

1. Clarification that the second or subsequent judge has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not increase the total length of the sentence imposed by the previous court;
2. A requirement that the second or subsequent court determine the county or counties of incarceration or supervision, including the order of service of incarceration or supervision;
3. A requirement that to the extent reasonably possible, the period of mandatory supervision be served in one county and after completion of any period of incarceration;
4. A requirement that the second or subsequent court calculate the defendant’s remaining custody and supervision time in accordance with rule 4.472;
5. Specific factors for the court to consider when making its sentencing determination, including factors relevant to the appropriateness of supervision and incarceration in each respective county;
6. A requirement that if the defendant is ordered to serve only a custody term without supervision in another county, the defendant must be transported at such time and under



such circumstances as the court must direct to the county where the custody term is to be served;

7. A requirement that the defendant be transported with an abstract of the court's judgment as required by section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence;
8. Discretion for the court to order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530; and
9. A requirement that if the defendant is ordered to serve a period of supervision in another county, whether with or without a term of custody, the matter must be transferred for the period of supervision in accordance with provisions of rule 4.530.

### **Alternatives Considered**

The committee did not consider alternatives to these changes.

### **Implementation Requirements, Costs, and Operational Impacts**

As a result of SB 670, some training of judges will be necessary to implement the new requirement that courts determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent or consecutive to another judgment or judgments previously imposed pursuant to section 1170(h) in another county or counties. No additional training is anticipated as a result of amending rule 4.452.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.452, at pages 5–6
2. Cal. Rules of Court, rule 4.530,  
[www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4\\_530](http://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_530)
3. Penal Code section 1170,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1170.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.&lawCode=PEN)
4. Penal Code section 1170.3,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1170.3.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.3.&lawCode=PEN)
5. SB 670 (Stats. 2017, ch. 287),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB670](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB670)

Rule 4.452 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**

2  
3 If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more  
4 determinate sentences imposed previously in the same court or in other courts, the court  
5 in the current case must pronounce a single aggregate term, as defined in section  
6 1170.1(a), stating the result of combining the previous and current sentences. In those  
7 situations:

- 8  
9 (1) The sentences on all determinately sentenced counts in all of the cases on which a  
10 sentence was or is being imposed must be combined as though they were all counts  
11 in the current case.  
12  
13 (2) The judge in the current case must make a new determination of which count, in  
14 the combined cases, represents the principal term, as defined in section 1170.1(a).  
15 The principal term is the term with the greatest punishment imposed including  
16 conduct enhancements. If two terms of imprisonment have the same punishment,  
17 either term may be selected as the principal term.  
18  
19 (3) Discretionary decisions of the judges in the previous cases may not be changed by  
20 the judge in the current case. Such decisions include the decision to impose one of  
21 the three authorized terms of imprisonment referred to in section 1170(b), making  
22 counts in prior cases concurrent with or consecutive to each other, or the decision  
23 that circumstances in mitigation or in the furtherance of justice justified striking the  
24 punishment for an enhancement. However, if a previously designated principal  
25 term becomes a subordinate term after the resentencing, the subordinate term will  
26 be limited to one-third the middle base term as provided in section 1170.1(a).  
27  
28 (4) Notwithstanding paragraph (3), the second or subsequent judge has the discretion  
29 to specify whether a previous sentence is to be served in custody or on mandatory  
30 supervision and the terms of such supervision, but may not increase the total length  
31 of the sentence imposed by the previous court.  
32  
33 (5) In cases in which a sentence is imposed under the provisions of section 1170(h) and  
34 the sentence has been imposed by courts in two or more counties, the second or  
35 subsequent court shall determine the county or counties of incarceration or  
36 supervision, including the order of service of such incarceration or supervision. To  
37 the extent reasonably possible, the period of mandatory supervision shall be served  
38 in one county and after completion of any period of incarceration. In accordance  
39 with rule 4.472, the second or subsequent court shall calculate the defendant's  
40 remaining custody and supervision time.  
41

1 (6) In making the determination under paragraph (5), the court shall exercise its  
2 discretion after consideration of the following factors:

3  
4 (A) The relative length of custody or supervision required for each case;

5  
6 (B) Whether the cases in each county are to be served concurrently or  
7 consecutively;

8  
9 (C) The nature and quality of treatment programs available in each county;

10  
11 (D) The nature and extent of the defendant's current enrollment and participation  
12 in any treatment program;

13  
14 (E) The nature and extent of the defendant's ties to the community, including  
15 employment, duration of residence, family attachments and property  
16 holdings;

17  
18 (F) The nature and extent of supervision available in each county;

19  
20 (G) The factors listed in rule 4.530(f); and

21  
22 (H) Any other factor relevant to such determination.

23  
24 (7) If after the court's determination in accordance with paragraph (5) the defendant is  
25 ordered to serve only a custody term without supervision in another county, the  
26 defendant shall be transported at such time and under such circumstances as the  
27 court shall direct to the county where the custody term is to be served. The  
28 defendant shall be transported with an abstract of the court's judgment as required  
29 by section 1213(a), or other suitable documentation showing the term imposed by  
30 the court and any custody credits against the sentence. The court may order the  
31 custody term to be served in another county without also transferring jurisdiction of  
32 the case in accordance with rule 4.530.

33  
34 (8) If after the court's determination in accordance with paragraph (5) the defendant is  
35 ordered to serve a period of supervision in another county, whether with or without  
36 a term of custody, the matter shall be transferred for the period of supervision in  
37 accordance with provisions of rule 4.530.  
38

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Petition for Writ of Habeas Corpus

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Kim DaSilva, 415-865-4534

*kimberly.dasilva@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/15/16

Project description from annual agenda: HC-001, Petition for Writ of Habeas Corpus: revision of form HC-001, and/or other rules and forms regarding standard of review for writs of habeas corpus and post-conviction relief

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

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

This form is currently located within a "miscellaneous" form group and is numbered MC-275, with the "MC" signifying the miscellaneous category. However, before the proposed effective date of this proposal, it is anticipated that the form will be redesignated to a "habeas corpus" form group, signified by "HC." The number of this form would change to HC-001. The purpose of the proposed redesignation and renumbering is to establish a more user-friendly, subject-area connection to certain forms.

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## INVITATION TO COMMENT

**SPR18-13**

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Title	Action Requested
Criminal Procedure: Petition for Writ of Habeas Corpus	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form HC-001 <sup>1</sup>	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Kimberly DaSilva, 415-865-4534
Hon. Tricia A. Bigelow, Chair	kimberly.dasilva@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the Judicial Council form used by non-capital petitioners to petition for a writ of habeas corpus. This proposal would update the instructions regarding filing in the Supreme Court and Court of Appeal to reflect amendments to the appellate rules; replace or add authority that is more recent or more on point for the propositions they support; add language relevant to successive petitions and repetitive claims in item 12 to include the court in which the petition is filed; and add citations as authority for the procedural bars of successiveness and repetitiveness. These changes are in response to a request from members of the California Supreme Court's Central Criminal Staff.

### Background

*Petition for Writ of Habeas Corpus* (form HC-001) is used by non-capital petitioners 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 to challenge an order of commitment, a criminal conviction, or conditions of confinement. With the exception of self-represented litigants, when filing in the Supreme Court and Court of Appeal, all parties are required to file documents electronically pursuant to California Rules of Court, rule 8.71,

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<sup>1</sup> This form is currently located within a "miscellaneous" form group and is numbered MC-275, with the "MC" signifying the miscellaneous category. However, before the proposed effective date of this proposal, it is anticipated that the form will be redesignated to a "habeas corpus" form group, signified by "HC." The number of this form would change to HC-001. The purpose of the proposed redesignation and renumbering is to establish a more user-friendly, subject-area connection to certain forms.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

adopted effective January 1, 2017. However, self-represented parties may file documents electronically if they chose to do so.

Pursuant to California Rules of Court, rule 8.380, an unrepresented person must use form HC-001 to petition a reviewing court for a 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. This form is used by unrepresented petitioners whose petitions frequently run up against the procedural bar of successiveness (which bars unjustified, successive petitions) and the procedural bar of repetitiveness (which bars petitions based on the same grounds set forth in a previously denied petition). (*In re Clark* (1993) 5 Cal.4th 750, 767–769; *In re Miller* (1941) 17 Cal.2d 734, 735.)

## **The Proposal**

This proposal would:

1. Update the instructions regarding filing in the Supreme Court and Court of Appeal to reflect amendments to the appellate rules;
2. Move the request in item 6(a) that the petitioner attach available documents supporting the claim to a new, stand-alone item 6(b) and re-letter the current item 6(b) as item 6(c);
3. Add a request as item 7(b) that the petitioner attach available documents supporting the claim, and re-letter the current item 7(b) as item 7(c);
4. Replace or add authority cited on the form that is more recent or more on point for the propositions they support by:
  - a. Adding a citation to *People v. Duvall* (1995) 9 Cal.4th 464, 474 to the request in the proposed item 6(b) that the petitioner attach available documents supporting the claim;
  - b. Adding to item 10 a citation to *In re Dixon* (1953) 41 Cal. 2d 756, 759 to support the request that the petitioner explain why claims that could have been made on appeal were not made;
  - c. Replacing the citation in item 11(a) to *In re Muszalski* (1975) 52 Cal.App.3d 500 with *In re Dexter* (1979) 25 Cal.3d 921, 925 as authority for administrative review;
  - d. Adding to item 11(b) a citation to *People v. Duvall* (1995) 9 Cal.4th 464, 474 to support the request that the petitioner “Attach documents that show you have exhausted your administrative remedies”;
  - e. Replacing the citation in item 15 to *In re Swain* (1949) 34 Cal.2d 300, 304 with *In re Robbins* (1998) 18 Cal.4th 770, 780. *In re Robbins* is more recent and also more clearly authoritative on the timeliness issue for which the item requests information; and
5. Clarify that the procedural bars against successive and repetitive petitions include those that are filed in the same court by:
  - a. Adding language in item 12 to include the court in which the petition is filed; and

- b. Adding citations in item 12 to *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735 as authority for those procedural bars.

These revisions would benefit both petitioners and courts by providing more accurate and current authority for the information requested on the form and by more specifically requesting information relevant to successive petitions and repetitive claims.

### **Implementation Requirements, Costs, and Operational Impacts**

No significant implementation requirements, costs, or operational impacts are anticipated as a result of this proposal.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Form HC-001, *Petition for Writ of Habeas Corpus*, at pages 4–9



Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CDC or ID Number: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

No. \_\_\_\_\_

(To be supplied by the Clerk of the Court)

_____ Petitioner	vs.	_____ Respondent
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**INSTRUCTIONS—READ CAREFULLY**

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2016). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

**This petition concerns:**

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline
- Other (specify): \_\_\_\_\_

1. Your name: \_\_\_\_\_
2. Where are you incarcerated? \_\_\_\_\_
3. Why are you in custody?  Criminal conviction  Civil commitment

*Answer items a through i to the best of your ability.*

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. Penal or other code sections: \_\_\_\_\_

c. Name and location of sentencing or committing court:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

d. Case number: \_\_\_\_\_

e. Date convicted or committed: \_\_\_\_\_

f. Date sentenced: \_\_\_\_\_

g. Length of sentence: \_\_\_\_\_

h. When do you expect to be released? \_\_\_\_\_

i. Were you represented by counsel in the trial court?  Yes  No *If yes, state the attorney's name and address:*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. What was the LAST plea you entered? (Check one):

- Not guilty
- Guilty
- Nolo contendere
- Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial

6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

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a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

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b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duval* (1995) 9 Cal. 4th 464, 474.)

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c. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

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8. Did you appeal from the conviction, sentence, or commitment?  Yes  No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): \_\_\_\_\_
  - b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_
  - d. Case number or citation of opinion, if known: \_\_\_\_\_
  - e. Issues raised: (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_
  - f. Were you represented by counsel on appeal?  Yes  No If yes, state the attorney's name and address, if known:  
\_\_\_\_\_  
\_\_\_\_\_

9. Did you seek review in the California Supreme Court?  Yes  No If yes, give the following information:
- a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_
  - c. Case number or citation of opinion, if known: \_\_\_\_\_
  - d. Issues raised: (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal. (See *In re Dixon* (1953) 41 Cal.2d 756, 759):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Did you seek the highest level of administrative review available?  Yes  No  
*Attach documents that show you have exhausted your administrative remedies.* (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)

Yes If yes, continue with number 13.  No If no, skip to number 15.

- 13 a. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding: \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

16. Are you presently represented by counsel?  Yes  No If yes, state the attorney's name and address, if known:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court?  Yes  No If yes, explain:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: \_\_\_\_\_



(SIGNATURE OF PETITIONER)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2015

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Justice Realignment: Petition and Order for Dismissal

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961

*eve.hershcopf@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-14

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**Title**

Criminal Justice Realignment: Petition and Order for Dismissal

**Action Requested**

Review and submit comments by June 8, 2018

**Proposed Rules, Forms, Standards, or Statutes**

Revise forms CR-180 and CR-181

**Proposed Effective Date**

January 1, 2019

**Proposed by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

**Contact**

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

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to two Judicial Council forms in response to recent legislation that authorizes dismissal relief for defendants sentenced to state prison for a felony that, if committed after the 2011 Realignment legislation, would have been eligible for sentencing to a county jail under Penal Code section 1170(h)(5). The proposed revisions would incorporate the new statutory basis for relief on both forms.

### Background

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, 2103.41, 1203.43, and 1203.49.<sup>1</sup> These are two of the most heavily used optional criminal law forms and are frequently submitted by self-represented petitioners.

Criminal justice realignment implemented changes to long-standing felony sentencing laws, including authorizing that certain eligible defendants be sentenced to jail rather than prison under section 1170(h)(5). The felony county jail sentence option became effective October 1, 2011. In 2013, legislation<sup>2</sup> added section 1203.41 to authorize courts to permit a defendant who received a felony county jail sentence under section 1170(h)(5) to withdraw his or her guilty or no contest plea and enter a plea of not guilty after the lapse of one or two years following the defendant's completion of the sentence, and then dismiss the action.

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Assem. Bill 651 (Bradford; Stats. 2013, ch. 787).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*



In September 2017, the Legislature enacted Assembly Bill 1115,<sup>3</sup> adding section 1203.42, which further expands dismissal relief by providing the same relief as in section 1203.41, but for defendants who were sentenced to state prison for a felony that, if committed after the 2011 Realignment legislation, would have been eligible for a county jail sentence under section 1170(h)(5). The relief is available in the interests of justice and at the court's discretion, provided that the defendant is not under supervised release and is not serving a sentence for, on probation for, or charged with the commission of any offense. The statute provides that the defendant is released from all penalties and disabilities resulting from the offense of which he or she has been convicted, with certain exceptions.

### **The Proposal**

The Criminal Law Advisory Committee proposes the following revisions to the *Petition for Dismissal* (CR-180) and *Order for Dismissal* (CR-181) to incorporate the new statutory basis for relief under section 1203.42:

- Add a reference to section 1203.42 to the caption of both forms;
- Add new item 6 to form CR-180 for petitioners to indicate the new option for requesting relief under section 1203.42;
- Include in the instructions for new item 6 of form CR-180 that the petitioner “may provide an explanation in the space below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents” and revise the instructions in items 4 and 5 to indicate that the petitioner “may provide an explanation in the space below” for relief under sections 1203.49 and 1203.41.
- Add a check box with a citation to section 1203.42 to renumbered item 9 on form CR-180; and
- Add five references to section 1203.42 to the body of form CR-181 to incorporate the new basis for relief: a check box with a citation to section 1203.42 to items 3 and 4, and a citation to section 1203.42 to items 6, 8, and 9.

### **Alternatives Considered**

The committee alternatively considered creating new forms to address the new form of relief, but this approach seemed unnecessarily burdensome and potentially confusing to petitioners and courts because the relief provided in section 1203.42 so closely resembles that provided by section 1203.41, which is currently included on forms CR-180 and CR-181. A second option considered was to remove section 1203.41 relief from forms CR-180 and CR-181 and create new optional dismissal forms for the relief provided under sections 1203.41 and 1203.42, but the committee rejected this approach as unnecessary and potentially confusing.

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<sup>3</sup> Assem. Bill 1115 (Jones-Sawyer; Stats. 2017, ch. 207).

## Implementation Requirements, Costs, and Operational Impacts

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

### Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the proposed revisions an effective way to address the legislation adding section 1203.42?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Forms CR-180 and CR-181, at pages 4–8
2. AB 651 (Stats. 2013, ch. 787),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB651&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB651&search_keywords=)
3. AB 1115 (Stats. 2017, ch. 207),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1115](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1115)

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):	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
<b>PETITION FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)</b>	<b>FOR COURT USE ONLY</b> DATE: TIME: DEPARTMENT:

1. On (date): \_\_\_\_\_, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code	Section	Type of offense (felony, misdemeanor, or infraction):	Eligible for reduction to misdemeanor under Penal Code, § 17(b) (yes or no)	Eligible for reduction to infraction under Penal Code, § 17(d)(2) (yes or no)

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

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

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or under charge of commission of any crime, and the petitioner (check all that apply):

- a.  has fulfilled the conditions of probation for the entire period thereof.
- b.  has been discharged from probation prior to the termination of the period thereof.
- c.  should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

3.  **Misdemeanor or infraction with sentence other than probation (Pen. Code, § 1203.4a)**

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner (check one):

- a.  has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land.
- b.  should be granted relief in the interests of justice. (Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

4.  **Misdemeanor conviction under Penal Code section 647(b) (Pen. Code, § 1203.49)**
- a.  Petitioner has completed a term of probation for a conviction under Penal Code section 647(b).
- b.  Petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may provide an explanation in the space below, or complete and attach the Attached Declaration (form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*
- 
5.  **Felony county jail sentence under Penal Code section 1170(h)(5) (Pen. Code, § 1203.41)**
- Petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one)*:
- a.  more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or**
- b.  more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).
- (Please note: You must explain why granting a dismissal would be in the interests of justice. You may provide an explanation in the space below, or complete and attach the Attached Declaration (form MC-031) or submit other relevant documents.)*



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): _____	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
<b>ORDER FOR DISMISSAL</b> <b>(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)</b>	CASE NUMBER: _____

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

- The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces (*check one*)
  - ALL FELONY CONVICTIONS in the above-entitled action.
  - ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
  - only the following convictions in the above-entitled action (*specify charges and date of conviction*):

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

- The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code  § 1203.4  § 1203.4a  § 1203.41  § 1203.42  § 1203.43  § 1203.49 and it is ordered that the pleas of guilty or nolo contendere or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for (*check one*)
  - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
  - only the following convictions or pleas for deferred entry of judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

- The court **DENIES** the petition for dismissal under Penal Code (*check all that apply*)  § 1203.4  § 1203.4a  § 1203.41  § 1203.42  § 1203.43  § 1203.49 for (*check one*)
  - ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
  - only the following convictions or pleas for deferred entry judgment in the above-entitled action (*specify charges and date of conviction or plea for deferred entry of judgment*):

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

5. In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when he or she committed the crime. The court orders (*check one*):
- the relief described in section 1203.4.
  - the relief described in section 1203.4, with the following exceptions (*specify*):
6. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41, or 1203.42,
- The petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission; and
  - Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)
7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
8. If the order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.
9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).
10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in **former** Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

FOR COURT USE ONLY

Date:

\_\_\_\_\_  
(JUDICIAL OFFICER)

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim)

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961

*eve.hershcopf@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

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

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



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## INVITATION TO COMMENT SPR18-15

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**Title**

Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim)

**Action Requested**

Review and submit comments by June 8, 2018

**Proposed Effective Date**

January 1, 2019

**Proposed Rules, Forms, Standards, or Statutes**

Approve forms CR-407 and CR-408

**Contact**

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

**Proposed by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes two new optional forms, *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407) and *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408) in response to recent legislation<sup>1</sup> that establishes a petition process under Penal Code section 236.14 to vacate a conviction or adjudication for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for committing a nonviolent offense while he or she was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records.

### Background

In 2014, legislation<sup>2</sup> added Penal Code section 1203.49 to authorize a defendant who had been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who had completed a term of probation for that conviction, to petition the court for dismissal relief. For relief under section 1203.49, the petitioner must establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. The court is then authorized to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal

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<sup>1</sup> [Sen. Bill 823](#) (Block; Stats. 2016, ch. 650).

<sup>2</sup> [Assem. Bill 1585](#) (Alejo; Stats. 2014, ch. 708).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Code section 1203.4, and (3) notifies the Department of Justice that the petitioner was a victim of human trafficking and of the relief ordered.

In September 2016, the Legislature enacted [Senate Bill 823](#) (Block; Stats. 2016, ch. 650), which added Penal Code section 236.14, effective January 1, 2017, and establishes a petition process to vacate a conviction or adjudication for a person who has been arrested for or convicted of committing a nonviolent offense while he or she was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records. (The legislation also provides for relief for a person adjudicated a ward of the juvenile court for committing a nonviolent offense while a victim of human trafficking, which is addressed in a separate Invitation to Comment.)

In order to obtain relief under Penal Code section 236.14, the petitioner is required to establish that he or she was a human trafficking victim at the time the nonviolent crime was committed, that the commission of the crime was a direct result of being a human trafficking victim, and that the victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme. Section 236.14 authorizes the court, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, to consolidate petitions with multiple convictions from different jurisdictions into one hearing. If the court finds a compelling reason why a petitioner and/or counsel cannot attend the hearing on the petition, the petitioner or his or her attorney may appear via alternate electronic means. Section 236.14(g) authorizes the court, upon making specified findings, to expunge the arrests and to vacate the convictions.

The court's order granting vacatur relief must provide for the sealing and destruction of the petitioner's arrest and court records by relevant law enforcement agencies and the Department of Justice. Penal Code section 236.14 also mandates that the record of a proceeding related to a vacatur petition that is accessible by the public must not disclose the petitioner's full name. These records likely include the index, the register of actions, as well as other court records.<sup>3</sup>

## **The Proposal**

The Criminal Law Advisory Committee proposes two new optional forms, *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407) and *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408) to address the new statutory basis for relief under section 236.14. Both forms are proposed to be confidential forms to address the directive in section 236.14, subdivision (q) that, "the record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name." The petition form also directs the petitioner to file a separate petition for each court case

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<sup>3</sup> Penal Code section 851.92(d)(2) provides the following definition for "court records" that must be sealed when relief is granted under certain statutes: "Court records" means records, files, and materials created, compiled, or maintained by or for the court in relation to court proceedings, and includes, but is not limited to, indexes, registers of actions, court minutes, court orders, court filings, court exhibits, court progress and status reports, court history summaries, copies of state summary criminal history information and local summary criminal history information, and any other criminal history information contained in any of those materials.

for which the petitioner is seeking relief. Both of these elements of the forms are discussed below, in the section on “Alternatives Considered.”

The proposed *Petition to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-407):

- Provides instructions to guide the petitioner in filling out and filing the petition form. The fourth bullet of the instructions directs the petitioner to file a separate petition for each court case in a particular county, and to file separate petitions in the superior courts in each county in which the petitioner has an arrest or conviction.
- Prompts the petitioner to provide identifying details regarding the dates and locations of arrests and convictions that the petitioner is seeking to have expunged or vacated, and supporting facts regarding the petitioner’s status as a victim of human trafficking and commission of the crime as a direct result of being a victim of human trafficking.
- Provides an option for the petitioner to request that the court consolidate into one hearing the court’s review of all of the petitions to vacate filed by the petitioner.
- Provides an option for the petitioner to request that the court hold the hearing on a petition without the personal presence of the petitioner or counsel, and to permit the petitioner and/or counsel to appear for the hearing via electronic means.

The proposed *Order to Vacate Arrest or Conviction (Human Trafficking Victim)* (form CR-408):

- Provides an option for the court to indicate whether the prosecutorial agency has filed an opposition to the petitioner, and to deem the petition unopposed.
- Provides an option for the court to indicate in its findings whether the elements necessary to grant relief are present.
- Provides an option for the court to indicate whether it grants or denies the requested relief.
- Notifies the California Department of Justice of the petitioner’s status as a victim of human trafficking when the crime was committed, and of the relief ordered.
- Directs the California Department of Justice and the law enforcement agencies with jurisdiction over the expunged arrests to seal and destroy their records of the petitioner’s arrest(s) and then to destroy the court order to seal and destroy those records.
- Provides an option for the court to grant additional relief.
- Provides an option, if the court denies the petition, for the court to provide reasons for the denial and to grant the petitioner a reasonable period of time to cure the noted deficiencies.

### **Alternatives Considered**

The committee alternatively considered adding section 236.14 relief to forms CR-180 and CR-181, *Petition for Dismissal* and *Order for Dismissal*, but determined that the relief provided under section 236.14 was sufficiently complex and different from section 1203.49 relief to warrant the development of new forms. The committee discussed a variety of options regarding

the mandate in section 236.14(q) that “the record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner’s full name.” Options discussed included having the petitioner file the petition using initials or “Jane Doe,” having the court redact the name of the petitioner, or having the court order the file sealed once the petition is filed.

The committee was concerned that each of these approaches would result in court records with some level of public disclosure, and would also place a significant burden on petitioners and the courts. The committee concluded that the most effective approach is for the petition and order to be confidential forms so that the petition is confidential upon filing and placed in the confidential portion of the court’s file. This approach serves to protect the reputation of the petitioner from public redisclosure of the original criminal offense and additional disclosure of his or her status as a human trafficking victim, and is consistent with the sealing standard set forth in *In re Marriage of Burkle*.

The committee also considered alternatives in response to section 236.14(e), which states that, “The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.” The committee agreed that it would be extremely difficult operationally for courts, and likely not in the best interests of petitioners, for one petition to include multiple convictions from the same or different jurisdictions because of the challenges in accurately tracking, filing, and recording the order in each court’s files and case management systems, given that there may be different types of convictions and a different decision on vacatur relief in each case. For these reasons, the committee recommends that form CR-407 instruct the petitioner to file a separate petition for each court case.

The committee recommends that form CR-407 instruct the petitioner that if the court(s) and prosecutorial agencies agree, the court(s) may consolidate the hearings on the separate petitions into one hearing, and provide the petitioner with an option to request that the petitioner and/or counsel be permitted to appear at the hearing(s) by telephone, videoconference, or other electronic means, as authorized by section 236.14(n).

### **Implementation Requirements, Costs, and Operational Impacts**

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

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the proposed revisions an effective way to address the legislation adding Penal Code section 236.14?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Forms CR-407 and CR-408, at pages 6–10

PETITIONER (the person who is filing this petition): NAME: DATE OF BIRTH: STREET ADDRESS: CITY: STATE: ZIP CODE: MAILING ADDRESS (if different): CITY: STATE: ZIP CODE: TELEPHONE NO.: E-MAIL ADDRESS (if available):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
ATTORNEY: STATE BAR NO.: 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:	CASE NUMBER:
<b>PETITION TO VACATE ARREST OR CONVICTION          (HUMAN TRAFFICKING VICTIM)          (Pen. Code, § 236.14)</b>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> DATE: TIME: DEPARTMENT:
<p style="text-align: center;"><b>Instructions — Read Carefully</b></p> <ul style="list-style-type: none"> <li>• This petition 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).</li> <li>• 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 <i>Attachment to Judicial Council Form</i> (form MC-025) as your additional page.</li> <li>• Serve the petition on the state or local prosecuting agency that was responsible for the conviction or that had jurisdiction over the arrest.</li> <li>• File the petition(s) in the superior court in the county where the arrest(s) or conviction(s) occurred. If you have multiple arrests or convictions within one county, file a <i>separate</i> petition for <i>each</i> court case. If you have arrests or convictions in more than one county, file a <i>separate</i> petition in the superior court in each county. (If the court(s) and all of the state or local prosecutorial agencies agree, the court(s) <i>may</i> consolidate the hearings on the separate petitions into one hearing.) Only the original petition needs to be filed unless local rules require additional copies.</li> <li>• Notify the clerk of the court in writing if you change your address after filing your petition.</li> </ul>	

1. This petition concerns the arrests for a nonviolent offense (any offense not listed in Pen. Code, § 667.5(c)) listed below:
  - a. Date(s) of the arrest(s):
  - b. Location(s) of the arrest(s) (include city and county):
  - c. Law enforcement agency(ies) that made the arrest(s). (If it was a police department, include the city name; if it was a county sheriff, list the county):
  - d. Arrest report number(s) or police report number(s), if available:
  - e. Include any other information about the arrest(s) that is available from the prosecutor or the court, including the case number that the prosecutor used to review the arrest or used to file a case:

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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2. This petition concerns the conviction(s) for a nonviolent offense (any offense not listed in Pen. Code § 667.5(c)) listed below:

- a. Date of the conviction(s):
- b. Location of the conviction(s) *(include city and county)*:
- c. Court case number for the conviction(s):

3. I was a victim of human trafficking at the time the nonviolent crime was committed.

4. The commission of the crime was the direct result of my being a victim of human trafficking.

- Supporting facts

Tell your story briefly. Describe the facts you allege constitute evidence of your being a victim of human trafficking, and that constitute evidence that the commission of the crime was the direct result of you being a human trafficking victim. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

5.  I have attached the following official documentation of my status as a victim of human trafficking issued by a federal, state, or local agency *(describe)*:

6.  I request that the court, with the agreement of all of the involved state or local prosecutorial agencies, consolidate the hearing on this petition with the hearing(s) on the following petitions *(list court case number and county)*:

Case Number	County
_____	_____
_____	_____
_____	_____

**CONFIDENTIAL**

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- 7.  I request that the court hold the hearing on this petition without my personal presence or the presence of counsel for the following reasons:
  
  
  
  
  
  
  
  
  
  
- 8.  I am prepared to appear in court for a hearing telephonically, via videoconference, or by other electronic means.
- 9.  I request that the court expunge the arrest(s) listed in item #1 of this petition.
- 10.  I request that the court set aside the verdict(s) of guilty, dismiss the accusation(s) or information(s) and vacate the conviction(s) in the case listed in item #2 of this petition.
- 11.  I request that the court grant the following additional relief (*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 OF PETITIONER)

 \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

**CONFIDENTIAL**



PETITIONER <i>(the person who is filing this petition)</i> : NAME: DATE OF BIRTH: STREET ADDRESS: CITY: STATE: ZIP CODE: MAILING ADDRESS <i>(if different)</i> : CITY: STATE: ZIP CODE: TELEPHONE NO.: E-MAIL ADDRESS <i>(if available)</i> :	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>
ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR <i>(name)</i> :	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
<b>ORDER TO VACATE ARREST OR CONVICTION          (HUMAN TRAFFICKING VICTIM)          (Pen. Code, § 236.14)</b>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> DATE: TIME: DEPARTMENT:

**FOR PURPOSES OF PENAL CODE SECTION 236.14 RELIEF**

1.  The petitioner and/or counsel were personally present at the hearing on this matter, or appeared telephonically, via videoconference, or by other electronic means.
2.  The state or local prosecutorial agency has not filed an opposition to the petition, and the petition is deemed unopposed.
3. The court finds:
  - The petitioner was a victim of human trafficking when he or she committed the offense(s).
  - The commission of the crime(s) was a direct result of the petitioner being a human trafficking victim.
  - The petitioner is engaged in a good faith effort to distance himself or herself from the human trafficking scheme.
  - It is in the best interest of the petitioner and in the interests of justice for this court to order the requested relief.
4. The court  grants  denies the petitioner's request to expunge the arrest(s) listed in the petition.
5. The court  grants  denies the petitioner's request to set aside the verdict(s) of guilty, to dismiss the accusation(s) or information(s), and to vacate the conviction(s) listed in the petition.

***If the court grants the requested relief:***

6. a. The Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
- b. The following agencies and officials are ordered to seal and destroy their records of the petitioner's arrest within three years from the date of the arrest or within one year after the granting of this order, whichever occurs later, and thereafter to destroy the court order to seal and destroy those records:
  - California Department of Justice
  - Law enforcement agency(ies), with jurisdiction over the offense(s) *(specify all)*:
  
  - Law enforcement agency(ies) that arrested the petitioner or participated in an arrest of the petitioner *(specify all)*:

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- 7. The petitioner may lawfully deny or refuse to acknowledge an arrest or conviction that is set aside and vacated pursuant to this order.
- 8. The records of a set aside and vacated arrest or conviction shall not be distributed to any state licensing board.
- 9. The record of a proceeding related to this petition that is accessible to the public shall not disclose the petitioner's full name.
- 10.  The court grants additional relief as follows:

11.  The denial of the petition due to insufficient evidence to establish grounds for vacating the arrest or conviction is made without prejudice. The reasons for denial are as follows:

12.  The petitioner is hereby granted a reasonable period of time to cure the deficiencies noted above.

Date:

\_\_\_\_\_ (JUDICIAL OFFICER)

**CONFIDENTIAL**

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings

Amend Cal. Rules of Court, rule 4.130

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961

*Eve.Hershcopf@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/15/16

Project description from annual agenda: Mental Health Issues: Consider and implement recommendations originally developed by the Mental Health Implementation Task Force to improve the resolution of mental health issues during criminal proceedings, and consider other mental health-related proposals. Specific proposals to consider developing include:

- Potential amendments to Penal Code section 1369 et seq. to address the confidentiality of court records of competency proceedings.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-16

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Title	Action Requested
Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.130	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961
Hon. Tricia A. Bigelow, Chair	<a href="mailto:Eve.Hershcopf@jud.ca.gov">Eve.Hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending the California rule of court relating to mental competency proceedings in criminal cases. This proposal would amend the rule to make court-appointed experts' reports on a criminal defendant's competency to stand trial presumptively confidential, while also including procedures for interested parties to request access to the experts' reports. The proposal was suggested by a judge of the Superior Court of Los Angeles County.

### The Proposal

This proposal would amend rule 4.130 to make court-appointed experts' reports on a criminal defendant's competency to stand trial presumptively confidential, while also including procedures for interested parties to request access to the experts' reports through requests to unseal. Under the legal standard for making forms confidential stated in *In re Marriage of Burkle* (2006) 135 Cal.App.4th 1045, 1048–1053, the committee considered the balance between a defendant's privacy interests and the public's First Amendment right of access to court records in deciding whether to amend the rule. In doing so, the committee agreed that making the experts' reports presumptively confidential would preserve a defendant's privacy interests in protecting highly sensitive medical information and be consistent with the treatment of medical records in other contexts (e.g., Civ. Code, § 56.10). However, since criminal proceedings are public and the First Amendment provides a right of access to court records, the committee proposes that the experts' reports be subject to a motion to unseal as outlined in California Rules of Court, rule 2.551(h). This would preserve an interested party's opportunity to have the court consider

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

whether, in certain instances, the public right of access overrides a defendant's privacy interests in his or her medical information. The committee also proposes incorporating a simplified procedure to apply to specified parties seeking access to the experts' reports.

This proposal would shift what is currently rule 4.130, subdivisions (e) and (f) to subdivisions (f) and (g), and amend subdivision (e) to add the following:

1. Provide that the experts' reports are presumptively confidential, retained in the confidential portion of the court file, and maintained by counsel as confidential;
2. Provide for a court to consider a motion, application, or petition to unseal the experts' reports under rule 2.551(h);
3. Provide for a simplified procedure for specified parties to request access to the experts' reports in cases involving a defendant who was examined for mental competency under Penal Code section 1369 in a criminal case who is charged in a separate criminal case;
4. Provide that the proposed rule does not preclude a party from applying existing law around ex parte discovery motions for access to the experts' reports when the facts supporting a discovery request are privileged, or as otherwise provided by law;
5. Provide that in cases stemming from complaints filed before January 1, 2019 (the proposed effective date of this rule amendment), the prosecuting attorney, defendant, or counsel for the defendant may request the court clerk to file the experts' reports as confidential. This provision is included to allow parties to a criminal proceeding that predates this amendment to benefit from the change in the rule;
6. Eliminate the advisory committee comment that "[t]he expert reports, unless sealed under rule 2.550, are publicly accessible court documents";
7. Add an advisory committee comment that experts' reports filed as confidential before January 1, 2019, may remain in the confidential portion of the case file without further action by the court.

### **Alternatives Considered**

As discussed above, the committee considered the balance between a defendant's privacy interests and the public's First Amendment right of access to court records in deciding whether to amend the rule.

### **Implementation Requirements, Costs, and Operational Impacts**

It is anticipated that the proposal's requirement that the experts' reports be treated as confidential would have a minimal operational impact on the court. There may be some operational impacts caused by the provision for an interested party to file a motion, application, or petition to unseal

the experts' reports, as provided for in proposed subdivision (d)(3)(A) of the rule, and the provision in subdivision (d)(3)(B) allowing specified parties to file a noticed request for the experts' reports.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.130, at pages 4–6

Rule 4.130 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 4.130. Mental competency proceedings**

2  
3 (a)–(c) \* \* \*

4  
5 **(d) Examination of defendant after initiation of mental competency proceedings**

6  
7 (1) \* \* \*

8  
9 (2) Any court-appointed experts must examine the defendant and advise the  
10 court on the defendant's competency to stand trial. Experts' reports are to be  
11 submitted to the court, counsel for the defendant, and the prosecution. The  
12 report must include the following:

13  
14 (A)–(G) \* \* \*

15  
16 (3) Statements made by the defendant during the examination to experts  
17 appointed under this rule, and products of any such statements, may not be  
18 used in a trial on the issue of the defendant's guilt or in a sanity trial should  
19 defendant enter a plea of not guilty by reason of insanity.

20  
21 **(e) Access to experts' reports**

22  
23 (1) The experts' reports are presumptively confidential, except as otherwise  
24 provided by law. The experts' reports must be retained in the confidential  
25 portion of the court's file. Counsel must maintain the experts' reports as  
26 confidential.

27  
28 (A) A court may consider a motion, application, or petition to unseal the  
29 experts' reports under rule 2.551(h).

30  
31 (B) If a defendant who was examined for mental competency under Penal  
32 Code section 1369 in a criminal case is charged in a separate criminal  
33 case, the defendant, defendant's counsel in the separate criminal case,  
34 or the prosecutor in the separate criminal case may file a request with  
35 two days' written notice for access to the experts' reports in the  
36 criminal case where the examination for mental competency occurred.

37  
38 (i) If the moving party is the prosecutor, such notice must be given  
39 to counsel for the subject defendant in the criminal case where  
40 the examination for mental competency occurred.

1 (ii) If the moving party is the defendant or counsel for the defendant,  
2 such notice must be given to the prosecutor in the criminal case  
3 where the examination for mental competency occurred.

4  
5 (iii) The noticed request must include a declaration by the defendant,  
6 the defendant’s counsel in the separate criminal case, or the  
7 prosecutor in the separate criminal case, requesting the experts’  
8 reports under subdivision (d)(3)(B).

9  
10 (iv) The request may be granted upon an affirmative showing by the  
11 moving party that he or she is the defendant in both criminal  
12 cases, the defendant’s counsel in the separate criminal case  
13 involving the same defendant, or the prosecutor in the separate  
14 criminal case involving the same defendant.

15  
16 (C) This rule does not preclude the defendant, the defendant’s counsel in a  
17 separate criminal case, or the prosecutor in a separate criminal case  
18 from filing an ex parte discovery motion for access to the experts’  
19 reports when the facts supporting a discovery request are privileged, or  
20 as otherwise provided by law. The reasons for seeking an ex parte  
21 application for release of the experts’ reports must be included in the  
22 motion.

23  
24 (D) In cases stemming from complaints filed before January 1, 2019, the  
25 prosecuting attorney, defendant, or counsel for the defendant may  
26 request the court clerk to file the experts’ reports as confidential.

27  
28  
29 (f)-(g)\*\*\*

30  
31 **Advisory Committee Comment**

32  
33 The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to  
34 follow in cases where there is a concern whether the defendant is legally competent to stand trial,  
35 but the concern does not necessarily rise to the level of a reasonable doubt based on substantial  
36 evidence. Before finding a reasonable doubt as to the defendant’s competency to stand trial and  
37 initiating competency proceedings under Penal Code section 1368 et seq., the court may appoint  
38 an expert to assist the court in determining whether such a reasonable doubt exists. As noted in  
39 *People v. Visciotti* (1992) 2 Cal.4th 1, 34–36, the court may appoint an expert when it is  
40 concerned about the mental competency of the defendant, but the concern does not rise to the  
41 level of a reasonable doubt, based on substantial evidence, required by Penal Code section 1367  
42 et seq. Should the results of this examination present substantial evidence of mental  
43 incompetency, the court must initiate competency proceedings under (b).



1  
2 Once mental competency proceedings under Penal Code section 1367 et seq. have been initiated,  
3 the court is to appoint at least one expert to examine the defendant under (d). Under no  
4 circumstances is the court obligated to appoint more than two experts. (Pen. Code, § 1369(a).)  
5 The costs of the experts appointed under (d) are to be paid for by the court as the expert  
6 examinations and reports are for the benefit or use of the court in determining whether the  
7 defendant is mentally incompetent. (See Cal. Rules of Court, rule 10.810, function 10.)  
8

9 Subdivision (d)(3), which provides that the defendant’s statements made during the examination  
10 cannot be used in a trial on the defendant’s guilt or a sanity trial in a not guilty by reason of sanity  
11 trial, is based on the California Supreme Court holdings in *People v. Arcega* (1982) 32 Cal.3d  
12 504 and *People v. Weaver* (2001) 26 Cal.4th 876.  
13

14 Although the court is not obligated to appoint additional experts, counsel may nonetheless retain  
15 their own experts to testify at a trial on the defendant’s competency. (See *People v. Mayes* (1988)  
16 202 Cal.App.4th 908, 917–918.) These experts are not for the benefit or use of the court, and their  
17 costs are not to be paid by the court. (See Cal. Rules of Court, rule 10.810, function 10.)  
18

19 ~~The expert reports, unless sealed under rule 2.550, are publicly accessible court documents.~~  
20 Experts’ reports filed as confidential before January 1, 2019, may remain in the confidential  
21 portion of the case file without further action by the court.  
22

23 Both the prosecution and the defense have the right to a jury trial. (See *People v. Superior Court*  
24 *(McPeters)* (1995) 169 Cal.App.3d 796.) Defense counsel may waive this right, even over the  
25 objection of the defendant. (*People v. Masterson* (1994) 8 Cal.4th 965, 970.)  
26

27 Either defense counsel or the prosecution (or both) may argue that the defendant is not competent  
28 to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel may advocate that  
29 defendant is not competent to stand trial and may present evidence of defendant’s mental  
30 incompetency regardless of defendant’s desire to be found competent].) If the defense declines to  
31 present evidence of the defendant’s mental incompetency, the prosecution may do so. (Pen. Code,  
32 § 1369(b)(2).) If the prosecution elects to present evidence of the defendant’s mental  
33 incompetency, it is the prosecution’s burden to prove the incompetency by a preponderance of the  
34 evidence. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1484, fn. 12.)  
35

36 Should both parties decline to present evidence of defendant’s mental incompetency, the court  
37 may do so. In those cases, the court is not to instruct the jury that a party has the burden of proof.  
38 “Rather, the proper approach would be to instruct the jury on the legal standard they are to apply  
39 to the evidence before them without allocating the burden of proof to one party or the other.”  
40 (*People v. Sherik* (1991) 229 Cal.App.3d 444, 459–460.)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2)

Adopt Cal. Rules of Court, rule 4.131

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Sarah Fleischer-Ihn, 415-865-7702

*Sarah.Fleischer-Ihn@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/15/16

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

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

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

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## INVITATION TO COMMENT

**SPR18-17**

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Title	Action Requested
Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2)	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 4.131	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Sarah Fleischer-Ihn, 415-865-7702
Hon. Tricia A. Bigelow, Chair	<a href="mailto:Sarah.Fleischer-Ihn@jud.ca.gov">Sarah.Fleischer-Ihn@jud.ca.gov</a>

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### **Executive Summary and Origin**

The Criminal Law Advisory Committee proposes the adoption of a California rule of court relating to determinations of probable cause under Penal Code section 1368.1(a)(2). Senate Bill 684 (Bates; Stats. 2017, ch. 246), effective January 1, 2018, amended Penal Code section 1368.1(a)(2) to allow a prosecuting attorney to request a probable cause determination for a defendant who is incompetent to stand trial, if the complaint charges specified offenses and the probable cause determination is sought “solely for the purpose of establishing the defendant is gravely disabled” under Welfare and Institutions Code section 5008(h)(1)(B), commonly referred to as a Murphy conservatorship.

### **The Proposal**

This proposal would add a rule of court addressing procedures for probable cause determinations under Penal Code section 1368.1(a)(2). The statute states that the probable cause determinations are to be conducted “pursuant to procedures approved by the court” and that, “[i]n making this determination, the court shall consider using procedures consistent with the manner in which a preliminary examination is conducted.”

The proposed rule provides for the following:

- The prosecuting attorney must serve and file notice of a request for a determination of probable cause at least 10 court days before the hearing;
- A judge must hear the determination of probable cause unless there is a stipulation by

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

both parties to having the matter heard by a subordinate judicial officer;

- A defendant need not be present;
- The one-session requirement of Penal Code section 861 does not apply; and
- Transcripts must be provided in the same manner as they are for preliminary examinations.

### **Alternatives Considered**

The committee alternatively considered additional provisions for the proposed rule, but determined that the current, limited proposal would provide appropriate guidance to the courts and justice system partners.

### **Implementation Requirements, Costs, and Operational Impacts**

No implementation requirements, costs, or operational impacts are expected. The proposal is intended to mitigate the court's workload by providing guidance and parameters for procedures for determinations of probable cause.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.131, at page 3
2. SB 684 (Stats. 2017, ch. 246),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB684](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB684)

Rule 4.131 of the California Rules of Court would be added, effective January 1, 2019, to read:

1 **Rule 4.131. Probable cause determinations under section 1368.1(a)(2)**

2  
3 **(a) Notice of a request for a determination of probable cause**

4  
5 The prosecuting attorney must serve and file notice of a request for a determination  
6 of probable cause on the defense at least 10 court days before the time appointed  
7 for the proceeding.

8  
9 **(b) Judge requirement**

10  
11 A judge must hear the determination of probable cause unless there is a stipulation  
12 by both parties to having the matter heard by a subordinate judicial officer.

13  
14 **(c) Defendant need not be present**

15  
16 A defendant need not be present for a determination of probable cause to proceed.

17  
18 **(d) Application of section 861**

19  
20 The one-session requirement of section 861 does not apply.

21  
22 **(e) Transcript**

23  
24 A transcript of the determination of probable cause must be provided to the  
25 prosecuting attorney and counsel for the defendant consistent with the manner in  
26 which a transcript is provided in a preliminary examination.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f

Approve forms CR-404 and CR-405

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961

*Eve.Hershcopf@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/15/16

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation. Specific proposals to consider developing include:

- SB 239 (Wiener): Infectious and communicable diseases: HIV and AIDS: criminal penalties. Would repeal felony and misdemeanor laws related to HIV. Would make the intentional transmission of an infectious or communicable disease, as defined, a misdemeanor. Would impose various requirements upon the court in order to prevent the public disclosure of the identifying characteristics, as defined, of the complainant and the defendant. Would repeal Penal Code section 647f, felony prostitution, and vacate any conviction, dismiss any charge, and legally deem that an arrest under the provision never occurred. Would authorize a person serving a sentence as a result of a violation of the provision to petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case. Would require a court to vacate the conviction and resentence the person to any remaining counts while giving credit for any time already served.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-18

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Title	Action Requested
Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-404 and CR-405	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961
Hon. Tricia A. Bigelow, Chair	<a href="mailto:Eve.Hershcopf@jud.ca.gov">Eve.Hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

Senate Bill 239 (Weiner; Stats. 2017, ch. 537), effective January 1, 2018, invalidates convictions for violations of Penal Code section 647f (felony prostitution) and adds section 1170.22 to the Penal Code, which outlines a petition and application process for the dismissal of section 647f convictions. The Criminal Law Advisory Committee proposes two optional forms to be used for petitioners/applicants to request the court for relief under Penal Code section 1170.22. Penal Code section 1170.22(i) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.”

### The Proposal

The proposal recommends approval of two optional forms requesting resentencing and dismissal.

**Petition/application.** Optional *Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-404) may be used by both persons currently serving eligible sentences and persons who have completed eligible sentences. The form allows the petitioner/applicant to:

- Identify an eligible conviction for a violation of Penal Code section 647f;
- Request the desired relief;
- Waive the statutory requirement under section 1170.22(a) that the matter be heard by the trial court that entered the judgment of conviction in the case; and
- Waive his or her appearance.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

**Order.** Optional *Order After Petition/Application for Resentencing and Dismissal* (Pen. Code, § 1170.22) (form CR-405) provides the court with the ability to:

- Grant the relief; or
- When applicable, resentence the petitioner/applicant.

### **Alternatives Considered**

The committee considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their own unique needs, while still providing the convenience of a standard form for those courts that choose to use them. Courts will still be required to accept petitions/applications submitted on the proposed optional Judicial Council forms even if they develop their own forms, under rule 1.35(a) of the California Rules of Court.

The committee considered including language in the order to seal the conviction. The committee decided not to include the language because the relevant statutes are silent on whether the records of conviction are to be sealed.

### **Implementation Requirements, Costs, and Operational Impacts**

It is anticipated that the volume of petitions/applications for relief under will be minimal and will not impose significant workload burdens on courts. Expected costs are limited to training, possible case management system updates, and the production of new forms.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?



### **Attachments and Links**

1. Forms CR-404 and CR-405, at pages 4–5

2. SB 239 (Stats. 2017, ch. 537),

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB239](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB239)

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 ( <i>name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b> <b>2018-02-27</b>
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT: _____	CASE NUMBER: _____
<b>PETITION/APPLICATION FOR RESENTENCING AND DISMISSAL</b> <b>(Pen. Code, § 1170.22)</b>	<b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPT: _____

**1. CONVICTION INFORMATION**

Petitioner/applicant was convicted of a violation of Penal Code section 647f in the above-captioned case.

**2. REQUEST**

PETITION: Petitioner is currently serving a sentence in the above-captioned case and now requests the court to recall, resentence, or dismiss and vacate the conviction.

**OR**

APPLICATION: Applicant has completed his or her sentence in the above-captioned case and now requests the court to dismiss and vacate the conviction as invalid pursuant to Penal Code sections 1170.21 and 1170.22(e).

**3. CONSENT TO HEARING BY ANY JUDGE (Optional)**

Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. Petitioner/applicant consents to having the presiding judge of the court designate any judge to rule on this matter.

**4. WAIVER OF APPEARANCE (Optional)**

Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without his or her appearance.

Date: \_\_\_\_\_



\_\_\_\_\_  
SIGNATURE OF PETITIONER/APPLICANT

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 ( <i>name</i> ): _____	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b> <b>2018-03-19</b>
PEOPLE OF THE STATE OF CALIFORNIA  <p style="text-align: center;">v.</p> DEFENDANT: _____	CASE NUMBER: _____
<b>ORDER AFTER PETITION/APPLICATION          FOR RESENTENCING AND DISMISSAL          (Pen. Code, § 1170.22)</b>	<i>FOR COURT USE ONLY</i> DATE: _____ TIME: _____ DEPT: _____

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

**1. PETITION FOR RESENTENCING AND DISMISSAL**

- a.  The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court recalls the sentence imposed on the designated crime and enters the following additional orders:
- (1)  Refer to the court minute order from (*date*): \_\_\_\_\_
- OR** (*Check all that apply*)
- (2)  The following sentence is imposed for the commission of the crime: \_\_\_\_\_
- (3)  The petitioner is given credit for time served of (*days*): \_\_\_\_\_
- (4)  Petitioner is required to complete the period of supervision imposed as a condition of parole, postrelease community supervision, mandatory supervision, or probation.
- b.  The court releases the petitioner from any form of supervision.
- c.  The court **DISMISSES** the conviction for violation of Penal Code section 647f as legally invalid.
- d.  Other: \_\_\_\_\_

**2. APPLICATION FOR DISMISSAL OF A COMPLETED SENTENCE**

- a.  The applicant is eligible for the requested relief. The application is **GRANTED**. The court **DISMISSES** the conviction for a violation of Penal Code section 647f as legally invalid.
- b.  The petitioner was also convicted of a violation of (*other counts*): \_\_\_\_\_ on (*date*): \_\_\_\_\_  
in the above-captioned case. The conviction for a violation of (*other counts*): \_\_\_\_\_  
on (*date*): \_\_\_\_\_ remains.
- c.  Other: \_\_\_\_\_

**IT IS SO ORDERED.**

Date: \_\_\_\_\_  
\_\_\_\_\_  
JUDICIAL OFFICER

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Criminal Procedure: Petition to Seal Arrest and Related Records

Approve forms CR-409, CR-409-INFO, and CR-410

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Eve Hershcopf, 415-865-7961

*eve.hershcopf@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: 12/15/16

Project description from annual agenda: Recently enacted legislation: Review enacted legislation that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

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

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

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## INVITATION TO COMMENT SPR18-19

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Title	Action Requested
Criminal Procedure: Petition to Seal Arrest and Related Records	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms CR-409, CR-409-INFO, and CR-410	January 1, 2019
Proposed by	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961
Hon. Tricia A. Bigelow, Chair	<a href="mailto:Eve.Hershcopf@jud.ca.gov">Eve.Hershcopf@jud.ca.gov</a>

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### Executive Summary and Origin

Senate Bill 393 (Lara; Stats. 2017, ch. 680), effective January 1, 2018, added section 851.91 to the Penal Code, which outlines how an individual who suffered an arrest that did not lead to a conviction can file a petition to have the arrest and related records sealed. The Criminal Law Advisory Committee proposes the development of a petition to seal arrests as directed by Penal Code section 851.91(b)(3), which requires the Judicial Council to furnish forms.

### The Proposal

The proposal recommends approval of two optional forms and an informational form. It is likely that a significant number of petitioners may be self-represented. The forms strive to use plain language (also known as “plain English”) so that users can readily understand the forms on their first reading.<sup>1</sup>

**Petition.** Optional *Petition to Seal Arrest and Related Records (Pen. Code, § 851.91)* (form CR-409) allows the petitioner to:

- Provide information about the arrest the petitioner is requesting to be sealed;

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<sup>1</sup> The federal government has recognized the benefit of plain language and embraced its use to improve citizen engagement. The Plain Writing Act of 2010 (Pub.L. No. 111-274, 124 Stat. 2861), for example, requires federal agencies to write “clear Government communication that the public can understand and use.” In addition, since 2004, the Judicial Council has used plain language writing and formatting on many of its family law forms.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

- Request relief as a matter of right; and
- Request relief in the interests of justice.

**Information sheet.** *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91* (form CR-409-INFO) provides the petitioner with information on:

- What is a petition to seal arrest and related records;
- What happens if the court grants the petition;
- What information should be included in the petition;
- When the petition should be filed;
- Who should be served;
- Whether translations of the petition are available; and
- Other means to seal or limit arrest records.

**Order.** Optional *Order to Seal Arrest and Related Records* (*Pen. Code*, §§ 851.91, 851.92) (form CR-410) provides the court with the ability to:

- Grant the relief; or
- Deny the relief and state the reasons for the denial.

### **Alternatives Considered**

The committee considered making the forms mandatory but determined that optional forms would allow courts the flexibility of developing their own forms to fit their own unique needs, while still providing the convenience of a standard form for those courts that choose to use them. Courts will still be required to accept petitions submitted on the proposed optional Judicial Council forms even if they develop their own forms, under rule 1.35(a) of the California Rules of Court.

The committee considered including all the qualifying factors for relief as a matter of right in the petition, so that a petitioner could address why he or she qualified for relief as a matter of right. However, the committee decided that simplifying the request for relief as a matter of right would be more accessible to a petitioner without placing an undue burden on the court. CR-409-INFO, *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91*, lists the qualifying factors for relief as a matter of right that are not included in the petition.

### **Implementation Requirements, Costs, and Operational Impacts**

It is anticipated that the volume of petitions for relief under Penal Code section 851.91 will be significant. Courts will have to process and act on the requests for relief by setting and conducting hearings, reviewing evidence, and issuing written orders. The proposed forms can help mitigate workload burdens by streamlining some of this process.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the forms written in a way that would be understandable to a typical self-represented court user?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Forms CR-409, CR-409-INFO, and CR-410, at pages 4–7
2. SB 393 (Stats. 2017, ch. 680),

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB393](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB393)

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**2018-03-19**

*Fill in the name and street address of the court that you are filing the petition in:*

**Superior Court of California, County of**

*Fill this out if a criminal complaint was filed or charged against the petitioner, and there is a case number and case name for that criminal case. Do not fill this out if an arrest happened but no criminal complaint was filed or charged in court:*

**Trial Court Case Number:**

**Trial Court Case Name:**  
*People of the State of California*  
v.  
\_\_\_\_\_

**1 Your Information**

a. Petitioner (*the person who is filing this petition*):

Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Mailing address (*if different*): \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Phone: \_\_\_\_\_

E-mail (*if available*): \_\_\_\_\_

b. Petitioner's lawyer (*skip this if petitioner has no lawyer*):

Name: \_\_\_\_\_ State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Mailing address (*if different*): \_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City State Zip*

Phone: \_\_\_\_\_

E-mail (*if available*): \_\_\_\_\_

**2 Information About Your Case**

a. Date of the arrest you are requesting to be sealed: \_\_\_\_\_

b. Where did the arrest happen? Include the city and county: \_\_\_\_\_

c. What law enforcement agency made the arrest? If it was a police department, include the city (*for example, ABC City Police Department*). If it was a county sheriff, list the county (*for example, XYZ County Sheriff*):

\_\_\_\_\_

d. What is the arrest report number or police report number, if available?

\_\_\_\_\_

e. Include any other information about the arrest that is available from the prosecutor or the court, including the case number that the prosecutor used to review the arrest or used to file a case against you. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Trial Court Case Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

f. Add any information on offenses or charges based on the arrest. If you would like to explain the information provided, please do so below, or complete and attach the *Attached Declaration* (form MC-031) or submit other relevant documents.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

g. If the prosecutor filed a case against you, please include what the charges were (*for example, Pen. Code, § 242, for battery*).

\_\_\_\_\_  
\_\_\_\_\_

h. Choose one:

I am entitled to have the arrest described in item ② of this petition sealed as a matter of right because the arrest did not result in a conviction and I satisfy the requirements of Penal Code section 851.91.

**OR**

I am requesting to have the arrest sealed in the interests of justice (Pen. Code, § 851.91(c)(2)(B)).  
*(Describe below how this is in the interests of justice. In deciding whether to grant this request, the court may consider any important factors, including the following factors and anything else you consider important: hardship and difficulties caused by the arrest; statements or evidence regarding your good character, from you, others, or both; statements or evidence regarding the arrest, from you, others, or both; your record of convictions.)*

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please attach any additional signed and dated statements with the petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of petitioner or attorney*

This information sheet does not cover all of the questions that may arise in a case. Do *not* deliver this information sheet to the court clerk.

### **What is a petition to seal arrest and related records?**

The petition is a request to the court to seal arrest and related records under Penal Code section 851.91. A separate petition must be filed for each arrest for which sealing is requested.

### **What happens if the court grants my petition (request)?**

If the court grants the petition, it will send a copy of the order to law enforcement and the California Department of Justice to update the arrest record, noting that the arrest is sealed. Records that are sealed under the court's order will not be disclosed except to you or a criminal justice agency (which includes courts, peace officers, prosecuting attorneys, city attorneys pursuing specific actions, defense attorneys, probation officers, parole officers, and correctional officers). Criminal history providers may disclose information to other criminal history providers. For more information, see Penal Code section 851.92.

### **What information do I include in the petition?**

Read the petition carefully and fill out all parts of the petition. The court may deny the petition based on incomplete information.

### **How will the court makes its decision?**

To have the arrest sealed as a matter of right, the court will determine whether the arrest did not result in a conviction (Pen. Code, § 851.91(a)(1)). The court will not seal the arrest as a matter of right if (1) you may still be charged with any of the offenses upon which the arrest was based; (2) the arrest or case was filed for murder or any other offense for which there is no statute of limitations (except if you have been acquitted or found factually innocent), or (3) you intentionally evaded law enforcement efforts to prosecute the arrest, including by engaging in identity fraud. (Pen. Code, § 851.91(a)(2).)

To have the arrest sealed in the interests of justice (Pen. Code, § 851.91(c)(2)(B)), you must describe how sealing the arrest is in the interests of justice through a personal statement and/or statements from others.

### **What do I do with the petition once I fill it out?**

If a criminal case was filed based on the arrest you want to have sealed, take or mail this petition to the clerk's office in the court where the case was filed. The clerk will give you a court date for the hearing, which should be at least 15 days from the date you file the petition.

If no criminal case was filed or charged against you, take or mail this petition to the clerk's office in the court that handles criminal matters for the city or county where the arrest happened. If you don't know which court this is, you may want to contact a court in the county to ask.

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.

### **Does anyone else get the petition?**

A copy of the petition must be served (delivered by hand or by mail) on the prosecutor of the city or county where the arrest happened *and* the law enforcement agency that made the arrest at least 15 days before the hearing on the petition.

### **Are translations of the petition available?**

Translations of the petition are available in Spanish, Chinese, Vietnamese, and Korean at the California Courts website at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

### **Are there other ways to seal or limit arrest records?**

Yes. You may request the court to deem an arrest a detention under Penal Code section 849.5; request a determination of factual innocence under section 851.8; receive an acquittal and a determination of factual innocence under section 851.85; have your conviction set aside based on a determination of factual innocence under section 851.86; and request relief after completion of a pre-filing diversion program under section 851.87.

*Clerk stamps date here when form is filed.***DRAFT  
not approved by the  
Judicial Council  
2018-03-19**

① The court finds that the petitioner is eligible for the following requested relief and makes the following order:

- The court **GRANTS** the petition. The record of arrest in the following matters shall be sealed and the arrest deemed not to have occurred:

Law enforcement agency report number: \_\_\_\_\_

Prosecuting agency report number: \_\_\_\_\_

Court case number: \_\_\_\_\_

Other: \_\_\_\_\_

Petitioner may answer any question relating to the sealed arrest as though it did not happen, and petitioner is released from all penalties and disabilities resulting from the arrest, except as follows:

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

*Clerk fills in the name and street address of the court.***Superior Court of California, County of***Clerk fills in the number and name of the case.***Trial Court Case Number:****Trial Court Case Name:***People of the State of California**v.*

②  The court **DENIES** the petition (*check one*):

a.  The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).

b.  Petitioner's arrest does not qualify under Penal Code section 851.91(a).

c.  The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).

d.  Other: \_\_\_\_\_

Date:



\_\_\_\_\_  
*Signature of trial court judicial officer*

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Changes to Continuance Rule and Forms (Amend rule 5.94; approve forms FL-302-INFO, FL-306-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; revoke and replace with FL-307)

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Gabrielle Selden, 415-865-8085, [gabrielle.selden@jud.ca.gov](mailto:gabrielle.selden@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda:

Family and Juvenile Law Advisory Committee: Family Law: Changes to Request to Continue Hearing and Declaration Regarding Notice of Request for Temporary Emergency Orders  
In continuation of 2015 annual agenda item 1 regarding implementation of AB 1081 (Quirk) effective July 1, 2017, amend rule 5.94 of the California Rules of Court, adopt Order on Request to Continue Hearing (form FL-307), and revising two forms, Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders and Request and Order to Continue Hearing and Extend Temporary Emergency (Ex Parte) Orders. The proposed changes would respond to specific suggestions from court professionals by increasing efficiencies in processing requests to continue hearings and requests for temporary emergency orders.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-20

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Title	Action Requested
Family Law: Changes to Continuance Rule and Forms	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 5.94; approve forms FL-302-INFO, FL-306-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307	January 1, 2019
As Proposed by	Contact
Family and Juvenile Law Advisory Committee	Gabrielle D. Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	Gregory Tanaka, 415-865-7671 <a href="mailto:gregory.tanaka@jud.ca.gov">gregory.tanaka@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes changes to one rule of court and three forms relating to the procedure for continuing a hearing as described in that rule. In addition, the committee proposes two new information sheets—one that explains the process associated with form FL-306 and another that describes the options for rescheduling a hearing. The changes are intended to respond to the concerns raised by courts that form FL-306, revised effective September 1, 2017, is not being used by attorneys and parties for the limited purpose intended by the Judicial Council and to provide general information to litigants about rescheduling hearings.

### Background

Effective September 1, 2017, the Judicial Council revoked form FL-306 and replaced it with two new forms—an application and an order. The title of new form FL-306, *Request to Continue Hearing*, was used to harmonize it with other civil forms used to request a continuance to effect service with temporary emergency (ex parte) orders (i.e., *Order on Request to Continue Hearing* (form DV-116), *Request to Continue Court Hearing* (form WV-115), *Request to Continue Court Hearing* (form EA-115)).

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

In addition, form FL-306 was “expanded to cover actions filed by the Department of Child Support Services in parentage cases and to allow a party to use the form to ask the court to continue a hearing on a *Request for Order* (form FL-300), order to show cause, or other moving papers without temporary emergency orders *to allow time for service before the hearing* (emphasis added).”<sup>1</sup>

Subdivision (f) of rule 5.94 of the California Rules of Court and forms FL-306 and FL-307, *Order on Request to Continue Hearing*, cover requests to continue a hearing in limited circumstances. They allow a party to request that the court continue a hearing when the other parties in the case have not been served with notice of the hearing. In this situation, under rule 5.94, the moving party is not required to provide notice to the other party before seeking an order to continue the hearing. Rule 5.94 also allows responding parties who have been served to use form FL-306 to request a continuance of hearing involving temporary emergency orders, as permitted by Family Code section 245. However, the rule does not address how notice to the other party is to be provided.

When the title of the mandatory form was changed to *Request to Continue Hearing*, effective September 1, 2017, courts observed that parties and attorneys started using form FL-306 to ask to continue a hearing date in all cases, including when the other party had actually been served with notice of the hearing.

No statewide rules of court or forms cover procedures for continuances other than as provided by rule 5.94(f). The procedure for all other continuances is governed by local court rules. Local procedures generally require that the party asking to continue the hearing provide notice of the request to the other parties, thereby allowing the other parties the opportunity to be heard on the request to continue the hearing before the court makes an order.

The changes proposed to rule 5.94 and other forms would address the issue of when notice is required on the other party before asking the court to continue a hearing and provide a method for the other party to respond to the request before the court considers the request. New information sheets would also educate parties about filing and responding to a request to continue a hearing and generally describe other procedures to reschedule a hearing in family court.

## **The Proposal**

### **Amendments to rule 5.94**

The rule would incorporate new content to specifically address how to ask to reschedule a hearing—and respond to the request—in different circumstances. For example, the rule would be reorganized under the following subdivision titles:

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<sup>1</sup> See Judicial Council of Cal., *Family Law: Request to Continue Hearing and Declaration Regarding Notice of Request for Temporary Emergency Orders* (Apr. 28, 2017), p. 4, <https://jcc.legistar.com/View.ashx?M=F&ID=5165106&GUID=7C168ED1-5D9D-47F5-A816-B9A99F2CAB4C>.

- (f) Rescheduling a hearing to serve papers on the other party;
- (g) Rescheduling a hearing to respond to a request for temporary emergency (ex parte) orders;
- (h) Rescheduling a hearing involving temporary emergency (ex parte) orders;
- (i) Rescheduling a hearing to attend mediation or child custody recommending counseling;
- (j) Agreements to reschedule a hearing; and
- (k) Request for order to reschedule a hearing.

Reorganizing the rule to include the new content will help the parties understand the procedures that apply in each situation and the forms and information sheets associated with those procedures.

The committee also proposes using the term “reschedule” to replace “continue” or “continuance” as a global change to the rule and forms in this invitation to comment. This change would respond to comments from court professionals and organizations that assist self-represented litigants that the term “continue” is often misunderstood and should be clarified so that a party understands that the hearing will not proceed (continue) as scheduled, but will be reset to a future date.

### **Changes to forms**

#### **Request to Continue Hearing (*form FL-306*)**

The committee proposes changing this form as follows:

- The title of form FL-306 would be changed to *Request to Reschedule Hearing*.
- All references to “continue” or “continuance” would be replaced with “reschedule,” as previously noted.
- The content would be divided under two titles “INFORMATION ABOUT THE HEARING” and “REASON FOR REQUEST TO RESCHEDULE.”
- The content under “REASON FOR REQUEST TO RESCHEDULE” would clarify when the form can be used.
- A new notice box would clarify that the other party must be notified of the request to reschedule and would direct the user to a new information sheet to learn about filing and serving this form.
- A reference to new information about this form would be added under the caption and title.

#### **Order on Request to Continue Hearing (*form FL-307*)**

This form would be renumbered from FL-307 to FL-309. The form number FL-307 would be reassigned to a proposed new form, *Responsive Declaration to Request to Reschedule Hearing*. The renumbered order form would be revised to include a space for the court to order the parties to attend child custody mediation or recommending counseling. In addition, the term “continue” would be replaced by “reschedule,” and the title of form FL-309 would be revised.

**Declaration Regarding Notice and Service of Request for Temporary Emergency (*Ex Parte*) Orders (form FL-303)**

Page 2 of this form would be revised to add item 4a(2) for a party or attorney to indicate if other documents (not listed in 4a(1)) were served. This change would be needed to implement a proposed new procedure included in rule 5.94(h)(4) for cases in which written notice of a request to reschedule a hearing using form FL-306 must be completed less than five days before the hearing. However, the specific form numbers would not be included on form FL-303 to avoid confusion, because form FL-306 is to be used in limited cases.

**New forms**

***How to Reschedule a Hearing in Family Court (form FL-302-INFO)***

The proposed new form would generally describe four ways in which a party may ask the court to reschedule a hearing. It would also include references to resources if the party has questions about the process.

***When to Use Request to Reschedule Hearing Form (form FL-306-INFO)***

This form would provide detailed information about when *Request to Reschedule Hearing* (form FL-306) can be used in a family law case. The form describes how to comply with rule 5.94 of the California Rules of Court relating to notifying the other party about the request to reschedule the hearing and how to respond to the request.

No Judicial Council forms currently address the issue of continuances in family court. This area is largely a matter left to local rules and procedures. The above two new forms proposed in this cycle can generally make parties aware of the ways a hearing can be continued, and form FL-306-INFO can help parties understand when and how to use form FL-306.

***Responsive Declaration to Request to Reschedule Hearing (form FL-307)***

This new optional form would implement the new procedures specified in rule 5.94. The rule would require a blank copy of form FL-307 to be served on the other party when form FL-306 is used to ask to reschedule the hearing. The new form and procedures will likely encourage the other party to file and serve a response, thereby providing information for the judicial officer to consider before making an order on the request to reschedule the hearing.

***Agreement and Order to Reschedule Hearing (form FL-308)***

Finally, proposed optional *Agreement and Order to Reschedule Hearing* (form FL-308) would provide parties with a form to serve as their stipulation if the court does not provide a local form for this purpose. Like *Order on Request to Reschedule Hearing* (form FL-309), form FL-308 would include a space for the court to order the parties to attend child custody mediation or recommending counseling. Unlike form FL-309, the form would only be one page. It would be limited to cases in which a party is seeking only to reschedule the hearing to a new date. Parties who want to agree to reschedule the hearing as well as modify temporary emergency (*ex parte*) orders would be required to draft their own agreement for the court to sign.



## **Alternatives Considered**

The Family and Juvenile Law Advisory Committee considered the following:

- (1) Recommending temporary technical revisions to forms FL-306 and FL-307 to respond to the concerns raised by courts that form FL-306, revised effective September 1, 2017, was not being used by attorneys and the parties for the limited purpose intended by the Judicial Council. The technical changes to the rule and form would have clarified to the parties, attorneys, and court that form FL-306 should not be used in all cases to request a continuance of a hearing.
- (2) Directing staff from the Center for Families, Children & the Courts to provide technical assistance to judicial officers and court clerks about the proper use of form FL-306 for rescheduling a hearing.
- (3) Undertaking a comprehensive review of rule 5.94 and forms and recommending changes to respond to the concerns raised by court professionals following the September 1, 2017, publication of the amended rule and revised forms.

The committee did not decide to pursue interim technical changes in (1) because doing so would have required courts to incur additional costs to produce copies over three consecutive forms publication cycles. Instead, the committee opted to proceed with options (2) and (3).

The committee decided to direct staff to provide technical assistance to the courts and concurrently draft for circulation in the subsequent public comment cycle a proposal that would include new information sheets and clarify the procedures for a party to provide notice to the other party and the opportunity for the other party to respond to a *Request to Reschedule Hearing* (form FL-306).

## **Implementation Requirements, Costs, and Operational Impacts**

The committee anticipates that courts would incur some costs to revise forms and add them to their case management systems, train court staff about the amended rule and revised and new forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts in the long term by clarifying procedures.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are other changes to the rules and forms needed for the proposal to address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 5.94, at pages 7–12
2. Forms FL-302-INFO, FL-303, FL-306, FL-306-INFO, FL-307, FL-308, and FL-309, at pages 13–24

Rule 5.94 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 5.94. Order shortening time; other filing requirements; request to ~~continue~~**  
2 **reschedule hearing**

3  
4 (a)–(d) \* \* \*

5  
6 (e) **Failure to timely serve request for order**

7  
8 The *Request for Order* (form FL-300) or other moving paper such as an order to  
9 show cause, along with any temporary emergency (ex parte) orders, will expire on  
10 the date and time of the scheduled hearing if the requesting party fails to:

- 11  
12 (1) Have the other party timely served before the hearing with the *Request for*  
13 *Order* (form FL-300) or other moving paper, such as an order to show cause;  
14 supporting documents; and any temporary emergency (ex parte) orders; or  
15  
16 (2) Obtain a court order to ~~continue~~ reschedule the hearing.

17  
18 (f) ~~Procedures to request continued hearing date~~ **Rescheduling a hearing to serve**  
19 **papers on the other party**

20  
21 (1) If a *Request for Order* (form FL-300), order to show cause, or other moving  
22 paper is not timely served on the other party before the date of the hearing,  
23 and the party requesting the order wishes to proceed with the request, he or  
24 she must ask the court to continue reschedule the hearing date. For purposes  
25 of this rule, “reschedule the hearing” means the same as “continue the  
26 hearing” under the Family Code.

27  
28 (2)(1) On a showing of good cause or on its own motion, the court may:

- 29  
30 (A) ~~Continue~~ Reschedule the hearing and set a new date; and  
31  
32 (B) Modify or terminate any temporary emergency (ex parte) orders  
33 initially granted with the *Request for Order*, order to show cause, or  
34 other moving paper.

35  
36 (3)(2) If the court ~~grants a continuance~~ reschedules the hearing and makes no  
37 change to the temporary emergency (ex parte) orders, those orders are  
38 extended until the time of the ~~continued~~ rescheduled hearing or to another  
39 date specified by the court.  
40

1           (4) ~~The party served with a *Request for Order* (form FL-300), order to show~~  
2           ~~cause, or other moving paper that includes temporary emergency (ex parte)~~  
3           ~~orders:~~

4  
5           (A) ~~Is entitled to one continuance as a matter of course for a reasonable~~  
6           ~~period of time to respond. A second or subsequent request by the~~  
7           ~~responding party to continue the hearing must be supported by facts~~  
8           ~~showing good cause for the continuance;~~

9  
10          (B) ~~May ask the court to continue the hearing by using *Request to Continue*~~  
11          ~~*Hearing* (form FL-306); and~~

12  
13          (C) ~~Must file and serve a *Responsive Declaration to Request for Order*~~  
14          ~~(form FL-320) before the date of the new hearing, as required by law or~~  
15          ~~described in *Order on Request to Continue Hearing* (form FL-307).~~

16  
17          (5)(3) ~~The following procedures apply to either the party's request asking to~~  
18          ~~continue reschedule the hearing because the responding party has not been~~  
19          ~~served with the moving papers:~~

20  
21          (A) ~~The party asking for the continuance must complete and submit an~~  
22          ~~original *Request to Continue Reschedule Hearing* (form FL-306) with~~  
23          ~~two copies for the court to review, as follows:~~

24  
25           (i) ~~The form should be submitted to the court no later than five court~~  
26           ~~days before the hearing date set on the *Request for Order*, order~~  
27           ~~to show cause, or other moving papers; or~~

28  
29           (ii) ~~The party may present the form FL-306 to the court on the date~~  
30           ~~of the hearing.~~

31  
32           (iii) ~~The party who on the date of the hearing, makes an oral request~~  
33           ~~to the court to continue the hearing, is not required to complete~~  
34           ~~form FL-306, but must complete and submit an *Order on Request*~~  
35           ~~*to Continue Hearing* (form FL-307) if the court grants the~~  
36           ~~request.~~

37  
38          (B) ~~The party may make an oral request to reschedule the hearing on the~~  
39          ~~date of the hearing and is not required to complete form FL-306.~~  
40          ~~However, the party must still follow the procedures as described in (C).~~

41  
42          (B)(C) ~~Along with form FL-306, The party asking for the continuance to~~  
43          ~~reschedule the hearing to serve papers must submit to the court an~~

1                                    *Order on Request to ~~Continue~~ Reschedule Hearing* (form FL-3079)  
2                                    with the caption and initial items completed as described on the form.

3  
4                    ~~(C)~~(D)        After the court signs and files form FL-3079, a filed copy must  
5                    be served on the other party as follows, unless the court orders  
6                    otherwise:

7  
8                    (i)    If the ~~continuance is granted~~ court reschedules the hearing, the  
9                    *Order on Request to ~~Continue~~ Reschedule Hearing* (form  
10                    FL-3079) must be attached as the cover page and served along  
11                    with the *Request for Order* (form FL-300) or other moving  
12                    papers such as an order to show cause; any temporary emergency  
13                    (ex parte) orders; and supporting documents.

14  
15                    (ii)    If the court grants the responding party's request for a  
16                    ~~continuance, and the party who asked for the orders was absent~~  
17                    ~~when the continuance was granted, then *Order on Request to*~~  
18                    ~~*Continue Hearing* (form FL-307) must be attached as the cover~~  
19                    ~~page to any documents the court orders served on that party.~~

20  
21                    ~~(iii)~~(ii)        Service must be in the manner required by rule 5.92 or as  
22                    ordered by the court.

23  
24                    ~~(D)~~(E) If the *Order on Request to ~~Continue~~ Reschedule Hearing* (form  
25                    FL-3079), *Request for Order* (FL-300) or order to show cause, original  
26                    or modified temporary emergency (ex parte) order, and supporting  
27                    documents are not timely served on the other party, and the requesting  
28                    party wishes to proceed with the hearing, he or she must repeat the  
29                    procedures in this rule ~~unless the opposing party agrees to waive notice~~  
30                    ~~and proceed with the hearing unless the court orders otherwise.~~

31  
32                    (g)    **Rescheduling a hearing to respond to a request for temporary emergency (ex**  
33                    **parte) orders**

34  
35                    The party served with a *Request for Order* (form FL-300), order to show cause, or  
36                    other moving paper that includes temporary emergency (ex parte) orders:

37  
38                    (1)    Has the right under Family Code 245 to reschedule the hearing one time for a  
39                    reasonable period to respond. Additional requests by the responding party to  
40                    reschedule the hearing on the temporary emergency (ex parte) order must be  
41                    supported by facts showing good cause to reschedule the hearing.  
42

- 1           (2) May ask the court to reschedule the hearing in writing before or at the  
2 hearing, or orally at the hearing, using the procedures described in (h).  
3  
4           (3) Should file and serve a *Responsive Declaration to Request for Order* (form  
5 FL-320) before the date of the new hearing, as required by law or described  
6 in the *Order on Request to Reschedule Hearing* (form FL-309).  
7

8   **(h) Rescheduling a hearing involving temporary emergency (ex parte) orders**  
9

10 Either party may ask the court to reschedule the hearing involving temporary  
11 emergency (ex parte) orders. The request may be made in writing before or at the  
12 hearing, or orally at the hearing.  
13

- 14           (1) The party may make an oral request at the time of the hearing when all  
15 parties are present. The party must complete the items indicated in the order  
16 and submit two copies of *Order on Request to Reschedule Hearing* (form  
17 FL-309) for the court to complete and sign.  
18  
19           (2) The party making a written request should provide written notice no less than  
20 five court days before the hearing. To do so, the party must:  
21  
22               (A) Have the other party personally served with a copy of *Request to*  
23 *Reschedule Hearing* (form FL-306), a blank *Responsive Declaration to*  
24 *Request to Reschedule Hearing* (form FL-307), and *Order on Request*  
25 *to Reschedule Hearing* (form FL-309) with the required items on the  
26 form completed; and  
27  
28               (B) File the original form FL-306 with the court, along with proof that the  
29 other party was personally served with the forms described in (A). An  
30 original and two copies of the order (form FL-309) must also be  
31 submitted to the court clerk at that time.  
32  
33               (C) After the judicial officer signs the order, serve the other party the *Order*  
34 *on Request to Reschedule Hearing* (form FL-309) as the cover page to  
35 all documents listed on the order. Service must be in the manner  
36 ordered by the court or as described in rule 5.92.  
37  
38               (D) File with the court proof that the other party was served with the order  
39 and documents listed in the order on or before the date of the original  
40 hearing.  
41  
42           (3) The responding party must file any response to the written request to  
43 reschedule at least three court days after being served with the request.

1 Responsive Declaration to Request to Reschedule Hearing (form FL-307)  
2 may be used for this purpose.

3  
4 (4) If written notice to reschedule the hearing is given less than five court days  
5 before the hearing:

6  
7 (A) The party (or attorney) must:

8  
9 (i) Notify the other party by no later than 10 a.m. the day before  
10 submitting forms FL-306 and FL-307 to the court clerk;

11  
12 (ii) Personally serve on the other party or the attorney an unfiled  
13 copy of completed form FL-306, a blank form FL-307, and  
14 form FL-309 with the necessary items completed;

15  
16 (iii) File form FL-306 with the court and:

17  
18 a. File a declaration describing how and when the other parties  
19 were notified of the request to reschedule the hearing and  
20 served with the papers. *Declaration Regarding Notice and*  
21 *Service of Request for Temporary Emergency (Ex Parte)*  
22 *Orders (form FL-303) may be used for this purpose; and*

23  
24 b. Submit an original *Order on Request to Reschedule Hearing*  
25 (form FL-309) (with the required items completed) and two  
26 copies to the court clerk; and

27  
28 (iv) When the court signs form FL-309, have the other party served  
29 with a file-stamped copy, along with the other documents listed  
30 on that order.

31  
32 (B) The other party may file and serve a *Responsive Declaration to Request*  
33 *to Reschedule Hearing (form FL-307) before the date and time set for*  
34 *the emergency hearing.*

35  
36 (i) **Rescheduling a hearing to attend mediation or child custody recommending**  
37 **counseling**

38  
39 (1) When parties need to reschedule a hearing relating to child custody and  
40 visitation (parenting time) because they have been unable to attend the family  
41 court services appointment, they should follow their local court rules and  
42 procedures for requesting and obtaining an order to reschedule the hearing.

43

1           (2) If the local court has no local rules and procedures for rescheduling hearings  
2           under (1), the parties may:

3  
4           (A) Complete and file an agreement (stipulation) for the court to sign. See  
5           (j) of this rule; or

6  
7           (B) Complete and file form FL-306 as described in (h)(2) or (h)(4).  
8

9       (j) **Agreements (stipulations) to reschedule a hearing**

10  
11       The court may order that the hearing date of a *Request for Order* (FL-300), order to  
12       show cause, or other moving paper be rescheduled based on an agreement  
13       (stipulation) between the parties and/or their attorneys.

14  
15       (1) The parties may complete *Agreement and Order to Reschedule Hearing*  
16       (form FL-308) for this purpose.

17  
18       (2) The parties may agree to reschedule the hearing to a date that must be  
19       provided by the court clerk.

20  
21       (3) If temporary emergency orders are in effect, the parties may further agree  
22       that those orders will remain in effect until after the end of the new hearing  
23       date, or until another date that is ordered by the court.

24  
25       (4) The court must approve and sign the agreement to make it a court order.

26  
27       (5) The court may limit the number of times that parties can agree to reschedule  
28       a hearing.

29  
30       (k) **Request for order to reschedule a hearing**

31  
32       If there is no agreement to reschedule a hearing—or if the hearing must be  
33       rescheduled for reasons other than those specified in *Request to Reschedule*  
34       *Hearing* (form FL-306)—the party seeking to reschedule may:

35  
36       (1) File and serve *Request for Order* (form FL-300) to ask the court to  
37       reschedule the hearing as described in rule 5.92; or

38  
39       (2) If time before the hearing is insufficient to file and serve a *Request for Order*  
40       (form FL-300) seeking an urgent order to reschedule, file a *Request for Order*  
41       seeking an order shortening time (temporary emergency [ex parte] order) to  
42       reschedule the hearing under rules 5.151, 5.165, 5.167, and 5.169.

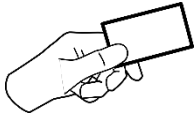


# FL-302-INFO How to Reschedule a Hearing in Family Court

If you need to reschedule (continue) a hearing date for a *Request for Order* or *Order to Show Cause*, you will need a court order. This form describes the ways you can seek a court order to reschedule a hearing.

## 1 Request to Reschedule Hearing (Form FL-306)

Use this form to ask to reschedule the hearing only if the following applies to your case:



### Serve papers

A *Request for Order* or *Order to Show Cause* (with or without temporary (ex parte) emergency orders) could not be served on the other party or parties as required before the hearing.



### New mediation date

The parties have not been able to meet with a child custody mediator or recommending counselor before the hearing as ordered by the court. Ask your mediator or child custody recommending counselor for information if this situation applies to you. Most courts have local procedures and forms in these cases, but will accept form FL-306 or your agreement (for example, form FL-308) to reschedule the hearing.



### Temporary emergency (ex parte) orders

Either party has a good reason (“good cause”) for rescheduling a hearing that involves temporary emergency (ex parte) orders. If the hearing is rescheduled, the court may extend, change, or end the temporary emergency (ex parte) orders.

Note: The person responding to temporary emergency (ex parte) orders served with a *Request for Order* or *Order to Show Cause* has a legal right to reschedule one hearing to provide a reasonable time to respond, but must provide a good reason for the court to reschedule additional hearings.



### DO NOT USE FORM FL-306:

- If you and the other party have an agreement (a “stipulation”) to reschedule the hearing. See item 2.
- To ask to change the date of a domestic violence restraining order hearing. Read [DV-115-INFO](#), *How to Ask for a New Hearing Date*, for more information.
- For any reason not listed on form FL-306. If you cannot agree to a new date, a party must file a *Request for Order* (form FL-300) to ask the court to reschedule the hearing. See items 3 and 4.

**Notice to the other party:**

Before filing form FL-306, the party asking to reschedule the hearing must let the other parties know about the request and serve them a copy of the form with any other documents related to the request (unless the need to reschedule is because the other party was not served before the hearing).

For more information, including procedures and deadlines for providing notice and filing form FL-306, read *Information Sheet for Request to Reschedule Hearing* (form FL-306-INFO).



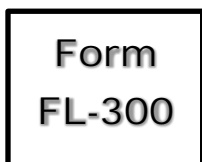
**2****Agreement (Stipulation) to Reschedule Hearing**

The judge in your family court case may order that the hearing date be rescheduled based on an agreement (stipulation) between the parties or their attorneys.

- You have to file the written agreement with the court. You can file it the day of the hearing, but it is best if you can file it at least five days before that date, so the judge doesn't have to read your file multiple times.
- You must follow your court's local procedures to obtain the new hearing date from the court clerk.
- You may use *Agreement and Order to Reschedule Hearing* (form FL-308), use a local form approved by the court, or write your own agreement.
- Some courts may limit the number of times the parties can agree to rescheduling a hearing. Check your local court rules before submitting your written agreement.

***Important!*** If the court has issued temporary emergency orders and those orders are in effect, the parties could further agree that those emergency orders will remain in effect until the end of the new hearing. A draft of a new temporary order with new end dates may have to be given to the court for the judge to sign with your agreement.

For information about how to write up your agreement, get it approved by the court, and filed in your case, see <http://www.courts.ca.gov/selfhelp-agreeFL>, speak with an attorney, or get help at your court's self-help center or Office of the Family Law Facilitator.

**3****Request for Order (Form FL-300)**

A party may file a *Request for Order* ([form FL-300](#)) to ask the court to reschedule the hearing if there is enough time before the scheduled hearing to do so. This may be an option only if the court grants the request and the order can be served on the other party at least 15 days before the original hearing date.

The *Request for Order* must be filed with the court. It must also be served on the other party and a proof of service filed with the court.

For more information about completing and serving form FL-300, read *Information Sheet for Request for Order* ([form FL-300-INFO](#)). The form can be found online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

**4 Request for Temporary Emergency (Ex Parte) Order to Reschedule Hearing**

Form  
FL-300

If there is not enough time to file *Request for Order* (form FL-300) as described in **3**, there is another option. A party can file a *Request for Order* to ask the court to decide to change the date of the hearing on an emergency basis. To do so, the party asks the court for an “order shortening time,” which would allow a party to have the papers served on the other party less than 15 days before the hearing.

Form  
FL-305

Do not use this procedure to ask to change the date of a domestic violence restraining order hearing. Read [DV-115-INFO](#), *How to Ask for a New Hearing Date*, for more information.

Form  
FL-303

*To request an order shortening time:*

- Complete form FL-300. Describe the emergency and explain why you need an urgent order to reschedule the hearing. On the first page, after the title “Request for Order,” check the box for “Temporary Emergency Orders.” Then check the box for “Other” and write “Order Shortening Time.” Next, complete items 9 and 10, describing the emergency, and explain why you need an urgent order to reschedule the hearing.
- Complete *Temporary Emergency (Ex Parte) Orders* (form [FL-305](#)) to serve as your proposed temporary order.
- Include a declaration describing how and when you notified and served the other parties (or why you could not or did not do so) about your urgent request to reschedule the hearing. You may use form [FL-303](#).
- Complete other forms if required by your local court rules.
- Follow your court’s local procedures for reserving the day for the emergency (ex parte) hearing on your request to reschedule, if required, and submitting your paperwork. Check your court’s local rules and forms online at [www.courts.ca.gov/3027.htm](http://www.courts.ca.gov/3027.htm)

More information about temporary emergency (ex parte) orders can be found on the California Courts Online Self-Help Center at [www.courts.ca.gov/](http://www.courts.ca.gov/)\_\_\_\_\_ (to be developed)

**5 Do you have questions or need help?**

- Find a lawyer through your local bar association, the State Bar of California at [calbar.ca.gov](http://calbar.ca.gov), or the Lawyer Referral Service at 1-866-442-2529.
- For free and low-cost legal help (if you qualify), go to [www.lawhelpca.org](http://www.lawhelpca.org).
- Contact the family law facilitator or self-help center for information, assistance, and referrals to local legal services providers. Go to [www.courts.ca.gov/selfhelp-courtresources.htm](http://www.courts.ca.gov/selfhelp-courtresources.htm).

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   Draft not approved by the Judicial Council
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
<b>DECLARATION REGARDING NOTICE AND SERVICE OF REQUEST          FOR TEMPORARY EMERGENCY (EX PARTE) ORDERS</b>	CASE NUMBER:

**NOTICE:** Do not use this form to ask for domestic violence restraining orders. Before completing this form, read your court's local procedures for requesting temporary emergency orders and obtaining the information needed to complete item 2 of this form. Courts may grant temporary emergency orders with or without an emergency hearing. Find local rules at [courts.ca.gov/3027.htm](http://courts.ca.gov/3027.htm).

1. I am (specify)  attorney for  petitioner  respondent  other parent/party  
 not a party in the case (name and title/relationship to party):
2. I  did  did not give notice that  
 there will be an emergency court hearing on a request for temporary emergency (ex parte) orders.  
 papers will be submitted to the court asking a judicial officer to grant temporary emergency orders without a hearing on the date, time, and location indicated below:

a. Date: _____ Time: _____ <input type="checkbox"/> Dept.: _____ <input type="checkbox"/> Room: _____ b. Address of court: <input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify): _____
--

3. **NOTICE** (If you gave notice, complete item 3a. If you did not give notice, complete item 3b or 3c.)

- a.  I gave notice as described in items (1) through (5):
  - (1) I gave notice to (select all that apply)
 

<input type="checkbox"/> petitioner.	<input type="checkbox"/> petitioner's attorney.
<input type="checkbox"/> respondent.	<input type="checkbox"/> respondent's attorney.
<input type="checkbox"/> other parent/party.	<input type="checkbox"/> other parent's/party's attorney.
<input type="checkbox"/> child's attorney.	<input type="checkbox"/> Other (specify): _____
  - (2) I gave notice
 

<input type="checkbox"/> personally on (date): _____ at (location): _____, California; at	<input type="checkbox"/> a.m.
	<input type="checkbox"/> p.m.
<input type="checkbox"/> by telephone on (date): _____ telephone no.: _____ at	<input type="checkbox"/> a.m.
	<input type="checkbox"/> p.m.
<input type="checkbox"/> by voicemail on (date): _____ voicemail no.: _____ at	<input type="checkbox"/> a.m.
	<input type="checkbox"/> p.m.
<input type="checkbox"/> by fax on (date): _____ fax no.: _____ at	<input type="checkbox"/> a.m.
	<input type="checkbox"/> p.m.
  - (3) I gave notice (select one):
 

<input type="checkbox"/> by 10 a.m. the court day before this emergency hearing.
<input type="checkbox"/> after 10 a.m. the court day before this emergency hearing because of the following exceptional circumstances (specify): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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3. a. (4) I notified the person in 3a(1) that the following temporary emergency orders are being requested (specify):

(5) The person in 3a(1) responded as follows:  Attachment 3a(5)

(6) I  do  do not believe that the person in 3a(1) will oppose the request for temporary emergency orders.

b.  **Request for waiver of notice.** I did not give notice about the request for temporary emergency orders. I ask that the court waive notice to the other party to help prevent an immediate (identify the exceptional circumstances)

- (1)  danger or irreparable harm to myself (or my client) or to the children in the case.
- (2)  risk that the children in the case will be removed from the state of California.
- (3)  loss or damage to property subject to disposition in the case.
- (4)  Other exceptional circumstances (specify):

Facts in support of the request to waive notice include (specify):  Attachment 3b.

c.  **Unable to provide notice.** I did not give notice about the request for temporary emergency orders. I used my best efforts to tell the opposing party when and where this hearing would take place but was unable to do so. The efforts I made to inform the other person were (specify below):  Attachment 3c.

4.  **SERVICE OF FORMS**

a. (1)  An unfiled copy of Request for Order (form FL-300) for temporary emergency orders, Temporary Emergency (Ex Parte) Orders (form FL-305), and related documents were served on the parties in (3).

(2)  Other documents served on the parties in (3) are (specify):

- (3)  Petitioner     Petitioner's attorney     Other parent/party     Other parent/party's attorney
- Respondent     Respondent's attorney     Child's attorney
- Other (specify):

b. Method of service:

- Personal service on (date): \_\_\_\_\_ at (location): \_\_\_\_\_, California; at  a.m.  p.m.
- Fax on (date): \_\_\_\_\_ fax no.: \_\_\_\_\_ at  a.m.  p.m.
- Overnight mail or other overnight carrier.

c.  Documents were not served on the opposing party due to the exceptional circumstances specified in  3b, above  3c, above  Attachment 4c.

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)

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">Not approved by the Judicial Council</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
<p style="text-align: center;"><b>REQUEST TO RESCHEDULE HEARING</b></p> <input type="checkbox"/> And Extend Temporary Emergency (Ex Parte) Orders	CASE NUMBER:

Notice: Read *Information Sheet for Request to Reschedule Hearing* (form FL-306-INFO) before you complete this form.

**INFORMATION ABOUT THE HEARING**

1. Name of person asking to reschedule the hearing (*specify*):
2. I ask that the court reschedule (continue) the hearing date for the (*select one*)
  - a.  *Request for Order*
  - b.  *Order to Show Cause for*  Contempt  Seek Work.
  - c.  *Other (specify)*:
3. The item in 2 was filed on (*date*):
4. The hearing is currently set for (*date*):
5. The request to reschedule  includes  does not include temporary emergency (ex parte) orders previously issued.

**REASON FOR REQUEST TO RESCHEDULE**

6.  I ask that the court reschedule the hearing because the papers could not be served as required before the hearing date.
7.  I ask that the court reschedule the hearing to another date because (*check all that apply*):
 

**Important!** If you check item 7a, b, or c, you must file proof that you notified the other party of your request to reschedule the hearing, unless otherwise directed by the court. Read form FL-306-INFO for filing and service information.

  - a.  the parties have not been able to meet with a child custody mediator or child custody recommending counselor as ordered by the court.
  - b.  I am the party responding to the papers in 2. Under Family Code section 245, I have a legal right to one continuance for a reasonable period to respond to the request for temporary emergency (ex parte) orders.
  - c.  the hearing concerns temporary emergency (ex parte) orders. For good cause, either party may ask the court to reschedule the hearing. My reasons for rescheduling are stated  below  [on Attachment 7\(c\)](#):
8. I have completed the required sections of *Order on Request to Reschedule Hearing* ([form FL-309](#)). (*Note: Form FL-309 must be submitted to the court with this form.*)

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

## FL-306-INFO When to Use Request to Reschedule Hearing Form

If you need to reschedule (continue) the court date for a *Request for Order* or *Order to Show Cause*, you will need a court order. This form describes when you can use form FL-306 for this purpose. For other ways to reschedule a hearing, read *How to Reschedule a Hearing in Family Court* (form FL-302-INFO).

### 1 When can I use form FL-306?

Use of this form is limited to the following situations:

#### Service required

To ask that the court reschedule a hearing because a *Request for Order* or *Order to Show Cause* (with or without temporary emergency orders) could not be served on the other party or parties as required before the hearing.

#### Attend mediation

To ask for a new hearing date because the parties have been unable to attend mediation or because the child custody recommending counselor needs more time to complete a report before the hearing.

#### Time to respond to emergency orders

To respond to temporary emergency (ex parte) orders served with a *Request for Order* or *Order to Show Cause*.

The responding party has the legal right to reschedule one hearing for a reasonable time to respond to the request for temporary emergency (ex parte) orders.

If a responding party is asking the court to reschedule the hearing on the ex parte orders more than one time, the responding party must provide a good reason (“show good cause”) why the hearing should be rescheduled.

“Good cause” means a substantial reason for changing the hearing date, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on the date originally set by the court.

#### Cases involving temporary emergency orders

To ask the court to reschedule a hearing and extend the expiration date of (or change or end) the temporary emergency (ex parte) orders served with a *Request for Order* or *Order to Show Cause*. Either party in the case may ask the court to do so for good cause.

### 2 Can I use form FL-306 in a domestic violence restraining order case?

No. To ask to change the date of a domestic violence restraining order hearing. Read [DV-115-INFO](#), *How to Ask for a New Hearing Date*, for more information.

### 3 Does the other party need to know that I want to reschedule the hearing?

Yes. For information about providing notice to the other party, see item **5**.

However, if the *Request for Order* (form FL-300) could not be served on the other party or parties as required before the hearing, you do not have to give the other party notice that you want to reschedule the hearing to serve the papers.

### 4 What can I do if I need a new hearing date to attend mediation or child custody recommending counseling

You should follow your local court’s rules and procedures for asking and obtaining an order to reschedule the hearing.

If your local court has no local rules or procedures, the parties may:

- Use form FL-306 to ask the court for a new hearing date. Follow the instructions in “Written request before the hearing” in item **5**.
- Complete and file an agreement to reschedule the hearing with the court for the judge to sign. Note: The court clerk must provide the new hearing date.

### 5 What if my cases involves temporary emergency (ex parte) orders?

For these cases, the law allows either party to ask the court to reschedule the hearing in writing before the hearing or orally at the hearing, as described on the following page.



- **Verbal request at hearing**

If a party makes a verbal (oral) request to reschedule the hearing at the time of the hearing when all parties are present, form FL-306 is not required. But the party must bring the original and two copies of *Order on Request to Reschedule Hearing* (form FL-309), with the top part completed to court on the date of the hearing

- **Written request before the hearing**

To provide written notice before the hearing, form FL-306 should be served on the other party no later than five court days before the hearing (if the notice is personally served). Include a blank copy of *Responsive Declaration* (form FL-307) and *Order on Request to Reschedule Hearing* (form FL-309), with the top part completed. Then file a proof of service with the court before or at the hearing.

Note: If the forms are served by mail to the other party within California, service must be completed five court days, plus five calendar days, before the hearing.

Any response to the request must be served and filed at least three court days after the party is served with the request (form FL-307 is available for this purpose).

- If written notice must be given less than five court days before the hearing, the party must:

- (1) Notify the other party no later than 10 a.m. the day before submitting the papers in (4) to the court clerk;
- (2) Serve an unfiled copy of forms FL-306, FL-307, and FL-309 on the other party or attorney (form names are shown above);
- (3) Complete a declaration describing how and when the other parties were notified and when papers were personally served. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form [FL-303](#)) may be used; and
- (4) File form FL-306, the declaration regarding notice, and submit form FL-309 with the first items completed.

The other party may file and serve a *Responsive Declaration* (for example, form FL-307) before the date set for the court to consider the request.

**6 How will the court let me know if the hearing will be rescheduled?**

If a party made a verbal request at the hearing, the court will complete the order. It will be file stamped and the parties will be given a copy.

If the written request is filed with the court before the hearing, the party asking to reschedule must arrange to pick up a filed copy of the order from the court clerk and have it served on the other party as noted in **7**, unless the court orders otherwise.

**7 What do I do after the court makes the order?**

You must have the other party served with the order and other documents. For example:

- If the court sets a new court date because the other party could not be served before the hearing, the order (form FL-309) must be attached as the cover page and served on the other party, along with the:
  - Filed *Request for Order* (form FL-300) or other moving papers;
  - Any temporary emergency (ex parte) orders; and
  - Other supporting papers.
- If the court sets a new court date at the request of the *responding party* for a hearing involving a temporary emergency (ex parte) order, and the party who asked for the temporary emergency order was absent when the court ordered that the hearing be rescheduled, the responding party must be sure to serve the absent party with:
  - Form FL-309 as the cover page; and
  - Other documents the court orders served on that party.

**8 Do you have questions or need help?**

- Find a lawyer through your local bar association, the State Bar of California at [calbar.ca.gov](http://calbar.ca.gov), or the Lawyer Referral Service at 1-866-442-2529.
- For free and low-cost legal help (if you qualify), go to [www.lawhelpca.org](http://www.lawhelpca.org).
- Contact the family law facilitator or self-help center for information and assistance, and referrals to local legal services providers. Go to [www.courts.ca.gov/selfhelp-courtresources.htm](http://www.courts.ca.gov/selfhelp-courtresources.htm).



PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="font-size: 2em; font-weight: bold; text-align: center;"><i>DRAFT</i></p> <p style="font-size: 1.5em; font-weight: bold; text-align: center;"><i>Not approved by the Judicial Council</i></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
<p style="text-align: center;"><b>RESPONSIVE DECLARATION TO REQUEST TO RESCHEDULE HEARING</b></p> <input type="checkbox"/> And Extend Temporary Emergency (Ex Parte) Orders	CASE NUMBER:

**INFORMATION ABOUT THE HEARING**

1. The person asking to reschedule the hearing is (name):
2. The hearing is currently set for (date):
3. The request to reschedule  includes  does not include temporary emergency (ex parte) orders previously issued.

**RESPONSE TO REQUEST TO RESCHEDULE HEARING**

4. I (choose a or b):
  - a.  consent to an order to reschedule the hearing.  
 and request that the rescheduled hearing date be set  on  after (specify date):
  - b.  do not consent to an order to reschedule the hearing for the following reasons (specify):

Attachment 4b.

*Important! Read Information Sheet for Request to Reschedule Hearing (form FL-306-INFO) for deadlines related to this form.*

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

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">Not approved by the Judicial Council</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
<b>AGREEMENT AND ORDER TO RESCHEDULE HEARING</b>	CASE NUMBER:

The parties signing below agree that

1. The hearing currently scheduled for (date): \_\_\_\_\_ will be rescheduled (continued).
2. The name of the party who filed the *Request for Order, Order to Show Cause*, or other matter is:
3. The agreement  includes  does not include extending temporary emergency (ex parte) orders previously issued.
4.  The rescheduled hearing date will be set  on  after (specify date): \_\_\_\_\_

Each party declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF RESPONDENT)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR PETITIONER)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR RESPONDENT)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF OTHER PARENT/PARTY)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR OTHER PARENT/PARTY)

**THE COURT ORDERS**

*FOR COURT USE ONLY*

5. The court hearing is rescheduled (continued) to the date, time, and location shown below:

New Hearing Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

Address of court:  Same as noted above  Other (specify): \_\_\_\_\_

The parties must attend an appointment for child custody mediation or recommending counseling as follows (specify date, time, and location): \_\_\_\_\_

6. Temporary emergency (ex parte) orders
  - a.  There are no temporary emergency (ex parte) orders.
  - b.  The temporary emergency (ex parte) orders previously issued remain in effect until
    - (1)  the end of the new hearing in 5.
    - (2)  (date): \_\_\_\_\_

Date: _____	▶ _____ JUDICIAL OFFICER
-------------	-----------------------------

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:          <b>FOR COURT USE ONLY</b>          <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
<b>ORDER ON REQUEST TO RESCHEDULE HEARING</b>	CASE NUMBER:

Use this form only with Request to Reschedule Hearing (form FL-306).

Complete items 1, 2, 3, and 4.

1. The hearing is currently scheduled for (date):
2. The name of party who filed the Request for Order, Order to Show Cause, or other matter is:
3. The name of party asking to reschedule the hearing is
4. The request  includes  does not include temporary emergency (ex parte) orders previously issued.

**The court will complete the rest of this form.**

5.  **Order denying request to reschedule hearing**  
 The request to reschedule the hearing is DENIED for the reasons specified  below  on Attachment 5.

6.  **Order granting request to reschedule hearing and notice of new hearing**

- a. The court hearing is rescheduled to the date, time, and location shown below:

New Hearing Date:	Time:	Dept.:	Room:
Address of court: <input type="checkbox"/> Same as noted above <input type="checkbox"/> Other (specify):			
<input type="checkbox"/> The parties must attend an appointment for child custody mediation or recommending counseling as follows (specify date, time, and location):			

- b.  By granting the request, any temporary emergency (ex parte) orders previously issued remain in effect until
  - (1)  the end of the new hearing in 6a.
  - (2)  (date):

7. **Reason for rescheduling**

- a. The hearing needs to be rescheduled because
  - (1)  the papers could not be served as required before the hearing date.
  - (2)  the parties need to attend child custody mediation or child custody recommending counseling before the hearing.
  - (3)  the responding party asked for one continuance in a matter involving temporary emergency (ex parte) orders.
  - (4)  Other good cause as stated  below  on Attachment 7(a)(4)
- b.  The court finds good cause and orders that the hearing be rescheduled in its discretion.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:
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**8. Temporary emergency (ex parte) orders**

- a.  No temporary emergency (ex parte) orders were changed.
- b.  The temporary emergency (ex parte) orders are MODIFIED as of this date. The new orders are stated in the attached
  - (1)  *Request for Order* (form FL-300).
  - (2)  *Temporary Emergency (Ex Parte) Orders* (form FL-305).
  - (3)  *Order to Show Cause*     Contempt     Seek Work     Other (*specify*):
  - (4)  Other (*specify*):
- c.  The temporary emergency (ex parte) orders are TERMINATED for the reasons stated  on Attachment 8c  
 in this section:

**9. Service of order**

- a.  No further service is required. Both parties were present at the hearing when the court granted this order.
- b.  The documents listed in 10 must be served by (*date*): \_\_\_\_\_ on (*check all that apply*)
  - (1)  petitioner/plaintiff.
  - (2)  respondent/defendant.
  - (3)  other parent/party.
  - (4)  Other (*specify*):
- c.  All documents must be  personally served     served by mail.
- d.  Other orders regarding service (*specify*):

**10. Documents for service**

A filed copy of this order (form FL-309) must be presented as the cover page to the following documents when served:

- a.  A copy of the previously filed *Request for Order*, *Order to Show Cause*, or other moving paper
- b.  A copy of the extended or modified *Temporary Emergency (Ex Parte) Orders* (form FL-305)
- c.  Other (*specify*):

11.  *Responsive Declaration to Request for Order* ([form FL-320](#)) must be filed and served on or before (*date*):

12.  Other orders:

Date:



\_\_\_\_\_  
 JUDICIAL OFFICER

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Income and Expense Declaration (form FL-150)

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail): Gabrielle Selden, 415-865-8085, gabrielle.selden@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 32: Technical Changes to Rules and Forms. Develop rule and forms changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2): a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy..."

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

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

This proposal for technical changes will conform Income and Expense Declaration (form FL-150) to the changes to the Internal Revenue Code, effective January 1, 2019. Proposals for technical changes usually do not circulate for comment. However, the Family and Juvenile Law Advisory Committee is seeking public comment about how to make other improvements to this essential family law form since it has not been revised in over 11 years.

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR18-21

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Title	Action Requested
Family Law: Income and Expense Declaration	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form FL-150	January 1, 2019
As Proposed by	Contact
Family and Juvenile Law Advisory Committee	Gabrielle D. Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	Bonnie Hough, 415-865-7668 <a href="mailto:bonnie.hough@jud.ca.gov">bonnie.hough@jud.ca.gov</a>
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends making time-sensitive revisions to *Income and Expense Declaration* (form FL-150) to implement the recent changes to the tax treatment of alimony (spousal support) under the Internal Revenue Code of 1986, which becomes effective January 1, 2019. In addition, the committee recommends changes to update the reference to a military housing allowance acronym which may lead to confusion. The committee is considering proposing more substantial revisions to the FL-150 in the future and welcomes additional suggestions for the form.

### Background

#### *New Federal Tax Treatment for Spousal Support Payments*

Public Law 115-97 (commonly referred to as “The Tax Cuts and Jobs Act”) amends the spousal support provisions of the Internal Revenue Code of 1986 (IRC) by repealing the income tax deduction to the person who pays spousal support under a divorce or separation instrument. In addition, the new law repeals the corresponding inclusion of spousal support in the gross income of the recipient. These amendments apply to: (1) Any divorce or separation instrument executed after December 31, 2018, and (2) Any modification of divorce or separation instrument that expressly provides that the amendments made by this section of the IRC apply to such modifications.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

The California Revenue and Taxation Code has not yet been amended to reflect the new federal tax treatment of spousal support. Thus, it appears that spousal support (and domestic partner support)<sup>1</sup> will continue to be taxable as income to the recipient and tax deductible to the payor for state tax purposes after December 31, 2018.

### *Military Housing Benefits*

The term “Basic Allowance for Quarters” (BAQ) is now known as “Basic Allowance for Housing” (BAH). It describes several types of allowances that partially reimburse military personnel for their housing if they live in civilian communities.<sup>2</sup> This term is included on the form FL-150 as one source of income.

## **The Proposal**

### **Changes to Income and Expense Declaration**

#### *Changes regarding spousal support items*

Item 5 (Income) on form FL-150 requires the party completing the form to list all income received last month and on an average monthly basis for all categories listed in this item. Item 5e requires a party receiving spousal support to state how much support was received last month and on an average monthly basis. The item appears on the form as follows:

“Spousal support  from this marriage  from a different marriage”

To determine the after-tax income of the person completing the form, the court will need to know whether that spousal support is taxable or not. A party receiving spousal support under a divorce or separation decree entered *before* December 31, 2018, will continue to pay income tax on those support payments. Persons who receive spousal support from a divorce or separation decree entered *after* December 31, 2018, will *not* have to declare a spousal support payment as federal taxable income, but will continue to include that amount on form FL-150 at item 5e, just as other non-taxable sources of income, such as TANF and SSI must be reported.

Parties who modify their spousal support judgments after January 1, 2019 may choose to follow the new federal law and make the support payments non-deductible to the payor (and taxable to the recipient), otherwise, the payments will remain tax deductible to the payor (and taxable to the recipient). Thus, just listing the date of the order may not be determinative as to tax status. To conform item 5e to the changes in federal law, the committee recommends that the item be revised as follows:

“Spousal support  from this marriage  from a different marriage  federal taxable”

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<sup>1</sup> In California, alimony payments between registered domestic partners are treated the same as alimony payments between spouses. However, for federal purposes, the treatment may not be the same because the IRC identifies alimony as a payment to a spouse under a divorce or separation instrument.

<sup>2</sup> The types of BAH are listed at: [http://militarypay.defense.gov/Pay/Allowances/BAH\\_Types.aspx](http://militarypay.defense.gov/Pay/Allowances/BAH_Types.aspx)

Item 10 (Deductions) on form FL-150 also needs to be changed to reflect the new federal tax law. Item 10e. requires a party to declare the amount of spousal support paid the last month (from the date the form was signed). To conform to the new tax law, item 10e would be revised as follows:

“Spousal support that I pay by court order from a different marriage.  federal tax deductible”

#### *Changes regarding military benefits reference*

The term “Basic Allowance for Quarters” (BAQ) is now known as “Basic Allowance for Housing (BAH). The acronym BAQ is found on form FL-150 (at item 5.I); however, the reference is intended to serve as an example of other items that are attributed as income to a party in a family law proceeding. There are other military allowances such as “Basic Allowance for Subsistence” (BAS). The committee proposes that the term BAQ be replaced with “military allowances.” This will help persons who are not in the military understand what the example refers to and avoids confusion among military members as to why only one allowance is referenced.

#### **Request for Comments to Improve Income and Expense Declaration**

Form FL-150 was last revised January 1, 2007, and the committee is aware that court professionals have suggested substantive and formatting changes in recent cycles. Although the form is being circulated for a focused reason, the committee would like to take the opportunity to gather information from all persons who are familiar with the form about how to improve it in a future cycle. Additional proposed changes to the form that are received from public comment will not be implemented effective January 1, 2019, but will be considered by the committee for modification in the future.

Because form FL-150 is an essential form in nearly all family law actions, the committee would like to receive suggestions from parties and attorneys who use the form, court professionals who assist self-represented parties complete the form, and judicial officers who review the form to make court orders relating to the parties’ finances.

#### **Alternatives Considered**

Revisions to form FL-150 are needed to implement the recent changes to the tax treatment of alimony (spousal support) in the Internal Revenue Code of 1986, effective January 1, 2019. The committee considered two alternatives:

- (1) Recommending technical changes directly to the Judicial Council without circulating the form with the proposed changes for public comment; or
- (2) Circulating the form to request specific comment on the proposed changes and requesting comments for generally improving the form in a future cycle.



The committee chose the second option, as it would enable the committee to obtain suggestions for alternative language to help implement the new tax laws while gathering input on the form for future revisions.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee anticipates that this proposal will result in minor costs incurred by the courts to revise the form. Those costs are likely outweighed by the time saved by the court in obtaining the information necessary to make appropriate orders including the taxability of the parties' income.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there other ways to change the form to comply with the new tax laws?
- What other changes are suggested for improving the form in a future cycle?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

Form FL-150, at pages 5–8

Attachment A<sup>3</sup>: Public Law 115-97, Section 11051, at pages 9-11

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<sup>3</sup> The full text of Public Law 115-97 may be found at <https://www.congress.gov/bill/115th-congress/house-bill/1>

PARTY WITHOUT ATTORNEY OR 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   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>  <b>3/20/2018</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	
<b>INCOME AND EXPENSE DECLARATION</b>	CASE NUMBER:

**1. Employment** (Give information on your current job or, if you're unemployed, your most recent job.)

Attach copies of your pay stubs for last two months (black out Social Security numbers).

- a. Employer:
- b. Employer's address:
- c. Employer's phone number:
- d. Occupation:
- e. Date job started:
- f. If unemployed, date job ended:
- g. I work about \_\_\_\_\_ hours per week.
- h. I get paid \$ \_\_\_\_\_ gross (before taxes)  per month  per week  per hour.

(If you have more than one job, attach an 8 1/2-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1—Other Jobs" at the top.)

**2. Age and education**

- a. My age is (specify): \_\_\_\_\_
- b. I have completed high school or the equivalent:  Yes  No If no, highest grade completed (specify): \_\_\_\_\_
- c. Number of years of college completed (specify): \_\_\_\_\_ Degree(s) obtained (specify): \_\_\_\_\_
- d. Number of years of graduate school completed (specify): \_\_\_\_\_ Degree(s) obtained (specify): \_\_\_\_\_
- e. I have:  professional/occupational license(s) (specify): \_\_\_\_\_  
 vocational training (specify): \_\_\_\_\_

**3. Tax information**

- a.  I last filed taxes for tax year (specify year): \_\_\_\_\_
- b. My tax filing status is  single  head of household  married, filing separately  
 married, filing jointly with (specify name): \_\_\_\_\_
- c. I file state tax returns in  California  other (specify state): \_\_\_\_\_
- d. I claim the following number of exemptions (including myself) on my taxes (specify): \_\_\_\_\_

- 4. **Other party's income.** I estimate the gross monthly income (before taxes) of the other party in this case at (specify): \$ \_\_\_\_\_  
 This estimate is based on (explain): \_\_\_\_\_

(If you need more space to answer any questions on this form, attach an 8 1/2-by-11-inch sheet of paper and write the question number before your answer.) Number of pages attached: \_\_\_\_\_

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

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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**Attach copies of your pay stubs for the last two months and proof of any other income. Take a copy of your latest federal tax return to the court hearing. (Black out your Social Security number on the pay stub and tax return.)**

5. **Income** (For average monthly, add up all the income you received in each category in the last 12 months and divide the total by 12.)

	Last month	Average monthly
a. Salary or wages (gross, before taxes).....	\$ _____	_____
b. Overtime (gross, before taxes).....	\$ _____	_____
c. Commissions or bonuses.....	\$ _____	_____
d. Public assistance (for example: TANF, SSI, GA/GR) <input type="checkbox"/> currently receiving .....	\$ _____	_____
e. Spousal support <input type="checkbox"/> from this marriage <input type="checkbox"/> from a different marriage <input type="checkbox"/> federal taxable .....	\$ _____	_____
f. Partner support <input type="checkbox"/> from this domestic partnership <input type="checkbox"/> from a different domestic partnership .....	\$ _____	_____
g. Pension/retirement fund payments.....	\$ _____	_____
h. Social Security retirement (not SSI).....	\$ _____	_____
i. Disability: <input type="checkbox"/> Social Security (not SSI) <input type="checkbox"/> State disability (SDI) <input type="checkbox"/> Private insurance .....	\$ _____	_____
j. Unemployment compensation.....	\$ _____	_____
k. Workers' compensation.....	\$ _____	_____
l. Other (military allowances, royalty payments, etc.) (specify): .....	\$ _____	_____

6. **Investment income** (Attach a schedule showing gross receipts less cash expenses for each piece of property.)

a. Dividends/interest.....	\$ _____	_____
b. Rental property income.....	\$ _____	_____
c. Trust income.....	\$ _____	_____
d. Other (specify): .....	\$ _____	_____

7. **Income from self-employment, after business expenses for all businesses**..... \$ \_\_\_\_\_

I am the  owner/sole proprietor  business partner  other (specify): \_\_\_\_\_

Number of years in this business (specify): \_\_\_\_\_

Name of business (specify): \_\_\_\_\_

Type of business (specify): \_\_\_\_\_

**Attach a profit and loss statement for the last two years or a Schedule C from your last federal tax return. Black out your Social Security number. If you have more than one business, provide the information above for each of your businesses.**

8.  **Additional income.** I received one-time money (lottery winnings, inheritance, etc.) in the last 12 months (specify source and amount): \_\_\_\_\_

9.  **Change in income.** My financial situation has changed significantly over the last 12 months because (specify): \_\_\_\_\_

10. **Deductions**

	Last month
a. Required union dues.....	\$ _____
b. Required retirement payments (not Social Security, FICA, 401(k), or IRA).....	\$ _____
c. Medical, hospital, dental, and other health insurance premiums (total monthly amount).....	\$ _____
d. Child support that I pay for children from other relationships.....	\$ _____
e. Spousal support that I pay by court order from a different marriage <input type="checkbox"/> federal tax deductible .....	\$ _____
f. Partner support that I pay by court order from a different domestic partnership.....	\$ _____
g. Necessary job-related expenses not reimbursed by my employer (attach explanation labeled "Question 10g").....	\$ _____

11. **Assets**

	Total
a. Cash and checking accounts, savings, credit union, money market, and other deposit accounts.....	\$ _____
b. Stocks, bonds, and other assets I could easily sell.....	\$ _____
c. All other property, <input type="checkbox"/> real and <input type="checkbox"/> personal (estimate fair market value minus the debts you owe).....	\$ _____

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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**12. The following people live with me:**

Name	Age	How the person is related to me (ex: son)	That person's gross monthly income	Pays some of the household expenses?
a.				<input type="checkbox"/> Yes <input type="checkbox"/> No
b.				<input type="checkbox"/> Yes <input type="checkbox"/> No
c.				<input type="checkbox"/> Yes <input type="checkbox"/> No
d.				<input type="checkbox"/> Yes <input type="checkbox"/> No
e.				<input type="checkbox"/> Yes <input type="checkbox"/> No

**13. Average monthly expenses**     Estimated expenses     Actual expenses     Proposed needs

- |  |   |
|--|---|
| a. Home:<br>(1) <input type="checkbox"/> Rent or <input type="checkbox"/> mortgage..... \$ _____<br>If mortgage: \$ _____<br>(a) average principal: \$ _____<br>(b) average interest: \$ _____<br>(2) Real property taxes..... \$ _____<br>(3) Homeowner's or renter's insurance<br>(if not included above)..... \$ _____<br>(4) Maintenance and repair..... \$ _____<br>b. Health-care costs not paid by insurance..... \$ _____<br>c. Child care..... \$ _____<br>d. Groceries and household supplies..... \$ _____<br>e. Eating out..... \$ _____<br>f. Utilities (gas, electric, water, trash)..... \$ _____<br>g. Telephone, cell phone, and e-mail..... \$ _____ | h. Laundry and cleaning..... \$ _____<br>i. Clothes..... \$ _____<br>j. Education..... \$ _____<br>k. Entertainment, gifts, and vacation..... \$ _____<br>l. Auto expenses and transportation<br>(insurance, gas, repairs, bus, etc.)..... \$ _____<br>m. Insurance (life, accident, etc.; do not include<br>auto, home, or health insurance)..... \$ _____<br>n. Savings and investments..... \$ _____<br>o. Charitable contributions..... \$ _____<br>p. Monthly payments listed in item 14<br>(itemize below in 14 and insert total here).... \$ _____<br>q. Other (specify): \$ _____<br><div style="border: 1px solid black; padding: 5px; margin-top: 5px;">                     r. <b>TOTAL EXPENSES</b> (a-q) (do not add in the amounts in a(1)(a) and (b)) \$ _____                 </div> s. <b>Amount of expenses paid by others</b> \$ _____ |
|--|---|

**14. Installment payments and debts not listed above**

Paid to	For	Amount	Balance	Date of last payment
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

**15. Attorney fees** (this information is required if either party is requesting attorney fees):

- a. To date, I have paid my attorney this amount for fees and costs (specify): \$
- b. The source of this money was (specify):
- c. I still owe the following fees and costs to my attorney (specify total owed): \$
- d. My attorney's hourly rate is (specify):

I confirm this fee arrangement.

Date:

\_\_\_\_\_ (TYPE OR PRINT NAME)

▶

\_\_\_\_\_ (SIGNATURE OF DECLARANT)

PETITIONER/PLANTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
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**CHILD SUPPORT INFORMATION**  
**(NOTE: Fill out this page only if your case involves child support.)**

**16. Number of children**

- a. I have *(specify number)*: \_\_\_\_\_ children under the age of 18 with the other parent in this case.
- b. The children spend \_\_\_\_\_ percent of their time with me and \_\_\_\_\_ percent of their time with the other parent.  
*(If you're not sure about percentage or it has not been agreed on, please describe your parenting schedule here.)*

**17. Children's health-care expenses**

- a.  I do  I do not have health insurance available to me for the children through my job.
- b. Name of insurance company:
- c. Address of insurance company:
  
- d. The monthly cost for the **children's** health insurance is or would be *(specify)*: \$ \_\_\_\_\_  
*(Do not include the amount your employer pays.)*

**18. Additional expense for the children in this case**

- |   | Amount per month |
|---|------------------|
| a. Childcare so I can work or get job training.....                           | \$ _____         |
| b. Children's health care not covered by insurance.....                       | \$ _____         |
| c. Travel expenses for visitation.....  | \$ _____         |
| d. Children's educational or other special needs <i>(specify below)</i> ..... | \$ _____         |

**19. Special hardships.** I ask the court to consider the following special financial circumstances

*(attach documentation of any item listed here, including court orders):*

- |  | Amount per month | For how many months? |
|--|------------------|----------------------|
| a. Extraordinary health expenses not included in 18b.....  | \$ _____         | _____                |
| b. Major losses not covered by insurance (examples: fire, theft, other insured loss).....          | \$ _____         | _____                |
| c. (1) Expenses for my minor children who are from other relationships and are living with me..... | \$ _____         | _____                |
| (2) Names and ages of those children <i>(specify)</i> :  |                  |                      |
| (3) Child support I receive for those children..... \$ _____                                       |                  |                      |

The expenses listed in a, b, and c create an extreme financial hardship because *(explain)*:

**20. Other information I want the court to know concerning support in my case *(specify)*:**

**Shown Here:  
Public Law No: 115-97 (12/22/2017)**

**ATTACHMENT A**

(This measure has not been amended since the House agreed to the Senate amendment without amendment on December 20, 2017. The summary of that version is repeated here.)

This bill amends the Internal Revenue Code (IRC) to reduce tax rates and modify policies, credits, and deductions for individuals and businesses. It also establishes an oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) in Alaska.

(Unless otherwise specified, provisions referred to in this summary as temporary or as a suspension of an existing provision apply for taxable years beginning after December 31, 2017, and before January 1, 2026.)

**TITLE I**

**Subtitle A-- Individual Tax Reform**

**Part V--Deductions And Exclusions**

**SEC. 11051. REPEAL OF DEDUCTION FOR ALIMONY PAYMENTS.**

(a) IN GENERAL.—Part VII of subchapter B is amended by striking section 215 (and by striking the item relating to such section in the table of sections for such subpart).

(b) CONFORMING AMENDMENTS.—

(1) CORRESPONDING REPEAL OF PROVISIONS PROVIDING FOR INCLUSION OF ALIMONY IN GROSS INCOME.—

(A) Subsection (a) of section 61 is amended by striking paragraph (8) and by redesignating paragraphs (9) through (15) as paragraphs (8) through (14), respectively.

(B) Part II of subchapter B of chapter 1 is amended by striking section 71 (and by striking the item relating to such section in the table of sections for such part).

(C) Subpart F of part I of subchapter J of chapter 1 is amended by striking section 682 (and by striking the item relating to such section in the table of sections for such subpart).

(2) RELATED TO REPEAL OF SECTION 215.—

(A) Section 62(a) is amended by striking paragraph (10).

(B) Section 3402(m)(1) is amended by striking “(other than paragraph (10) thereof)”.

(C) Section 6724(d)(3) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(3) RELATED TO REPEAL OF SECTION 71.—

(A) Section 121(d)(3) is amended—

(i) by striking “(as defined in section 71(b)(2))” in subparagraph (B), and

(ii) by adding at the end the following new subparagraph:

“(C) DIVORCE OR SEPARATION INSTRUMENT.—For purposes of this paragraph, the term ‘divorce or separation instrument’ means— ‘

‘(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

“(ii) a written separation agreement, or

“(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.”.

(B) Section 152(d)(5) is amended to read as follows:

“(5) SPECIAL RULES FOR SUPPORT.—

“(A) IN GENERAL.—For purposes of this subsection— H. R. 1—37

“(i) payments to a spouse of alimony or separate maintenance payments shall not be treated as a payment by the payor spouse for the support of any dependent, and

“(ii) in the case of the remarriage of a parent, support of a child received from the parent’s spouse shall be treated as received from the parent.

“(B) ALIMONY OR SEPARATE MAINTENANCE PAYMENT.— For purposes of subparagraph (A), the term ‘alimony or separate maintenance payment’ means any payment in cash if—

“(i) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument (as defined in section 121(d)(3)(C)),

“(ii) in the case of an individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

“(iii) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.”.

(C) Section 219(f)(1) is amended by striking the third sentence.

(D) Section 220(f)(7) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(E) Section 223(f)(7) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(F) Section 382(l)(3)(B)(iii) is amended by striking “section 71(b)(2)” and inserting “section 121(d)(3)(C)”.

(G) Section 408(d)(6) is amended by striking “subparagraph (A) of section 71(b)(2)” and inserting “clause (i) of section 121(d)(3)(C)”.

(4) ADDITIONAL CONFORMING AMENDMENTS.—Section 7701(a)(17) is amended—

(A) by striking “sections 682 and 2516” and inserting “section 2516”, and

(B) by striking “such sections” each place it appears and inserting “such section”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and

(2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Transfer of Jurisdiction

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Tracy Kenny, 916-263-2838, [tracy.kenny@jud.ca.gov](mailto:tracy.kenny@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda:

Implementation of Legislative Changes from the 2017- 2018 Legislative Session As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

AB 712 (Bloom): Civil Actions: change of venue Ch. 316, Statutes of 2017 Requires a court to retain jurisdiction over emergency orders regarding child custody after a transfer of jurisdiction has been initiated but not assumed by the receiving court. Requires the council, by 1/1/19, to establish timeframes for a court to transfer and to assume jurisdiction..

DRAFT

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

N/A

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

N/A

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-22**

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Title	Action Requested
Family Law: Transfer of Jurisdiction	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.97	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Tracy Kenny, 916-263-2838 <a href="mailto:tracy.kenny@jud.ca.gov">tracy.kenny@jud.ca.gov</a>
Hon. Jerilyn Borack, Cochair	
Hon. Mark Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes the adoption of a new rule of court to implement the requirements of Assembly Bill 712 (Bloom; Stats. 2017, ch. 316). The legislation requires the council to adopt a rule of court to establish time frames for the transfer and receipt of jurisdiction over family law actions.

### **Background**

In 2017 the Legislature enacted AB 712, which amended Code of Civil Procedure section 399 to enact specific change of venue provisions for family law actions and proceedings. In addition to granting a court that has ordered the transfer of an action jurisdiction to make specific orders to prevent immediate harm while a transfer is pending, the legislation also required the council to adopt a rule of court by January 1, 2019, to establish time frames for the transfer and assumption of jurisdiction in family law actions.

### **The Proposal**

To implement the express requirement in AB 712 for the establishment of time frames for the transfer of jurisdiction in family law matters, the committee proposes the addition of rule 5.97 to the California Rules of Court. The time limits in rule 5.97 become effective once the statutorily required costs and fees for the transfer have been paid, or the party required to pay the fees has obtained a fee waiver. It would provide the clerk of the court in which the transfer is ordered with five court days from the date the time period for writ review has expired to transfer the

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pleadings and papers and send notice of the transfer, and another 20 court days from that date for the clerk in the receiving court to accept the filing and send notice of the filing date and case number. In addition, the rule includes the authority for the transferring court to exercise the specific jurisdiction to make orders to prevent immediate harm in the time period before the case has been received and filed.

### **Alternatives Considered**

The advisory committee considered alternative time frames but determined that, given current court workload and resource constraints, it was necessary to ensure the finality of the order and establish a reasonable time frame to accommodate the range of circumstances facing different courts.

### **Implementation Requirements, Costs, and Operational Impacts**

While courts are currently required by statute to effectuate transfers promptly, there is not a set time frame in current law. Because this proposal would implement a time frame, courts may face some costs to institute procedures to track these transfers to ensure compliance with the rule of court.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the time frames proposed in the rule appropriate?
- Is the treatment of fee waivers in the rule a workable solution?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rule 5.97, at pages 3–4
2. AB 712 (Bloom; Stats. 2017, ch. 316),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB712](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB712)

1 **Rule 5.97. Time frames for transferring jurisdiction**

2  
3 **(a) Application**

4 This rule applies to family law actions or proceedings for which a transfer of  
5 jurisdiction has been ordered under title 4 of the Code of Civil Procedure.

6  
7 **(b) Payment of fees; fee waivers**

8  
9 Responsibility for the payment of court costs and fees for the transfer of  
10 jurisdiction as provided in Government Code section 70618 is subject to the  
11 following provisions:

12  
13 (1) If a transfer of jurisdiction is ordered in response to a motion made under title  
14 4 of the Code of Civil Procedure by a party, the responsibility for costs and  
15 fees is subject to Code of Civil Procedure section 399(a). If the fees are not  
16 paid within the time specified in section 399(a), the court may, on a duly  
17 noticed motion by any party or on its own motion, dismiss the action without  
18 prejudice to the cause. No other action on the cause may be commenced in  
19 another court before satisfaction of the court’s order for fees and costs or a  
20 court-ordered waiver of such fees and costs.

21  
22 (2) If a transfer of jurisdiction is ordered by the court on its own motion, the  
23 court must specify in its order which party is responsible for the Government  
24 Code section 70618 fees. If that party has not paid the fees within 5 days of  
25 service of notice of the transfer order, any other party interested in the action  
26 or proceeding may pay the costs and fees and the clerk must transmit the case  
27 file. If the fees are not paid within the time period set forth in Code of Civil  
28 Procedure section 399, the court may, on a duly noticed motion by any party  
29 or on its own motion, dismiss the action without prejudice to the cause or  
30 enter such other orders as the court deems appropriate. No other action on the  
31 cause may be commenced in the original court or another court before  
32 satisfaction of the court’s order for fees and costs or a court-ordered waiver  
33 of such fees and costs.

34  
35 (3) If the party responsible for the fees has been granted a fee waiver by the  
36 sending court, the case file must be transmitted as if the fees and costs were  
37 paid and the fee waiver order must be transmitted with the case file in lieu of  
38 the fees and costs. If a partial fee waiver has been granted, the party  
39 responsible for the fees and costs must pay the required portion of the fees  
40 and costs before the case will be transmitted. In any case involving a fee  
41 waiver, the court receiving the case file has the authority under Government  
42 Code section 68636 to review the party’s eligibility for a fee waiver based on

1                    additional information available to the court or pursuant to a hearing at final  
2                    disposition of the case.

3  
4    **(c) Time frame for transfer of jurisdiction**

5                    After a court orders the transfer of jurisdiction over the action or proceeding, the  
6                    clerk must transmit the case file to the clerk of the court to which the action or  
7                    proceeding is transferred within 5 court days of the date of expiration of the 20-day  
8                    time period to petition for a writ of mandate. If a writ is filed, the clerk must  
9                    transmit the case file within 5 court days of the notice that the order is final. The  
10                   clerk must send notice to all parties who have appeared in the action or proceeding  
11                   stating the date of the transmittal.

12  
13    **(d) Time frame to assume jurisdiction over transferred matter**

14                   Within 20 court days of the date of the transmittal, the clerk of the court receiving  
15                   the transferred action or proceeding must send notice to all parties who have  
16                   appeared in the action or proceeding stating the date of the filing of the case and the  
17                   number assigned to the case in the court.

18  
19    **(e) Emergency orders while transfer is pending**

20                   Until the clerk of the receiving court sends notice of the date of filing, the  
21                   transferring court retains jurisdiction over the matter to make orders designed to  
22                   prevent immediate danger or irreparable harm to a party or the children involved in  
23                   the matter, or immediate loss or damage to property subject to disposition in the  
24                   matter.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Nicole Giacinti - (415) 865-7598 - [nicole.giacinti@jud.ca.gov](mailto:nicole.giacinti@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 2: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. Senate Bill 239 was identified for consideration by the Criminal Law Advisory Committee and also impacts juvenile justice proceedings.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-23**

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Title	Action Requested
Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt forms JV-742 and JV-743	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti, (415) 865-7598 <a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes approving two new forms to comply with Senate Bill 239 (Wiener; Stats. 2017, ch. 537), which decriminalizes convictions based on Penal Code section 647f and requires the Judicial Council to promulgate forms to implement the legislation. The proposed forms would allow those who are eligible for relief to request that their Penal Code 647f conviction be vacated and dismissed, and that they be resentenced, if appropriate.

### **Background**

Prior to SB 239, people who were found to be positive for HIV/AIDS at the time of a previous prostitution offense could be charged with a felony for a subsequent prostitution arrest pursuant to Penal Code section 647f (section 647f). SB 239, implemented through Penal Code sections 1170.21 and 1170.22, allows people convicted of a violation of section 647f to seek to have their conviction vacated and dismissed as invalid. Those people who are serving a sentence for a section 647f offense may not only request dismissal of the conviction but may also seek to be resentenced. Penal Code section 1170.22(h) makes this relief applicable to juvenile delinquency adjudications and dispositions.

While section 647f is a charge that is not often seen in juvenile court, the committee believes it is necessary to create these forms because the relief is specifically applicable to juveniles and because Penal Code section 1170.22(i) specifically directs the Judicial Council to create forms to implement the relief. The Criminal Law Advisory Committee (CLAC) is drafting forms for use

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

in criminal proceedings; however, the differences between adult and juvenile court are significant enough that creating a joint form would be challenging.<sup>1</sup>

### **The Proposal**

The forms, which are modeled on the forms created for Proposition 64<sup>2</sup> (forms JV-744 and JV-746) during the winter 2017 cycle, are written in a format that is intended to be easier for non-lawyers to understand. Because children are no longer being prosecuted for prostitution crimes, these forms will be irrelevant in several years. As such, the committee recommends that the forms sunset after five years. The sunset date is reflected on the footer of the forms.

### **Request to dismiss and resentence**

Recognizing that many people who complete this form will not be represented by an attorney, the form includes instructions about how to fill out the form. The substantive elements of the form include:

- A section to request resentencing and dismissal, for those young people who may be on probation for multiple offenses, only one of which is a section 647f violation.
- A section for dismissal for those young people who are no longer on probation for the section 647f violation.
- A section where the applicant can waive his or her appearance.
- A section where the applicant can ask for an interpreter.
- A section where the applicant can waive the right to the original sentencing judge.

### **Order after request to reduce juvenile Penal Code section 647f offense**

The order form is straightforward. In those instances where resentencing is necessary, it allows the court to either terminate delinquency jurisdiction or state which terms of probation will be vacated.

### **Alternatives Considered**

The committee discussed the necessity of creating the forms, since section 647f is not a charge that is often seen in juvenile court. However, the committee decided it was necessary to create the petition and order because the Legislature specifically made the decriminalization of convictions under section 647f applicable to juveniles and required the Judicial Council to create forms to implement the legislation. The committee also considered developing dual forms with CLAC; however, the terminology in juvenile proceedings is sufficiently distinct from criminal proceedings that a joint form would frustrate attempts at plain language.

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<sup>1</sup> See the CLAC proposal titled, *Criminal Procedure: Petition/Application for Dismissal of a Conviction for a Violation of Penal Code Section 647f*.

<sup>2</sup> Commonly known as the Adult Use of Marijuana Act, Proposition 64 was adopted by the voters on November 8, 2016.



## **Implementation Requirements, Costs, and Operational Impacts**

It is unlikely that this proposal will impose any implementation costs or result in operational impacts, since section 647f is a crime rarely seen in juvenile court. However, if there are eligible young people, there will be moderate workload burdens on the court as those young people seek to have their section 647f adjudications dismissed and vacated. The proposed forms are intended to mitigate those burdens by providing courts with forms to streamline the process.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- It is recommended that forms JV-742 and JV-743 sunset in five years. Is five years a sufficient time period to provide young people time to request vacatur or should the sunset date be later?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## **Attachments and Links**

1. Forms JV-742 and JV-743, at pages 4–6

PARTY WITHOUT AN ATTORNEY OR ATTORNEY: STATE BAR NO. (if applicable): NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>REQUEST TO RESENTENCE AND DISMISS JUVENILE PENAL CODE SECTION 647f OFFENSE</b>	CASE NUMBER:  Date: Time: Department:

**INSTRUCTIONS**

- Use this form if you went to court and were found to have committed a Penal Code section 647f offense when you were under the age of 18 and you want to be resentenced or have the charge taken off your record. You need to use a different form if you were 18 or older at the time of the offense.
- If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office in the court or county where you went to court can probably help you get the information.
- The court will serve this form for you unless you have an attorney. If you have an attorney, he or she must serve the form.
- How to fill out the form without an attorney:
  - A. Put your name and contact information in the box at the top of the form and in item number 1 below.
  - B. Put the address of the court from your court papers in the box below your address. This form must be filed in the same county where you went to court for this offense.
  - C. Fill out item number 2 about the Penal Code section 647f offense.
  - D. If you are on probation now for the Penal Code section 647f offense, also check item number 3 to ask the judge to make new dispositional orders (a new sentence) and take the charge off your record.
  - E. If you have completed probation for the Penal Code section 647f offense, check item number 4 to ask the judge to take the charge off your record. After the charge gets taken off your record, it can't be used against you later.
  - F. Your case may be heard by the judge who originally sentenced you or the court will have a different judge hear your request.
  - G. You can check item number 5 if you do not want to come to court if there is a hearing.
  - H. If you will need an interpreter, ask for one in item number 6.

**1. MY INFORMATION**

My name is:

I was born on (date):

**2. OFFENSE INFORMATION**

On (date): \_\_\_\_\_ I was found to come within the jurisdiction of the court under Welfare and Institutions Code section 602 for a violation of Penal Code section 647f.

CASE NAME:	CASE NUMBER:
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**3. REQUEST FOR A NEW DISPOSITIONAL ORDER (RESENTENCING)**

I am currently subject to a dispositional order (on probation) for the Penal Code section 647f offense in number 2. I request that the dispositional order be recalled and relief be granted in accordance with Penal Code Sections 1170.21 and 1170.22 so that I will be resentenced and my conviction will be dismissed and vacated.

**4. REQUEST FOR DISMISSAL**

I am no longer a ward of the court (completed probation) for the Penal Code section 647f offense in number 2. I request that the court dismiss and vacate the conviction (take the charge off my record) because it is invalid under Penal Code sections 1170.21 and 1170.22.

**5. WAIVER OF APPEARANCE**

I understand that I have a right to attend any hearing about my request and argue on my behalf. I give up that right. The case may be heard without my presence.

**6. REQUEST FOR INTERPRETER**

If there is a hearing, I will need a (*language*) \_\_\_\_\_ interpreter.

**7. WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

I waive the right to have the judge who originally sentenced me hear my request. I understand that if I don't waive this right, I will not have the hearing in front of the original judge if he or she is unavailable.

Date: \_\_\_\_\_

 SIGNATURE OF PETITIONER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<p style="text-align: center;"><b>ORDER AFTER REQUEST TO REDUCE JUVENILE PENAL CODE SECTION 647f OFFENSE</b></p>	CASE NUMBER:
	Date: Time: Department:

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

**1. NEW DISPOSITION AND DISMISSAL**

- The applicant is eligible for the requested relief. The petition is **GRANTED**. The court recalls its disposition for the designated offense and makes the following additional orders:
- a.  The following Penal Code section 647f offense is vacated and dismissed as legally invalid (*indicate date of petition*):
  - b.  Wardship and delinquency jurisdiction for this offense is terminated.
  - c.  Delinquency jurisdiction remains in effect. All prior orders remain in full force and effect. The court vacates condition number(s) \_\_\_\_\_ of the terms and conditions of probation.

**2. DISMISSAL OF COMPLETED PROBATION**

- The applicant is eligible for the requested relief. The request is **GRANTED**. The court hereby vacates and dismisses the adjudication for a violation of Penal Code section 647f as legally invalid.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_  
\_\_\_\_\_  
JUDICIAL OFFICER

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Vacatur of Convictions Related to Human Trafficking and Preservation of Extended Foster Care Eligibility

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Nicole Giacinti - (415) 865-7598 - [nicole.giacinti@jud.ca.gov](mailto:nicole.giacinti@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 2: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. Assembly Bill 604 expands the definition of nonminor dependent to include a nonminor subject to an order vesting temporary placement and care with a county child welfare department.

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

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

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## INVITATION TO COMMENT SPR18-24

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Title	Action Requested
Juvenile Law: Vacatur of Convictions Related to Human Trafficking and Preservation of Extended Foster Care Eligibility	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.812, 5.903, and 5.906; adopt Cal. Rules of Court, rule 5.811; revise forms JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683; approve forms JV-748 and JV-749	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti
Hon. Jerilyn L. Borack, Cochair	415-865-7598
Hon. Mark A. Juhas, Cochair	<a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@jud.ca.gov</a>

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending three rules and adopting one new rule of the California Rules of Court, revising eight Judicial Council forms, and approving two new Judicial Council forms to implement Assembly Bill 604 (Gipson; Stats. 2017, ch. 707), which clarified that extended foster care benefits are available to young people who have adjudications that are eligible for vacatur pursuant to Penal Code section 236.14. The committee further proposes revising form JV-462 to include certain changes necessitated by recent legislation. The committee also proposes making a technical change to form JV-462, and revising form JV-367 to reflect how the form is typically used. Finally, the committee proposes amending rules 5.903 and 5.906 to clarify who may attend status review hearings for former wards who have become nonminor dependents.

### Background

All three rules and 10 forms proposed for amendment or revision, were originally created to implement extended foster care (Assem. Bill 12, Assem. Bill 212, Assem. Bill 1712, and Assem.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Bill 787).<sup>1</sup> Rule 5.812 was last amended in 2014, while six of the 10 forms were last revised that year. Rule 5.906 was last amended in 2016, while forms JV-464-INFO and JV-466 were last revised that year. Form JV-367 was last revised in 2017, while form JV-320, which is included in this proposal to fix an error in the permanent plan option listed for nonminor dependents, was revised effective January 1, 2018, as part of a large revision that was intended to bring forms affected by continuum of care reform into compliance.

The bulk of the proposed revisions and amendments contained herein are required by Assembly Bill 604 (Gipson; Stats. 2017, ch. 707), which amended Welfare and Institutions Code sections 303, 388, 450, 451, and 11401 to ensure that young people can take advantage of both the vacatur opportunity provided by Penal Code section 236.14 *and* extended foster care, if they are otherwise eligible. Assembly Bill 604 requires the Judicial Council to create rules and forms to implement the legislation.

Before AB 604, when a young person was granted vacatur of his or her underlying petition and all associated orders, it meant he or she was no longer eligible for extended foster care benefits because the basis for juvenile court jurisdiction had been vacated. Now, young people who may have exited the system after their underlying petition was vacated pursuant to Penal Code section 236.14 are entitled to reenter juvenile jurisdiction, if otherwise eligible. Similarly, those young people who are in out-of-home placement when their underlying petition is vacated pursuant to Penal Code section 236.14 will automatically fall within the transition jurisdiction of the juvenile court as stated in Welfare and Institutions Code section 450.

Implementing the reentry piece of AB 604 and the automatic transition jurisdiction for children 17 years and 5 months and older will be straightforward; however, the legislation does not establish a process for children younger than 17 years and 5 months who are eligible for vacatur. Under Welfare and Institutions Code section 450, only children who are 17 years and 5 months or older are eligible for transition jurisdiction; consequently, children younger than that who seek to have their underlying petition vacated will not automatically fall within the transition jurisdiction of the juvenile court. This issue cannot be resolved through the rules and forms process, but the committee has attempted to address it by amending rule 5.812 to highlight the statutory sections that may provide the appropriate process.

In addition to the revisions necessary to ensure this population of young people remain eligible for extended foster care, the committee proposes approving forms that will create a process for vacating offenses committed as a result of being a human trafficking victim. The committee proposes approving a petition for vacatur and an order for vacatur. In light of the decriminalization of prostitution for juveniles in conjunction with the recent efforts to identify victims of human trafficking and provide them services through child welfare rather than juvenile justice, it is anticipated that (1) going forward there will be only rare circumstances

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<sup>1</sup> Assem. Bill 12 (Beall; Stats. 2010, ch. 559), Assem. Bill 212 (Beall; Stats. 2012, ch. 459), Assem. Bill 1712 (Beall; Stats. 2012, ch. 846), and Assem. Bill 787 (Stone; Stats. 2014, ch. 487).

where delinquency petitions are filed against victims of human trafficking, and (2) it will only take a few years for those young people who are eligible for vacatur to petition for that relief. Consequently, the petition and order for vacatur will be necessary for a limited amount of time. For that reason, the committee proposes that the petition and order sunset after five years. It should be noted that the Criminal Law Advisory Committee (CLAC) is also in the process of creating forms for the vacatur process and the forms proposed for approval in the proposal are similar to those proposed by CLAC.<sup>2</sup> The main difference between CLAC’s forms and the juvenile forms is the simplicity of the language. The committee used more plain language in the forms, so that they are easier for juveniles and young adults to understand.

While form JV-320 is not affected by AB 604, it is included in this proposal because a technical change is necessary. Specifically, item 16a still includes the permanent plan of “independent living with identification of a caring adult.” Pursuant to continuum of care reform, that permanent plan option became “another planned permanent living arrangement”; however, due to an oversight, item 16a was not revised when this form and 17 others were updated in 2017.<sup>3</sup> The committee proposes that item 16a be revised now to reflect the correct permanent plan and make the form legally accurate.

The committee also proposes revising form JV-367, *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor*. This form is used when the probation department or the child welfare agency proposes that termination of nonminor dependent status may be appropriate. The form contains both an option to terminate nonminor dependent status and an option to continue nonminor dependent status; however, the form does not contain all the necessary title IV-E findings that must be made at a status review hearing for a nonminor dependent.<sup>4</sup> The result is that when this form is used and nonminor dependent status is continued, the title IV-E findings are not being made. The committee’s proposal to include the title IV-E findings on this form would remedy that problem.

Finally, the committee proposes amending rules 5.903 and 5.906 to clarify that the district attorney is not entitled to attend nonminor dependent status review hearings once the nonminor has transitioned from delinquency jurisdiction to the general juvenile jurisdiction of the court under Welfare and Institutions Code section 450. Nonminor dependents under the transition jurisdiction of the court, as described in section 450, are no longer under the delinquency jurisdiction of the juvenile court.<sup>5</sup> The statutes and rules that address nonminor dependents acknowledge this shift in jurisdiction to, what is best described as, a consensual agreement between the agency—either probation or child welfare—and the nonminor dependent to work

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<sup>2</sup> The CLAC proposal, *Criminal Procedure: Vacatur of Convictions Related to Human Trafficking*, can be found here (eventually this will be a hyperlink).

<sup>3</sup> Sen. Bill 794 (Comm. on Human Services; Stats. 2015, ch. 425); see also Welf & Inst. Code, §§ 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.

<sup>4</sup> 42 U.S.C. § 670 et seq.

<sup>5</sup> Welf. & Inst. Code, §§ 451(b), 607.2(b)(1).



together to accomplish the jointly created supervised living plan.<sup>6</sup> In recognition of this, the clerk is required to create a separate court file that is not accessible to the district attorney in section 450 cases, and review hearings must be informal and nonadversarial.<sup>7</sup> Since the district attorney is not allowed access to the nonminor dependent's case file, and is not entitled to notice of the proceeding,<sup>8</sup> the district attorney should not be present in the courtroom at the nonminor dependent status review hearings when the nonminor dependent is under section 450 transition jurisdiction. Amending rules 5.903 and 5.906 will clarify that transition jurisdiction nonminor dependents are not to be treated as wards.

## **The Proposal**

The Family and Juvenile Law Advisory Committee proposes the form and rule changes discussed below to ensure that the forms contain accurate findings that courts can rely on to ensure that an eligible young person remains in extended foster care after his or her underlying petition is vacated due to Penal Code section 236.14. It is also recommended that technical changes be made to two forms and that one form be revised to reflect changes implemented by continuum of care reform.

## **Revisions to Implement AB 604**

*Amendments to allow for reentry.* To ensure the eligibility of young people who would otherwise be eligible for extended foster care—but for vacatur of the underlying petition based on Penal Code section 236.14—it is recommended that language that references the vacated petition be included in certain rules and forms, as set forth below:

- Amend rule 5.906, *Request by nonminor for the juvenile court to resume jurisdiction*, subdivision (d)(1)(A) to read, “The nonminor is eligible to seek assumption of dependency jurisdiction pursuant to the provisions of subdivision (c) of section 388.1, or the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age, including a nonminor whose petition was vacated pursuant to Penal Code section 236.14.”
- Revise form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care*, under the section titled “Court Jurisdiction Requirements” to include an instruction that states that extended foster care is available to a young person who was in foster care on his or her 18th birthday and whose underlying petition is subject to vacatur.
- Revise form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care*, after item 4, which asks for the date the juvenile court closed the nonminor's case, to add an item 4(a): “The date the juvenile court closed my case \_\_\_\_.” Include item 4(b)

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<sup>6</sup> Cal. Rules of Court, rule 5.900(b).

<sup>7</sup> § 362.5; rule 5.900 (d) & (f).

<sup>8</sup> § 295; rule 5.903(c).

underneath: “My arrest and adjudication [ ] were [ ] were not vacated based on Penal Code section 236.14.”

- Revise form JV-470, *Findings and Orders Regarding Prima Facie Showing on Nonminor’s Request to Reenter Foster Care*, to include in item 2(a) an additional checkbox finding that reads: “The nonminor was previously under juvenile court jurisdiction with an order for foster care placement when he or she was 18 years of age, based on a petition that was vacated under Penal Code 236.14; or....”
- Revise form JV-472, *Findings and Orders After Hearing to Consider Nonminor’s Request to Reenter Foster Care*, subsection 4(b) to state: “The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age [ ] and jurisdiction was vacated pursuant to Penal Code 236.14, or....”

***Amendments to allow for transition jurisdiction.*** To implement the legislation’s intent to allow young people eligible for relief under Penal Code section 236.14 to modify delinquency jurisdiction to transition jurisdiction, staff proposes creating one new rule, amending one rule, and revising two forms. The most important piece of these form revisions is structuring them so that the orders maintaining the foster care placement are made before the underlying petition is vacated.

- **Adopt new rule 5.811**, *Modification to transition jurisdiction for a ward older than 17 years and 5 months with a petition subject to vacatur*, which sets forth the procedure that must be followed when a young person aged 17 years and 5 months or older is eligible for vacatur. The rule is patterned after rules 5.812 and 5.813, which set forth the procedure that must be followed to modify wards to transition jurisdiction. The proposed new rule differs from those rules in that it specifically references vacatur pursuant to Penal Code section 236.14, it directs the court to order sealing and destruction of the underlying petition and associated records, and it contains a sunset provision for the same reasons (discussed above) as the petition and order for vacatur.
- **Amend rule 5.812**, *Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority*, in recognition of the fact that these young people no longer have a delinquency adjudication; amend subsections (c)(1)(A), (d)(1)(A), (e)(4)(A)(ii), and (e)(5)(B) to clarify that the court need not find that a young person whose petition is subject to vacatur has completed his or her rehabilitative goals.
- **Amend rule 5.812 subsection (f)**, “Modification of jurisdiction—conditions,” to include an additional subsection that specifies that the court’s order modifying jurisdiction to transition jurisdiction must be made before the underlying petition is vacated, and that the orders must contain reference to certain findings required by title IV-E. It is also

recommended that the rule be amended to include information about sealing and destruction of records related to the arrest and/or conviction.

- **Revise form JV-680, *Findings and Orders for Child Approaching Majority–Delinquency***, to include language in the introductory section, as well as the findings and orders section, that states the form also applies to children whose underlying petition is subject to vacatur pursuant to Penal Code section 236.14.
- **Revise form JV-682, *Findings and Orders After Hearing to Modify Delinquency Jurisdiction to Transition Jurisdiction for Child Younger Than 18 Years of Age***, to clarify that the form applies to young people whose underlying petition is subject to vacatur and to include the findings and orders that will transition the young person to the transition jurisdiction of the juvenile court. The revisions to form JV-682 also include the order to seal and destroy records related to the adjudication being dismissed.
- **Revise form JV-683, *Findings and Orders After Hearing to Modify Delinquency Jurisdiction to Transition Jurisdiction for Ward Older Than 18 Years of Age***, to clarify that the form applies to young people whose underlying petition is subject to vacatur and to include the findings and orders that will transition the young person to the transition jurisdiction of the juvenile court. Like form JV-682, the revisions to form JV-683 also include the order to seal and destroy records related to the adjudication being dismissed.

***Forms proposed for vacatur.*** Penal Code section 236.14 allows the applicant to consolidate arrests and adjudications from various jurisdictions into one request. To accommodate this mandate, the petition for vacatur—*Request to Vacate Arrest or Conviction* (form JV-748)—contains a table where the applicant can list arrests and adjudications from various jurisdictions. In addition, the legislation states that the applicant’s full name is not to be included on records that are available to the public. Since juvenile records are not available to the public, this should not be an issue for the juvenile forms. Finally, the footers on forms JV-748 and *Order After Request to Vacate Arrest or Conviction* (form JV-749) state that the forms expire on January 1, 2024.

***Revisions to form JV-462 to conform to CCR changes.*** The committee proposes revising form JV-462 to bring it in line with changes made during the spring 2017 cycle to other out-of-home placement finding and order forms. Form JV-462 was not previously changed along with the other forms because it was thought that a legislative fix would be implemented to resolve the contradiction between the findings and orders language and the goal of extended foster care. In the absence of a legislative fix, it is recommended that form JV-462 be revised to comport with the findings and orders required by continuum of care reform.

***Revise JV-367 to comport with current practice.*** To ensure that the title IV-E findings are made at hearings where termination of nonminor dependent status is considered but not ordered, it is recommended that the title IV-E findings be included on form JV-367. Specifically, it is

recommended that items number six through nine, as well as items number 16, 17, 19, 22, and 25 from form JV-462 be included on the JV-367 immediately before what is currently item number 23. It is also recommended that item number 23 be revised to match the proposed new language for item 25 of form JV-462.

***Revise form JV-320 to make a technical change.*** Form JV-320 was revised effective January 1, 2018, but due to an oversight, a plan option that is no longer authorized was inadvertently left on the revised form. To comply with federal and state mandates, it is recommended that “independent living with identification of a caring adult” be deleted from item 16a and replaced with “another planned permanent living arrangement.”

***Amend rules 5.903 and 5.906 to clarify who is entitled to attend nonminor dependent review hearings.*** In many counties, because the prosecutor is typically present at juvenile justice hearings, he or she is present when eligible youth transition to nonminor dependent status under section 450. However, as stated above, pursuant to the rules and statutes that address nonminor dependent status, young people under the transition jurisdiction of the court are entitled to nonadversarial status review hearings just like their counterparts on the child welfare side. Consequently, the prosecuting agency is not entitled to the nonminor file, is not required to receive notice of status review hearings, and should not be present at those hearings. Amending rules 5.903 and 5.906 to clearly state that the prosecuting agency is not entitled to be present will bring clarity to this issue.

### **Alternatives Considered**

The necessity of creating forms JV-748 and JV-749 was discussed and it was determined that the efficiencies, for the courts and parties, achieved by establishing a uniform process for vacatur outweighed any downside to creating new forms. The committee also considered whether it was necessary to modify the forms in a way that would achieve anonymity but it was determined that, since juvenile files are already confidential, an instruction noting the confidentiality provisions would be sufficient. Consequently, form JV-749 states that any records disclosed to the public must not include the petitioner’s full name.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation of AB 604 may impose moderate workload burdens on the court as eligible young people seek to reenter extended foster care or seek to have adjudications dismissed and vacated. The proposed forms are intended to mitigate those burdens by providing courts with uniform forms to streamline the process.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- What term should be used in the rules and forms to refer to a young person whose petition is subject to vacatur? Is “young person” appropriate?
- Are the petition for vacatur and the accompanying order written plainly enough that they will be accessible to the juvenile and young adult population?
- Is the table on form JV-748 sufficient to obtain information about convictions and arrests from other jurisdictions in the state?
- Should the forms include additional provisions aimed at anonymizing the name of the young person who seeks to have his or her underlying petition vacated?
- It is recommended that rule 5.811 and forms JV-748 and JV-749 sunset in five years. Is five years a sufficient time period to provide young people time to request vacatur or should the sunset period be longer?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rules 5.811, 5.812, 5.903, and 5.906, at pages 9–19.
2. Judicial Council forms JV-320, JV-367, JV-462, JV-464-INFO, JV-466, JV-470, JV-472, JV-680, JV-682, JV-683, JV-748, and JV-749, at pages 20–61.

Rule 5.811 of the California Rules of Court would be adopted, and rules 5.812, 5.903, and 5.906 would be amended, effective January 1, 2019, to read:

1 **Rule 5.811. Modification to transition jurisdiction for a ward older than 17 years**  
2 **and 5 Months with a petition subject to vacatur (Welf. and Inst. Code, §§ 450,**  
3 **451, 727.2(i)–(j), 778; Pen. Code, § 236.14)**  
4

5 **(a) Purpose**  
6

7 This rule provides the procedures that must be followed to modify delinquency  
8 jurisdiction to transition jurisdiction for a young person who is older than 17 years,  
9 5 months of age and:  
10

- 11 (1) The underlying petition establishing wardship is subject to vacatur under  
12 Penal Code section 236.14;
- 13
- 14 (2) Is under a foster care placement order;
- 15
- 16 (3) Wants to remain in extended foster care under the transition jurisdiction of the  
17 juvenile court;
- 18
- 19 (4) Is not receiving reunification services; and
- 20
- 21 (5) Does not have a hearing set for termination of parental rights or establishment  
22 of guardianship.
- 23

24 **(b) Setting and conduct of hearing**  
25

- 26 (1) The probation officer must request a hearing for the court to modify  
27 delinquency jurisdiction to transition jurisdiction and vacate the underlying  
28 petition.
- 29
- 30 (2) The hearing must be held before a judicial officer and recorded by a court  
31 reporter.
- 32
- 33 (3) The hearing must be continued for no more than five court days for the  
34 submission of additional evidence as ordered by the court if the court finds  
35 that the report and, if required, the Transitional Independent Living Case Plan  
36 submitted by the probation officer, do not provide the information required by  
37 (d) and the court is unable to make all the findings required by (e).
- 38

39 **(c) Notice of hearing**  
40

- 1 (1) The probation officer must serve written notice of the hearing in the manner  
2 provided in section 295.  
3  
4 (2) Proof of service of notice must be filed by the probation officer at least five  
5 court days before the hearing.  
6

7 **(d) Reports**  
8

9 At least 10 calendar days before the hearing, the probation officer must submit a  
10 report to the court that includes information regarding:  
11

- 12 (1) Whether the young person is subject to an order for foster care placement and  
13 is older than 17 years, 5 months of age and younger than 18 years of age;  
14  
15 (2) Whether the young person is a nonminor who was subject to an order for  
16 foster care placement on the day of the young person's 18th birthday and is  
17 within the age eligibility requirements for extended foster care;  
18  
19 (3) Whether the young person was removed from the physical custody of his or  
20 her parents, adjudged to be a young person of the juvenile court under section  
21 725, and ordered into foster care placement as a young person; or whether the  
22 young person was removed from the custody of his or her parents as a  
23 dependent of the court with an order for foster care placement in effect at the  
24 time the court adjudged him or her to be a young person of the juvenile court  
25 under section 725 and was ordered into a foster care placement as a young  
26 person, including the date of the initial removal findings—"continuance in the  
27 home is contrary to the child's welfare" and "reasonable efforts were made to  
28 prevent removal"—as well as whether the young person continues to be  
29 removed from the parents or legal guardian from whom the child was  
30 removed under the original petition;  
31  
32 (4) Whether each parent or legal guardian is currently able to provide the care,  
33 custody, supervision, and support the child requires in a safe and healthy  
34 environment;  
35  
36 (5) Whether the young person signed a mutual agreement with the probation  
37 department or social services agency for placement in a supervised setting as a  
38 transition dependent and, if so, a recommendation as to which agency should  
39 be responsible for placement and care of the transition dependent;  
40  
41 (6) Whether the young person plans to meet at least one of the conditions in  
42 section 11403(b) and what efforts the probation officer has made to help the  
43 young person meet any of these conditions;

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- (7) When and how the young person was informed of the benefits of remaining under juvenile court jurisdiction as a transition dependent and the probation officer's assessment of the young person's understanding of those benefits;
- (8) When and how the young person was informed that he or she may decline to become a transition dependent and have the juvenile court terminate jurisdiction at a hearing under section 391 and rule 5.555; and
- (9) When and how the young person was informed that if juvenile court jurisdiction is terminated, he or she can file a request to return to foster care and have the court resume jurisdiction over him or her as a nonminor.

**(e) Findings**

At the hearing, the court must make the following findings:

- (1) Whether notice has been given as required by law;
- (2) Whether the underlying petition is subject to vacatur pursuant to Penal Code section 236.14;
- (3) Whether the young person has been informed that he or she may decline to become a transition dependent and have juvenile court jurisdiction terminated at a hearing set under rule 5.555;
- (4) Whether the young person intends to sign a mutual agreement with the probation department or social services agency for placement in a supervised setting as a nonminor dependent;
- (5) Whether the young person was informed that if juvenile court jurisdiction is terminated, the young person can file a request to return to foster care and may have the court resume jurisdiction over the young person as a nonminor dependent;
- (6) Whether the benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained and whether the young person understands them;
- (7) Whether the young person's Transitional Independent Living Case Plan includes a plan for the young person to satisfy at least one of the conditions in section 11403(b); and



1 (8) Whether the young person has had an opportunity to confer with his or her  
2 attorney.

3  
4 In addition to the findings listed above, the court must make the following findings  
5 for children who are older than 17 years, 5 months of age but younger than 18 years  
6 of age:

- 7  
8 (1) Whether the young person’s return to the home of his or her parent or legal  
9 guardian would create a substantial risk of detriment to the young person’s  
10 safety, protection, or physical or emotional well-being—the facts supporting  
11 this finding must be stated on the record;  
12  
13 (2) Whether reunification services have been terminated; and  
14  
15 (3) Whether the young person’s case has been set for a hearing to terminate  
16 parental rights or establish a guardianship.

17  
18 **(f) Orders**

19  
20 The court must enter the following orders:

- 21  
22 (1) An order adjudging the young person a transition dependent as of the date of  
23 the hearing or pending his or her 18th birthday and granting status as a  
24 nonminor dependent under the general jurisdiction of the court. The order  
25 modifying the court’s jurisdiction must contain all of the following provisions:  
26  
27 (A) A statement that “continuance in the home is contrary to the child or  
28 nonminor’s welfare” and that “reasonable efforts have been made to  
29 prevent or eliminate the need for removal”;  
30  
31 (B) A statement that the child continues to be removed from the parents or  
32 legal guardian from whom the child was removed under the original  
33 petition; and  
34  
35 (C) Identification of the agency that is responsible for placement and care of  
36 the child based on the modification of jurisdiction.  
37  
38 (2) An order vacating the underlying delinquency petition pursuant to Penal Code  
39 section 236.14.  
40  
41 (3) An order directing the Department of Justice and any law enforcement agency  
42 that has records of the arrest to seal those records and then destroy them three

1 years from the date of the arrest or one year after the order to seal, whichever  
2 occurs later.

3  
4 (4) An order continuing the appointment of the attorney of record, or appointing a  
5 new attorney as the attorney of record for the nonminor dependent.

6  
7 (5) An order setting a nonminor dependent status review hearing under section  
8 366.31 and rule 5.903 within six months of the last hearing held under section  
9 727.2 or 727.3.

10  
11 **(g) Sunset Provision**

12  
13 Unless amended or reenacted by Judicial Council action effective after the effective  
14 date of this rule, this rule is repealed effective January 1, 2020.

15  
16 **Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over**  
17 **child in foster care and for status review or dispositional hearing for child**  
18 **approaching majority (§§ 450, 451, 727.2(i)–(j), 778)**

19  
20 **(a) Hearings subject to this rule**

21 \*\*\*

22  
23  
24 **(b) Conduct of the hearing**

25  
26 (1) \*\*\*

27  
28 **(c) Reports**

29  
30 (1) In addition to complying with all other statutory and rule requirements  
31 applicable to the report prepared by the probation officer for a hearing  
32 described in (a)(1)–(4), the report must state whether the child was provided  
33 with the notices and information required under section 607.5 and include a  
34 description of:

35  
36 (A) The child’s progress toward meeting the case plan goals that will enable  
37 him or her to be a law-abiding and productive member of his or her  
38 family and the community. This information is not required if dismissal  
39 of delinquency jurisdiction and vacatur of the underlying petition is  
40 based on Penal Code section 236.14.

41  
42 (B) – (E) \*\*\*

43

1 (F) For a child other than a dual status child, including a child whose  
2 underlying petition is subject to vacatur under Penal Code section  
3 236.14, the probation officer's recommendation regarding the  
4 modification of the juvenile court's jurisdiction over the child from that  
5 of a ward under section 601 or 602 to that of a dependent under section  
6 300 or to that of a transition dependent under section 450 and the facts in  
7 support of his or her recommendation.  
8

9 (2) \*\*\*

10  
11 **(d) Findings**

12  
13 (1) At the hearing described in (a)(1)–(4), in addition to complying with all other  
14 statutory and rule requirements applicable to the hearing, the court must make  
15 the following findings in the written documentation of the hearing:  
16

17 (A) Whether the rehabilitative goals for this child have been met and  
18 juvenile court jurisdiction over the child as a ward is no longer required.  
19 The facts supporting the finding must be stated on the record. This  
20 finding is not required where dismissal of delinquency jurisdiction is  
21 based on Penal Code section 236.14.  
22

23 (B) - (C) \*\*\*

24  
25 (D) For a child other than a dual status child:

26  
27 (i) Who was not subject to the court's dependency jurisdiction at the  
28 time he or she was adjudged a ward and is currently subject to an  
29 order for a foster care placement, including a child whose  
30 underlying petition is subject to vacatur under Penal Code section  
31 236.14, whether the child appears to come within the description of  
32 section 300 and cannot be returned home safely. The facts  
33 supporting the finding must be stated on the record;  
34

35 (ii) - (v)\*\*\*

36  
37 (2) \*\*\*

38  
39 **(e) Orders**

40  
41 (1) - (3) \*\*\*  
42

1 (4) For a child who was not subject to the court’s dependency jurisdiction at the  
2 time he or she was adjudged a ward and is currently subject to an order for a  
3 foster care placement, including a child whose underlying petition is subject to  
4 vacatur under Penal Code section 236.14, the court must:

5  
6 (A) Order the probation department or the child’s attorney to submit an  
7 application under section 329 to the county child welfare services  
8 department to commence a proceeding to declare the child a dependent  
9 of the court by filing a petition under section 300 if the court finds:

10  
11 (i) The child does not come within the description of section 450(a);

12  
13 (ii) The rehabilitative goals for the child included in his or her case  
14 plan have been met and delinquency jurisdiction is no longer  
15 required, or the underlying petition is subject to vacatur under  
16 Penal Code section 236.14; and

17  
18 (iii) The child appears to come within the description of section 300  
19 and a return to the home of the parents or legal guardian may be  
20 detrimental to his or her safety, protection, or physical or  
21 emotional well-being.

22  
23 (B) - (C) \*\*\*

24  
25 **(f) Modification of jurisdiction—conditions**

26  
27 (1) Whenever the court modifies its jurisdiction over a dependent or ward under  
28 section 241.1, 607.2, or 727.2, the court must ensure that all of the following  
29 conditions are met:

30  
31 (A) The petition under which jurisdiction was taken at the time the  
32 dependent or ward was originally removed from his or her parents or  
33 legal guardian and placed in foster care is not dismissed until after the  
34 new petition is sustained; and

35  
36 (B) The order modifying the court’s jurisdiction contains all of the following  
37 provisions:

38  
39 (i) A reference to the original removal findings, the date those  
40 findings were made, and a statement that the finding “continuation  
41 in the home is contrary to the child’s welfare” and the finding  
42 “reasonable efforts were made to prevent removal” made at that  
43 hearing remain in effect;

- (ii) A statement that the child continues to be removed from the parents or legal guardian from whom the child was removed under the original petition; and
- (iii) Identification of the agency that is responsible for placement and care of the child based upon the modification of jurisdiction.

(2) Whenever the court modifies jurisdiction over a young person under section 450(a)(1)(B), the court must ensure that all of the following conditions are met:

- (A) The order modifying the court’s jurisdiction must be made before the underlying petition is vacated;
- (B) The order modifying jurisdiction must contain the following provisions:
  - (i) Continuance in the home is contrary the child’s welfare, and reasonable efforts were made to prevent removal;
  - (ii) The child continues to be removed from the parents or legal guardians;
  - (iii) Identification of the agency that is responsible for placement and care of the young person based on modification of jurisdiction;
  - (iv) A statement that the underlying conviction and the arrest upon which it was based are vacated; and
  - (v) An order directing the Department of Justice and any law enforcement agency that has records of the arrest to seal those records and then destroy them three years from the date of the arrest or one year after the order to seal, whichever occurs later.

**Rule 5.903. Nonminor dependent status review hearing (§§ 224.1(b), 295, 366.1, 366.3, 366.31)**

**(a) Purpose**

The primary purpose of the nonminor dependent status review hearing is to focus on the goals and services described in the nonminor dependent’s Transitional Independent Living Case Plan and the efforts and progress made toward achieving

1 independence and establishing lifelong connections with caring and committed  
2 adults.

3  
4 **(b) Setting and conduct of a nonminor dependent status review hearing**

5  
6 (1) - (2) \*\*\*

7  
8 (3) The hearing may be attended, as appropriate, by participants invited by the  
9 nonminor dependent in addition to those entitled to notice under (c). If  
10 delinquency jurisdiction is dismissed in favor of transition jurisdiction under  
11 Welfare and Institutions Code section 450, the prosecuting attorney must not  
12 appear at subsequent review hearings for the nonminor dependent.

13  
14 (4) - (5) \*\*\*

15  
16 **(c) Notice of hearing (§ 295)**

17  
18 \*\*\*

19  
20  
21 **(d) Reports**

22  
23 \*\*\*

24  
25 **(e) Findings and orders**

26  
27 \*\*\*

28  
29 **Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction**  
30 **(§§ 224.1(b), 303, 388(e), 388.1)**

31  
32 **(a) Purpose**

33  
34 \*\*\*

35 **(b) Contents of the request**

36  
37 \*\*\*

38  
39 **(c) Filing the request**

40  
41 \*\*\*

42

1 **(d) Determination of prima facie showing**

2  
3 (1) Within three court days of the filing of form JV-466 with the clerk of the  
4 juvenile court of general jurisdiction, a juvenile court judicial officer must  
5 review the form JV-466 and determine whether a prima facie showing has  
6 been made that the nonminor meets all of the criteria set forth below in  
7 (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

8  
9 (A) ~~The nonminor was previously under juvenile court jurisdiction subject to~~  
10 ~~an order for foster care placement on the date he or she attained 18 years~~  
11 ~~of age, or the nonminor is eligible to seek assumption of dependency~~  
12 ~~jurisdiction pursuant to the provisions of subdivision (c) of section~~  
13 ~~388.1; The nonminor is eligible to seek assumption of dependency~~  
14 ~~jurisdiction under the provisions of subdivision (c) of section 388.1, or~~  
15 ~~the nonminor was previously under juvenile court jurisdiction subject to~~  
16 ~~an order for foster care placement on the date he or she attained 18 years~~  
17 ~~of age, including a nonminor whose petition was vacated pursuant to~~  
18 ~~Penal Code section 236.14.~~

19  
20 (B) - (D) \*\*\*

21  
22 (2) - (3) \*\*\*

23  
24  
25 **(e) Appointment of attorney**

26  
27 \*\*\*

28  
29 **(f) Setting the hearing**

30  
31 \*\*\*

32  
33 **(g) Notice of hearing**

34  
35 (1) The juvenile court clerk must serve notice as soon as possible, but no later  
36 than five court days before the date the hearing is set, as follows:

37  
38 (A) The notice of the date, time, place, and purpose of the hearing and a  
39 copy of the form JV-466 must be served on the nonminor, the  
40 nonminor’s attorney, the child welfare services agency, the probation  
41 department, or the Indian tribal agency that was supervising the  
42 nonminor when the juvenile court terminated its delinquency,  
43 dependency, or transition jurisdiction over the nonminor, and the

1 attorney for the child welfare services agency, the probation department,  
2 or the Indian tribe. Notice must not be served on the prosecuting  
3 attorney if delinquency jurisdiction has been dismissed and the  
4 nonminor's petition is for the court to assume or resume transition  
5 jurisdiction under Welfare and Institutions Code section 450.  
6

7 (B) - (D) \*\*\*  
8

9 (2) - (4) \*\*\*  
10

11 **(h) Reports**

12 \*\*\*  
13

14  
15 **(i) Findings and orders**

16 \*\*\*  
17  
18



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):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<b>ORDERS UNDER WELFARE AND INSTITUTIONS CODE</b> <b>SECTIONS 366.24, 366.26, 727.3, 727.31</b>	CASE NUMBER:

Child's name:	
Date of birth:	Age:
Parent's name (if known):	<input type="checkbox"/> Mother <input type="checkbox"/> Father
Parent's name (if known):	<input type="checkbox"/> Mother <input type="checkbox"/> 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
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |

CHILD'S NAME:	CASE NUMBER:
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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:
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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
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |

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
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |

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:
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16. a.  The child remains placed with *(name of placement)*:  
with a permanent plan of *(specify)*:
- |  |  |
|--|--|
| (1) <input type="checkbox"/> Returning home            | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative     |
| (2) <input type="checkbox"/> Adoption                  | (6) <input checked="" type="checkbox"/> Another planned permanent living arrangement |
| (3) <input type="checkbox"/> Tribal customary adoption |  |
| (4) <input type="checkbox"/> Legal guardianship        |  |

**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
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |
- 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:
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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 NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME: DEPT:	CASE NUMBER:	
<b>FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR</b>		
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

- |  | Present                  | Attorney (name) | Present                  |
|--|--------------------------|-----------------|--------------------------|
| 1. Parties (name)  |                          |                 |                          |
| a. Nonminor:   | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| b. Probation officer:  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| c. County agency social worker:  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| d. Other (specify):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 2. Parent  |                          |                 |                          |
| a. <input type="checkbox"/> Father <input type="checkbox"/> Mother (name): | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| b. <input type="checkbox"/> Father <input type="checkbox"/> Mother (name): | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 3. Legal guardian (name):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 4. Indian custodian (name):  | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 5. Tribal representative (name):   | <input type="checkbox"/> |                 | <input type="checkbox"/> |
| 6. Others present  |                          |                 |                          |
| a. Other (name):   |                          |                 |                          |
| b. Other (name):   |                          |                 |                          |
| c. Other (name):   |                          |                 |                          |
| 7. <b>The court has read and considered and admits into evidence</b>       |                          |                 |                          |
| a. <input type="checkbox"/> The report of the social worker dated:         |                          |                 |                          |
| b. <input type="checkbox"/> The report of the probation officer dated:     |                          |                 |                          |
| c. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |
| d. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |
| e. <input type="checkbox"/> Other (specify):                               |                          |                 |                          |

NONMINOR'S NAME:	CASE NUMBER:
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**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

**Findings**

- 8.  Notice of the date, time, and location of the hearing was given as required by law.
- 9.  The nonminor is neither present in court nor participating by telephone and
  - a.  the nonminor expressed a wish not to appear for the hearing and did not appear.
  - b.  the nonminor's current location is unknown. Reasonable efforts  were  were not made to find him or her.
- 10.  The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court.
- 11. Remaining under juvenile court jurisdiction  is  is not in the nonminor's best interests. The facts supporting this determination were stated on the record.
- 12. a.  The nonminor does not now meet any of the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
  - b.  The nonminor meets the following criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction.
    - (1)  The nonminor attends high school or a high school equivalency certificate (GED) program.
    - (2)  The nonminor attends a college, a community college, or a vocational education program.
    - (3)  The nonminor attends a program or takes part in activities that will promote employment or overcome barriers to employment.
    - (4)  The nonminor is employed at least 80 hours per month.
    - (5)  The nonminor is incapable of doing any of the activities in (1)–(4) due to a medical condition.
- 13.  The nonminor has an application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process  is  is not in the nonminor's best interests.
- 14.  The nonminor has an application pending for Special Immigrant Juvenile status or other immigration relief for which an active juvenile court case is required.
- 15.  The nonminor was informed of the options available to make the transition from foster care to independence and successful adulthood.
- 16.  The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor, and the nonminor has stated that he or she understands those benefits.
- 17.  The nonminor was informed that if juvenile court jurisdiction is continued, he or she may have the right to have that jurisdiction terminated and that if jurisdiction is then terminated, the court will maintain general jurisdiction for the purpose of reviewing a request to resume jurisdiction over him or her as a nonminor dependent.
- 18.  The nonminor was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a petition asking the court to resume dependency jurisdiction or transition jurisdiction over him or her as a nonminor dependent as long as he or she has not yet reached 21 years of age.
- 19. a.  The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
  - b.  The nonminor cannot be located despite the department's reasonable efforts, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.
- 20.  The nonminor is subject to delinquency jurisdiction and either was previously a dependent of the court under section 300 or was placed in foster care under section 727. The requirements of Welfare and Institutions Code, § 607.5,  were  were not met.

NONMINOR'S NAME:	CASE NUMBER:
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21.  The nonminor is an Indian child under the Indian Child Welfare Act and  was  was not informed of his or her right to choose whether the Act will continue to apply to him or her as a nonminor dependent.  
 The nonminor  wants  does not want the Indian Child Welfare Act to continue to apply.
22. a.  The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects agreements made to obtain independent living skills, and sets out benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved.
- b.  The Transitional Independent Living Plan identifies the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare for successful adulthood upon leaving foster care.
- c.  The 90-day Transition Plan is a concrete, individualized plan that specifically covers housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

**Orders**

23.  **The nonminor dependent's continued placement is necessary.**
24.  **The nonminor dependent's continued placement is no longer necessary.**
25.  The nonminor dependent's current placement is appropriate.
26.  The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.
27.  The nonminor dependent's Transitional Independent Living Case Plan  does  does not include appropriate and meaningful independent living skill services that will help the youth transition from foster care to successful adulthood.
28.  The county agency  has  has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the youth's permanent plan and prepare him or her for independence.
29. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been  excellent  satisfactory  minimal.
- b.  The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in his or her efforts to attain those goals were stated on the record.
30. The likely date by which it is anticipated the nonminor dependent will achieve successful adulthood is:
31.  The nonminor meets at least one of the conditions listed in item 12(b)(1)–(5) and
- a.  **dependency jurisdiction**  **transition jurisdiction** **over the nonminor as a nonminor dependent is ordered.**
- b. The nonminor's permanent plan is
- (1)  Return home
  - (2)  Adoption
  - (3)  Tribal customary adoption
  - (4)  Placement with a fit and willing relative
  - (5)  Another planned permanent living arrangement
  - (6)  Other (specify):
- c.  For nonminor's placed in another planned permanent living arrangement, the court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because:
- (1)  The nonminor is 18 or older.
  - (2)  Other (specify):



NONMINOR'S NAME:	CASE NUMBER:
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31. **The compelling reasons why other permanent plan options are not in the nonminor's best interest are:**
- (1)  The nonminor wants to live independently.
  - (2)  Other (specify):
  - d.  Family reunification services are continued
  - e. The Indian Child Welfare Act  does  does not continue to apply.
  - f. The matter is set for further hearing.
32.  The nonminor does not meet and does not intend to meet the eligibility criteria for status as a nonminor dependent but is otherwise eligible to and will remain under the juvenile court's jurisdiction in a foster care placement, and the matter is set for a status review hearing on the date indicated in item 29, which is within six months of the nonminor's most recent status review hearing.
33.  Reasonable efforts were made to find the nonminor, and his or her location remains unknown. **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.
34.  The nonminor
- a.  does not meet the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction;
  - b.  meets the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; or
  - c.  meets the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and
- the findings required in items 10, 16, 19a, and 22c of this form were made, and the nonminor was given an endorsed, filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365). **Juvenile court jurisdiction over the nonminor is terminated.** The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under Welfare and Institutions Code, § 388(e) or 388.1, to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.
35.  The nonminor is 21 years of age or older and no longer subject to the jurisdiction of the juvenile court under section 303. The findings required by items 19 and 22c were made. **Juvenile court jurisdiction over the nonminor is dismissed.** The attorney for the nonminor is relieved 60 days from today's date.
36.  **Other findings and orders**
- a. See attachment 36a.

NONMINOR'S NAME:	CASE NUMBER:
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b. Other (specify):

37.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept.:	Room:
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- a.  Nonminor dependent review hearing (Welf. & Inst. Code, § 366(f); Cal. Rules of Court, rule 5.903)
- b.  Other (specify):

38. Number of pages attached: \_\_\_\_\_

Date:

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JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		STATE BAR NO.:  STATE: ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
NONMINOR'S NAME: NONMINOR'S DATE OF BIRTH: HEARING DATE AND TIME:			
<b>FINDINGS AND ORDERS AFTER NONMINOR DEPENDENT STATUS REVIEW HEARING</b>		CASE NUMBER:	
Judicial Officer:	Court Clerk:	Court Reporter:	
Baliff:	Other Court Personnel:	Interpreter: Language:	

1. Parties (name):
- |                                 |                          |  |                  |  |                          |
|---------------------------------|--------------------------|--|------------------|--|--------------------------|
|                                 | Present                  |  | Attorney (name): |  | Present                  |
| a. Nonminor dependent:          | <input type="checkbox"/> |  |                  |  | <input type="checkbox"/> |
| b. Probation officer:           | <input type="checkbox"/> |  |                  |  | <input type="checkbox"/> |
| c. County agency social worker: | <input type="checkbox"/> |  |                  |  | <input type="checkbox"/> |
| d. Other (specify):             | <input type="checkbox"/> |  |                  |  | <input type="checkbox"/> |
2. Tribal representative (name):
3. Others present in courtroom
- a. Other (specify):
- b. Other (specify):
- c. Other (specify):
- d. Other (specify):
4. The court has read and considered and admits into evidence:
- a.  Report of social worker dated:
- b.  Report of probation officer dated:
- c.  Other (specify):
- d.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

5. Notice of the date, time, and location of the hearing was given as required by law.
6.  **The nonminor dependent's continued placement is necessary.**
7.  **The nonminor dependent's continued placement is no longer necessary.**
8.  The nonminor dependent's current placement is appropriate.
9.  The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.

NONMINOR'S NAME:	CASE NUMBER:
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10.  The nonminor dependent's Transitional Independent Living Case Plan does include a plan for him or her to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) to remain in foster care under juvenile court jurisdiction as indicated below:
- Attending high school or a high school equivalency certificate (GED) program.
  - Attending a college, a community college, or a vocational education program.
  - Attending a program or participating in an activity that will promote or help remove a barrier to employment.
  - Employed at least 80 hours per month.
  - The nonminor dependent is not able to attend a high school, a high school equivalency certificate (GED) program, a college, a community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition.
11.  The county agency  has  has not made reasonable efforts and provided assistance to help the nonminor dependent establish and maintain compliance with one of the conditions in Welfare and Institutions Code section 11403(b).
12.  The nonminor dependent  was  was not provided with the information, documents, and services as required under Welfare and Institutions Code section 391(e).
13.  The Transitional Independent Living Case Plan  was  was not developed jointly by the nonminor dependent and the county agency.
14.  For the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, the representative from his or her tribe  was  was not consulted during the development of the nonminor dependent's Transitional Independent Living Case Plan.
15.  The nonminor dependent's Transitional Independent Living Case Plan  does  does not reflect the living situation and services consistent, in the nonminor dependent's opinion, with what he or she needs to achieve successful adulthood and set out benchmarks that indicate how both the county agency and nonminor dependent will know when successful adulthood can be achieved.
16.  The nonminor dependent's Transitional Independent Living Case Plan  does  does not include appropriate and meaningful independent living skill services that will help the youth transition from foster care to successful adulthood.
17.  The county agency  has  has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the youth's permanent plan and prepare him or her for independence.
18.  The county agency  has  has not made ongoing and intensive efforts to finalize the permanent plan.
19.  The nonminor dependent  did  did not sign and receive a copy of his or her Transitional Independent Living Case Plan.
20. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been  excellent  satisfactory  minimal.
- b.  The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in his or her efforts to attain those goals were stated on the record.
21.  The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the nonminor could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
22.  The county agency  has  has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to him or her, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections.
23.  The county agency  has  has not made reasonable efforts to establish or maintain the nonminor dependent's relationship with his or her siblings who are under juvenile court jurisdiction.
24. The likely date by which it is anticipated the nonminor dependent will achieve successful adulthood is:
25.  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:
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26.  At a hearing under rule 5.555 of the California Rules of Court held on the date below, the juvenile court entered the findings and orders as recorded on the *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367), and juvenile court jurisdiction is terminated under to those findings and orders.

27.  Juvenile court jurisdiction over the youth as a nonminor dependent is continued and \_\_\_\_\_

- a.  the youth's permanent plan is: \_\_\_\_\_
- (1)  return home \_\_\_\_\_
  - (2)  adoption \_\_\_\_\_
  - (3)  tribal customary adoption \_\_\_\_\_
  - (4)  placement with a fit and willing relative \_\_\_\_\_
  - (5)  another planned permanent living arrangement \_\_\_\_\_
  - (6)  other (specify): \_\_\_\_\_

b.  for nonminors placed in another planned permanent living arrangement, the court has considered the evidence before it and finds that another planned permanent living arrangement is still the best permanent plan because: \_\_\_\_\_

- (1)  The nonminor is 18 or older. \_\_\_\_\_
- (2)  Other (specify): \_\_\_\_\_

The compelling reasons why other permanent plan options are not in the nonminor's best interest are: \_\_\_\_\_

- (1)  The nonminor wants to live independently. \_\_\_\_\_
- (2)  Other (specify): \_\_\_\_\_

c.  family reunification services are continued \_\_\_\_\_

d. The matter is continued for a hearing set under Welfare and Institutions Code section 366.31, and rule 5.903 of the California Rules of Court within the next six months.

28. All prior orders not in conflict with this order remain in full force and effect.

29.  Other findings and orders

- a.  See attachment 30a.
- b.  (Specify): \_\_\_\_\_

30.  Additional findings and orders for nonminor dependent with case plan of continued family reunification services

- a. The agency  has  has not complied with the case plan by making reasonable efforts to create a safe home for the nonminor dependent to reside in and to complete whatever steps are necessary to finalize the permanent plan.
- b. The extent of progress made toward alleviating or mitigating the causes necessitating the current out "of" home placement has been
  - (1)  by the father:
  - (2)  by the mother:
  - (3)  by the nonminor:
  - (4)  other (specify): \_\_\_\_\_
- c. The likely date by which the nonminor dependent may safely reside in the family home or achieve successful adulthood is:
- d. (1)  The nonminor can safely reside in the family home and may return to the family home.
  - (a)  The court maintains jurisdiction under Welfare and Institutions Code section 303(a) and a review hearing under Welfare and Institutions Code section 366.31 is ordered.
  - (b)  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:
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30. d. (2)  The nonminor cannot safely reside in the family home, and reunification services are continued.
- (a)  The nonminor dependent and parent(s) of guardian(s) are in agreement with the continuation of reunification services.
  - (b)  Continued reunification services are in the best interest of the nonminor dependent.
  - (c)  There is a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.
  - (d)  The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.
- (3)  The nonminor cannot safely reside in the family home and reunification services are terminated (*check all that apply*).
- (a)  The nonminor dependent and parent(s) or guardian(s) are not in agreement with the continuation of reunification services.
  - (b)  Continued reunification services are not in the best interest of the nonminor dependent.
  - (c)  There is not a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.

31.  Additional findings and orders for nonminor residing in the home of a parent or former legal guardian
- a. (1)  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court is ordered.
  - (2)  Court supervision and juvenile court jurisdiction continues to be necessary. The court maintains jurisdiction under Welfare and Institutions Code section 303(a). The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.
  - b.  The county agency  has  has not complied with the case plan by making reasonable efforts to maintain a safe family home for the nonminor.
  - c.  The county agency  has  has not complied with the nonminor's Transitional Independent Living Case Plan, including efforts to prepare the nonminor for successful adulthood.

**32. The next hearings are scheduled as follows:**

- a.  Nonminor dependent status review hearing (Welfare & Institutions Code, § 366.31; Cal. Rules of Court, rule 5.903)
- |               |       |       |       |
|---------------|-------|-------|-------|
| Hearing date: | Time: | Dept: | Room: |
|---------------|-------|-------|-------|
- b.  Hearing to consider termination of jurisdiction under rule 5.555 of the California Rules of Court.
- |               |       |       |       |
|---------------|-------|-------|-------|
| Hearing date: | Time: | Dept: | Room: |
|---------------|-------|-------|-------|
- c.  Other (*specify*):
- |               |       |       |       |
|---------------|-------|-------|-------|
| Hearing date: | Time: | Dept: | Room: |
|---------------|-------|-------|-------|

33. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

**How to Ask to Return to Juvenile Court  
Jurisdiction and Foster Care**

Some 18-, 19-, and 20-year-olds can reopen their court case and return to foster care. This form explains:

- The benefits of returning to foster care,
- Who qualifies to return to foster care, and
- How to ask to reopen your court case and return to a foster care placement.

**What benefits can I get if I return to foster care?**

If you ask the court to reopen your court case and return to foster care as a nonminor dependent, you can get money to live in supervised foster care. You may be able to live in a:

- Relative’s home;
- Home of a nonrelated extended family member (a person close to your family but not related to you);
- Foster home;
- Group home if you need to because of a medical condition;
- You can also stay in a group home until your 19th birthday or until you finish high school, whichever one happens first; or
- Supervised independent living setting, such as an apartment or college dormitory.

You can also get:

- A clothing allowance,
- Case management services, and
- Independent Living Program services.

**Do I qualify to return to juvenile court jurisdiction and foster care?**

You qualify if you meet these requirements:

**Court Jurisdiction Requirements**

- You are now 18, 19, or 20 years old;
- You were in foster care on your 18th birthday and your case was vacated (Penal Code section 236.14);
- You were in foster care on your 18th birthday;\* **OR**
- You were placed by the juvenile court in a guardianship or adoption; and
  - Your guardian(s) or adoptive parent(s) were receiving payments for your support on or after your 18th birthday; and

- Your guardian(s) or adoptive parent(s) died on or after your 18th birthday, or they no longer support you and no longer receive payments for your support.

*\*Even if you were on the run, you can qualify if there was an order for you to be in foster care at the time.*

**Work/School Requirements**

You must plan to do one of the following:

- Finish high school or get a high school equivalency (GED) certificate.
- Attend college or community college.
- Attend a vocational education program.
- Attend a program or do activities that will help you get a job.
- Get a job.

*Exception:* If you have a medical problem that makes you unable to do any of these things, you do not have to be in school, a program, or working.

**Sign an Agreement to Return to Foster Care**

You and a social worker (SW) or probation officer (PO) must have signed a Voluntary Reentry Agreement that says:

- You want to return to foster care to be placed in a supervised setting.
- The SW or PO will be responsible for your placement and care.
- Together, you and the SW or PO will make a plan that helps you to learn how to live independently.
- If you ask the SW or PO to file your court papers, you will cooperate with the SW or PO.
- If your situation changes and you no longer qualify to stay in foster care, you will tell the SW or PO.

*Important!* Even if you are not sure you qualify, you should still apply.

**When can I get help to find housing?**

As soon as you sign the agreement to return to foster care, your social worker or probation officer can help you find housing and other services you may need.



**How do I ask the juvenile court to reopen my court case and return to foster care?**

You must fill out and file the court form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care*. This form tells the court you want to reopen your court case and return to foster care. A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care can help you fill out the form and file it for you.

If you want to fill out the form yourself, you can find a lot of the information you need on form JV-365, *Termination of Juvenile Court Jurisdiction—Nonminor*, which the court gave you when you left foster care.

**Where can I get the form I need to fill out?**

The court may have already given you the form when your foster care ended. Or you can get the form at:

- Your county's courthouse or public library, or
- The California Courts website:  
[www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm).

**What if I need help with the form?**

If you want help to fill out the form, ask:

- A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care,
- The person who was your lawyer when you were in foster care, or
- An adult you trust.

**What do I do with my completed form?**

After you and the SW or PO have signed the Voluntary Reentry Agreement, you can:

- File the form yourself, or
- Ask the SW or PO to file the form for you.

*Note:* If you file it yourself, your court hearing will be about three weeks sooner.

**Where do I file my completed form?**

You can file it by mail or in person at the juvenile court clerk's office at the courthouse in the county where your court case was closed.

You can submit it by mail or in person at the juvenile court clerk's office in the county where you live. The clerk will send it to the juvenile court clerk's office at the courthouse in the county where your court case was closed.

If you file by mail because you live outside of California, you must send it to juvenile court clerk's office at the courthouse in the county where your court case was closed.

*Important!* Keep a copy of all papers you file at court. If you file in person, the clerk can give you free copies.

**Do I have to pay to file the form?**

No. It's free.

**Do I have to fill out other court forms?**

No, unless you want to keep your contact information private. If so, do **not** put your address and other contact information on form JV-466. Instead, put it on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*.





**Who will decide if I can return to juvenile court jurisdiction and foster care?**

A judge with the court in the county where your court case was closed will decide if your court case should be reopened.

**The judge can decide that:**

- **You do not qualify** because of your age. If this happens, you cannot file another request.
- **The information you gave to the court** shows that you do not meet one of the eligibility requirements or the court needs more information to decide your case. If this happens, the court will deny your request and send you a letter explaining why your request was denied. The court will also send you a list of lawyers who can help you with your case. You can file another request that includes the information that was missing.
- **The court has enough information** to decide your case and wants you to come to a court hearing. If this happens, you will get a notice telling you the date, time, and place of your hearing. The court will also assign a lawyer to speak for you at the hearing.

The court will send a copy of the notice and your papers to:

- The lawyer assigned to your case, and
- The office that supervised you when the juvenile court's jurisdiction was dismissed. That office must make a report about your eligibility to return to foster care.

If you ask for it on the form JV-466, the court can also send a notice to your parents or former legal guardian and the CASA office for your former CASA.

**When will the hearing happen?**

If you filed your court papers yourself and the court decides there is enough information to decide your case, the hearing will happen about three weeks after you filed your court papers.

If you asked a social worker or probation officer to file your court papers and the court decides there is enough information to decide your case, the hearing will happen about six weeks after you ask the social worker or probation officer to file your court papers.

**What happens at the hearing?**

At your hearing, the judge will review the evidence and decide your case.

If the court decides you meet the requirements, you will be allowed to return to foster care. You will also have to go back to court within 6 months to tell the court how you are doing. Your lawyer will also go with you to that hearing. If you used to be a dependent, you will be under the juvenile court's dependency jurisdiction.

If you used to be a ward, you will be under the juvenile court's transition jurisdiction.

If the court denies your request, you can file another request later if your situation changes so that you meet the requirements.

This form can be used to ask the court to reopen your case because your situation changed and you decide that you want to return to the court's jurisdiction and a foster care placement.

If you don't want other people (for example, a parent or brother or sister who was part of your case when you were a child) to know your contact information, do not write it in ①. Write that information on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*. Read form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care*, for information about filling out and filing the forms.

If you do not know the information asked for on this form, leave the space blank. Remember to get and keep copies of all court papers and other papers you sign or receive from the child welfare services agency or the probation department.

**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:

**Name:**

Court fills in case number when form is filed.

**Case Number:**

- ① My information:
- My address: \_\_\_\_\_  
\_\_\_\_\_
  - My city, state, zip code: \_\_\_\_\_
  - My area code and telephone number: \_\_\_\_\_
  - My date of birth: \_\_\_\_\_
- ② The location of the juvenile court that had authority over me when I was 18 years old or when my guardianship or adoption was finalized:
- City: \_\_\_\_\_
  - County: \_\_\_\_\_
- ③ The name and court file number or case number of my case in juvenile court:
- Name of my case: \_\_\_\_\_
  - Court file number or case number: \_\_\_\_\_
- ④ a. The date the juvenile court closed my case: \_\_\_\_\_
- b. My arrest and conviction  was  was not vacated based on Penal Code section 236.14.
- ⑤ I need help to keep or find an appropriate place to live.
- I need a placement right now.
- ⑥ Voluntary Reentry Agreement with child welfare services or the probation department to return to foster care:
- I agree to sign a Voluntary Reentry Agreement for a supervised placement.
- I signed a Voluntary Reentry Agreement for a supervised placement on (date): \_\_\_\_\_ with
- Child welfare services.
- Probation department.



Your name: \_\_\_\_\_

- 7 You must plan to meet at least one of the five conditions listed below. Please check all that apply:
- a.  I plan to attend a high school or a high school equivalency certificate (GED) program.
  - b.  I plan to attend a college, a community college, or a vocational education program.
  - c.  I plan to attend a program or take part in activities that will help train me to be employed or will help me solve problems that prevented me from finding a job.
  - d.  I plan to work at least 80 hours per month.
  - e.  I cannot go to a high school, a high school equivalency certificate (GED) program, a college, a community college, or a vocational education program; take part in a program or activities to help me find a job; or work 80 hours per month because of a medical condition.

- 8 If you were in a guardianship on your 18th birthday or adopted from foster care, please check all that apply below. If not, skip to 9.
- a.  I was placed by the juvenile court in a guardianship.
  - b.  I was adopted from foster care.
  - c.  My guardian(s) or adoptive parent(s) were receiving payments for my support on or after my 18th birthday.
  - d.  My guardian(s) or adoptive parent(s) died on or after my 18th birthday.
  - e.  My guardian(s) or adoptive parent(s) are no longer supporting me.
  - f.  My guardian(s) or adoptive parent(s) no longer receive payments for my support.

9 The judge will set a hearing about this request if the judge thinks that he or she has enough information to decide whether you have met all the requirements.

Do you want your parents or former legal guardian to be told about the hearing, if the judge sets one?

- NO. I do not want my parents or former legal guardian to be told about the hearing.
- YES. I do want my parents or former legal guardian to be told about the hearing. Their names and addresses are:

Parent's name and address: \_\_\_\_\_

Parent's name and address: \_\_\_\_\_

Former legal guardian's name and address: \_\_\_\_\_

10 The judge will give you a free lawyer to help before and during the hearing. If you want the lawyer who represented you when you were a dependent, ward, or nonminor dependent, please write the lawyer's name and telephone number on the line below, and if that lawyer is available, the court will appoint him or her to help you before and during the hearing.

Name and telephone number of the lawyer who used to represent me and who I want to represent me again:  
 \_\_\_\_\_  
 \_\_\_\_\_

Your name: \_\_\_\_\_

11 Did you have a Court Appointed Special Advocate (CASA)?

NO. I did not have a CASA.

YES. I did have a CASA.

Would you like the CASA to be told about the hearing if the judge schedules a hearing?

NO. I do not want the CASA to be told about the hearing.

YES. I want the CASA to be told about the hearing. The name of the person who was my CASA is:

\_\_\_\_\_

12 Did the Indian Child Welfare Act apply to you when you were under juvenile court jurisdiction as a child?

a.  NO. The Indian Child Welfare Act did not apply to me.

b.  YES. The Indian Child Welfare Act did apply to me.

Would you like to have the Indian Child Welfare Act apply to you as a nonminor dependent?

(1)  NO. I do not want the Indian Child Welfare Act to apply to me.

(2)  YES. I do want the Indian Child Welfare Act to apply to me. The name of my tribe and the name, address, and telephone number of my tribal representative is: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c.  I DO NOT KNOW if the Indian Child Welfare Act applied to me.

(1)  I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.

Name of tribe(s) (name each):

Name of band (if applicable):

(2)  I may have Indian ancestry.

Name of tribe(s) (name each):

Name of band (if applicable):

(3)  I have no Indian ancestry as far as I know.

13 Your verification:

I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print your name



\_\_\_\_\_  
Sign your name



Case Number:

Your name: \_\_\_\_\_

**14** Verification by nonminor's representative:

The nonminor is unable to provide verification due to a medical condition. I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*



\_\_\_\_\_  
*Sign your name*

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): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
NONMINOR'S NAME: _____	
<b>FINDINGS AND ORDERS REGARDING PRIMA FACIE SHOWING ON NONMINOR'S REQUEST TO REENTER FOSTER CARE</b>	CASE NUMBER: _____

**Findings and Orders: Prima Facie Showing Made**

1. The court has read and considered
  - a.  Request to Return to Juvenile Court Jurisdiction and Foster Care (form JV-466) filed by (name): \_\_\_\_\_ on (date): \_\_\_\_\_
  - b.  Other (specify): \_\_\_\_\_
  - c.  Other (specify): \_\_\_\_\_
  
2.  The court finds that a prima facie showing has been made that
  - a. The nonminor was previously under juvenile court jurisdiction with an order for foster care placement when he or she was 18 years of age, based on a petition that was vacated under Penal Code section 236.14; or
  - b. the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age.
  - c. the nonminor is under 21 years of age.
  - d. the nonminor wants assistance to maintain or secure an appropriate, supervised placement or is in need of immediate placement and agrees to a supervised placement under a voluntary reentry agreement.
  - e. the nonminor intends to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b) as follows (check all that apply):
    - (1)  Attending high school or a high school equivalency certificate (GED) program
    - (2)  Attending a college, community college, or vocational education program
    - (3)  Attending a program or participating in an activity that will promote or help remove a barrier to employment
    - (4)  Employed for at least 80 hours per month
    - (5)  Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity, or to work 80 hours per month due to a medical condition
  
- 3 **The court orders the following:**
  - a. The nonminor's request to return to foster care is set for hearing on (specify date within 15 days of the date form JV-466 was filed): \_\_\_\_\_
  - b. An attorney is appointed to represent the nonminor solely for the hearing on the request.
  - c.  Other orders: \_\_\_\_\_

**Findings and Orders: Prima Facie Showing Not Made**

4. The court has read and considered
  - a.  Request to Return to Juvenile Court Jurisdiction and Foster Care (form JV-466) filed by (name): \_\_\_\_\_ on (date): \_\_\_\_\_

NONMINOR'S NAME:	CASE NUMBER:
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- 4. b.  Other (specify):
- c.  Other (specify):
  
- 5.  The court finds that a prima facie showing has not been made. The nonminor's request to return to foster care is denied because (check all that apply)
  - a.  the nonminor was not previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age
  - b.  the nonminor is over 21 years of age
  - c.  the nonminor does not want assistance to maintain or secure an appropriate, supervised placement or does not agree to a supervised placement under a voluntary reentry agreement
  - d.  the nonminor does not intend to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b), and stated below:
    - (1) Attending high school or a high school equivalency certificate (GED) program
    - (2) Attending a college, community college, or vocational education program
    - (3) Attending a program or participating in an activity that will promote or help remove a barrier to employment
    - (4) Being employed for at least 80 hours per month
    - (5) Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition
  - e.  Other (specify reason for denial):
  
- 6. The nonminor may file a new request when the issues are resolved.
  
- 7. The court clerk must serve on the nonminor the following documents:
  - a. A copy of the written order
  - b. Blank copies of *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468)
  - c. A copy of *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO)
  - d. The names and contact information of attorneys approved by the court to represent children in juvenile court proceedings who have agreed to provide a consultation to nonminors whose requests are denied due to the failure to make a prima facie showing

Date:

\_\_\_\_\_

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
NONMINOR'S NAME:		
<b>FINDINGS AND ORDERS AFTER HEARING TO CONSIDER                  NONMINOR'S REQUEST TO REENTER FOSTER CARE</b>	CASE NUMBER:	
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

- |                                 |                          |                         |                          |
|---------------------------------|--------------------------|-------------------------|--------------------------|
| 1. Parties (name)               | <u>Present</u>           | <u>Attorney (name):</u> | <u>Present</u>           |
| a. Nonminor dependent:          | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| b. Probation officer:           | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| c. County agency social worker: | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| d. Other (specify):             | <input type="checkbox"/> |                         | <input type="checkbox"/> |

2. Others present
- a. Other (specify):
  - b. Other (specify):
  - c. Other (specify):

3. **The court has read and considered and admits into evidence**
- a.  report of social worker dated:
  - b.  report of probation officer dated:
  - c.  other (specify):
  - d.  other (specify):
  - e.  other (specify):

**Court Grants Request**

4.  **The court makes the findings stated below:**
- a. Notice of the date, time, and location of the hearing was given as required by law.
  - b. **The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age  and jurisdiction was vacated pursuant to Penal Code section 236.14, or**
  - c. The nonminor is under 21 years of age.
  - d. The nonminor intends to satisfy a condition or conditions under Welfare and Institutions Code section 11403(b).
  - e. The condition or conditions under Welfare and Institutions Code section 11403(b) that the nonminor intends to satisfy follow (specify all that apply):
    - (1)  Attending high school or a high school equivalency certificate (GED) program



NONMINOR'S NAME:	CASE NUMBER:
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- 4. e. (2)  Attending a college, community college, or vocational education program
- (3)  Attending a program or participating in an activity that will promote or help remove a barrier to employment
- (4)  Being employed for at least 80 hours per month
- (5)  Unable to do any of the activities in e(1)–(5) due to a medical condition
  
- f. Continuing in a foster care placement is in the nonminor's best interest.
- g. The nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency.
- h.  The nonminor, who is an Indian child, chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.
  
- 5.  The court makes the orders stated below:
  - a. The court grants the request to resume jurisdiction, and juvenile court jurisdiction shall resume over the nonminor as a nonminor dependent.
  - b. Placement and care are vested with the placing agency.
  - c. The placing agency must develop with the nonminor a new Transitional Independent Living Case Plan and file it with the court within 60 days.
  - d.  The social worker or probation officer must consult with the tribal representative regarding a new Transitional Independent Living Case Plan.
  - e. A nonminor dependent review hearing under Welfare and Institutions Code section 391 and rule 5.903 of the California Rules of Court is set for *(specify a date that is within six months of the date the voluntary reentry agreement was signed)*:
  - f. The prior order appointing an attorney for the nonminor is continued, and that attorney is appointed until the jurisdiction of the juvenile court is terminated.

**Court Denies Request**

- 6.  a. The court finds that the nonminor is under 21 years of age, but the nonminor does not intend to satisfy at least one of the conditions under Welfare and Institutions Code section 11403(b), or the nonminor and the placing agency have not entered into a reentry agreement.
  - (1) The nonminor's request to return to foster care is denied. The request is denied because *(specify the reasons for denial)*:
  
  - (2) The nonminor may file a new request when the circumstances change.
  - (3) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing)*:
  
- b. The court finds that the nonminor is over 21 years of age.
  - (1) The request to have juvenile court jurisdiction resumed is denied; and
  - (2) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing)*:

**Findings and Orders: Service**

- 7. The written findings and orders must be served by the juvenile court clerk on all persons who were served with notice of the hearing.
  - a. Service must be by personal service or first-class mail within three court days of the issuance of the order.
  - b. Proof of service must be filed.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

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):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>FINDING AND ORDERS FOR CHILD APPROACHING MAJORITY—DELINQUENCY</b>	CASE NUMBER:	
Judicial Officer:	Court Clerk:	Court Reporter:
Bailliff:	Other Court Personnel:	Interpreter: Language:

Use this form to document the juvenile court's findings and orders regarding the possible modification of jurisdiction over the child, from delinquency jurisdiction to transition jurisdiction or dependency jurisdiction, the child's plans for independent living, and his or her status as a nonminor dependent as stated in rule 5.812 of the California Rules of Court at the following hearings:

1. A review hearing under Welfare and Institutions Code section 727.2, held on behalf of a child approaching majority;
2. A review hearing under Welfare and Institutions Code section 727.2, during which a recommendation to terminate juvenile court jurisdiction is considered, held on behalf of a child more than 17 years, 5 months and less than 18 years of age; or
3. Any other hearing during which a recommendation to terminate juvenile court jurisdiction is considered, held on behalf of a child more than 17 years, 5 months and less than 18 years of age who is in a foster care placement or who was subject to an order for a foster care placement as a dependent when he or she was adjudged to be a ward. This form also applies to children whose underlying petition is subject to vacatur pursuant to Penal Code section 236.14.

If this hearing is also a review hearing under Welfare and Institutions Code section 727.2 or section 727.3, the findings and orders required in that section and in rule 5.810 of the California Rules of Court must be made in addition to the findings and orders on this form.

**BASED ON THE REPORTS READ, CONSIDERED, AND ADMITTED INTO EVIDENCE AND ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

**Findings**

1. a.  The child's rehabilitative goals have been met. Juvenile court jurisdiction over the child as a ward is no longer required. The facts supporting this finding were stated on the record.
- b.  The child's rehabilitative goals have not been met. Continued juvenile court jurisdiction over the child as a ward is required. The facts supporting this finding were stated on the record.
- c.  The child's underlying petition is subject to vacatur under Penal Code section 236.14.
  
2.  For a dual-status child for whom dependency jurisdiction was suspended under Welfare and Institutions Code section 241.1(e)(5)(A),
  - a.  a return to the child's home would be detrimental to the child, and juvenile court jurisdiction over the child as a dependent should be resumed. The facts supporting this finding were stated on the record.
  - b.  a return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dependent does not need to be resumed. The facts supporting this finding were stated on the record.

CHILD'S NAME:	CASE NUMBER:
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3.  For a dual-status child for whom the probation department was designated the lead agency under Welfare and Institutions Code section 241.1(e)(5)(B),
- a return to the child's home would be detrimental to the child, and juvenile court jurisdiction over the child as a dual-status child is no longer required. The facts supporting this finding were stated on the record.
  - a return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dependent is not required. The facts supporting this finding were stated on the record.
4.  For other than a dual status child,
- the child was not a court dependent at the time he or she was declared a ward. The child  does  does not appear to come within the description of Welfare and Institutions Code section 300, and  can  cannot be returned home safely. The facts supporting this finding were stated on the record and  the underlying petition is subject to vacatur under Penal Code section 236.14.
  - the child was subject to an order for a foster care placement as a dependent of the court at the time he or she was adjudged a ward and  does  does not remain within the description of a dependent child under Welfare and Institutions Code section 300, and a return to the home of his or her parents or legal guardian  would  would not create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The facts supporting the findings were stated on the record.
  - reunification services  have  have not been terminated.
  - the child's case  has  has not been set for a hearing to terminate parental rights or establish a guardianship.
  - The child  does  does not intend to sign a mutual agreement for a placement in a supervised setting as a nonminor dependent.
5.  The child's Transitional Independent Living Case Plan includes a plan for the child to satisfy at least one of the following conditions of eligibility to remain under juvenile court jurisdiction as a nonminor dependent:
- The child plans to continue attending high school or a high school equivalency certificate (GED) program.
  - The child plans to attend a college, community college, or vocational education program.
  - The child plans to take part in a program or activities to promote employment or overcome barriers to employment.
  - The child plans to be employed at least 80 hours a month.
  - The child may not be able to attend school, college, a vocational program, or a program or activities to promote employment or overcome barriers to employment or to work 80 hours per month due to a medical condition.
6.  The child's Transitional Independent Living Case Plan includes an alternative plan for the child's transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.
7. For an Indian child, he or she  does  does not intend to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent.
8.  The child has an in-progress application pending for title XVI Supplemental Security Income benefits, and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure continued assistance with the application process
- is in the child's best interest.
  - is not in the child's best interest because it is not necessary.

CHILD'S NAME:	CASE NUMBER:
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9.  The child has an in-progress application pending for Special Immigrant Juvenile Status or other application for legal residency for which an active juvenile court case is required.
10.  The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the child, and the child has stated that he or she understands those benefits.
11.  The child was informed that he or she may decline to become a nonminor dependent.
12.  The child was informed that on reaching 18 years of age, he or she may have the right to have juvenile court jurisdiction terminated following a hearing under rule 5.555 of the California Rules of Court.
13.  The child was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the court assume or resume jurisdiction over him or her as a nonminor dependent.
14. a.  All the information, documents, and services required by Welfare and Institutions Code section 391(e) were provided to the child.
- b.  Not all the information, documents, and services required by Welfare and Institutions Code section 391(e) were provided to the child.
- (1)  The barriers to providing any missing information, documents, or services can be overcome by the date the child attains 18 years of age.
- (2)  The barriers to providing any missing information, documents, or services may not be overcome by the date the child attains 18 years of age.
15.  The child  was  was not provided with the notices and information required under Welfare and Institutions Code section 607.5.

### Orders

16.  The court, having previously determined that the child is a dual-status child under Welfare and Institutions Code section 241.1(e)(5)(A), and that juvenile court jurisdiction over the child as a dependent should be resumed, orders that
- a. dependency jurisdiction over the child previously suspended is resumed and delinquency jurisdiction is dismissed.
- b. the matter is continued for a status review hearing set under Welfare and Institutions Code section 366.21 or section 366.31, on the date stated on the record, which is within six months of the date of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.
17.  The court having previously determined that the child is a dual status child under Welfare and Institutions Code section 241.1(e)(5)(B), that the child's rehabilitative goals were achieved, that a return to the child's home would be detrimental, and that juvenile court jurisdiction over the child as a dual-status child is no longer required, orders that
- a. the child's dual status is terminated, delinquency jurisdiction over the child is dismissed, and dependency jurisdiction is continued with the child welfare services department responsible for the child's placement and care.
- b. the matter is continued for a status review hearing set under Welfare and Institutions Code section 366.21 or section 366.31, on the date stated on the record, which is within six months of the date of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.
18.  The child comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450.
- a. The child was originally removed from the physical custody of his or her parents or legal guardians on (*specify date*):  
and continues to be removed from their custody.
- b. The removal findings made at that hearing—"continuation in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—remain in effect.

CHILD'S NAME:	CASE NUMBER:
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18. c. The  child welfare services department  probation department is responsible for the child's placement and care.

The child is adjudged a transition dependent pending his or her attaining the age of 18 years and assuming the status of a nonminor dependent under the transition jurisdiction of this court. The matter is continued for a status review hearing set under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

19.  The child comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450, in that his or her underlying petition is subject to vacatur under Penal Code section 236.14.

- a. Continuanance in the home is contrary to the child's welfare;
- b. Reasonable efforts have been made to prevent or eliminate the need for removal, and the child remains removed from the parent or guardian;
- c. The conviction in petition number \_\_\_\_\_ is vacated, along with the underlying arrest pursuant to Penal Code section 236.14;
- d. The Department of Justice and any law enforcement agency that has records of the arrest is ordered to seal those records and then destroy them three years from the date of the arrest or one year after the order to seal, whichever occurs later; and
- e. The  probation department  social services agency is responsible for the child's placement and care.

20.  The child (1) was not a court dependent at the time he or she was declared a ward; (2) is currently subject to an order for a foster care placement; (3) does not come within the juvenile court's transition jurisdiction; (4) has achieved his or her rehabilitative goals; (5) no longer requires delinquency jurisdiction; and (6) appears to come within the description of Welfare and Institutions Code section 300 and cannot be returned home safely.

- a. The  probation officer  child's attorney must submit an application under Welfare and Institutions Code section 329 to the child welfare services department to commence a proceeding to declare the child a dependent of the court.
- b. The matter is set for a hearing to review the child welfare services department's decision on the date stated on the record, which is within 20 court days of the date of this order.

21.  The child (1) was a court dependent at the time he or she was declared a ward; (2) does not come within the juvenile court's transition jurisdiction; (3) has achieved his or her rehabilitative goals; (4) no longer requires delinquency jurisdiction; and (5) remains within the description of a dependent child under Welfare and Institutions Code section 300 and a return to the home of a parent or legal guardian would create a substantial risk of detriment to his or her safety, protection, or physical or emotional well-being.

- a. The child was originally removed from the physical custody of his or her parents or legal guardians on *(specify date)*: \_\_\_\_\_ and continues to be removed from their custody.
- b. The removal findings made at that hearing—"continuation in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—remain in effect.
- c. The  child welfare services department  probation department is responsible for the child's placement and care.

The order terminating jurisdiction over the child as a dependent of the juvenile court is vacated and dependency jurisdiction over the child is resumed. Delinquency jurisdiction is terminated. The matter is continued for a status review hearing set under rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

CHILD'S NAME:	CASE NUMBER:
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22.  Jurisdiction over the child is not modified from delinquency jurisdiction to dependency jurisdiction or transition jurisdiction.
- a.  The child is returned to the home of the parent or legal guardian. A progress report hearing is set on the date stated on the record.
  - b.  The child is returned to the home of the parent or legal guardian and juvenile court jurisdiction of the child is terminated as stated in *Petition to Terminate Wardship and Order* (form JV-794).
  - c.  Delinquency jurisdiction is continued and the order for an out-of-home placement in a non-foster care placement remains in full force and effect. A progress report hearing is set on the date stated on the record.
  - d.  Delinquency jurisdiction is continued and the order for a foster care placement remains in full force and effect.
    - (1)  The child intends to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age, and a status review hearing is set under rule 5.903 of the California Rules of Court, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.
    - (2)  The child does not intend to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age.
      - (a)  A hearing to terminate delinquency jurisdiction under Welfare and Institutions Code sections 607.2(b)(4) and 607.3 is set for the date stated on the record, which is within one month of the child's 18th birthday.
      - (b)  A status review hearing is set under Welfare and Institutions Code section 727.2, on the date stated on the record, which is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or section 727.3.

**23. The next hearings are scheduled as follows:**

- a.  Nonminor dependent status review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court

Hearing date:	Time:	Dept:	Room:
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- b.  Hearing to consider termination of jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court

Hearing date:	Time:	Dept:	Room:
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- c.  Other (*specify*):

Hearing date:	Time:	Dept:	Room:
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Date:

\_\_\_\_\_  
JUDICIAL OFFICER

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):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>FINDINGS AND ORDERS AFTER HEARING TO MODIFY                  DELINQUENCY JURISDICTION TO TRANSITION JURISDICTION                  FOR CHILD YOUNGER THAN 18 YEARS OF AGE</b>	CASE NUMBER:	
Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	Other Court Personnel:	Interpreter: Language:

Use this form to document the findings and orders regarding the modification of delinquency jurisdiction to transition jurisdiction for a child older than 17 years, 5 months and younger than 18 years of age, who

- qualifies for vacatur of his or her underlying petition pursuant to Penal Code section 236.14 or has met his or her rehabilitative goals;
- is under an order for foster care placement;
- wants to remain in extended foster care under the transition jurisdiction of the juvenile court;
- is not receiving reunification services; and
- does not have a hearing set for termination of parental rights or establishment of guardianship.

1. Parties (name)	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>
a. Ward:	<input type="checkbox"/>		<input type="checkbox"/>
b. Probation officer:	<input type="checkbox"/>		<input type="checkbox"/>
c. County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>
d. Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>
2. Parent			
a. (Name):	<input type="checkbox"/> Father	<input type="checkbox"/> Mother	<input type="checkbox"/>
b. (Name):	<input type="checkbox"/> Father	<input type="checkbox"/> Mother	<input type="checkbox"/>
3. Legal guardian (name):	<input type="checkbox"/>		<input type="checkbox"/>
4. Indian custodian (name):	<input type="checkbox"/>		<input type="checkbox"/>
5. Tribal representative (name):	<input type="checkbox"/>		<input type="checkbox"/>
6. <input type="checkbox"/> Others present			
a. Other (name):			
b. Other (name):			
c. Other (name):			

CHILD'S NAME:	CASE NUMBER:
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**7. The court has read and considered and admits into evidence**

- a.  report of social worker dated:
- b.  report of probation officer dated:
- c.  other (specify):
- d.  other (specify):
- e.  other (specify):

**BASED ON THE FOREGOING AND ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

**Findings**

8. Notice  has  has not been given as required by law.

9. a.  The child comes within the description of Welfare and Institutions Code section 450, in that

- (1)  the child is older than 17 years and 5 months and younger than 18, and the underlying petition is subject to vacatur under Penal Code section 236.14.
- (2)  the child is older than 17 years, 5 months and younger than 18 years of age and is subject to an order for foster care placement.
- (3)  the child was removed from the physical custody of his or her parents or legal guardian, adjudged to be a ward of the juvenile court under Welfare and Institutions Code section 725, and ordered into foster care placement as a ward, or the child was removed from the custody of his or her parents as a dependent of the court with an order for foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under Welfare and Institutions Code section 725.
- (4)  the child's rehabilitative goals as stated in the case plan have been met, and juvenile court's delinquency jurisdiction over him or her as a ward is no longer required.

b.  The child does not come within the description of Welfare and Institutions Code section 450, in that (check all that apply)

- (1)  the child is not more than 17 years, 5 months and less than 18 years of age and subject to a foster care placement order.
- (2)  the child was not removed from the physical custody of his or her parents or legal guardian, adjudged to be a ward of the juvenile court under Welfare and Institutions Code section 725, and ordered into foster care placement as a ward, nor was the child removed from the custody of his or her parents as a dependent of the court with an order for a foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under Welfare and Institutions Code section 725.
- (3)  the child's rehabilitative goals as stated in the case plan have not been met, and the juvenile court's delinquency jurisdiction over him or her as a ward is required.

10.  The child  has  has not been informed that he or she may decline to become a nonminor dependent and may have juvenile court jurisdiction terminated at a hearing under Welfare and Institutions Code section 391, and rule 5.555 of the California Rules of Court.

11.  The child's return to the home of his or her legal guardian  would  would not create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The facts supporting this finding were stated in the records.

12. Reunification services  have  have not been terminated.

13. The child's case  has  has not been set for a hearing to terminate parental rights or establish a guardianship.



CHILD'S NAME:	CASE NUMBER:
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14. The child  does  does not intend to sign a mutual agreement for a placement in a supervised setting as a transition dependent.
15. The child's Transitional Independent Living Case Plan  does  does not include a plan for the child to satisfy at least one of the following conditions of eligibility to remain under juvenile court jurisdiction as a transition dependent (*check all that apply*):
- The child plans to continue attending high school or a high school equivalency certificate (GED) program.
  - The child has made plans to attend a college, a community college, or a vocational education program.
  - The child plans to participate in a program or activities to promote employment or overcome barriers to employment.
  - The child has made plans to be employed at least 80 hours per month.
  - The child may not be able to attend school, college, a vocational program, or a program or activities to promote employment or overcome barriers to employment or to work 80 hours per month due to a medical condition.
16. The child  has  has not had an opportunity to confer with his or her attorney.
17.  The court makes the following orders modifying jurisdiction:
- The young person comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450(a)(1)(B) and 450(a)(2)(C).
    - Continuance in the home is contrary to the child's welfare;
    - Reasonable efforts have been made to prevent or eliminate the need for removal, and the child remains removed from the parent or guardian;
    - The conviction in petition number \_\_\_\_\_ is vacated, along with the underlying arrest pursuant to Penal Code section 236.14;
    - The Department of Justice and any law enforcement agency that has records of the arrest is ordered to seal those records and then destroy them three years from the date of the arrest or one year after the order to seal, whichever occurs later; and
    - The  probation department  social services agency is responsible for the child's placement and care.
  - The child is adjudged a transition dependent under the transition jurisdiction of this court.
  - Delinquency jurisdiction is terminated.
  - (*Insert name*):  continues his/her court appointment  is appointed by the court as the attorney of record for the child.
  - The matter is continued for a nonminor dependent status review hearing set under Welfare and Institutions Code section 366.31, and rule 5.903 of the California Rules of Court on (*date*): \_\_\_\_\_. This date is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or 727.3.

CHILD'S NAME:	CASE NUMBER:
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18.  **The court makes the following orders not modifying jurisdiction:**

- a. The child does not come within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450.
- b. The child continues under the delinquency jurisdiction of the court.
- c. The matter is continued for a status review hearing on *(date)*: \_\_\_\_\_ . This date is within six months of the child's most recent status review hearing under Welfare and Institutions Code section 727.2 or 727.3.

19.  **The court makes the following additional findings and orders to terminate jurisdiction:**

- a. The child has met his or her rehabilitative goals and does not wish to become a transition dependent.
- b. A hearing to consider termination of jurisdiction under Welfare and Institutions Code section 391, and rule 5.555 of the California Rules of Court is set on *(date)*:

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

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  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<b>FINDING AND ORDERS AFTER HEARING TO MODIFY DELINQUENCY JURISDICTION TO TRANSITION JURISDICITON FOR WARD OLDER THAN 18 YEARS OF AGE</b>		CASE NUMBER:
Judicial Officer:	Court Clerk:	Court Reporter:
Bailliff:	Other Court Personnel:	Interpreter: Language:

- |  | Present                  | <u>Attorney (name):</u> | Present                  |
|--|--------------------------|-------------------------|--------------------------|
| 1. Parties (name)  |                          |                         |                          |
| a. Nonminor::  | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| b. Probation officer:  | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| c. County agency social worker:                                      | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| d. Other (specify):  | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| 2. Parent  |                          |                         |                          |
| a. (Name):   | <input type="checkbox"/> | Father                  | <input type="checkbox"/> |
| b. (Name):   | <input type="checkbox"/> | Father                  | <input type="checkbox"/> |
| c. (Name):   | <input type="checkbox"/> | Mother                  | <input type="checkbox"/> |
| d. (Name):   | <input type="checkbox"/> | Mother                  | <input type="checkbox"/> |
| 3. Legal guardian (name):  | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| 4. Indian custodian (name):  | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| 5. Tribal representative (name):                                     | <input type="checkbox"/> |                         | <input type="checkbox"/> |
| 6. <input type="checkbox"/> Others present                           |                          |                         |                          |
| a. Other (name):   |                          | (Name):                 |                          |
| b. Other (name):   |                          | (Name):                 |                          |
| c. Other (name):   |                          |                         |                          |
| 7. <b>The court has read and considered and admits into evidence</b> |                          |                         |                          |
| a. <input type="checkbox"/> report of social worker dated:           |                          |                         |                          |
| b. <input type="checkbox"/> report of probation officer dated:       |                          |                         |                          |
| c. <input type="checkbox"/> other (specify):                         |                          |                         |                          |
| d. <input type="checkbox"/> other (specify):                         |                          |                         |                          |
| e. <input type="checkbox"/> other (specify):                         |                          |                         |                          |

NONMINOR'S NAME:	CASE NUMBER:
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**BASED ON THE FOREGOING AND ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS**

**Findings**

8. Notice  has  has not been given as provided by law.
9. a.  The nonminor comes within the description of Welfare and Institutions Code section 450 in that
- (1) the ward is a nonminor ward in foster care placement who was a ward subject to an order for foster care placement on the day of his or her 18th birthday and is under the age of 21.
  - (2) the ward was removed from the physical custody of his or her parents or legal guardian, adjudged to be a ward of the juvenile court under Welfare and Institutions Code section 725, and ordered into foster care placement as a ward, or the ward was removed from the custody of his or her parents as a dependent of the court with an order for foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under Welfare and Institutions Code section 725.
  - (3) the ward's rehabilitative goals as stated in the case plan have been met, and juvenile court's delinquency jurisdiction over him or her as a ward is no longer required.
- b.  The nonminor comes within the description of Welfare and Institutions Code section 450 in that the young person is under 21 years of age and in a foster care placement based on a petition that is subject to vacatur under Penal Code section 236.14.
- (1)  the child was removed from the physical custody of his or her parents or legal guardian, adjudged to be a ward of the juvenile court under Welfare and Institutions Code section 725, and ordered into foster care placement as a ward, or the child was removed from the custody of his or her parents as a dependent of the court with an order for foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under Welfare and Institutions Code section 725.
- c.  The ward does not come within the description of Welfare and Institutions Code section 450, in that *(select all that apply)*
- (1)  the ward was not subject to an order for foster care placement on the day of his or her 18th birthday.
  - (2)  the ward is over the age of 21.
  - (3)  the ward was not removed from the physical custody of his or her parents or legal guardian, adjudged to be a ward of the juvenile court under Welfare and Institutions Code section 725, and ordered into foster care placement as a ward, nor was the ward removed from the custody of his or her parents as a dependent of the court with an order for a foster care placement in effect at the time the court adjudged him or her to be a ward of the juvenile court under Welfare and Institutions Code section 725.
  - (4)  the ward's rehabilitative goals as stated in the case plan have not been met, and the juvenile court's delinquency jurisdiction over him or her as a ward is required.
10.  The ward  has  has not been informed that he or she may decline to become a nonminor dependent and may have juvenile court jurisdiction terminated at a hearing under rule 5.555 of the California Rules of Court.
11.  The nonminor  was  was not informed that if juvenile court jurisdiction is terminated, the nonminor can file a request to return to foster care and may have the court resume jurisdiction over the ward as a nonminor dependent.
12.  The benefits of remaining under juvenile court jurisdiction as a nonminor dependent  were  were not explained  and the nonminor understands them.
13.  The ward  has  has not signed a mutual agreement with the responsible agency for placement in a supervised setting as a nonminor dependent.

NONMINOR'S NAME:	CASE NUMBER:
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14. The ward's Transitional Independent Living Case Plan  does  does not include a plan for the ward to satisfy at least one of the following conditions of eligibility to remain under juvenile court jurisdiction as a transition dependent *(check all that apply)*:
- a.  The ward plans to continue attending high school or a high school equivalency certificate (GED) program.
  - b.  The ward has made plans to attend a college, a community college, or a vocational education program.
  - c.  The ward plans to participate in a program or activities to promote employment or overcome barriers to employment.
  - d.  The ward has made plans to be employed at least 80 hours per month.
  - e.  The ward may not be able to attend school, college, a vocational program, or a program or activities to promote employment or overcome barriers to employment or to work 80 hours per month due to a medical condition.

15. The ward  has  has not had an opportunity to confer with his or her attorney.

16.  **The court makes the following orders modifying jurisdiction:**

- a. The young person comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450(a)(1)(B) and 450(a)(2)(C).
  - (1) Continuance in the home is contrary to the child's welfare;
  - (2) Reasonable efforts have been made to prevent or eliminate the need for removal and the child remains removed from the parent or guardian;
  - (3) The conviction in petition number \_\_\_\_\_ is vacated, along with the underlying arrest pursuant to Penal Code section 236.14;
  - (4) The Department of Justice and any law enforcement agency that has records of the arrest is ordered to seal those records and then destroy them three years from the date of the arrest or one year after the order to seal, whichever occurs later; and
  - (5) The  probation department  social services agency is responsible for the child's placement and care.
- b. The ward comes within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450.
  - (1) The ward was originally removed from the physical custody of his or her parents or legal guardians on *(specify date of detention hearing when removal findings were made)*: \_\_\_\_\_ and continues to be removed from their custody.
  - (2) The removal findings—"continuance in the home is contrary to the child's welfare" and "reasonable efforts were made to prevent removal"—made at that hearing remain in effect.
  - (3) The  probation department  social services agency is responsible for the nonminor's placement and care.
- c. The nonminor is adjudged a nonminor dependent under the transition jurisdiction of this court.
- d. Delinquency jurisdiction is terminated.
- e. *(Insert name)*: \_\_\_\_\_  continues his/her court appointment  is appointed by the court as the attorney of record for the nonminor dependent.
- f. The matter is continued for a nonminor dependent status review hearing set under rule 5.903 of the California Rules of Court on *(date)*: \_\_\_\_\_. This date is within six months of the nonminor's most recent status review hearing under Welfare and Institutions Code section 727.2 or 727.3.

NONMINOR'S NAME:	CASE NUMBER:
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17.  **The court makes the following orders not modifying jurisdiction:**

- a. The nonminor does not come within the juvenile court's transition jurisdiction as described in Welfare and Institutions Code section 450.
- b. The nonminor continues under the delinquency jurisdiction of the court.
- c. The matter is continued for a status review hearing on *(date)*: \_\_\_\_\_ . This date is within six months of the nonminor's most recent status review hearing under Welfare and Institutions Code section 727.2 or 727.3.

18.  **The court makes the additional findings and orders to terminate jurisdiction:**

- a. The ward has met his or her rehabilitative goals, but does not wish to become a nonminor dependent.
- b. A hearing to consider termination of jurisdiction under Welfare and Institutions Code section 607.3, and rule 5.555 of the California Rules of Court is set on *(date)*:

Date:

\_\_\_\_\_

JUDICIAL OFFICER

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): _____	<b>FOR COURT USE ONLY</b>           <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>REQUEST TO VACATE ARREST OR CONVICTION</b> <b>(HUMAN TRAFFICKING VICTIM)</b> <b>(Penal Code, § 236.14)</b>	CASE NUMBER:   Date: Time: Department:

**Instructions — Read Carefully**

- Use this form if you were arrested and/or went to court for a crime that you committed because you were a victim of human trafficking when you were under the age of 18. If the court agrees that you committed the crime because you were a victim of human trafficking, the court will take the charge off your record. You need to use a different form if you were 18 or older at the time of the offense.
- If this form asks for information that you do not have, you can contact your attorney. If you don't have an attorney, the public defender's office in the court or county where you went to court can probably help you get the information.
- The court will serve this form for you unless you have an attorney. If you have an attorney, he or she must serve the form.
- How to fill out the form without an attorney:
  - A. Put your name and contact information in the box at the top of the form and in number 1 below.
  - B. Put the address of the court from your court papers in the box below your address. This form must be filed in the same county where you went to court for this offense.
  - C. Fill out the table in number 2. You can list arrests or adjudications from different courts that you want the court to take off your record because you did the crime when you were a victim of human trafficking.
  - D. Fill out number 3 with the dates of the police reports, delinquency petitions, or child welfare petitions that describe how you were a victim of human trafficking. Check the box in 3 if you have the police reports or petitions to attach to this request.
  - E. If you have arrests or adjudications from different counties, for crimes you committed while you were a human trafficking victim and you want the judge to consider taking all of those off your record, check the box in number 4.
  - F. The court will set a hearing to make a decision about your request. You need to go to the hearing, unless you have a good reason not to. If you do not want to go to the hearing, check the box in number 5 and tell the judge why you don't want to go. The judge might let you appear at the hearing by phone or videoconference.
  - G. If you will need an interpreter, ask for one in number 6.

**1. MY INFORMATION**

My name is:

I was born on (date):

CASE NAME:	CASE NUMBER:
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**2. OFFENSE INFORMATION**

I was arrested for and/or was made a ward of the court (adjudicated) for the offenses listed below:

Arrest or Adjudication Ar=arrest Ad=adjudication	Report number (from the police report or the delinquency petition)	Date	Court Case Number	Jurisdiction (City and/or County)	Offense (Crime) Committed

**3. I committed the crime(s) listed above because I was a victim of human trafficking.**

The facts that show I was a victim of human trafficking when I committed the crime are in:

- Police report number \_\_\_\_\_ that is dated \_\_\_\_\_ .
- Delinquency petition number \_\_\_\_\_ that is dated \_\_\_\_\_ .
- Dependency petition number \_\_\_\_\_ that is dated \_\_\_\_\_ .
- I have attached documents that are from the police department, probation department, or child welfare that show I was a victim of human trafficking.

**4.  I request that this court hear all of the arrests and adjudications that I want taken off my record, even if they did not happen in this county.**

**5. WAIVER OF APPEARANCE**

a.  I know that I have a right to attend any hearing about my request and argue on my behalf. I do not want to attend and agree that the hearing can be held without my presence. I have compelling reasons (good reasons) that I do not want to attend and they are written below:

\_\_\_\_\_

b.  I can appear at the hearing by telephone or videoconference.

**6. REQUEST FOR INTERPRETER**

If there is a hearing, I will need a (*language*) \_\_\_\_\_ interpreter.

7. I request that the court dismiss the adjudication(s) and the related petition(s) in the cases listed in item #2 of this request.

8. I request that the court expunge (take off) the arrest(s) listed in item #2 of this request.

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 INITIALS OF PETITIONER)

▶  
\_\_\_\_\_  
(SIGNED INITIALS OF PETITIONER OR SIGNATURE OF ATTORNEY)



ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CASE NAME: _____	
<b>ORDER AFTER REQUEST TO VACATE ARREST OR CONVICTION</b> <b>(HUMAN TRAFFICKING VICTIM)</b> <b>(Penal Code, § 236.14)</b>	CASE NUMBER: _____  Date: _____ Time: _____ Department: _____

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court finds as follows:

1.  The applicant and/or counsel were personally present at the hearing, or appeared by phone or video conference.
2.  The prosecutor did not file an opposition to the request. The request is considered unopposed.
3. The court finds:
  - The applicant was a victim of human trafficking when he or she committed the crime(s).
  - The applicant committed the crime because he or she was a human trafficking victim.
  - The applicant is making a good effort to distance him or herself from human trafficking.
  - It is in the best interest of the applicant and in the interest of justice for this court to grant the request.
4. The court  grants  denies the applicant's request to dismiss the adjudication(s) and related petition(s) and to vacate the adjudication(s) listed in the request.
5. The court  grants  denies the petitioner's request to expunge the arrest(s) listed in the request.
6. **If the court grants the requested relief:**
  - a. The Department of Justice is hereby notified that the applicant was a victim of human trafficking when he or she committed the crime, and of the relief ordered.
  - b. The following agencies and officials are ordered to seal and destroy their records of the applicant's arrest within three years from the date of the arrest or within one year after the granting of this order, whichever occurs later, and thereafter to destroy the court order to seal and destroy those records:
    - California Department of Justice
    - Law enforcement agency(s), with jurisdiction over the offense(s) (*specify all*):

Law enforcement agency(s) that arrested the applicant or participated in an arrest of the applicant (*specify all*):

CASE NAME:	CASE NUMBER:
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- 6. c. The applicant may lawfully deny or refuse to acknowledge an arrest or adjudication that is set aside and vacated pursuant to this order.
- d. The records of a set-aside and vacated arrest or adjudication must not be distributed to any state licensing board.
- e. The record of a proceeding related to this request that is accessible to the public must not disclose the applicant's full name.
- 7.  The request is denied without prejudice. The request is denied because the evidence presented did not show (provide reasons for denial):

8.  The applicant is hereby granted a reasonable period of time to fix the problems noted above.

Date: \_\_\_\_\_  
(JUDICIAL OFFICER)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Juvenile Law: Electronic Filing and Service in Juvenile Court Matters (Implementation of AB 976)

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Diana Glick, 916-643-7012, [diana.glick@jud.ca.gov](mailto:diana.glick@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda:

Rules Modernization Project and Implementation of AB 976

Each advisory committee was asked to include in their annual agendas for 2015 and 2016 an item providing for the drafting of proposed amendments to modernize the California Rules of Court related to their subject matter areas. This effort was undertaken in coordination with ITAC, which is responsible for developing and completing the overall rules modernization project. Implementation of council sponsored legislation (AB 976 (Berman) Electronic filing and service) that emerged from this project will require rule and form changes.

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

N/A

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

N/A

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR18-25

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Title	Action Requested
Juvenile Law: Electronic Filing and Service in Juvenile Court Matters (Implementation of AB 976)	Review and provide comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.504, 5.522, 5.524, 5.534, 5.538, 5.565, 5.570, 5.590, 5.640, 5.695, 5.700, 5.726, 5.727, 5.728, and 5.906; adopt rule 5.523; revise forms EFS-005-JV/JV-141, JV-221, JV-282, JV-310, JV-326, JV-326-INFO, and JV-510	January 1, 2019
	Contact
	Diana Glick, 916-643-7012 <a href="mailto:diana.glick@jud.ca.gov">diana.glick@jud.ca.gov</a>
Proposed by	
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

To implement Assembly Bill 976 (Stats. 2017, ch. 319), the Family and Juvenile Law Advisory Committee proposes amending 15 of the California Rules of Court, adopting one new rule, and revising seven Judicial Council forms. Assembly Bill 976 authorizes electronic filing and service in juvenile matters, pursuant to Code of Civil Procedure section 1010.6. The bill extends the ability to conduct electronic filing and service to all juvenile matters, with some important exceptions and conditions designed to protect the confidential information of minors and to preserve paper notice of specified proceedings. The bill also requires affirmative consent to electronic service for unrepresented parties as of January 1, 2019. These legal changes require the modifications to rules and forms proposed in the Invitation to comment.

### Background

Code of Civil Procedure section 1010.6 and trial court rules 2.250–2.261 authorize electronic filing and electronic service in civil matters. On July 1, 2014, the Judicial Council amended rule 5.522 to expressly enable the electronic filing of juvenile court documents in accordance with the

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

trial court rules, specifically rules 2.252 et seq. However, trial court rule 2.251 on electronic service was expressly excluded. Rule 5.522(b)(4) specifically states: “[t]his rule does not incorporate the electronic service provisions in rule 2.251.” Rule 2.251 authorizes electronic service in those courts that allow or require electronic filing, and sets forth technical requirements for electronic service.

Effective January 1, 2016, Assembly Bill 879 amended Welfare and Institutions Code sections 290.1–295 to authorize notice of certain juvenile dependency hearings by electronic mail. The provisions of AB 879 applied to a defined set of hearings conducted for children in the juvenile dependency system and authorize notice by e-mail for those hearings specified in sections 290.1–295. The legislation set important parameters for e-mail notice of hearing in the juvenile context and codified protections for parties and other persons who may consent to receive an e-mail notice of hearing. The legislation had no effect on juvenile delinquency matters and did not remove the prohibition on electronic service of documents in juvenile matters.

In 2017, the Judicial Council sponsored AB 976 to explicitly authorize electronic filing and service in juvenile, probate, and criminal matters through cross-reference to Code of Procedure sections 1010.6 et seq. The bill adds a new section to the Welfare and Institutions Code to effectuate this cross-reference and to establish limitations on electronic service to protect the confidential information of minors and ensure paper notice of specified proceedings in juvenile court.

### **Legislative Framework**

Assembly Bill 976, which was authored by Assembly Member Marc Berman, takes a comprehensive approach to the authorization of electronic filing and service in several areas of law and adds new provisions to the Code of Civil Procedure requiring a procedure for electronic signatures (to be developed by the Judicial Council by January 1, 2019) and to increase protections for self-represented litigants. Specifically, in all cases filed on or after January 1, 2019, electronic service on an unrepresented person is prohibited unless that person expressly consents to receiving electronic service in that specific action. Currently, and until January 1, 2019, any party who electronically files into a case is considered to have consented to electronic notice in that case.

To authorize electronic filing and service, the bill enacted new sections in the Penal Code, Probate Code, and Welfare and Institutions Code that cross-reference the central electronic filing and service provisions in Code of Civil Procedure section 1010.6. In the Welfare and Institutions Code, the bill added section 212.5, which both authorizes electronic filing and service in juvenile matters and establishes important protections for children and parents who are participants in juvenile cases.

In addition, the bill amended 32 sections of the Welfare and Institutions Code that govern notice and service in a variety of hearings in juvenile proceedings to authorize electronic service by cross-reference to new section 212.5.

The limitations placed on electronic filing and service in the juvenile context are the following:

- Electronic service is authorized only if the county and the court permit electronic service.
- Consent or the withdrawal of consent to receive electronic service may be completed by a party or other person entitled to service, or that person's attorney.
- Electronic service is prohibited on any party or person under 10 years of age.
- Electronic service is prohibited on any party or person age 10–15 unless both the minor and the minor's attorney have provided their express consent.
- Electronic service is prohibited on any party or person age 16 or 17 unless the minor provides express consent, after consultation with their attorney. The Judicial Council must develop a rule to set forth the duties of the minor's attorney during this consultation.
- Electronic service of psychological or medical documentation related to a minor is prohibited, with the exception of the summary required pursuant to section 16010 when it is part of a required report to the court.
- There are three types of notices that may be served electronically, but only in addition to other legally mandated forms of service:
  - A notice of hearing or appellate advisement issued under section 366.26(l)(3)(A) for a hearing at which a social worker is recommending the termination of parental rights.
  - A citation issued under section 661.
  - A notice of hearing under section 777(d).
- Electronic service of initial detention hearing notices issued under sections 290.1 and 290.2 is prohibited.
- Service in a matter that involves an Indian child—or when the court has reason to know that an Indian child is involved in the matter—shall be made under section 224.2.
- Electronic filing and service shall be conducted in a manner that preserves and ensures the confidentiality of records by encryption.

## **The Proposal**

### **Amend Existing Rules of Court and Adopt New Rule of Court**

The provisions of AB 976 establish a general authorization of electronic filing and service in juvenile proceedings with the exceptions described above. The advisory committee recommends making the following changes to the rules in title 5 of the California Rules of Court to bring them into conformity with the amendments to statutes:

#### **Rule 5.504. Judicial Council forms**

Remove the sunset date contained in subdivision (c) for flexibility in local court formatting of Judicial Council forms.

#### **Rule 5.522. Remote filing**

Streamline subdivision (b) to authorize electronic filing under section 212.5 and remove remaining subparagraphs, which are no longer applicable.

**Proposed New Rule: 5.523. Electronic service (§ 212.5)**

Adopt a new rule to establish general authorization for electronic service in juvenile matters under section 212.5, and set forth requirements for attorney consultation prior to consent to electronic service by minors, ages 16 and 17. Subdivision (a) contains a general authorization and references section 212.5. It also contains a requirement of service by first-class mail when a noticing entity knows or should know that a child or nonminor who has consented to electronic service is in custody. Subdivision (b) describes the requirement of express consent to electronic service by the child and the child’s attorney for minors age 10-15. Subdivision (c) describes the requirement of attorney consultation before a minor age 16 or 17 can expressly consent to receiving electronic service. Subdivision (d) contains the elements for consideration in the attorney consultation. Subdivision (e) contains specific information that must be provided to the minor by the minor’s attorney during the consultation.

**Rule 5.524. Form of petition; notice of hearing**

Add a sentence to rule 5.524(e)(1) to indicate that hearings noticed under sections 290.1 and 290.2 must not be served electronically. Change the reference in (e)(2) from “electronic mail” to “electronic service,” remove the reference to section 290.1, and insert a reference to obtaining consent to electronic service under section 212.5. Correct (f)(3) to include counsel representing a parent or guardian, in accordance with section 630.1.

**Rule 5.534. General provisions—all proceedings**

Change the title of subdivision (h) from “Address of parent or guardian—notice” to “Mailing address of parent or guardian.” Delete (i)(4) referencing e-mail notice of dependency hearings. Add new subdivision (j) titled “Electronic service address” with information on providing an electronic service address and consent to electronic service in juvenile matters. Please note that the subdivision titled “Caregiver notice and right to be heard (§§ 290.1–297, 366.21)” was supposed to have been relettered as subdivision (j) as of January 1, 2017, but was not; therefore, there are currently two subdivisions with the letter (i). This proposal would insert a new subparagraph (j) as described above underneath the first subdivision (i), and would reletter the second subdivision (i) to subdivision (k) to follow the new subdivision.

**Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary judge**

Because AB 976 added references to electronic service under section 212.5 to sections 248 and 248.5—and in the spirit of cross-referencing statute whenever possible—this proposal would remove the detailed instructions with regard to service in the rule and would refer the reader to sections 248 and 248.5 for service requirements.

**Rule 5.565. Hearing on subsequent and supplemental petitions**

Amend subdivision (c) to create two subparagraphs in order to indicate the different notice and service requirements for subsequent and supplemental petitions.

**Rule 5.570. Request to change court order (petition for modification)**

Rewrite subdivision (g), creating two subparagraphs in order to indicate the different notice and service requirements for petitions to terminate juvenile court jurisdiction over a nonminor, which is currently required to be noticed under section 295 (as currently set forth in rule 5.555), and all other types of petitions brought under these sections, which will continue to be noticed pursuant to local practice.

**Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases**

Amend (b)(2) to provide service requirements for advisement and notice of hearing under section 366.26 if a party is not present in court when the hearing is ordered. The amendment authorizes electronic service in accordance with section 212.5, except for notice of a hearing at which the social worker will recommend the termination of parental rights, in which case notice may be served electronically, but only in addition to service of notice by first-class mail.

**Rule 5.640. Psychotropic medications**

Amend (c)(5) to limit local county practice and local rules of court with respect to electronic service, in order to prohibit the electronic service of psychological and medical documentation related to a minor, under section 212.5. Amend (g)(3) and (4) to include the prohibition on electronic service of psychological or medical documentation related to a minor. Retain language in (h)(2) indicating that a copy of the court order must be provided in person or mailed to the caregiver within two court days of when the order is signed.

**Rule 5.695. Findings and orders of the court—disposition**

Amend (g)(10) to provide service requirements for advisement and notice of hearing under section 366.26 if a party is not present in court when the hearing is ordered. The amended subparagraphs authorize electronic service in accordance with section 212.5, except for notice of a hearing at which the social worker will recommend the termination of parental rights, in which case notice may be served electronically but only in addition to service of notice by first-class mail.

**Rule 5.700. Termination of jurisdiction—custody and visitation orders**

Amend (d), related to the clerk's responsibility to send an endorsed filed copy of the order, to include service by electronic means in accordance with section 212.5.

**Rule 5.726. Prospective adoptive parent designation**

Amend service requirements set forth in (d)(3)(A) to include a reference to electronic service in accordance with section 212.5.

**Rule 5.727. Proposed removal**

Amend (b) to add the required notice to the attorney of a sibling if the change in placement results in the separation of siblings placed together, in accordance with AB 743 (2009). Amend (d)(1) to include a reference to electronic service in accordance with section 212.5 for the notice



of removal issued by the Department of Social Services, and add subparagraph (3) to (d) with a reference to Code of Civil Procedure section 1010.6 for statutory language regarding when electronic service is considered complete and any extensions on time to respond after electronic service. Renumber the remaining subparagraphs. Add to (e)(2) a reference to Code of Civil Procedure section 1010.6 for statutory language regarding extensions on time to respond to notification of the proposed removal. Retain the personal or telephone service requirement in (f) for a notice of hearing on the proposed removal.

**Rule 5.728. Emergency removal**

Amend (b) to add the required notice to the attorney of a sibling if the change in placement results in the separation of siblings placed together, pursuant to AB 743 (2009). The proposal would retain the personal or telephone service requirement in (c) and (e) for a notice of hearing on emergency removal.

**Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction**

Amend (d)(2)(C) to include a reference to electronic service in accordance with section 212.5. Amend (g)(3) to include a reference to electronic service in accordance with section 212.5.

**Amend Existing Forms**

The advisory committee recommends making the following form changes to ensure consistency of the forms with new statutory language and amended rules of court:

***E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency) (form EFS-005-JV/JV-141)***

The statutes amended by AB 879 specifically mandated that consent to receive notice of hearing by e-mail be provided on form EFS-005. Prior to July 1, 2016, form EFS-005 allowed litigants and attorneys in civil litigation to provide an “electronic service address,” which can be, but is not necessarily, an electronic *mail* address. The “electronic service” referenced on the form and authorized through the more recent AB 976 is a broader concept than notice of a hearing, which was the sole focus of AB 879.

In response to the language of AB 879, form EFS-005 was restyled as EFS-005-CV and its content was preserved; a new form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)* was created. This form enables persons entitled to notice in juvenile court proceedings to give consent to receive notice by e-mail and provide the court with a current e-mail address. The form also allows persons entitled to notice in juvenile court proceedings to notify the court of a change in the e-mail address for receiving electronic notices of hearings and allows those who have previously provided consent to receive notices of hearing by e-mail to withdraw that consent. Given the broadening of authorization in juvenile matters achieved through AB 976, the committee now proposes to change the name of the form from “Email Notice” to “Electronic Service,” and to amend the language of the form to refer to the provision of consent for “receiving notices and documents electronically” instead of receiving notices of hearing by e-mail. The amendments to page 2 of

the form bring the instructions in line with the electronic service provisions of AB 976. The form retains the functions of consent, provision of an electronic service or electronic mail address, and withdrawal of consent, and could be used to satisfy the requirement of affirmative consent to electronic service that will be required as of January 1, 2019.

***Proof of Notice of Application (form JV-221)***

This form accompanies *Application for Psychotropic Medicine* (form JV-220) and provides the opportunity for the applicant to indicate that notice of the application was provided to parents, caregivers, CASA advocates, attorneys, and the child’s Indian tribe, as applicable. Because such an application would include medical and/or psychological documentation related to a minor, the committee proposes to remove the sections that allow the applicant to indicate that notice was made by electronic service, and that provide for an e-mail or electronic service address.

***Proof of Service—Nonminor (form JV-282)***

This optional form can be used to provide proof of service of a variety of documents related to a nonminor dependent in a juvenile court matter. Because nonminor dependents are by definition not minors, there are fewer restrictions on their ability to consent to electronic filing and service and on the types of documentation that may be served. The committee proposes to describe the ability to electronically serve documents in the first paragraph of the form and to split out the section titled “Name and address” into two sections: “Name” and “Mailing or Electronic Service Address.”

***Proof of Service Under Section 366.26 of the Welfare and Institutions Code (form JV-310)***

This mandatory form is used to show proof of service of a notice of hearing pursuant to section 366.26. Notice of all hearings held under this section may be served electronically (as long as other conditions of electronic service have been met), with the exception of a hearing at which the social worker will recommend termination of parental rights. In the latter case, notice may be given electronically, but only in addition to the other legally required forms of service. Therefore, the committee recommends revising this form to add a section to indicate that service was provided electronically and allow the filer to provide both the electronic service address where notice was given (in item 2h.) and their own electronic service address (in item 3).

***Proof of Notice (form JV-326)***

This form is used to provide proof of notice of the following: (1) an intent to remove, (2) an emergency removal, (3) a hearing regarding an intent to remove, (4) a hearing regarding an emergency removal, and/or (5) a hearing on a prospective adoptive parent designation. Because there is a general authorization for electronic service in juvenile matters of any document that may be served by mail, express mail, overnight delivery, or facsimile transmission, pursuant to new section 212.5 with specified exceptions, it is presumed that the notices and hearings described in section 366.26(n) may generally be provided electronically, providing that other conditions of electronic service have been met. However, current rules of court require personal or telephone notice of (1) an intent to remove, (2) a hearing regarding proposed removal, and (3) a hearing regarding an emergency removal. This proposal would amend rule 5.726 of the

California Rules of Court regarding prospective adoptive parent designation, and rule 5.727 regarding proposed removal to allow for electronic service of the notices under those sections, but would preserve the language in rules 5.727 and 5.728 mandating personal or telephone notice of the hearing on a proposed removal or an emergency removal. Therefore, the committee proposes that this form be modified to account for the possibility of electronic notice in every section that allows for service by mail. This would require additions to items 1a. through 1g. The notification of the court in item 1h. provides for only oral notification to the court (in person or by telephone). The committee also recommends renaming the form to add a statutory cross-reference to section 366.26(n), such that the form name would be “Proof of Notice Under Section 366.26(n),” in order to clearly indicate the relevant proceedings and to match the names of the pertinent title 5 rules.

***Instructions for Notice of Prospective Adoptive Parent Hearing (form JV-326-INFO)***

This information sheet describes the notice requirements for three types of hearings: (1) a hearing on prospective adoptive parent designation, (2) a hearing on a notice of proposed removal, and (3) a hearing regarding an emergency removal. Please note that the instructions do not address the notice requirements for the intent to remove or the emergency removal. The committee proposes that the name of the form be changed to “Instructions for Notice of Hearings Under Section 366.26(n)” to more clearly reflect the content of the INFO sheet and to align with the new name of form JV-326 and the pertinent title 5 rules. The committee further proposes amendments to the instructions to reflect the possibility of electronic notice of the hearing regarding a prospective adoptive parent designation.

***Proof of Service—Juvenile (form JV-510)***

This optional form can be used to provide proof of service of a variety of documents related to a juvenile court matter. Because AB 976 enacted a general authorization for electronic service, with specified exceptions, the committee proposes to describe the ability to electronically serve documents in the first paragraph of the form and to split out the section titled “Name and address” into two sections: “Name” and “Mailing or Electronic Service Address.”

**Alternatives Considered**

Alternatives considered include the retention of electronic service language for hearings on the administration of psychotropic medication and the retention of current rules of court limiting notice of a hearing on a proposed removal. Because the retention of the current language in these rules would be in direct conflict with the new statutory provisions, it was determined that the changes needed to be made.

**Implementation Requirements, Costs, and Operational Impacts**

Implementation may require changes in court procedures and training in those courts that choose to allow electronic filing and electronic service. Because the legislation requires affirmative consent to electronic service by unrepresented parties as of January 1, 2019, there are opportunities to coordinate the provision of this consent through electronic filing service providers.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there other California Rules of Court that will require amendment in order to facilitate electronic filing or service in juvenile proceedings?
- Are there additional forms that will require amendment in order to facilitate electronic filing or service in juvenile proceedings?
- Is the proposed language in rule 5.570 sufficient to encompass the variety in local practice of notice requirements for petitions filed pursuant to sections 388 and 778?
- Is the proposed rule containing specific points for consideration—when an attorney for a minor age 16 or 17 counsels that minor regarding the provision of consent to electronic service—sufficient to ensure that the minor is making an informed decision?
- How should the requirement of express consent to electronic service be effectuated? Should the use of form EFS-005-JV/JV-141 (as proposed to be amended) be mandatory to provide express consent? Should the express consent be written?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rules 5.504, 5.522, 5.523, 5.524, 5.534, 5.538, 5.565, 5.570, 5.590, 5.640, 5.695, 5.700, 5.726, 5.727, 5.728 and 5.906, at pages 10–31
2. Forms EFS-005-JV/JV-141, JV-221, JV-282, JV-310, JV-326, JV-326-INFO, and JV-510, at pages 32–46
3. Link A: chaptered language of AB 976 can be found here:  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB976](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB976)

Rules 5.504, 5.522, 5.524, 5.534, 5.538, 5.565, 5.570, 5.590, 5.640, 5.695, 5.700, 5.726, 5.727, 5.728, and 5.906 of the California Rules of Court would be amended, and rule 5.523 would be adopted, effective January 1, 2019, to read:

1 **Rule 5.504. Judicial Council forms**

2  
3 **(a) Explanation of Judicial Council legal forms**

4  
5 Rules 1.30–1.37 and 2.131–2.134 apply to Judicial Council legal forms,  
6 including forms applicable to the juvenile court.

7  
8 **(b) Electronically produced forms**

9  
10 The forms applicable to juvenile court may be produced entirely by computer,  
11 word-processor printer, or similar process, or may be produced by the  
12 California State Department of Social Services Child Welfare Systems Case  
13 Management System.

14  
15 **(c) Implementation of new and revised mandatory forms**

16  
17 To help implement mandatory Judicial Council juvenile forms:

18  
19 (1) New and revised mandatory forms produced by computer, word-processor  
20 printer, or similar process must be implemented within one year of the  
21 effective date of the form. During that one-year period the court may  
22 authorize the use of a legally accurate alternative form, including any  
23 existing local form or the immediate prior version of the Judicial Council  
24 form.

25  
26 (2) ~~Until January 1, 2019, a~~ A court may produce court orders in any  
27 form or format as long as:

28  
29 (A) The document is substantively identical to the mandatory Judicial  
30 Council form it is modifying;

31  
32 (B) Any electronically generated form is identical in both language and  
33 legally mandated elements, including all notices and advisements, to  
34 the mandatory Judicial Council form it is modifying;

35  
36 (C) The order is an otherwise legally sufficient court order, as provided in  
37 rule 1.31(g), concerning orders not on Judicial Council mandatory  
38 forms; and

39  
40 (D) The court sends written notice of its election to change the form or  
41 format of the mandatory form to the Family and Juvenile Law  
42 Advisory Committee and submits additional informational reports as

1 requested by the committee.

2  
3 **Rule 5.522. Remote filing**

4  
5 **(a) Applicability and definitions**

6  
7 (1) This rule applies to juvenile court proceedings in courts that permit fax  
8 or electronic filing by local rule.

9  
10 (2) As used in this rule, “fax,” “fax transmission,” “fax machine,” and “fax  
11 filing” are defined in rule 2.301. A fax machine also includes any  
12 electronic device capable of receiving a fax transmission, as defined in rule  
13 2.301.

14  
15 (3) As used in this rule, “electronic filing” is defined in rule 2.250. Rule 2.250  
16 also defines other terms used in this rule related to electronic filing, such as  
17 “document,” “electronic filer,” and “electronic filing service provider;”  
18 “regular filing hours,” and “close of business.”

19  
20 **(b) Electronic filing**

21  
22 A court may allow for the electronic filing of documents in juvenile proceedings  
23 as provided under, and consistent with, Welfare and Institutions Code section  
24 212.5.

25  
26 (1) ~~A court may allow for the electronic filing of documents in juvenile~~  
27 ~~dependency and delinquency proceedings as provided under, and consistent~~  
28 ~~with, rule 2.252-et seq.~~

29 (2) ~~A court may allow for the electronic filing of documents directly with the~~  
30 ~~court or may provide by local rule for indirect filing through an electronic~~  
31 ~~filing service provider that has in place systems to ensure the integrity and~~  
32 ~~confidentiality of transmission of records and adheres to the requirements~~  
33 ~~of rule 2.256(a)(1).~~

34  
35 (3) ~~Electronic filing must be conducted in a manner that preserves and~~  
36 ~~ensures the confidentiality of records by encryption or other secure~~  
37 ~~methods.~~

38  
39 (4) ~~This rule does not incorporate the electronic service provisions in rule 2.251.~~

40  
41 **(c) Fax filing \* \* \***

1 **5.523. Electronic service (§ 212.5)**

2  
3 **(a) Electronic service—General provisions**

4  
5 (1) Unless otherwise provided by law, a document in a juvenile court matter may  
6 be served electronically as prescribed by section 1010.6 of the Code of Civil  
7 Procedure and in accordance with section 212.5 of the Welfare and  
8 Institutions Code.

9  
10 (2) If the noticing entity knows or should know that a child or nonminor who has  
11 consented to electronic service is in custody at the time that a notice will  
12 issue, the entity must also provide service of the notice by first-class mail.

13 **(b) Consent to electronic service by a child, age 10 to 15**

14  
15 Electronic service is permitted on a child who is 10 to 15 years of age only upon  
16 express consent of the child and the child's attorney.

17 **(c) Consent to electronic service by a child, age 16 or 17**

18  
19 Electronic service is permitted on a child who is 16 or 17 years of age only if the  
20 child, after consultation with his or her attorney, expressly consents.

21  
22 **(d) Required consultation with attorney for child, age 16 or 17**

23  
24 In a consultation with a child who is 16 or 17 years old and who seeks to consent to  
25 electronic service in a juvenile matter, the child's attorney must discuss and  
26 encourage the child to consider the following:

27  
28 (1) Whether the child has regular and reliable access to a means of electronic  
29 communication for purposes of communication regarding their case;

30 (2) What means of electronic communication the child intends to use to  
31 communicate about their case and whether it is private and secure; and

32 (3) Whether the child understands their rights with respect to the provision and  
33 withdrawal of consent to electronic service.

34 **(e) Required notification to child, age 16 or 17**

35  
36 In addition to the required factors for consideration in consultation described in (c),  
37 the child's attorney must also notify the child who seeks to provide consent to  
38 electronic service of the following:

39  
40 (1) Electronic service of medical or psychological documentation related to a  
41 child is prohibited, with the exception of the summary required under section  
42 16010 when included as part of a required report to the court.

1  
2       (2) On or after January 1, 2019, electronic service on a party or other person is  
3       permitted only if the party or other person has expressly consented, as  
4       provided in section 1010.6 of the Code of Civil Procedure.

5  
6       (3) A party or other person may subsequently withdraw their consent to electronic  
7       service by completing the appropriate Judicial Council form.

8  
9       **Rule 5.524. Form of petition; notice of hearing**

10  
11       **(a) Form of petition—dependency (§§ 332, 333)**

12  
13       The petition to declare a child a dependent of the court must be verified and may  
14       be dismissed without prejudice if not verified. The petition must contain the  
15       information stated in section 332.

16  
17       **(b) Form of petition—delinquency (§§ 656, 656.1, 656.5, 661)**

18  
19       The petition to declare a child a ward of the court must be verified and may be  
20       dismissed without prejudice if not verified. The petition must contain the  
21       information stated in sections 656, 656.1, 656.5, 661, and, if applicable, the  
22       intent to aggregate other offenses under section 726.

23  
24       **(c) Use of forms**

25  
26       Dependency petitions must be filed on a Judicial Council form. The filing party  
27       must use *Juvenile Dependency Petition (Version One)* (form JV-100) with the  
28       *Additional Children Attachment (Juvenile Dependency Petition)* (form JV-101)  
29       when appropriate, or *Juvenile Dependency Petition (Version Two)* (form JV-  
30       110) as prescribed by local rule or practice. Rules 1.31 and 1.32 govern the use  
31       of mandatory and optional forms, respectively.

32  
33       **(d) Amending the petition (§§ 348, 678)**

34  
35       Chapter 8 of title 6 of part 2 of the Code of Civil Procedure, beginning at  
36       section 469, applies to variances and amendments of petitions and proceedings  
37       in the juvenile court.

38  
39       **(e) Notice of hearing—dependency (§§ 290.1, 290.2, 297, 338)**

40  
41       (1) When the petition is filed, the probation officer or social worker must serve a  
42       notice of hearing under section 290.1, with a copy of the petition attached.  
43       On filing of the petition, the clerk must issue and serve notice as prescribed  
44       in section 290.2, along with a copy of the petition. CASA volunteers are  
45       entitled to the same notice as stated in sections 290.1 and 290.2. Notice under



1            sections 290.1 and 290.2 cannot be served electronically.

- 2  
3            (2) If the county and the court choose to allow notice by electronic ~~mail~~ service  
4            of hearings under sections ~~290.1~~ 291–295, the court must develop a process  
5            for obtaining consent from persons entitled to notice that complies with ~~the~~  
6            ~~notice statute~~ Welfare and Institutions Code section 212.5 and ensures that  
7            notice can be effectuated according to statutory timelines.

8  
9            **(f) Notice of hearing—delinquency (§§ 630, 630.1, 658, 659, 660)**

- 10  
11            (1) Immediately after the filing of a petition to detain a child, the probation  
12            officer or the prosecuting attorney must issue and serve notice as  
13            prescribed in section 630.  
14  
15            (2) When a petition is filed, the clerk must issue and serve a notice of hearing  
16            in accordance with sections 658, 659, and 660 with a copy of the petition  
17            attached.  
18  
19            ~~(3) After reasonable notification by minor’s counsel or his or her parent or~~  
20            ~~guardian, the clerk must provide notice to the minor’s attorney as stated~~  
21            ~~in section 630.1.~~  
22  
23            (3) After reasonable notification by counsel representing the child, his  
24            parents, or guardian, the clerk must notify such counsel of the hearings as  
25            prescribed in section 630.1.

26  
27            **(g)–(h) \* \* \***

28  
29            **Rule 5.534. General provisions—all proceedings**

30  
31            **(a)–(h) \* \* \***

32  
33            **(i) Mailing Address of parent or guardian (§ 316.1)**

34  
35            At the first appearance by a parent or guardian in proceedings under section 300  
36            et seq., the court must order each parent or guardian to provide a mailing address.

- 37  
38            (1) The court must advise that the mailing address provided will be used by  
39            the court, the clerk, and the social services agency for the purposes of  
40            notice of hearings and the mailing of all documents related to the  
41            proceedings.  
42  
43            (2) The court must advise that until and unless the parent or guardian, or the  
44            attorney of record for the parent or guardian, submits written notification of

1 a change of mailing address, the address provided will be used, and notice  
2 requirements will be satisfied by appropriate service at that address.

3  
4 (3) *Notification of Mailing Address* (form JV-140) is the preferred method of  
5 informing the court and the social services agency of the mailing address of  
6 the parent or guardian and change of mailing address.

7  
8 (A) The form must be delivered to the parent or guardian, or both, with the  
9 petition.

10  
11 (B) The form must be available in the courtroom, in the office of the clerk,  
12 and in the offices of the social services agency.

13  
14 (C) The form must be printed and made available in both English and  
15 Spanish.

16  
17 (4) ~~If the county and the court allow notice of hearings under sections 290.1–~~  
18 ~~295 by electronic mail, persons who are entitled to notice and who want to~~  
19 ~~receive notice of hearings by electronic mail must indicate their consent by~~  
20 ~~filing E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address~~  
21 ~~Change (Juvenile Dependency) (form EFS-005-JV/JV-141).~~

22  
23 (j) **Electronic service address (§ 316.1)**

24  
25 Each party or person entitled to notice who consents to electronic service under  
26 section 212.5 must provide the court with an electronic service address.

27  
28 (1) The court must advise the party or person entitled to notice that the electronic  
29 service address will be used by the court and the social services agency for  
30 purposes of providing notice under sections 291, 292, 293, 294, 295, 297, and  
31 342, unless and until the party or person notifies the court or the social  
32 services agency of a new electronic service address in writing or unless the  
33 party or person withdraws consent to electronic service.

34  
35 (2) A party or person entitled to notice may indicate their consent and provide  
36 their electronic service address by filing *Electronic Service: Consent,*  
37 *Withdrawal of Consent, Address Change (Juvenile)* (form EFS-005-JV/JV-  
38 141).

39  
40 (i) \_\_\_\_\_

41  
42 (k) **Caregiver notice and right to be heard (§§ 290.1–297, 366.21) \* \* \***

43  
44 **Rule 5.538. Conduct of proceedings held before a referee not acting as a**

1           **temporary judge**

2

3       **(a)   \*\*\***

4

5       **(b)   Furnishing and serving findings and order; explanation of right to review**  
6       **(§ 248)**

7

8           After each hearing before a referee, the referee must make findings and enter an  
9           order as provided elsewhere in these rules. In each case, the referee must furnish  
10          and serve the findings and order and provide an explanation of the right to review  
11          the order in accordance with sections 248 and 248.5. ~~cause all of the following to~~  
12          ~~be done promptly:~~

13

14           (1)   ~~Furnish a copy of the findings and order to the presiding judge of the~~  
15           ~~juvenile court.~~

16

17           (2)   ~~Furnish to the child (if the child is 14 or more years of age or, if younger,~~  
18           ~~as requested) a copy of the findings and order, with a written explanation~~  
19           ~~of the right to seek review of the order by a juvenile court judge.~~

20

21           (3)   ~~Serve the parent and guardian—and counsel for the child, parent, and~~  
22           ~~guardian—a copy of the findings and order, with a written explanation of~~  
23           ~~the right to seek review of the order by a juvenile court judge.~~

24

25                   (A)   ~~Service is deemed complete at the time of personal, in-court service~~  
26                   ~~as provided in Welfare and Institutions Code section 248,~~  
27                   ~~subdivision (b)(1).~~

28

29                   (B)   ~~If personal, in-court service as in (A) is not possible, service must be~~  
30                   ~~by mail to the last known address and is deemed complete at the time~~  
31                   ~~of mailing as provided in subdivision (b)(2) of that section.~~

32

33       **Rule 5.565. Hearing on subsequent and supplemental petitions (§§ 342, 364, 386,**  
34       **387)**

35

36       **(a)   Contents of subsequent and supplemental petitions (§§ 342, 364, 387)**

37

38           A subsequent petition and a supplemental petition must be verified and, to the  
39           extent known to the petitioner, contain the information required in an original  
40           petition as described in rule 5.524. A supplemental petition must also contain a  
41           concise statement of facts sufficient to support the conclusion that the previous  
42           disposition has not been effective in the protection of the child or, in the case of a  
43           dependent child placed with a relative, that the placement is not appropriate in  
44           view of the criteria in section 361.3.

1  
2 **(b) Setting the hearing (§§ 334, 342, 364, 386, 387)**

3  
4 When a subsequent or supplemental petition is filed, the clerk must immediately  
5 set it for hearing within 30 days of the filing date. The hearing must begin within  
6 the time limits prescribed for jurisdiction hearings on original petitions under rule  
7 5.670.

8  
9 **(c) Notice of hearing (§§ 292, 297)**

10  
11 (1) For petitions filed under section 342 or section 387, notice must be provided  
12 in accordance with section 297.

13  
14 (2) For petitions filed under section 364, notice must be provided in accordance  
15 with section 292.

16  
17 ~~**(c) — Notice of hearing (§§ 290.1, 290.2, 292, 297)**~~

18 ~~For petitions filed under sections 342 or 387, notice must be provided in~~  
19 ~~accordance with sections 290.1, 290.2, and 291. Notice for petitions filed~~  
20 ~~under section 364 must be provided as stated in section 292.~~

21  
22 ~~**(d)–(f) \* \* \***~~

23  
24 **Rule 5.570. Request to change court order (petition for modification)**

25  
26 ~~**(a)–(f) \* \* \***~~

27  
28 **(g) Notice of petition and hearing (§§ 388, 778)**

29  
30 ~~The clerk must cause notice of the hearing to be given to the persons and in the~~  
31 ~~same manner prescribed by rule 5.524. The caregiver of the child, nonminor, or~~  
32 ~~nonminor dependent and the tribe of an Indian child must be similarly notified.~~  
33 ~~The parent or legal guardian of a nonminor dependent must not be notified unless~~  
34 ~~the nonminor dependent requests that he or she receive notice or the parent or legal~~  
35 ~~guardian is receiving court-ordered family reunification services.~~

36  
37 (1) If a petition is filed under section 388 or section 778 to terminate juvenile  
38 court jurisdiction over a nonminor, notice of the hearing must be given as  
39 required by rule 5.555(b)(3).

40  
41 (2) For hearings on all other petitions filed under section 388 or section 778,  
42 notice of the hearing must be provided as required under statute, except that  
43 notice to parents or former guardians of a nonminor must only be provided if  
44 the nonminor requests, in writing on the face of the petition, notice to the

1            parents or former guardians, or the parent or legal guardian is receiving  
2            court-ordered family reunification services.

3  
4     **(h)–(j) \* \* \***

5  
6     **Rule 5.590. Advisement of right to review in Welfare and Institutions Code section**  
7            **300, 601, or 602 cases**

8  
9     **(a) \* \* \***

10  
11    **(b) Advisement of requirement for writ petition to preserve appellate rights**  
12            **when court orders hearing under section 366.26**

13  
14            When the court orders a hearing under Welfare and Institutions Code section  
15            366.26, the court must advise all parties and, if present, the child’s parent,  
16            guardian, or adult relative, that if the party wishes to preserve any right to review  
17            on appeal of the order setting the hearing under Welfare and Institutions Code  
18            section 366.26, the party is required to seek an extraordinary writ by filing a  
19            *Notice of Intent to File Writ Petition and Request for Record (California Rules of*  
20            *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ petition  
21            and request for record and a *Petition for Extraordinary Writ (California Rules of*  
22            *Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ.

23  
24            (1) The advisement must be given orally to those present when the court  
25            orders the hearing under Welfare and Institutions Code section 366.26.

26  
27            (2) ~~Within one day after the court orders the hearing under Welfare and~~  
28            ~~Institutions Code section 366.26, the advisement must be sent by first-class~~  
29            ~~mail by the clerk of the court to the last known address of any party who is~~  
30            ~~not present when the court orders the hearing under Welfare and~~  
31            ~~Institutions Code section 366.26.~~

32  
33            (2) If a party is not present at the time of making the order, the advisement  
34            must be made by the clerk of the court by first-class mail to the last known  
35            address of the party or by electronic service in accordance with section  
36            212.5. If the notice is for a hearing at which the social worker will  
37            recommend the termination of parental rights, the notice may be  
38            electronically served in accordance with section 212.5, but only in addition  
39            to service of the notice by first-class mail.

40  
41            (3) The advisement must include the time for filing a notice of intent to file  
42            a writ petition.

43  
44            (4) Copies of *Petition for Extraordinary Writ (California Rules of Court,*

1 *Rules 8.452, 8.456) (form JV-825) and Notice of Intent to File Writ*  
2 *Petition and Request for Record (California Rules of Court, Rule 8.450)*  
3 *(form JV-820) must be available in the courtroom and must accompany all*  
4 *mailed notices informing the parties of their rights.*

5  
6 (c) \* \* \*

7  
8 **Rule 5.640. Psychotropic medications**

9 (a)–(b) \* \* \*

10 (c) **Procedure to obtain authorization**

11 (1)–(9) \* \* \*

12 (10) Notice of the application must be provided to the parents or legal guardians,  
13 their attorneys of record, the child’s attorney of record, the child’s Child  
14 Abuse Prevention and Treatment Act guardian ad litem, the child’s current  
15 caregiver, the child’s Court Appointed Special Advocate, if any, and where a  
16 child has been determined to be an Indian child, the Indian child’s tribe (see  
17 also 25 U.S.C. § 1903(4)–(5); Welf. & Inst. Code, §§ 224.1(a) and (e) and  
18 224.3).

19 (A) If the child is living in a group home or a short-term residential  
20 therapeutic center, notice to the caregiver must be by notice to the group home  
21 administrator, or to the administrator’s designee, as defined in California Code  
22 of Regulations, title 22, section 84064.

23 (B) Local county practice and local rules of court determine the procedures  
24 for the provision of notice, except as otherwise provided in this rule and in  
25 section 212.5. The person or persons responsible for providing notice as  
26 required by local court rules or local practice protocols are encouraged to use  
27 the most expeditious legally authorized manner of service possible to ensure  
28 timely notice.

29 (C) \* \* \*

30 (11)–(12) \* \* \*

31 (d)–(f) \* \* \*

32 (g) **Progress review**

33 (1) After approving any application for authorization, regardless of whether the  
34 approval is made at a hearing, the court must set a progress review.

- 1 (2) A progress review must occur at every status review hearing and may occur at  
2 any other time at the court's discretion.
- 3 (3) If the progress review is held at the time of the status review hearing, notice  
4 must be provided as required under section 293 or 295, except that electronic  
5 service of psychological or medical documentation related to a child is not  
6 permitted. The notice must include a statement that the hearing will also be a  
7 progress review on previously ordered psychotropic medication, and must  
8 include a blank copy of *Child's Opinion About the Medicine* (form JV-218)  
9 and a blank copy of *Statement About Medicine Prescribed* (form JV-219).
- 10 (4) If the progress review is not held at the time of the status review hearing,  
11 notice must be provided as required under section 293 or 295, except that  
12 electronic service of psychological or medical documentation related to a  
13 child is not permitted. The notice; must include a statement that the hearing  
14 will be a progress review on previously ordered psychotropic medication; and  
15 must include a blank copy of *Child's Opinion About the Medicine* (form JV-  
16 218) and a blank copy of *Statement About Medicine Prescribed* (form JV-  
17 219).
- 18 (5) Before each progress review, the social worker or probation officer must file a  
19 completed *County Report About Psychotropic Medication* (form JV-224) at  
20 least 10 calendar days before the hearing. If the progress review is set at the  
21 same time as a status review hearing, form JV-224 must be attached to and  
22 filed with the report.
- 23 (6) The child, caregiver, parents or legal guardians, and Court Appointed Special  
24 Advocate, if any, may provide input at the progress review as stated in (c)(2).
- 25 (7) At the progress review, the procedures described in section 349 must be  
26 followed.

27 **(h) Copy of order to caregiver**

- 28 (1) Upon the approval or denial of the application, the county child welfare  
29 agency, probation department, or other person or entity who submitted the  
30 request must provide the child's caregiver with a copy of the court order  
31 approving or denying the request.
- 32 (2) The copy of the order must be provided in person or mailed within two court  
33 days of when the order is signed.
- 34 (3) If the court approves the request, the copy of the order must include the last  
35 two pages of form JV-220(A) or the last two pages of JV-220(B) and all  
36 medication information sheets (medication monographs) that were attached to  
37 form JV-220(A) or form JV-220(B).

1 (4) If the child resides in a group home, a copy of the order, the last two pages of  
2 form JV-220(A) or the last two pages of JV-220(B), and all medication  
3 information sheets (medication monographs) that were attached to the JV-  
4 220(A) or form JV-220(B) must be provided to the group home administrator,  
5 or to the administrator's designee, as defined in California Code of  
6 Regulations, regulation 84064.

7 (5) If the child changes placement, the social worker or probation officer must  
8 provide the new caregiver with a copy of the order, the last two pages of form  
9 JV-220(A) or the last two pages of JV-220(B), and the medication information  
10 sheets (medication monographs) that were attached to form JV-220(A) or  
11 form JV-220(B).

12 (i)–(k) \* \* \*

13 **Rule 5.695. Findings and orders of the court—disposition**

14 (a)–(f) \* \* \*

15 (g) **Provision of reunification services (§ 361.5)**

16

17 (1)–(9) \* \* \*

18

19 (10) When the court orders a hearing under section 366.26, the court must  
20 advise orally all parties present, and by first-class mail or by electronic  
21 service in accordance with section 212.5 for parties not present, that if  
22 the party wishes to preserve any right to review on appeal of the order  
23 setting the hearing under section 366.26, the party must seek an  
24 extraordinary writ by filing a Notice of Intent to File Writ Petition and  
25 Request for Record (California Rules of Court, Rule 8.450) (form JV-  
26 820) or other notice of intent to file a writ petition and request for record  
27 and a Petition for Extraordinary Writ (California Rules of Court, Rules  
28 8.452, 8.456) (form JV-825) or other petition for extraordinary writ.

29

30 (A) Within 24 hours of the hearing, notice by first-class mail or by  
31 electronic service in accordance with section 212.5 must be provided  
32 by the clerk of the court to the last known address of any party who  
33 is not present when the court orders the hearing under section  
34 366.26.

35

36 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*  
37 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*  
38 *Petition and Request for Record (California Rules of Court, Rule*  
39 *8.450)* (form JV-820) must be available in the courtroom and must



1 accompany all mailed notices informing the parties of their rights.

- 2  
3 (C) If the notice is for a hearing at which the social worker will  
4 recommend the termination of parental rights, the notice may be  
5 electronically served in accordance with section 212.5, but only in  
6 addition to service of the notice by first-class mail.

7  
8 (h)–(i) \* \* \*

9  
10 **Rule 5.700. Termination of jurisdiction—custody and visitation orders (§§ 302, 304,**  
11 **361.2, 362.4, 726.5)**

12  
13 \* \* \*

14  
15 (a)–(c) \* \* \*

16  
17 **(d) Endorsed filed copy—clerk’s certificate of mailing**

18  
19 Within 15 court days of receiving the order, the clerk of the receiving court must  
20 send an endorsed filed copy of the order showing the case number assigned by the  
21 receiving court by first-class mail or by electronic means in accordance with  
22 section 212.5 to the child’s parents and the originating juvenile court, with a  
23 completed clerk’s certificate of mailing, for inclusion in the child’s file.

24  
25 **Rule 5.726. Prospective adoptive parent designation (§§ 366.26(n), 16010.6)**

26  
27 (a)–(c) \* \* \*

28  
29 **(d) Notice of designation hearing**

30  
31 After the court has ordered a hearing on a request for prospective-adoptive-  
32 parent designation, notice of the hearing must be as described below.

33  
34 (1) The following participants must be noticed:

35  
36 (A) The adoption agency;

37  
38 (B) The current caregiver,

39  
40 (C) The child’s attorney;

41  
42 (D) The child, if the child is 10 years of age or older;

43  
44 (E) The child’s identified Indian tribe if any;

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(F) The child’s Indian custodian if any; and

(G) The child’s CASA program if any.

(2) If the request for designation is made at the same time as a request for hearing on a proposed or emergency removal, notice of the designation hearing must be provided with notice of the hearing on proposed removal, as stated in rule 5.727(f).

(3) If the request for designation is made before the agency serves notice of a proposed removal or before an emergency removal occurred, notice must be as follows:

(A) Service of the notice must be either by first-class mail or electronic service in accordance with section 212.5 sent at least 15 calendar days before the hearing date to the last known address of the person to be noticed, or by personal service on the person at least 10 calendar days before the hearing.

(B) *Prospective Adoptive Parent Designation Order* (form JV-327) must be used to provide notice of a hearing on the request for prospective adoptive parent designation.

(C) The clerk must provide notice of the hearing to the participants listed in (1) above, if the court, caregiver, or child requested the hearing.

(D) The child’s attorney must provide notice of the hearing to the participants listed in (1) above, if the child’s attorney requested the hearing.

(E) *Proof of Notice Under Section 366.26(n)* (form JV-326) must be filed with the court before the hearing on the request for prospective adoptive parent designation.

(e)–(f) \* \* \*

**Rule 5.727. Proposed removal (§ 366.26(n))**

**(a) Application of rule**

This rule applies, after termination of parental rights or, in the case of tribal customary adoption, modification of parental rights, to the removal by the Department of Social Services (DSS) or a licensed adoption agency of a

1 dependent child from a prospective adoptive parent or from a caregiver who may  
2 meet the criteria for designation as a prospective adoptive parent in section  
3 366.26(n)(1). This rule does not apply if the caregiver requests the child's  
4 removal.

5  
6 **(b) Participants to be served with notice**

7  
8 Before removing a child from the home of a prospective adoptive parent as  
9 defined in section 366.26(n)(1) or from the home of a caregiver who may meet the  
10 criteria of a prospective adoptive parent in section 366.26(n)(1), and as soon as  
11 possible after a decision is made to remove the child, the agency must notify the  
12 following participants of the proposed removal:

- 13  
14 (1) The court;  
15  
16 (2) The current caregiver, if that caregiver either is a designated prospective  
17 adoptive parent or, on the date of service of the notice, meets the criteria  
18 in section 366.26(n)(1);  
19  
20 (3) The child's attorney;  
21  
22 (4) The child, if the child is 10 years of age or older;  
23  
24 (5) The child's identified Indian tribe if any;  
25  
26 (6) The child's Indian custodian if any; ~~and~~  
27  
28 (7) The child's CASA program if any; and  
29  
30 (8) The child's sibling's attorney, if the change in placement of a dependent  
31 child will result in the separation of siblings currently placed together. Notice  
32 must be made in accordance with section 1010.6.

33  
34 **(c) Form of notice**

35  
36 DSS or the agency must provide notice on *Notice of Intent to Remove Child*  
37 (form JV-323). A blank copy of *Objection to Removal* (form JV-325) and  
38 *Request for Prospective Adoptive Parent Designation* (form JV-321) must also  
39 be provided to all participants listed in (b) except the court.  
40

41 **(d) Service of notice**

42  
43 DSS or the agency must serve notice of its intent to remove a child as follows:

- 44  
45 (1) DSS or the agency must serve notice either by first-class mail or by

1            electronic service in accordance with section 212.5, sent to the last known  
2            address of the person to be noticed, or by personal service.

3  
4            (2) If service is by first-class mail, service is completed and time to respond  
5            is extended by five calendar days.

6  
7            (3) If service is made through electronic means, service is completed and  
8            time to respond is extended in accordance with section 1010.6 of the  
9            Code of Civil Procedure.

10  
11            (3) (4) Notice to the child’s identified Indian tribe and Indian custodian must  
12            comply with the requirements of section 224.2.

13  
14            (4) (5) Proof of Notice Under Section 366.26(n) (form JV-326) must be filed  
15            with the court before the hearing on the proposed removal.

16  
17            (e) **Objection to proposed removal**

18  
19            Each participant who receives notice under (b) may object to the proposed  
20            removal of the child and may request a hearing.

21  
22            (1) A request for hearing on the proposed removal must be made on *Objection*  
23            *to Removal* (form JV-325).

24  
25            (2) A request for hearing on the proposed removal must be made within five  
26            court or seven calendar days from the date of notification, whichever is  
27            longer. If service of the notification is by mail, time to request a hearing is  
28            extended by five calendar days. If service of the notification is by  
29            electronic means, time to request a hearing is extended in accordance  
30            with section 1010.6 of the Code of Civil Procedure.

31  
32            (3) The court must set a hearing as follows:

33  
34            (A) The hearing must be set as soon as possible and not later than five court  
35            days after the objection is filed with the court.

36  
37            (B) If the court for good cause is unable to set the matter for hearing five  
38            court days after the petition is filed, the court must set the matter for  
39            hearing as soon as possible.

40  
41            (C) The matter may be set for hearing more than five court days after the  
42            objection is filed if this delay is necessary to allow participation by the  
43            child’s identified Indian tribe or the child’s Indian custodian.

1 **(f) Notice of hearing on proposed removal**

2  
3 After the court has ordered a hearing on a proposed removal, notice of the  
4 hearing must be as follows:

- 5  
6 (1) The clerk must provide notice of the hearing to the agency and the  
7 participants listed in (b) above, if the court, caregiver, or child requested the  
8 hearing.  
9  
10 (2) The child's attorney must provide notice of the hearing to the agency and  
11 the participants listed in (b) above, if the child's attorney requested the  
12 hearing.  
13  
14 (3) Notice must be by personal service or by telephone. Notice by personal  
15 service must include a copy of the completed forms *Notice of Intent to*  
16 *Remove Child* (form JV-323) and *Objection to Removal* (form JV-325).  
17 Telephone notice must include the reasons for and against the removal,  
18 as indicated on forms JV-323 and JV-325.  
19  
20 (4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing  
21 on the proposed removal.  
22

23 **(g)–(i) \* \* \***

24  
25 **Rule 5.728. Emergency removal (§ 366.26(n))**

26  
27 **(a) Application of rule**

28 This rule applies, after termination of parental rights or, in the case of tribal  
29 customary adoption, modification of parental rights, to the removal by the  
30 Department of Social Services (DSS) or a licensed adoption agency of a  
31 dependent child from the home of a prospective adoptive parent or a caregiver  
32 who may meet the criteria for designation as a prospective adoptive parent in  
33 section 366.26(n)(1) when the DSS or the licensed adoption agency has  
34 determined a removal must occur immediately due to a risk of physical or  
35 emotional harm. This rule does not apply if the child is removed at the request of  
36 the caregiver.  
37

38 **(b) Participants to be noticed**

39  
40 After removing a child from the home of a prospective adoptive parent, or from  
41 the home of a caregiver who may meet the criteria of a prospective adoptive parent  
42 in section 366.26(n)(1), because of risk of physical or emotional harm, the agency  
43 must notify the following participants of the emergency removal:

- 1
- 2 (1) The court;
- 3
- 4 (2) The caregiver, who is a prospective adoptive parent or who, on the date of
- 5 service of the notice, may meet the criteria in section 366.26(n)(1);
- 6
- 7 (3) The child's attorney;
- 8
- 9 (4) The child if the child is 10 years of age or older;
- 10
- 11 (5) The child's identified Indian tribe if any;
- 12
- 13 (6) The child's Indian custodian if any; ~~and~~
- 14
- 15 (7) The child's CASA program if any; and
- 16
- 17 (8) The child's sibling's attorney, if the change in placement of a dependent child
- 18 will result in the separation of siblings currently placed together. Notice must
- 19 be made in accordance with section 1010.6.
- 20

21 **(c) Form and service of notice**

22  
23 *Notice of Emergency Removal* (form JV-324) must be used to provide notice of an  
24 emergency removal, as described below.

- 25
- 26 (1) The agency must provide notice of the emergency removal as soon
- 27 as possible but no later than two court days after the removal.
- 28
- 29 (2) Notice must be either by telephone or by personal service of the form.
- 30
- 31 (3) Telephone notice must include the reasons for removal as indicated on
- 32 the form, and notice of the right to object to the removal.
- 33
- 34 (4) Whenever possible, the agency, at the time of the removal, must give a
- 35 blank copy of *Request for Prospective Adoptive Parent Designation* (form
- 36 JV-321) and a blank copy of *Objection to Removal* (form JV-325) to the
- 37 caregiver and, if the child is 10 years of age or older, to the child.
- 38
- 39 (5) Notice to the court must be served by filing *Notice of Emergency*
- 40 *Removal*(form JV-324) and *Proof of Notice* (form JV-326) with the court.
- 41
- 42 (6) *Proof of Notice* (form JV-326) must be filed with the court before the
- 43 hearing on the proposed removal.
- 44

45 **(d) Objection to emergency removal**

1  
2 Each participant who receives notice under (b) may object to the removal of  
3 the child and may request a hearing.

- 4  
5 (1) A request for hearing on the emergency removal must be made on  
6 *Objection to Removal* (form JV-325).  
7  
8 (2) The court must set a hearing as follows:  
9  
10 (A) The hearing must be set as soon as possible and not later than five court  
11 days after the petition objecting to removal is filed with the court.  
12  
13 (B) If the court for good cause cannot set the matter for hearing within five  
14 court days after the petition objecting to removal is filed, the court must  
15 set the matter for hearing as soon as possible.  
16  
17 (C) The matter may be set for hearing more than five court days after the  
18 petition objecting to removal is filed if this delay is necessary to allow  
19 participation by the child's identified Indian tribe or the child's Indian  
20 custodian.

21  
22 **(e) Notice of hearing on emergency removal**

23  
24 After the court has ordered a hearing on an emergency removal, notice of  
25 the hearing must be as follows:

- 26  
27 (1) The clerk must provide notice of the hearing to the agency and the  
28 participants listed in (b) above, if the court, caregiver, or child requested the  
29 hearing.  
30  
31 (2) The child's attorney must provide notice of the hearing to the agency and  
32 the participants listed in (b) above, if the child's attorney requested the  
33 hearing.  
34  
35 (3) Notice must be by personal service or by telephone. Notice by personal  
36 service must include a copy of the completed *Notice of Emergency Removal*  
37 (form JV-324). Telephone notice must include the reasons for and against  
38 the removal, as indicated on forms JV-324 and JV-325.  
39  
40 (4) *Proof of Notice* (form JV-326) must be filed with the court before the hearing  
41 on the emergency removal.

42  
43 **(f)–(g) \* \* \***  
44

1 **Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction**  
2 **(§§ 224.1(b), 303, 388(e), 388.1)**

3  
4 **(a)–(c) \* \* \***

5  
6 **(d) Determination of prima facie showing**

7  
8 (1) Within three court days of the filing of form JV-466 with the clerk of the  
9 juvenile court of general jurisdiction, a juvenile court judicial officer  
10 must review the form JV-466 and determine whether a prima facie  
11 showing has been made that the nonminor meets all of the criteria set  
12 forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or  
13 (d)(3).

14  
15 (A) The nonminor was previously under juvenile court jurisdiction subject  
16 to an order for foster care placement on the date he or she attained 18  
17 years of age, or the nonminor is eligible to seek assumption of  
18 dependency jurisdiction pursuant to the provisions of subdivision (c) of  
19 section 388.1;

20  
21 (B) The nonminor has not attained 21 years of age;

22  
23 (C) The nonminor wants assistance to maintain or secure an appropriate,  
24 supervised placement or is in need of immediate placement and agrees  
25 to a supervised placement under a voluntary reentry agreement; and

26  
27 (D) The nonminor intends to satisfy at least one of the eligibility criteria in  
28 section 11403(b).

29  
30 (2) If the court determines that a prima facie showing has not been made, the  
31 court must enter a written order denying the request, listing the issues  
32 that resulted in the denial and informing the nonminor that a new form  
33 JV-466 may be filed when those issues are resolved.

34  
35 (A) The court clerk must serve on the nonminor:

36  
37 (i) A copy of the written order;

38  
39 (ii) A blank copy of *Request to Return to Juvenile Court Jurisdiction*  
40 *and Foster Care* (form JV-466) and *Confidential Information—*  
41 *Request to Return to Juvenile Court Jurisdiction and Foster Care*  
42 (form JV-468);

43  
44 (iii) A copy of *How to Ask to Return to Juvenile Court Jurisdiction and*



1 *Foster Care* (form JV-464-INFO); and

2  
3 (iv) The names and contact information for those attorneys approved  
4 by the court to represent children in juvenile court proceedings  
5 who have agreed to provide a consultation to any nonminor whose  
6 request was denied due to the failure to make a prima facie  
7 showing.

8  
9 (B) The court clerk must serve on the placing agency a copy of the  
10 written order.

11  
12 (C) Service must be by personal service, ~~or by first-class mail,~~ or by  
13 electronic service in accordance with section 212.5 within two court  
14 days of the issuance of the order.

15  
16 (D) A proof of service must be filed.

17  
18 (3) If the judicial officer determines that a prima facie showing has been  
19 made, the judicial officer must issue a written order:

20  
21 (A) Directing the court clerk to set the matter for a hearing, and

22  
23 (B) Appointing an attorney to represent the nonminor solely for the hearing  
24 on the request.

25  
26 (e)–(f) \* \* \*

27  
28 **(g) Notice of hearing**

29  
30 (1) The juvenile court clerk must serve notice as soon as possible, but no  
31 later than five court days before the date the hearing is set, as follows:

32  
33 (A) The notice of the date, time, place, and purpose of the hearing and a  
34 copy of the form JV-466 must be served on the nonminor, the  
35 nonminor's attorney, the child welfare services agency, the probation  
36 department, or the Indian tribal agency that was supervising the  
37 nonminor when the juvenile court terminated its delinquency,  
38 dependency, or transition jurisdiction over the nonminor, and the  
39 attorney for the child welfare services agency, the probation  
40 department, or the Indian tribe.

41  
42 (B) The notice of the date, time, place, and purpose of the hearing must be  
43 served on the nonminor's parents only if the nonminor included in the  
44 form JV-466 a request that notice be provided to his or her parents.

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(C) The notice of the date, time, place, and purpose of the hearing must be served on the nonminor’s tribal representative if the nonminor is an Indian child and indicated on the form JV-466 his or her choice to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

(D) The notice of the date, time, place, and purpose of the hearing must be served on the local CASA office if the nonminor had a CASA and included on the form JV-466 a request that notice be provided to his or her former CASA.

(2) The written notice served on the nonminor dependent must include:

(A) A statement that the nonminor may appear for the hearing by telephone; and

(B) Instructions regarding the local juvenile court procedures for arranging to appear and appearing at the hearing by telephone.

(3) Service of the notice must be by personal service, ~~or~~ by first-class mail, or by electronic service in accordance with section 212.5.

(4) Proof of service of notice must be filed by the juvenile court clerk at least two court days prior to the hearing.

**(h)–(i) \* \* \***

**Electronic Service: Consent,  
Withdrawal of Consent, Address  
Change (Juvenile)**

Clerk stamps date here when form is filed.

**DRAFT  
Not Approved by  
the Judicial Council**

**Use this form to:**

- Tell the court that you **agree to receive** notices and documents in your case electronically and give the court an electronic service address;
- **Change** your electronic service or e-mail address; or
- Tell the court that you **do not want to receive** notices and documents in your case electronically any more

- ①  I agree to receive notices and documents electronically in this case
- I want to change my electronic service or e-mail address. I want to receive notices and documents at the new address below starting on: (date):
- I want to stop receiving notices and documents electronically, starting: (date):

② My role is this juvenile case is (choose one of the following):

- Child or nonminor dependent who is the subject of the hearing  
I am:  10–15 years old       18+ years old  
 16 or 17 years old
- Parent or presumed/alleged parent
- Legal guardian
- Lawyer for (name of party or person represented): \_\_\_\_\_

- Grandparent/other adult relative (relationship to child or nonminor dependent): \_\_\_\_\_
- Caregiver for  the child or nonminor dependent     the sibling of the child
- Sibling of the child (age, if minor): \_\_\_\_\_
- Other (relationship to child or nonminor dependent): \_\_\_\_\_

③  I agree to receive notices and documents at this electronic or e-mail address (please print carefully):

Please keep this address confidential.

I do not want to receive notices and documents electronically anymore. I am attaching a copy of the Judicial Council form, *Notification of Mailing Address (JV-140)*, with my current mailing address.

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Signature

**If you are a child between the ages of 10 and 15 and you want to receive notices and documents in this case electronically, your lawyer must also agree and sign this form below.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name of lawyer for child

\_\_\_\_\_  
Signature of lawyer for child



Child's name: \_\_\_\_\_

---

**If your court and social services agency offer electronic service and you are a party or a person entitled to notice in a juvenile matter:**

- You can (but do not have to) **agree to receive** notices and documents electronically (electronic service). If you want to receive notices and documents electronically, you may fill out and sign this form, the EFS-005-JV/JV-141, and return it to the court.
- The electronic or e-mail address you provide will be used to serve notices and documents electronically in your case unless and until you tell the court that you have changed your electronic service or e-mail address.
- The court and social services agency will use your electronic service or e-mail address to send you notices of hearings and other documents when the court opens a case to protect a child from abuse or neglect. If you are a parent, you can read more about this process and the different types of hearings that will be held in *What happens if your child is taken from your home?* (form JV-050-INFO) and on the California Courts website: [www.courts.ca.gov/selfhelp-childabuse.htm](http://www.courts.ca.gov/selfhelp-childabuse.htm).
- You may ask the court or social services agency to keep your electronic service or e-mail address confidential by checking the box underneath your e-mail address.
- **If a social worker will recommend terminating parental rights over a child** at the hearing, you will still receive the hearing notice by mail or in person. You will also receive the hearing notice electronically.
- If you are a child between the **ages of 10 and 15** and you want to receive notices and documents electronically, **your lawyer must also sign this form** and agree for you to receive notices and documents electronically.
- If you are a child **age 16 or 17** and want to receive notices and documents electronically, **you must first consult with your lawyer and your lawyer must provide you with certain information before you give your consent**. See California Rules of Court, rule 5.523 for details about the information your attorney must provide you before you give your consent.

- 
- You may also use this form to tell the court when you **change your electronic service or e-mail address**.

- 
- You may also use this form to **stop** receiving notices and documents electronically. If you previously gave the court or social service agency an electronic service or e-mail address and agreed to receive notices and documents electronically, you can use this form to tell the judge that you do not want to receive notices and documents electronically anymore. **If you decide to stop receiving notices and documents electronically, please fill out and attach a copy of the Judicial Council form *Notification of Mailing Address (JV-140)* with your current mailing address when you submit this form.**

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.

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, *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*.

a. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Relationship to child: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

b. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Relationship to child: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

c. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_ Relationship to child: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

②  Parental rights were terminated, and the child has no legal parents who must be informed.

③  Parent/legal guardian (name): \_\_\_\_\_  
was not informed because (state reason): \_\_\_\_\_

④  Parent/legal guardian (name): \_\_\_\_\_  
was not informed because (state reason): \_\_\_\_\_

⑤ The child’s current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that an application is pending before the court. The caregiver was provided Form JV-217-INFO, *Guide to Psychotropic Medication Forms* and a blank copy of Form JV-219, *Statement About Medicine Prescribed*, or information on how to obtain a copy of the form as follows:

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:**



Child's name: \_\_\_\_\_

5 Caregiver's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the following address

(specify): \_\_\_\_\_

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Sign your name  Signature follows on page 3.

6  The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed Form JV-220, *Application for Psychotropic Medication*; completed 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*; a blank Form JV-218, *Child's Opinion About the Medication*; and a blank copy of Form JV-222, *Input on Application for Psychotropic Medication*, as follows:

a. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Manner:  In person  By fax at (specify): \_\_\_\_\_

By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

b. CAPTA guardian ad litem's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Manner:  In person  By fax at (specify): \_\_\_\_\_

By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

7  The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with a copy of Form JV-217-INFO, *Guide to Psychotropic Medication Forms*, and a blank copy of Form JV-222, *Input on Application for Psychotropic Medication*, or with information on how to obtain a copy of each form as follows:

a. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Attorney for (name): \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_

By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

b. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Attorney for (name): \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_

By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_



Case Number: \_\_\_\_\_

Child's name: \_\_\_\_\_

7 c. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_

Attorney for (name): \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_

By depositing the required information and copies of JV-217-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

Date: \_\_\_\_\_  
Type or print name \_\_\_\_\_ Sign your name  Signature follows on page 3.

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 an application is pending before the court as follows:

CASA volunteer (name): \_\_\_\_\_ Date notified: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

9  The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with 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 JV-222, Input on Application for Psychotropic Medication.

Indian Tribe (name): \_\_\_\_\_ Date notified: \_\_\_\_\_

Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_

By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

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

Date: \_\_\_\_\_  
Type or print name \_\_\_\_\_ Sign your name \_\_\_\_\_

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
<b>PROOF OF SERVICE—NONMINOR</b>	CASE NUMBER:

I served a copy of the (*name of document*):

on the following persons or entities by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the United States mail with postage prepaid or at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar OR by delivering a copy by electronic means at the electronic service address indicated below:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Nonminor<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service:   | <input type="checkbox"/> Attorney<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: |
| 2. <input type="checkbox"/> Social worker <input type="checkbox"/> Probation officer<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service:   | <input type="checkbox"/> Attorney<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: |
| 3. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal guardian<br>Notice provided only if requested by nonminor dependent or if the parent is receiving court-ordered family reunification services.<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: | <input type="checkbox"/> Attorney<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: |
| 4. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal guardian<br>Notice provided only if requested by nonminor dependent or if the parent is receiving court-ordered family reunification services.<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: | <input type="checkbox"/> Attorney<br>a. Name:<br>b. Mailing or electronic service address:<br>c. Date of service:<br>d. Method of service: |



<b>NONMINOR'S NAME:</b>	CASE NUMBER:
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5.  Nonminor dependent's sibling under juvenile court jurisdiction  Attorney
- a. Name: a. Name:
- b. Mailing or electronic service address: b. Mailing or electronic service address:
- c. Date of service: c. Date of service:
- d. Method of service: d. Method of service:
6.  Nonminor dependent's sibling under juvenile court jurisdiction  Attorney
- a. Name: a. Name:
- b. Mailing or electronic service address: b. Mailing or electronic service address:
- c. Date of service: c. Date of service:
- d. Method of service: d. Method of service:
7.  Supervisor of nonminor dependent's residence  Attorney
- a. Name: a. Name:
- b. Mailing or electronic service address: b. Mailing or electronic service address:
- c. Date of service: c. Date of service:
- d. Method of service: d. Method of service:
8.  Other  Attorney
- a. Name: a. Name:
- b. Mailing or electronic service address: b. Mailing or electronic service address:
- c. Date of service: c. Date of service:
- d. Method of service: d. Method of service:
9.  Other  Attorney
- a. Name: a. Name:
- b. Mailing or electronic service address: b. Mailing or electronic service address:
- c. Date of service: c. Date of service:
- d. Method of service: d. Method of service:

10. At the time of service I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address or my electronic service address is *(specify)*:

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

Date:

(TYPE OR PRINT NAME)



SIGNATURE

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>           <b>DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>PROOF OF SERVICE UNDER SECTION 366.26 OF THE WELFARE AND INSTITUTIONS CODE</b>	CASE NUMBER:

1. I served a copy of the attached *Notice of Hearing* under section 366.26 on (*identify name and relationship to child below*):
  - a. Name of person served:
  - b.  Mother  Legal/Presumed father  Alleged father  Guardian  Child 10 or over  
 Present custodian  Grandparent  Counsel of record
2. *Manner of service (check proper box)*:
  - a.  **Personal service.** By personally delivering a copy to the person served.  
 (1) Date of service: \_\_\_\_\_ (2) Time of service: \_\_\_\_\_
  - b.  **Substituted service.** By delivering copies to a competent adult at the usual place of residence or business of the person served, and thereafter mailing a copy by first-class mail to the person at the place where the copy was delivered.
    - (1) Name of person with whom left:
    - (2) Date and time of leaving:
    - (3) Date of mailing:
    - (4) Place of mailing (*city and state*):
  - c.  **Certified mail to residence or business.** (*Attach evidence of mailing.*)
  - d.  **Certified mail to counsel of record.** (*Attach evidence of mailing.*)
  - e.  **First-class mail.** By placing copies in a sealed envelope and depositing the envelope  directly in the United States mail with postage paid OR  at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar.
    - (1)  To residence (*address*):
    - (2)  To business (*address*):
    - (3) Date of deposit:
    - (4) Place of deposit (*city and state*):
  - f.  **First-class mail to grandparent.**
    - (1) Addressed as follows (*name and address*):
    - (2) Date of deposit:
    - (3) Place of deposit (*city and state*):
  - g.  **Publication.** (*Attach evidence of publication.*)
  - h.  **Electronic Service** (*electronic service address*):
  - i.  **Other:**
3. At the time of service I was at least 18 years of age and not a party to this matter. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address, or my electronic service address is (*specify*):

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

Proof of Notice Under Section 366.26(n)

Clerk stamps date here when form is filed. DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

1 Notice of [ ] Intent to remove [ ] Emergency removal [ ] Hearing on [ ] Prospective adoptive parent designation [ ] Intent to remove [ ] Emergency removal set for (date): \_\_\_\_\_ at (time): \_\_\_\_\_ in Department \_\_\_\_\_ of the superior court at (address): \_\_\_\_\_

Fill in court name and street address: Superior Court of California, County of \_\_\_\_\_

was given to: \_\_\_\_\_

a. [ ] The adoption agency (name of agency employee notified): \_\_\_\_\_

Fill in child's name and date of birth: Child's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Fill in case number: Case Number: \_\_\_\_\_

(1) [ ] Orally, in person, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

(2) [ ] Orally, by telephone, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ Phone number: \_\_\_\_\_

(3) [ ] By personally delivering copies to the person served on on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

(4) [ ] By placing copies as addressed below in a sealed envelope and depositing the envelope: (a) [ ] directly in the U.S. mail with postage paid or (b) [ ] at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice. Address: \_\_\_\_\_

(5) [ ] By electronic service on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ at the following electronic service address: \_\_\_\_\_

b. [ ] The caregiver (name): \_\_\_\_\_

(1) [ ] Orally, in person, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

(2) [ ] Orally, by telephone, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ Phone number: \_\_\_\_\_ or [ ] Confidential phone number in court file

(3) [ ] By personally delivering copies to the person served on on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

(4) [ ] By placing copies as addressed below in a sealed envelope and depositing the envelope: (a) [ ] directly in the U.S. mail with postage paid or (b) [ ] at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice. Address: \_\_\_\_\_

or [ ] Confidential address in court file

(5) [ ] By electronic service on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ at the following electronic service address: \_\_\_\_\_



Child's name: \_\_\_\_\_

- c.  The child's attorney (*name*): \_\_\_\_\_
  - (1)  Orally, in person, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (2)  Orally, by telephone, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 Phone number: \_\_\_\_\_ or  Confidential phone number in court file
  - (3)  By personally delivering copies to the person served on on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (4)  By placing copies as addressed below in a sealed envelope and depositing the envelope:
    - (a)  directly in the U.S. mail with postage paid *or*
    - (b)  at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice.  
 Address: \_\_\_\_\_

- (5)  By electronic service on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 at the following electronic service address: \_\_\_\_\_

- d.  The child if 10 years of age or older (*name*): \_\_\_\_\_
  - (1)  Orally, in person, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (2)  Orally, by telephone, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 Phone number: \_\_\_\_\_ or  Confidential phone number in court file
  - (3)  By personally delivering copies to the person served on on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (4)  By placing copies as addressed below in a sealed envelope and depositing the envelope:
    - (a)  directly in the U.S. mail with postage paid *or*
    - (b)  at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice.  
 Address: \_\_\_\_\_

*or*  Confidential address in court file

- (5)  By electronic service on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 at the following electronic service address: \_\_\_\_\_

- e.  The child's identified Indian tribe, if any (*name of tribe and person notified*): \_\_\_\_\_
  - (1)  Orally, in person, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (2)  Orally, by telephone, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 Phone number: \_\_\_\_\_ or  Confidential phone number in court file
  - (3)  By personally delivering copies to the person served on on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (4)  By placing copies as addressed below in a sealed envelope and depositing the envelope:
    - (a)  directly in the U.S. mail with postage paid *or*
    - (b)  at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice.  
 Address: \_\_\_\_\_

- (5)  By electronic service on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 at the following electronic service address: \_\_\_\_\_

- f.  The child's Indian custodian, if any (*name*): \_\_\_\_\_
  - (1)  Orally, in person, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_
  - (2)  Orally, by telephone, on (*date*): \_\_\_\_\_ at (*time*): \_\_\_\_\_  
 Phone number: \_\_\_\_\_ or  Confidential phone number in court file



Case Number: \_\_\_\_\_

Child's name: \_\_\_\_\_

- f. (3)  By personally delivering copies to the person served on on (date): \_\_\_\_\_ at (time): \_\_\_\_\_
- (4)  By placing copies as addressed below in a sealed envelope and depositing the envelope:
  - (a)  directly in the U.S. mail with postage paid *or*
  - (b)  at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice.

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*or*  Confidential address in court file

- (5)  By electronic service on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
 at the following electronic service address: \_\_\_\_\_

g.  The child's Court Appointed Special Advocate (CASA) program, if any (*name of tribe and person notified*): \_\_\_\_\_

- (1)  Orally, in person, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_
- (2)  Orally, by telephone, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
 Phone number: \_\_\_\_\_ *or*  Confidential phone number in court file
- (3)  By personally delivering copies to the person served on on (date): \_\_\_\_\_ at (time): \_\_\_\_\_
- (4)  By placing copies as addressed below in a sealed envelope and depositing the envelope:
  - (a)  directly in the U.S. mail with postage paid *or*
  - (b)  at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practice.

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- (5)  By electronic service on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
 at the following electronic service address: \_\_\_\_\_

h.  The court (*name of court employee notified*): \_\_\_\_\_

- (1)  Orally, in person, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_
- (2)  Orally, by telephone, on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
 Phone number: \_\_\_\_\_

2 At the time of notice, I was at least 18 years of age and not a party to this matter. I live or am employed in the county where the service occurred. My residence or business mailing address or electronic mailing address is (*specify*): \_\_\_\_\_

3 I declare under penalty of perjury under the laws of the State of California that the information in items 1 and 2 is true and correct, which means that if I lie on this form, I am committing a crime.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Type or print your name

\_\_\_\_\_  
 Sign of your name

Below are basic instructions for providing notice of a hearing on prospective adoptive parent designation, an intent to remove, or an emergency removal. If you are unfamiliar with this notice process, please refer to Welfare and Institutions Code section 366.26(n) and rules 5.726, 5.727, and 5.728 of the California Rules of Court.

### Notice of designation hearing

- ① The **clerk** must provide notice of the hearing if the caregiver or the child filed form JV-321.
- ② The **child's attorney** must provide notice of the hearing if the child's attorney filed form JV-321.
- ③ If the request for designation was made at the same time as a request for a hearing on an intended or emergency removal, notice of the designation hearing must be provided with notice of the removal hearing and can be given by telephone.
- ④ If the request for designation was made before a request for removal was filed or before an emergency removal occurred, notice must be either by first-class mail, by electronic service, or by personal service. Notice must include form JV-321, *Request for Prospective Adoptive Parent Designation*, and the order setting a hearing on form JV-327, *Prospective Adoptive Parent Designation Order*.
- ⑤ *Proof of Notice Under Section 366.26(n)*, form JV-326, must be filed with the court before the hearing on the request for prospective adoptive parent designation.

### Notice of proposed removal hearing

- ① The **clerk** must provide notice of the hearing if the court, the caregiver, or the child is requesting a hearing.
- ② The **child's attorney** must provide notice of the hearing if the child's attorney is requesting a hearing.
- ③ Notice may be given by personal service or by telephone. Telephone notice must include the reasons for and against the removal, as indicated on forms JV-323, *Notice of Intent to Remove Child*, and JV-325, *Objection to Removal*.
- ④ If notice is made by personal service, forms JV-323, *Notice of Intent to Remove Child*, and JV-325, *Objection to Removal*, must be used.
- ⑤ *Proof of Notice Under Section 366.26(n)*, form JV-326, must be filed with the court before the hearing on the intended removal.

### Notice of emergency removal hearing

- ① The **clerk** must provide notice of the hearing if the court, the caregiver, or the child is requesting a hearing.
- ② The **child's attorney** must provide notice of the hearing if the child's attorney is requesting a hearing.
- ③ Notice of an emergency removal hearing may be by personal service or by telephone. Telephone notice must include the reasons for and against the removal, as indicated on forms JV-324, *Notice of Emergency Removal*, and JV-325, *Objection to Removal*.
- ④ If notice is made by personal service, forms JV-324, *Notice of Emergency Removal*, and JV-325, *Objection to Removal*, must be used.
- ⑤ *Proof of Notice Under Section 366.26(n)*, form JV-326, must be filed with the court before the hearing on the emergency removal.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <b>DRAFT</b> <b>Not Approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>PROOF OF SERVICE—JUVENILE</b>	CASE NUMBER:

I served a copy of the \_\_\_\_\_ (name of document) on \_\_\_\_\_ (hearing date, if applicable) on the following persons or entities by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the U.S. mail with postage prepaid or at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practices with which I am readily familiar OR by delivering a copy by electronic means at the electronic service address indicated below:

1.  Social worker     Probation officer

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

2.  Mother     Father     Legal guardian

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

3.  Mother     Father     Legal guardian

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

4.  Mother     Father     Legal guardian

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

Attorney

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

Attorney

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

Attorney

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

Attorney

a. Name: \_\_\_\_\_

b. Mailing or electronic service address: \_\_\_\_\_

c. Date of service: \_\_\_\_\_

d. Method of service: \_\_\_\_\_

CASE NAME:  	CASE NUMBER:  
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5.  Child (if 10 years of age or older)

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

6.  Child (if 10 years of age or older)

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

7.  Child's sibling

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

8.  CASA volunteer

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

9.  Tribe/Bureau of Indian Affairs

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

10.  Indian custodian

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:



CASE NAME:  	CASE NUMBER:  
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11.  Child's caregiver

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

12.  De facto parent

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

13.  Grandparent

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

14. Other (specify):

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

15. Other (specify):

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

Attorney

a. Name:

b. Mailing or electronic service address:

c. Date of service:

d. Method of service:

16. At the time of service I was at least 18 years of age and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business mailing address, or my electronic service address is (specify):

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶

\_\_\_\_\_  
(SIGNATURE)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** 04/05/2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: School Notification of Delinquency Court Adjudication

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

*Staff contact (name, phone and e-mail): Daniel Richardson, 415-865-7619; Daniel.richardson@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. Senate Bill 7, the Stop Tobacco Access to Kids Enforcement Act, enacted in 2016, removed criminal penalties for those under 21 found in possession of tobacco products

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

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

The committee considered merely updating incorrect legal citations but determined that a more substantial update was necessary to improve the usability of the form.

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## INVITATION TO COMMENT

**SPR18-26**

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Title	Action Requested
Juvenile Law: School Notification of Delinquency Court Adjudication	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend form JV-690	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Daniel Richardson, 415-865-7619 Daniel.richardson@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising Judicial Council form JV-690 to provide clarity and conformity with Welfare and Institutions Code section 827(b) on what information is disseminated to a school when a child has committed certain criminal offenses.<sup>1</sup> The current form contains inaccuracies in the listed offenses and has been reported as confusing in terms of whether only the offenses on the form can be communicated to the school. The proposed changes reflect closely the language of section 827(b) and give the court the option to indicate the specific code section of the offense that was adjudicated. In addition, it is proposed that the form be revised to include more specific information for the school on how the form may be disseminated, to enhance confidentiality and help avoid situations in which the form is disseminated incorrectly. Finally, the committee recommends removing offenses from the form that are no longer eligible as felonies or misdemeanors.

### Background

The Judicial Council adopted *School Notification of Court Adjudication* (form JV-690) for optional use in 2011 as part of a proposal to adopt and amend numerous forms to include findings that are required by law but were not on forms, improve the usability of the existing forms, and reflect new legal requirements. The optional form was created to meet the

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<sup>1</sup> All further code references are to the Welfare and Institutions Code unless otherwise indicated.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

requirements in section 827(b) to notify a child’s school district if the child is found to have committed an enumerated offense. The form included check boxes for many of the more common qualifying offenses and contained a short admonition about the proper dissemination and handling of the confidential information.

### **The Proposal**

The proposal is being made because of errors and a lack of clarity in form JV-690 related to some of the criminal code sections listed on the form. The Judicial Council’s Center for Families, Children & the Courts (CFCC) staff were contacted by a clerk of a superior court who raised several issues with the form. She noted that the form does not clearly state whether the court is required to inform the school of only the specific code sections that are listed on the form, or if other offenses should be included as well. She also pointed out an error in the form in that it lists some criminal offenses that no longer exist in the Penal Code.

The proposed amendments to the form fall under the following three areas:

1. Clarifying how the form should convey information about the child’s criminal offense to the school;
2. Adding instructions on dissemination; and
3. Removing offenses that are infractions.

### **Offense disclosure**

The list of offenses on the form and their accompanying code sections present some complications and inaccuracies that suggest the form should be amended. For instance, Penal Code sections 12020 and 120101 are listed on the form but no longer exist in the Penal Code. The form also lists “Unlawful Sexual Intercourse (Pen. Code §261.5),” which does not fall under the offense category in section 827(b) of “a sex offense listed in section 290 of the Penal Code.”

The form’s listed offenses are also not an exhaustive list of offenses that could be included under the list of offenses in section 827(b).<sup>2</sup> For example, on the form, “Gambling (Pen. Code, § 337a)” does not capture all the offenses that could be considered an offense described as “gambling.”<sup>3</sup> “Graffiti on government property (Pen. Code, § 640.5)” is the only listed offense available for vandalism but doesn’t describe all types of vandalism. As pointed out by the superior court clerk, this inaccuracy creates confusion over what information should be included on the form when it is sent to a school district. Hence, the committee proposes removing the specific code sections as currently listed on the form.

The committee then considered the following three options in terms of how the form would convey information on a child’s offense: (1) include the generic offense as listed in subdivision

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<sup>2</sup> Hereafter “subdivision (b)”.

<sup>3</sup> See Penal Code chapter 10, Gaming [§§ 330–337z].

(b) without the option of including the code section of the offense; (2) include the generic offense and provide a blank space for the code section of the offense; or (3) include the generic offense and indicate that including the code section of the offense is optional. The committee elected to proceed with the third option.

Subdivision (b) is a limited exception to the overriding purpose of section 827 of protecting the confidentiality of the juvenile court case files. The protections of section 827 apply not only to the documents in the case file, but also to the information contained therein.<sup>4</sup> A school must be informed if a child has been found by a court of competent jurisdiction to have committed any felony or misdemeanor involving the offenses listed in subdivision (b). Section 827(b)(2)(A) reads in pertinent part:

Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case.

(Welf. & Inst. Code, § 827(b)(2)(A).)

The language related to the disclosure to the school leaves open to interpretation how much information about the child's offense should be communicated to the school.<sup>5</sup> One interpretation is that the specific code section of the offense should or could be communicated to the school. Although the statute doesn't specifically say this, it is reasonable to believe that notice that a child has "committed any felony or any misdemeanor involving..." and "[w]ritten notice shall include only the offense found to have been committed" could be read to require the code section. Another interpretation is that the plain language indicates only that the school should be notified of an offense involving the generic crimes as listed in subdivision (b).

The committee weighed several factors when determining how the form should convey the information related to the child's criminal offense, including the legislative history of subdivision (b), the context of subdivision (b) to the rest of section 827, and the law's increased emphasis on the sealing of records and avoiding of collateral consequences for juvenile offenders. The committee felt that given the context of section 827 and recent developments in the law related to the sealing of records,<sup>6</sup> the disclosure should as closely as possible preserve

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<sup>4</sup> *T.N.G. v. Superior Court* (1971), 4 Cal.3d 767, 780.

<sup>5</sup> After researching the matter, CFCC staff are unaware of any published case law interpreting section 827(b)(2)(A).

<sup>6</sup> In 2013, the Legislature took action to ensure that all juveniles who come before the court or a probation officer receive information about the process required to request sealing of records, and to require the adoption of a Judicial

confidentiality of the case file and ensure that juvenile offenders can graduate from probation with a clean slate while also providing the school with critical information to ensure safety at the school.

Option three (indicating that providing the code section of the offense is optional) allows the court to communicate the offense but does not require it to do so, which allows the court to consider the unique circumstances of the case when determining whether the specific offense should be communicated to the school. The committee also believes that the language of subdivision (b) does not prohibit the disclosure of the criminal offense, but also does not specifically require it. Therefore, giving the court the option of disclosing the code section does not appear to run afoul of the statutory language.

### **Instructions on dissemination**

The committee also elected to expand the admonition on the dissemination and use of the form, expanding the form from one page to two. When a school district receives the form, section 827(b) and (d) gives detailed instructions on its dissemination. Without seeking out the language of section 827, the school district may not know the rules on dissemination, resulting in a greater risk that the form will be disseminated beyond what section 827 permits.

The committee therefore proposes that the second page of the form be used to incorporate the specific directives on the form's dissemination and use found in section 827(b) and (d). The language has been partially revised as plain language to promote readability. The instructions include specific information on the purpose of the form, how the form is to be disseminated within the school district, how the form may be used, penalties for not following the rules of the form's confidentiality, instructions for when the child is no longer enrolled in the school district, and the child's and the child's family's right to verify the required destruction of the form. Providing these advisements will help to ensure that the rules around the dissemination of the form are followed.

### **Infractions**

Due to changes in the law, some offenses listed in subdivision (b) can no longer be considered misdemeanors or felonies, such as offenses related to curfew and tobacco possession. Section 827(b) however these offenses are still listed in section 827(b) as potential felonies or misdemeanors that are to be disclosed to the child's school. Leaving these offenses on the form increases the likelihood that courts will communicate infractions related to curfew or tobacco to the school. The committee therefore proposes that curfew be removed from the form so that

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Council form that can be used to petition the court for sealing under section 781. (Assem. Bill 1006 [Yamada]; Stats. 2013, ch. 269.) In 2014, the Legislature went a step further by enacting section 786, requiring courts to seal records without requiring a petition for any child 14 or older who was not a serious or violent 707(b) offender and who satisfactorily completed probation. (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249.) And new legislation in 2017 modifies the lifetime ban on sealing a juvenile offense record involving a specified serious or violent offense by allowing section 707 violent offenders over 14 years of age to petition the court to seal the record, with certain exceptions. (Sen. Bill 312 [Skinner]; Stats. 2017, ch. 679.)

infractions related to curfew are not communicated to the school unnecessarily. The committee elected to specify that for offenses related to tobacco products, the form reference “Distribution of Tobacco Products.” Possession by a minor is no longer a misdemeanor or felony after the Stop Tobacco Access to Kids Enforcement Act (SB 7) was signed into law in 2016,<sup>7</sup> but distribution of a tobacco is still misdemeanor under Penal Code section 308. If these offenses again become felonies or misdemeanors, the form can be amended to include them.

### **Alternatives Considered**

The committee considered leaving the form in its current format. Given the inaccuracies in the form and the need to frame the disclosure to more closely align with subdivision (b), the committee elected to proceed with the proposed amendments.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs. The form is proposed to be expanded from one page to two pages to accommodate the extra admonitions that the committee believes are important for the proper dissemination of the form. Printing the form may now require two pages; however, courts can print on both sides of a single piece of paper, which is anticipated to be common.

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<sup>7</sup> Sen. Bill 7 [Hernandez]; Stats. 2016, ch. 8.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- In terms of the disclosure of the offense committed by the child, should the form indicate that providing the code section of the offense is optional (as proposed), or should the form not give the option of including the code section or require that the code section be inserted?
- Are there any suggestions to improve the readability and content of the admonitions on the proposed second page?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Form JV-690, at pages 6–7



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

**SCHOOL NOTIFICATION OF COURT ADJUDICATION  
(Welfare & Institutions Code Section 827(b))**

**TO SUPERINTENDENT:**

SCHOOL DISTRICT:

MAILING ADDRESS:

CITY, STATE, ZIP CODE:

1. Under Welfare & Institutions Code section 827(b), you are hereby notified that

a. CHILD'S NAME:

b. CHILD'S DATE OF BIRTH:

is enrolled in your school and was found by a court of competent jurisdiction to have committed a felony or misdemeanor involving

(1)  Gambling (code section optional):

(6)  A sex offense listed in section 290 of the Penal Code (code section optional):

(2)  Alcohol (code section optional):

(7)  Assault or battery (code section optional):

(3)  Drugs (code section optional):

(8)  Larceny (code section optional):

(4)  Graffiti (code section optional):

(9)  Vandalism (code section optional):

(5)  Carrying of weapons (code section optional):

(10)  Distribution of Tobacco Products (code section optional):

2. THE COURT-ORDERED DISPOSITION of the child's case is

a.  Wardship probation

c.  Non-wardship probation

b.  Department of Juvenile Facilities Commitment

d.  Other:

Date:

\_\_\_\_\_  
CLERK OF THE SUPERIOR COURT

For more information, contact the probation officer for the child.

**WARNING: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A MISDEMEANOR**

Any information received from this court is to be kept in a separate confidential file at the school of attendance. This record must be destroyed upon the child's graduating from high school, reaching the age of 18, or being released from court jurisdiction, whichever occurs first.

## FURTHER INSTRUCTIONS ON DISSEMINATION

### **(1) What is the purpose of this form?**

Welfare and Institutions Code section 827(b) requires that when a child is found to have committed a felony or misdemeanor for certain offenses, the court must send this form to inform the school of the underlying offense and the outcome of the case. The form is intended to encourage communication between the courts, law enforcement, and schools to ensure rehabilitation of the child and to promote public safety.

Juvenile court proceedings and information related to the case are confidential, and disclosure of this form is governed by the rules of confidentiality found in Welfare and Institutions Code section 827. Information related to a child's juvenile case is strictly confidential; the disclosure on this form is a limited exception. It is to be provided only to select individuals in the child's school district. An intentional violation of these rules is a misdemeanor.

### **(2) How is the form to be disseminated?**

Welfare and Institutions Code section 827(b) provides specific instructions for the school on how the form should be disseminated when it is sent by the court:

- The court will send this form to the district superintendent of the child's school district.
- The district superintendent must expeditiously transmit it to the principal at the school of attendance.
- The principal must then expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the child. In addition, the principal must disseminate the information to any teachers or administrators directly supervising or reporting on the behavior or progress of the child, if the principal believes they need the information to work with the child in an appropriate fashion and to promote school safety.

### **(3) How is the form to be used?**

Any information received from the court by a teacher, counselor, or administrator must be received in confidence for the limited purpose of rehabilitating the child and protecting students and staff.

A teacher, counselor, or administrator who receives the information in the form must not disclose the information or disseminate the form unless it is communication with the child, his or her parents or guardians, law enforcement personnel, or the juvenile probation officer and is necessary to effectuate the child's rehabilitation or to protect students and staff.

### **(4) Are there penalties if the form or the information on the form is unlawfully disseminated?**

Yes, an intentional violation of the confidentiality provisions of Welfare and Institutions Code section 827(b) is a misdemeanor punishable by a fine not to exceed \$500.

### **(5) What if the child is no longer at my school?**

If a child is removed from public school because of the court's finding described in this form, the superintendent must maintain the information in a confidential file and must defer transmitting the form received from the court until the child is returned to public school. If the child is returned to a school district other than the one from which the child came, the parole or probation officer having jurisdiction over the child must notify the superintendent of the last district of attendance, who must transmit the notice received from the court to the superintendent of the new district of attendance.

### **(6) The child and his or her family have the right to verify that the form was destroyed.**

The form is required to be destroyed when the child graduates from high school, reaches the age of 18, or is released from court jurisdiction, whichever occurs first. At any time after the form is required to be destroyed, the child or his or her parent or guardian has the right to make a written request to the principal of the school to review the child's school records to verify that the form has been destroyed. After this requested review, the principal or his or her designee must respond in writing to the written request and either confirm or deny that the form has been destroyed, or explain why destruction has not yet occurred.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.678, 5.690, 5.695, and 5.708; repeal rule 5.526)

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Kerry Doyle, 415-865-8791, [kerry.doyle@ca.gov](mailto:kerry.doyle@ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO:

Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262); and Sen. Bill 89 (Comm. on Budget and Fiscal Review; Stats. 2015, ch. 425).

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

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

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## INVITATION TO COMMENT

**SPR18-27**

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Title	Action Requested
Juvenile Law: Dependency Hearings— Continued Condensing of the Rules of Court	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.678, 5.690, 5.695, and 5.708; repeal rule 5.526	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 <a href="mailto:kerry.doyle@jud.ca.gov">kerry.doyle@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

In title 5 of the California Rules of Court, the rules that provide the procedures to be followed during dependency court hearings from the initiation of the case through each of the status review hearings repeat statutory text, which makes the rules more cumbersome and necessitates frequent amendments whenever the underlying statutes are amended. During the 2017 legislative session, four bills were enacted that require amendments to the existing rules of court. This proposal would delete some of these unnecessary sections in the rules or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules.

### **Background**

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far more limited than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed 3 to delete language that duplicated statute.

## **The Proposal**

This proposal continues the process of condensing the rules of court governing dependency hearings and was spurred by recent legislation<sup>1</sup> that would, under the council's past practices, have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

Specifically, this proposal would amend four juvenile dependency proceedings rules and repeal one to delete unnecessary statutory text or, when necessary, replace that text with appropriate references to the underlying code sections. These changes would streamline the rules and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text. The specific rule change proposals follow.

### **Rule 5.526. Citation to Appear; warrants of arrest; subpoenas**

This rule would be repealed because it simply restates the text in Welfare and Institutions Code section 338.<sup>2</sup> (Making this change obviates the need to amend this rule to incorporate changes made by Assembly Bill 1401 [Maienschein].)

### **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives**

Rule 5.678(a) would be amended to delete the specific findings drawn from section 319(b) in support of detention and replace them with a reference to that section. Rule 5.678(b) would be amended to delete the factors the court must consider that are drawn from section 319(d) and replace them with a reference to that section. Paragraph (c)(3), which restates section 319(e), would be deleted. Rule 5.678(e) would be amended to delete the possible foster care placements that are drawn from the text of section 319(f) and replace them with a reference to that section. (Making these changes obviates the need to amend this rule to incorporate the changes made by Assembly Bill 404 [Stone].) Rule 5.678(e)(1)–(2), which restates provisions of section 319(f)(3), would be deleted, as would references to section 600 et. seq. in the headers of the rule because rule 5.760, not rule 5.678, governs detention hearings for cases petitioned under section 600.

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<sup>1</sup> Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262); and Sen. Bill 89 (Comm. on Budget and Fiscal Review; Stats. 2015, ch. 425).

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

**Rule 5.690. General conduct of disposition hearing**

Effective January 1, 2017, the council deleted most of the text of rule 5.690(c) concerning the case plan requirements (some of which were in the rule, but many of which were not) and instead specified that a case plan must be prepared and included with the court report as required in section 16501.1(g). The committee continues to propose that a cross-reference to this statute remain in the rule. (This cross-reference obviates the need to amend this rule to incorporate the changes made by Senate Bill 89 [Comm. on Budget and Fiscal Review].) The committee now recommends, however, that the rule reference section 16501.1 in its entirety, and not merely subdivision (g). Section 16501.1 contains many important case plan requirements that require court oversight, such as the timelines by which case plans must be submitted to the court; a description of the type of home or institution in which the child is placed; the plan and timeline for transitioning the child to a less restrictive environment; and documentation that a preplacement assessment of the service needs of the child and family have been provided.

The committee further proposes that the cross-reference to section 16501.1 be moved to a paragraph of subdivision (c) governing all case plans.

**Rule 5.695. Findings and orders of the court—disposition**

Effective January 1, 2017, the council deleted specific required removal findings from rule 5.695(d) and replaced them with a reference to subdivision (c) of section 361, which provides these findings. The committee now recommends that the rule be amended to add a paragraph to rule 5.695(c), with a cross-reference to subdivision (d) of section 361, which was newly enacted as a result of Assembly Bill 1332 (Bloom).

**Alternatives Considered**

Initially the committee considered simply amending the existing rules of court to reflect the new statutory language but preferred to abbreviate the rules by replacing unneeded text with code references to obviate the need for further rule amendments when these statutes are again amended.

**Implementation Requirements, Costs, and Operational Impacts**

Because this proposal amends rules of court to make them more concise without changing the underlying statutory requirements, it should cost the courts nothing. The main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there statutory provisions that were deleted that should remain?
- Are there additional statutory provisions that should be deleted?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708, attached at pages 5–21
2. Assembly Bill 404,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB404](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB404)
3. Assembly Bill 1332,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1332](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1332)
4. Assembly Bill 1401,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1401](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1401)
5. Senate Bill 89,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB89](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB89)

Rules 5.678, 5.690, 5.695, and 5.708 of the California Rules of Court would be amended, and rule 5.526 would be repealed, effective January 1, 2019, to read:

1 **Rule 5.526. Citation to appear; warrants of arrest; subpoenas**

2  
3 **(a) — Citation to appear (§§ 338, 661)**

4  
5 In addition to the notice required under rule 5.524, the court may issue a citation  
6 directing a parent or guardian to appear at a hearing.

7  
8 (1) — The citation must state that the parent or guardian may be required to  
9 participate in a counseling program, and the citation may direct the child's  
10 present caregiver to bring the child to court.

11  
12 (2) — The citation must be personally served at least 24 hours before the time stated  
13 for the appearance.

14  
15 **(b) — Warrant of arrest (§§ 339, 662)**

16  
17 The court may order a warrant of arrest to issue against the parent, guardian, or  
18 present custodian of the child if:

19  
20 (1) — The citation cannot be served;

21  
22 (2) — The person served does not obey it; or

23  
24 (3) — The court finds that a citation will probably be ineffective.

25  
26 **(c) — Protective custody or warrant of arrest for child (§§ 340, 663)**

27  
28 The court may order a protective custody warrant or a warrant of arrest for a child  
29 if the court finds that:

30  
31 (1) — The conduct and behavior of the child may endanger the health, person,  
32 welfare, or property of the child or others; or

33  
34 (2) — The home environment of the child may endanger the health, person, welfare,  
35 or property of the child.

36  
37 **(d) — Subpoenas (§§ 341, 664)**

38  
39 On the court's own motion or at the request of the petitioner, child, parent,  
40 guardian, or present caregiver, the clerk must issue subpoenas requiring attendance



1 and testimony of witnesses and the production of papers at a hearing. If a witness  
2 appears in response to a subpoena, the court may order the payment of witness fees  
3 as a county charge in the amount and manner prescribed by statute.  
4

5 **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**  
6 **detention alternatives**

7  
8 **(a) Findings in support of detention (§ 319; 42 U.S.C. § ~~600 et seq.~~)**

9  
10 The court must order the child released from custody unless the court ~~finds that:~~  
11 makes findings as specified in section 319(b).

12  
13 ~~(1) A prima facie showing has been made that the child is described by section~~  
14 ~~300;~~

15  
16 ~~(2) Continuance in the home of the parent or guardian is contrary to the child's~~  
17 ~~welfare; and~~

18  
19 ~~(3) Any of the following grounds exist:~~

20  
21 ~~(A) There is a substantial danger to the physical health of the child or the~~  
22 ~~child is suffering severe emotional damage, and there are no reasonable~~  
23 ~~means to protect the child's physical or emotional health without~~  
24 ~~removing the child from the parent's or guardian's physical custody;~~

25  
26 ~~(B) The child is a dependent of the juvenile court who has left a placement;~~

27  
28 ~~(C) The parent, guardian, or responsible relative is likely to flee the~~  
29 ~~jurisdiction of the court with the child; or~~

30  
31 ~~(D) The child is unwilling to return home and the petitioner alleges that a~~  
32 ~~person residing in the home has physically or sexually abused the child.~~

33  
34 **(b) Factors to consider**

35  
36 In determining whether to release or detain the child under (a), the court must  
37 consider the following: factors in section 319(d).

38  
39 ~~(1) Whether the child can be returned home if the court orders services to be~~  
40 ~~provided, including services under section 306; and~~

1           ~~(2) Whether the child can be returned to the custody of his or her parent who is~~  
2           ~~enrolled in a certified substance abuse treatment facility that allows a~~  
3           ~~dependent child to reside with his or her parent.~~

4  
5           **(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C. § 600 et seq.)**

6  
7           (1) Whether the child is released or detained at the hearing, the court must  
8           determine whether reasonable efforts have been made to prevent or eliminate  
9           the need for removal and must make one of the following findings:

10  
11           (A) Reasonable efforts have been made; or

12  
13           (B) Reasonable efforts have not been made.

14  
15           (2) The court must not order the child detained unless the court, after inquiry  
16           regarding available services, finds that there are no reasonable services that  
17           would prevent or eliminate the need to detain the child or that would permit  
18           the child to return home.

19  
20           ~~(3) If the court orders the child detained, the court must:~~

21  
22           ~~(A) Determine if there are services that would permit the child to return~~  
23           ~~home pending the next hearing and state the factual bases for the~~  
24           ~~decision to detain the child;~~

25  
26           ~~(B) Specify why the initial removal was necessary; and~~

27  
28           ~~(C) If appropriate, order services to be provided as soon as possible to~~  
29           ~~reunify the child and the child's family.~~

30  
31           **(d) Order of the court (§ 319, 42 U.S.C. § 600 et seq.)**

32  
33           If the court orders the child detained, the court must order that temporary care and  
34           custody of the child be vested with the county welfare department pending  
35           disposition or further order of the court.

36  
37           **(e) Detention alternatives (§ 319)**

38  
39           The court may order the child detained ~~in the approved home of a relative, an~~  
40           ~~emergency shelter, another suitable licensed home or facility, a place exempt from~~  
41           ~~licensure if specifically designated by the court, or the approved home of a~~  
42           ~~nonrelative extended family member as defined in section 362.7. as specified in~~  
43           section 319(f).

1  
2 (1) ~~In determining the suitability of detention with a relative or a nonrelative~~  
3 ~~extended family member, the court must consider the recommendations of~~  
4 ~~the social worker based on the approval of the home of the relative or~~  
5 ~~nonrelative extended family member, including the results of checks of~~  
6 ~~criminal records and any prior reports of alleged child abuse.~~

7  
8 (2) ~~The court must order any parent and guardian present to disclose the names,~~  
9 ~~residences (if known), and any identifying information of any maternal or~~  
10 ~~paternal relatives of the child.~~

11  
12 **Rule 5.690. General conduct of disposition hearing**

13  
14 **(a) Social study (§§ 280, 358, 358.1, 360, 361.5, 16002(b))**

15  
16 The petitioner must prepare a social study of the child. The social study must  
17 include a discussion of all matters relevant to disposition and a recommendation for  
18 disposition.

19  
20 (1) The petitioner must comply with the following when preparing the social  
21 study:

22  
23 (A) If petitioner recommends that the court appoint a legal guardian,  
24 petitioner must prepare an assessment under section 360(a), to be  
25 included in the social study report prepared for disposition or in a  
26 separate document.

27  
28 (B) If petitioner recommends removal of the child from the home, the  
29 social study must include:

30  
31 (i) A discussion of the reasonable efforts made to prevent or  
32 eliminate removal and a recommended plan for reuniting the  
33 child with the family, including a plan for visitation;

34  
35 (ii) A plan for achieving legal permanence for the child if efforts to  
36 reunify fail; and

37  
38 (iii) A statement that each parent has been advised of the option to  
39 participate in adoption planning and to voluntarily relinquish the  
40 child if an adoption agency is willing to accept the  
41 relinquishment, and the parent's response.

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- (C) The social study must include a discussion of the social worker’s efforts to comply with rule 5.637, including but not limited to:
  - (i) The number of relatives identified and the relationship of each to the child;
  - (ii) The number and relationship of those relatives described by item (i) who were located and notified;
  - (iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; and
  - (iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child.
- (D) If siblings are not placed together, the social study must include an explanation of why they have not been placed together in the same home, what efforts are being made to place the siblings together, or why making those efforts would be contrary to the safety and well-being of any of the siblings.
- (E) If petitioner alleges that section 361.5(b) applies, the social study must state why reunification services should not be provided.
- (F) All other relevant requirements of sections 358 and 358.1.

- (2) The petitioner must submit the social study and copies of it to the clerk at least 48 hours before the disposition hearing is set to begin, and the clerk must make the copies available to the parties and attorneys. A continuance within statutory time limits must be granted on the request of a party who has not been furnished a copy of the social study in accordance with this rule.
- (b) Evidence considered (§§ 358, 360)**

The court must receive in evidence and consider the social study, a guardianship assessment, the report of any CASA volunteer, the case plan, and any relevant evidence offered by petitioner, the child, or the parent or guardian. The court may require production of other relevant evidence on its own motion. In the order of disposition, the court must state that the social study and the study or evaluation by the CASA volunteer, if any, have been read and considered by the court.

1 (c) Case plan (§ 16501.1)

2  
3 Whenever child welfare services are provided, the social worker must prepare a  
4 case plan.

5  
6 (1) A written case plan must be completed and filed with the court by the date of  
7 disposition or within 60 calendar days of initial removal or of the in-person  
8 response required under section 16501(f) if the child has not been removed  
9 from his or her home, whichever occurs first.

10  
11 (2) ~~The~~ For a child of any age the court must consider the case plan and must  
12 find as follows:

13  
14 (A) The case plan meets the requirements of section 16501.1; or

15  
16 (B) The case plan does not meet the requirements of section 16501.1. If the  
17 court finds that the case plan does not meet the requirements of section  
18 16501.1, the court must order the agency to comply with the  
19 requirements of section 16501.1; and

20  
21 ~~(A)~~ (C) The social worker solicited and integrated into the case plan the  
22 input of the child;<sub>2</sub> the child's family;<sub>2</sub> the child's identified Indian  
23 tribe, including consultation with the child's tribe on whether tribal  
24 customary adoption as defined in section 366.24 is an appropriate  
25 permanent plan for the child if reunification is unsuccessful; and other  
26 interested parties;<sub>2</sub> or

27  
28 ~~(B)~~ (D) The social worker did not solicit and integrate into the case plan  
29 the input of the child, the child's family, the child's identified Indian  
30 tribe, and other interested parties. If the court finds that the social  
31 worker did not solicit and integrate into the case plan the input of the  
32 child, the child's family, the child's identified Indian tribe, and other  
33 interested parties, the court must order that the social worker solicit and  
34 integrate into the case plan the input of the child, the child's family, the  
35 child's identified Indian tribe, and other interested parties, unless the  
36 court finds that each of these participants was unable, unavailable, or  
37 unwilling to participate.

38  
39 (3) For a child 12 years of age or older and in a permanent placement, the  
40 court must consider the case plan and must also find as follows:

41  
42 (A) The child was given the opportunity to review the case plan, sign  
43 it, and receive a copy; or

1  
2 (B) The child was not given the opportunity to review the case plan,  
3 sign it, and receive a copy. If the court makes such a finding, the  
4 court must order the agency to give the child the opportunity to  
5 review the case plan, sign it, and receive a copy.  
6

7 ~~(C) Whether the case plan was developed in compliance with and~~  
8 ~~meets the requirements of section 16501.1(g). If the court finds~~  
9 ~~that the development of the case plan does not comply with~~  
10 ~~section 16501.1(g) the court must order the agency to comply~~  
11 ~~with the requirements of section 16501.1(g).~~  
12

13 **Rule 5.695. Findings and orders of the court—disposition**  
14

15 **(a) Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**  
16

17 At the disposition hearing, the court may:  
18

- 19 (1) Dismiss the petition with specific reasons stated in the minutes;  
20
- 21 (2) Place the child under a program of supervision for a time period consistent  
22 with section 301 and order that services be provided;  
23
- 24 (3) Appoint a legal guardian for the child without declaring dependency and  
25 order the clerk to issue letters of guardianship, which are not subject to the  
26 confidential protections of juvenile court documents as described in section  
27 827;  
28
- 29 (4) Declare dependency and appoint a legal guardian for the child if the  
30 requirements of section 360 are met and order the clerk to issue letters of  
31 guardianship, which are not subject to the confidential protections of juvenile  
32 court documents as described in section 827;  
33
- 34 (5) Declare dependency, permit the child to remain at home, and order that  
35 services be provided;  
36
- 37 (6) Declare dependency, permit the child to remain at home, limit the control to  
38 be exercised by the parent or guardian, and order that services be provided; or  
39
- 40 (7) Declare dependency, remove physical custody from the parent or guardian,  
41 and:  
42

1 (A) After stating on the record or in writing the factual basis for the order,  
2 order custody to a noncustodial parent, terminate jurisdiction, and  
3 direct that *Custody Order—Juvenile—Final Judgment* (form JV-200)  
4 be prepared and filed under rule 5.700;

5  
6 (B) After stating on the record or in writing the factual basis for the order,  
7 order custody to a noncustodial parent with services to one or both  
8 parents; or

9  
10 (C) Make a placement order and consider granting specific visitation rights  
11 to the child’s grandparents.

12  
13 **(b) Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)**

14  
15 (1) If a child is declared a dependent, the court may clearly and specifically limit  
16 the control over the child by a parent or guardian.

17  
18 (2) If the court orders that a parent or guardian retain physical custody of the  
19 child subject to court-ordered supervision, the parent or guardian must be  
20 ordered to participate in child welfare services or services provided by an  
21 appropriate agency designated by the court.

22  
23 (3) The court must consider whether it is necessary to limit the rights of the  
24 parent or guardian to make educational or developmental-services decisions  
25 for the child or youth. If the court limits those rights, it must follow the  
26 procedures in rules 5.649–5.651.

27  
28 **(c) Removal of custody—required findings (§ 361)**

29  
30 (1) The court may not order a dependent removed from the physical custody of a  
31 parent or guardian with whom the child resided at the time the petition was  
32 filed, unless the court makes one or more of the findings in subdivision (c) of  
33 section 361 by clear and convincing evidence.

34  
35 (2) The court may not order a dependent removed from the physical custody of a  
36 parent with whom the child did not reside at the time the petition was initiated  
37 unless the juvenile court makes one of the findings in subdivision (d) of section  
38 361 by clear and convincing evidence.

39  
40 **(d) Reasonable efforts finding**

41  
42 The court must consider whether reasonable efforts to prevent or eliminate the need  
43 for removal have been made and make one of the following findings:

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- (1) Reasonable efforts have been made to prevent removal; or
- (2) Reasonable efforts have not been made to prevent removal.

**(e) Family-finding determination (§ 309)**

- (1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives. The court may consider the activities listed in (f) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child’s relatives.

- (2) If the court finds that the social worker has not exercised due diligence, the court may order the social worker to exercise due diligence in conducting an investigation to identify, locate, and notify the child’s relatives—except for any individual the social worker identifies as inappropriate to notify under rule 5.637(b)—and may require a written or oral report to the court.

**(f) Due diligence (§ 309)**

When making the determination required in (e), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:

- (1) Asked the child, in an age-appropriate manner and consistent with the child’s best interest, about his or her relatives;
- (2) Obtained information regarding the location of the child’s relatives;
- (3) Reviewed the child’s case file for any information regarding relatives;
- (4) Telephoned, e-mailed, or visited all identified relatives;
- (5) Asked located relatives for the names and locations of other relatives;
- (6) Used Internet search tools to locate relatives identified as supports; or



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(7) Developed tools, including a genogram, family tree, family map, or other diagram of family relationships, to help the child or parents to identify relatives.

**(g) Provision of reunification services (§ 361.5)**

(1) Unless the court makes a finding that reunification services need not be provided under subdivision (b) of section 361.5 if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child’s mother and statutorily presumed parent, or the child’s legal guardian, to facilitate reunification of the family as required in section 361.5.

(2) On a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that such services will benefit the child.

(3) If a child is removed from the custody of a parent or guardian, and reunification services are ordered, the court must order visitation between the child and the parent or guardian for whom services are ordered. Visits are to be as frequent as possible, consistent with the well-being of the child.

(4) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360.

(5) Except when the order is made under paragraph (1) of subdivision (b) of section 361.5, if the court orders no reunification services for every parent otherwise eligible for such services, the court must conduct a hearing under section 366.26 within 120 days and:

- (A) Order that the social worker provide a copy of the child’s birth certificate to the caregiver consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and
- (B) Order that the social worker provide a child or youth 16 years of age or older with a certified copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.

- 1 (6) A judgment, order, or decree setting a hearing under section 366.26 is not an  
2 immediately appealable order. Review may be sought only by filing a *Notice*  
3 *of Intent to File Writ Petition and Request for Record (California Rules of*  
4 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ  
5 petition and request for record, and a *Petition for Extraordinary Writ*  
6 *(California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other  
7 petition for extraordinary writ. If a party wishes to preserve any right to  
8 review on appeal of the findings and orders made under this rule, the party  
9 must seek an extraordinary writ under rules 8.450 and 8.452.  
10
- 11 (7) A judgment, order, or decree setting a hearing under section 366.26 may be  
12 reviewed on appeal following the order of the 366.26 hearing only if the  
13 following have occurred:  
14
- 15 (A) An extraordinary writ was sought by the timely filing of a *Notice of*  
16 *Intent to File Writ Petition and Request for Record (California Rules of*  
17 *Court, Rule 8.450)* (form JV-820) or other notice of intent to file a writ  
18 petition and request for record, and a *Petition for Extraordinary Writ*  
19 *(California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other  
20 petition for extraordinary writ; and  
21
- 22 (B) The petition for extraordinary writ was summarily denied or otherwise  
23 not decided on the merits.  
24
- 25 (8) Review on appeal of the order setting a hearing under section 366.26 is  
26 limited to issues raised in a previous petition for extraordinary writ that were  
27 supported by an adequate record.  
28
- 29 (9) Failure to file a notice of intent to file a writ petition and request for record  
30 and a petition for extraordinary writ review within the period specified by  
31 rules 8.450 and 8.452 to substantively address the issues challenged, or to  
32 support the challenge by an adequate record, precludes subsequent review on  
33 appeal of the findings and orders made under this rule.  
34
- 35 (10) When the court orders a hearing under section 366.26, the court must advise  
36 orally all parties present, and by first-class mail for parties not present, that if  
37 the party wishes to preserve any right to review on appeal of the order setting  
38 the hearing under section 366.26, the party must seek an extraordinary writ  
39 by filing a *Notice of Intent to File Writ Petition and Request for Record*  
40 *(California Rules of Court, Rule 8.450)* (form JV-820) or other notice of  
41 intent to file a writ petition and request for record and a *Petition for*  
42 *Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-  
43 825) or other petition for extraordinary writ.

1  
2 (A) Within 24 hours of the hearing, notice by first-class mail must be  
3 provided by the clerk of the court to the last known address of any  
4 party who is not present when the court orders the hearing under  
5 section 366.26.  
6

7 (B) Copies of *Petition for Extraordinary Writ (California Rules of Court,*  
8 *Rules 8.452, 8.456)* (form JV-825) and *Notice of Intent to File Writ*  
9 *Petition and Request for Record (California Rules of Court, Rule*  
10 *8.450)* (form JV-820) must be available in the courtroom and must  
11 accompany all mailed notices informing the parties of their rights.  
12

13 **(h) Information regarding termination of parent-child relationship (§§ 361, 361.5)**  
14

15 If a child is removed from the physical custody of the parent or guardian under  
16 either section 361 or 361.5, the court must:  
17

- 18 (1) State the facts on which the decision is based; and  
19  
20 (2) Notify the parents that their parental rights may be terminated if custody is  
21 not returned within 6 months of the dispositional hearing or within 12 months  
22 of the date the child entered foster care, whichever time limit is applicable.  
23

24 **(i) Setting a hearing under section 366.26**  
25

26 At the disposition hearing, the court may not set a hearing under section 366.26 to  
27 consider termination of the rights of only one parent unless that parent is the only  
28 surviving parent, or the rights of the other parent have been terminated by a  
29 California court of competent jurisdiction or by a court of competent jurisdiction of  
30 another state under the statutes of that state, or the other parent has relinquished  
31 custody of the child to the county welfare department.  
32

33 **Rule 5.708. General review hearing requirements**  
34

35 **(a) Notice of hearing (§ 293)**  
36

37 The petitioner or the clerk must serve written notice of review hearings on *Notice*  
38 *of Review Hearing* (form JV-280), in the manner provided in sections 224.2 or 293  
39 as appropriate, to all persons or entities entitled to notice under sections 224.2 and  
40 293 and to any CASA volunteer, educational rights holder, or surrogate parent  
41 appointed to the case.  
42

1 **(b) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)**

2  
3 Before the hearing, the social worker must investigate and file a report describing  
4 the services offered to the family, progress made, and, if relevant, the prognosis for  
5 return of the child to the parent or legal guardian.

6  
7 (1) The report must include:

8  
9 (A) Recommendations for court orders and the reasons for those  
10 recommendations;

11  
12 (B) A description of the efforts made to achieve legal permanence for the  
13 child if reunification efforts fail;

14  
15 (C) A factual discussion of each item listed in sections 366.1 and 366.21(c);  
16 and

17  
18 (D) A factual discussion of the information required by section 16002(b).

19  
20 (2) At least 10 calendar days before the hearing, the social worker must file the  
21 report and provide copies to the parent or legal guardian and his or her  
22 counsel, to counsel for the child, to any CASA volunteer, and, in the case of  
23 an Indian child, to the child's identified Indian tribe. The social worker must  
24 provide a summary of the recommendations to any foster parents, relative  
25 caregivers, or certified foster parents who have been approved for adoption.

26  
27 (3) The court must read and consider, and state on the record that it has read and  
28 considered, the report of the social worker, the report of any CASA  
29 volunteer, the case plan submitted for the hearing, any report submitted by  
30 the child's caregiver under section 366.21(d), and any other evidence.

31  
32  
33 **(c) Reasonable services (§§ 366, 366.21, 366.22, 366.25, 366.3)**

34  
35 (1) If the child is not returned to the custody of the parent or legal guardian, the  
36 court must consider whether reasonable services have been offered or  
37 provided. The court must find that reasonable services have been offered or  
38 provided or have not been offered or provided.

39  
40 (2) If the child is not returned to the custody of the parent or legal guardian, the  
41 court must consider the safety of the child and make the findings listed in  
42 sections 366(a) and 16002.

43

1 (d) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)

2  
3 The court must consider the educational and developmental-services needs of each  
4 child and nonminor or nonminor dependent, including whether it is necessary to  
5 limit the rights of the parent or legal guardian to make educational or  
6 developmental-services decisions for the child. If the court limits those rights or, in  
7 the case of a nonminor or nonminor dependent who has chosen not to make  
8 educational or developmental-services decisions for him- or herself or has been  
9 deemed incompetent, finds that appointment would be in the best interests of the  
10 nonminor or nonminor dependent, the court must appoint a responsible adult as the  
11 educational rights holder as defined in rule 5.502. Any limitation on the rights of a  
12 parent or guardian to make educational or developmental-services decisions for the  
13 child must be specified in the court order. The court must follow the procedures in  
14 rules 5.649–5.651.

15  
16 (e) Case plan (§§ 16001.9, 16501.1)

17  
18 ~~The court must consider the case plan submitted for the hearing and must~~  
19 ~~determine:~~

20  
21 The court must consider the case plan and must determine find as follows:

22  
23 (1) The case plan meets the requirements of section 16501.1; or

24  
25 (2) The case plan does not meet the requirements of section 16501.1. If the court  
26 finds that the case plan does not meet the requirements of section 16501.1, the  
27 court must order the agency to comply with the requirements of section  
28 16501.1; and

29  
30 ~~(3) Whether the~~ The child was actively involved, as age- and developmentally  
31 appropriate, in the development of the case plan and plan for permanent  
32 placement; or

33  
34 (4) The child was not actively involved, as age- and developmentally appropriate,  
35 in the development of the case plan and plan for permanent placement. If the  
36 court finds the child was not appropriately involved, the court must order the  
37 agency to actively involve the child in the development of the case plan and  
38 plan for permanent placement, unless the court finds the child is unable,  
39 unavailable, or unwilling to participate; and

40  
41 ~~(1) (5) Whether each~~ Each parent or legal guardian was actively involved in the  
42 development of the case plan and plan for permanent placement; or

1           (6) Each parent or legal guardian was not actively involved in the development  
2 of the case plan and plan for permanent placement. If the court finds that any  
3 parent or legal guardian was not actively involved, the court must order the  
4 agency to actively involve that parent or legal guardian in the development of  
5 the case plan and plan for permanent placement, unless the court finds that  
6 the parent is unable, unavailable, or unwilling to participate; and

7  
8           ~~(3)~~(7) In the case of an Indian child, ~~whether~~ the agency consulted with the Indian  
9 child's tribe, as defined in rule 5.502, and the tribe was actively involved in  
10 the development of the case plan and plan for permanent placement,  
11 including consideration of tribal customary adoption as an appropriate  
12 permanent plan for the child if reunification is unsuccessful; or

13  
14           (8) The agency did not consult with the Indian child's tribe, as defined in rule  
15 5.502, and the tribe was not actively involved in the development of the case  
16 plan and plan for permanent placement, including consideration of tribal  
17 customary adoption as an appropriate permanent plan for the child if  
18 reunification is unsuccessful. If the court finds that the agency did not consult  
19 the Indian child's tribe, the court must order the agency to do so, unless the  
20 court finds that the tribe is unable, unavailable, or unwilling to participate;  
21 and

22  
23           ~~(4)~~(9) For a child 12 years of age or older in a permanent placement, ~~whether~~ the  
24 child was given the opportunity to review the case plan, sign it, and receive a  
25 copy; or

26  
27           (10) The child was not given the opportunity to review the case plan, sign it, and  
28 receive a copy. If the court finds that the child was not given this opportunity,  
29 the court must order the agency to give the child the opportunity to review  
30 the case plan, sign it, and receive a copy.

31  
32           ~~(5) — Whether the case plan was developed in compliance with and meets the~~  
33 ~~requirements of section 16501.1(g). If the court finds that the development of~~  
34 ~~the case plan does not comply with section 16501.1(g), the court must order~~  
35 ~~the agency to comply with the requirements of section 16501.1(g).~~

36  
37 **(f) Sibling findings; additional findings (§§ 366, 16002)**

38  
39           (1) The court must determine whether the child has other siblings under the  
40 court's jurisdiction. If so, the court must make the additional determinations  
41 required by section 366(a)(1)(D); and  
42

1 (2) The court must enter any additional findings as required by section 366 and  
2 section 16002.

3

4 **(g) Placement with noncustodial parent (§ 361.2)**

5

6 If at any review hearing the court places the child with a noncustodial parent, or if  
7 the court has previously made such a placement, the court may, after stating on the  
8 record or in writing the factual basis for the order:

9

10 (1) Continue supervision and reunification services;

11

12 (2) Order custody to the noncustodial parent, continue supervision, and order  
13 family maintenance services; or

14

15 (3) Order custody to the noncustodial parent, terminate jurisdiction, and direct  
16 that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared  
17 and filed under rule 5.700.

18

19 **(h) Setting a hearing under section 366.26 for one parent**

20

21 The court may not set a hearing under section 366.26 to consider termination of the  
22 rights of only one parent unless:

23

24 (1) That parent is the only surviving parent;

25

26 (2) The rights of the other parent have been terminated by a California court of  
27 competent jurisdiction or by a court of competent jurisdiction of another state  
28 under the statutes of that state; or

29

30 (3) The other parent has relinquished custody of the child to the county welfare  
31 department.

32

33 **(i) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

34

35 The court must make the following orders and determinations when setting a  
36 hearing under section 366.26:

37

38 (1) The court must ensure that notice is provided as required by section 294.

39

40 (2) The court must follow all procedures in rule 5.590 regarding writ petition  
41 rights, advisements, and forms.

42

1 **(j) Appeal of order setting section 366.26 hearing**

2

3 An appeal of any order setting a hearing under section 366.26 must follow the  
4 procedures in rules 8.400–8.416.



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Intercounty Placements (Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556)

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Kerry Doyle, 415-865-8791, [kerry.doyle@ca.gov](mailto:kerry.doyle@ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO:

Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 608)

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR18-28**

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Title	Action Requested
Juvenile Law: Intercounty Placements	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 <a href="mailto:kerry.doyle@jud.ca.gov">kerry.doyle@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee recommends amending one rule and repealing and adopting one rule of the California Rules of Court, and approving two forms, to conform to recent statutory changes regarding who a child welfare agency must notice when moving a foster child to a different county.

### **Background**

Assembly Bill 1688 (Rodriguez; Stats 2016, ch. 608) requires the county to provide notice to the child's attorney and to the child, if 10 years of age or older, before moving the child to a placement outside the county, and allows for the child and child's attorney to object to the move. When this legislation was passed, the committee determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. Since then, Judicial Council staff has been asked by both the California Department of Social Services, and a large law office representing children, to create forms for both the notice of, and potential objection to, the proposed move.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **The Proposal**

Rules 5.610 and 5.614 would be amended to ensure they conform to the requirements in Welfare and Institutions Code section 361.2(h) and to remove any language that is repetitive of statute.<sup>1</sup>

### **Rule 5.610. Transfer-out hearing**

Rule 5.610(c) would be amended to delete the specific findings drawn from sections 375 and 750.

### **Rule 5.614. Courtesy supervision (§§ 380, 755)**

Rule 5.614 would be repealed because it simply restates the text in sections 380 and 755.

### **Rule 5.614. Intercounty placements**

Rule 5.614 would be replaced with a rule governing intercounty placements.

To streamline the rule, it would contain a cross-reference to section 361.2(h). This would obviate the need to amend the rule again if this code section is amended in the future. The rule would also identify the optional forms that can be used for notice and objection.

### ***Notice***

While section 361.2(h) requires that notice of a need to place the child out of county be provided to the child's parent or guardian, the child's attorney, and the child, if the child is 10 years of age or older, it does not provide for notice to two important groups: the child's identified Indian tribe and the child's Court Appointed Special Advocate (CASA) volunteer. Proposed rule 5.614 includes notice to these two additional participants.

Federal and state law protect the relationship between an Indian child and the child's tribe.<sup>2</sup> In particular, the law requires that whenever an Indian child is removed from his or her home for placement or further placement, the placement must comply with the placement preferences of the Indian Child Welfare Act.<sup>3</sup> Furthermore, the child's tribe must be consulted on any

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<sup>1</sup> Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s at a time when access to statutory materials via electronic devices and online resources was far more limited by judicial officers than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed three to delete language that duplicated statute. This approach streamlines the rules and reduces the frequency with which the rules need to be amended to reflect changes in the statutory text.

<sup>2</sup> 25 U.S.C. §§ 1901–1903; Welf. & Inst. Code, § 224.

<sup>3</sup> 25 U.S.C. § 1915; 25 C.F.R. §§ 23.129–23.132; Welf. & Inst. Code, §§ 224(b), 361.31.

placement or change in placement.<sup>4</sup> A child's identified Indian tribe is entitled to receive notice of every hearing in a dependency case.<sup>5</sup>

Due to the significant role a dependent child's CASA volunteer plays in the child's life, CASA volunteers are entitled to notice of all hearings under the California Rules of Court. (Cal. Rules of Court, rules 5.710–5.725, 5.740, 5.810.) Given the potentially life-changing importance of an out-of-county placement, the CASA volunteer should receive notice of the agency's request to remove the child, as the volunteer receives notice of other important court events regarding the child.

The Family and Juvenile Law Advisory Committee considered possibilities regarding who should have the duty of providing notice of the hearing. Options included requiring the clerk of the court to provide notice and requiring the agency requesting out-of-county placement to provide notice. Workload concerns arose about both options. Another option is to have the party requesting the hearing provide notice; this caused concern, since children are unlikely to have the necessary procedural knowledge.

The proposed rule takes a “hybrid” approach. It would require that if the party objecting is represented by counsel, that counsel must provide notice. The clerk would be required to give notice of a hearing requested by a participant not represented by counsel. The committee's intention is to ensure proper notice and somewhat reduce the burden this new procedure places on court clerks.

### ***Burden of Proof***

Section 362.1(h) is silent about the burden of proof for the hearing on the proposed out-of-county placement. Evidence Code section 115 establishes that, except as otherwise provided by the law, the burden of proof requires proof by a preponderance of the evidence. Proposed rule 5.614 would clarify that the agency must show by a preponderance of the evidence that the standard in section 361.2(h) is met.

### ***Notice of Intent to Place Child Out of County (form JV-555) and Objection to Out-of-County Placement (form JV-556)***

The proposal creates two optional forms for use to notice, and object to, a planned out-of-county placement. One benefit to proposed form JV-555 is that it contains a statement informing the person notified that if he or she does not agree with the proposed placement, they may request a court hearing.

### **Alternatives Considered**

As mentioned above, when AB 1688 was passed, the committee determined that rules and forms were not necessary to implement the changes to the intercounty placement notice requirements. However, since then, both the California Department of Social Services, and a large law office representing children, have asked Judicial Council staff to create forms for both the notice of,

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<sup>4</sup> Welf. & Inst. Code, § 361.31(g).

<sup>5</sup> Welf. & Inst. Code, § 224.2(b).

and potential objection to, the proposed move. The committee now recognizes a potential need for optional forms to ensure the required written notice.

The committee considered not creating optional Judicial Council forms and only amending rule 5.614. The committee questioned whether the forms were necessary. Ultimately, the committee decided to circulate the forms for public comment and to seek specific comment on whether the forms were helpful.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal restates the law that became effective January 1, 2017; therefor courts are already receiving objections to, and setting hearings on, out-of-county placements. Similarly, the written notice requirements to parents and guardians have been in place for many years, and the written notice requirements to the child’s attorney and the child age 10 or older have been in place since January 1, 2017; therefor this should not result in increased workload for social workers, except in counties that are not currently providing the required written notice.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the child’s CASA be included in the list of those who should receive notice of the agency’s proposed placement of the child out of the county?
- Are forms JV-555 and JV-556 helpful in providing guidance in implementation of AB 1688, or is rule 5.614 sufficient?
- The “hybrid” notice approach requires that the clerk determine whether the person objecting has an attorney who should notice the hearing, or whether the clerk should notice the hearing. Is this too much of a burden on the clerk? Will the “hybrid” notice approach help to somewhat lessen the burden of notice on the clerk?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

**Attachments and Links**

1. Cal. Rules of Court, rules 5.610 and 5.614, at pages 6–9
2. Forms JV-555 and JV-556, at pages 10–13
3. Assembly Bill 1688,

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1688](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1688)



1 **Rule 5.614. ~~Courtesy supervision (§§ 380, 755)~~**

2  
3 ~~The court may authorize a child placed on probation, a ward, or a dependent child to live~~  
4 ~~in another county and to be placed under the supervision of the other county's county~~  
5 ~~welfare agency or probation department with the consent of the agency or department.~~  
6 ~~The court in the county ordering placement retains jurisdiction over the child.~~

7  
8 **Rule 5.614. Intercounty Placements**

9  
10 **(a) Procedure**

11  
12 Whenever a social worker must place a child outside the child's county of  
13 residence, the procedures in section 361.2(h) must be followed.

14  
15 **(b) Participants to be served with notice**

16 Unless the requirements for emergency placement in section 361.2 are met, before  
17 placing a child out of county, the agency must notify the following participants of  
18 the proposed removal:

19 (1) The participants listed in section 362.1(h);

20 (2) The child's identified Indian tribe if any;

21 (3) The child's Indian custodian if any; and

22 (4) The child's CASA program if any.

23 **(c) Form of notice**

24 The social worker may provide the required written notice to the participants in (b)  
25 with *Notice of Intent to Place Child Out of County* (form JV-555). If form JV-555 is  
26 used, the social worker must also provide a blank copy of *Objection to Out-of-*  
27 *County Placement* (form JV-556).

28 **(d) Service of notice**

29 The agency must serve notice of its intent to place the child out of county as  
30 follows:

31 (1) The agency must serve notice either by first-class mail, sent to the last known  
32 address of the person to be noticed, or by personal service;

33



1           (2) Notice to the child’s identified Indian tribe and Indian custodian must comply  
2           with the requirements of section 224.2; and

3           (3) Proof of Notice (form JV-326) must be filed with the court before the hearing  
4           on the proposed out-of-county placement.

5           **(e) Objection to proposed removal**

6           Each participant who receives notice under (b) may object to the proposed removal  
7           of the child and the court must set a hearing as required by section 361.2(h).

8           (1) Objection to the proposed intercounty placement can be done by using  
9           Objection to Out-of-County Placement (form JV-556).

10          (2) A request for hearing on the proposed removal must be made no later than  
11          seven days of receipt of the notice.

12          **(f) Notice of hearing on proposed removal**

13          After the court has ordered a hearing on a proposed intercounty placement, notice  
14          of the hearing must be as follows:

15          (1) If the party objecting is not represented by counsel, the clerk must provide  
16          notice of the hearing to the agency and the participants listed in (b) above;

17          (2) If the party objecting to the removal is represented by counsel, that counsel  
18          must provide notice of the hearing to the agency and the participants listed in  
19          (b) above;

20          (3) Notice must be by personal service or mail; and

21          (4) Proof of Notice (form JV-326) must be filed with the court before the hearing  
22          on the proposed removal.

23          **(g) Burden of proof**

24          At a hearing on an out-of-county placement, the agency intending to move the child  
25          must prove by a preponderance of the evidence that the standard in section 361.2(h)  
26          is met.

27          **(h) Emergency placements**

28          If the requirements for emergency placement in section 361.2 are met, the agency  
29          must provide notice as required in section 16010.6.

1 **Rule 5.616. Interstate Compact on the Placement of Children**

2

3 **(a)-(j) \* \* \***

**Notice of Intent to Place Child Out of County**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by  
the Judicial Council**

*This notice must be served with a blank copy of form JV-556, Objection to Out-of-County Placement.*

- 1 **To:**
  - a. Parent or Guardian (*name*):  
\_\_\_\_\_
  - b. Parent or Guardian (*name*):  
\_\_\_\_\_
  - c. Child’s attorney (*name*):  
\_\_\_\_\_
  - d. Child, if 10 years of age or older (*name*):  
\_\_\_\_\_
  - e. Child’s identified Indian tribe, if any (*name*):  
\_\_\_\_\_
  - f. Child’s Indian custodian, if any (*name*):  
\_\_\_\_\_
  - g. Child’s Court Appointed Special Advocate (CASA) program, if any (*name of person notified*):  
\_\_\_\_\_

*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:**

2 Name of agency proposing move:

Address:

Phone number:

The agency is placing the child out of county. The reasons that require placement outside of the county are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*If more space is needed, attach a sheet of paper and write "JV-555, Item 2—Reasons for Out-of-County Placement" at the top.*

Number of pages attached: \_\_\_\_\_



Case Number:
--------------


Child's name: \_\_\_\_\_

**3** If you do not agree with the out-of-county placement, you may request a court hearing. To do this, you can fill out form JV-556, *Objection to Out-of-County Placement*, and file it with the court within seven days from the date you received this notice.

I declare under penalty of perjury under the laws of the State of California that the information in items 1 and 2 is true and correct, which means that if I lie on the form, I am committing a crime.

Date:

\_\_\_\_\_  
*Type or print your name*

 \_\_\_\_\_  
*Sign your name*

*Clerk stamps date here when form is filed.***DRAFT  
Not approved by  
the Judicial Council**

If you do not agree with the out-of-county placement, you can request a court hearing by filling out this form. The following people can object to removal: the child's parent or guardian, the child's attorney, the child (if 10 years of age or older), the child's identified Indian tribe or custodian, and the child's CASA program. Bring this form to the clerk of the court.

If you are not an attorney and you requested the hearing, the clerk will provide notice of the hearing to you and any other participants.

If you are an attorney in this matter and you requested the hearing, you must provide notice of the hearing to all other participants.

*Fill in court name and street address:***Superior Court of California, County of**

- ① a. Name: \_\_\_\_\_
- b. I am the  child  child's attorney  child's parent  
 child's identified Indian tribe  child's CASA program  
 child's Indian custodian

c.  Confidential address

d. Address: \_\_\_\_\_

e. Phone number: \_\_\_\_\_

*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:**

② If you are not the child's attorney and you know who the child's attorney is, fill out below.

a. Name of child's attorney:

b. Address of child's attorney:

c. Phone number of child's attorney:

③  The child is 10 years of age or older. Child's phone number: \_\_\_\_\_  
 Confidential phone number in court file

④  The child has a Court Appointed Special Advocate (CASA) volunteer.  
 Phone number of CASA program, if known: \_\_\_\_\_

⑤  The child has an identified Indian tribe (*specify tribe*): \_\_\_\_\_  
 Phone number of tribe: \_\_\_\_\_

⑥  The child has an Indian custodian (*name*): \_\_\_\_\_  
 Phone number of custodian, if known: \_\_\_\_\_



Case Number: \_\_\_\_\_

Child's name: \_\_\_\_\_

7 The social worker should not place the child outside the county because *(give reasons)*:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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*If you need more space, attach a sheet of paper and write "JV-556, Item 7—Reasons to Not Place the Child Outside the County" at the top.*

Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct, which means that if I lie on this form, I am committing a crime.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Type or print your name*

\_\_\_\_\_  
\_\_\_\_\_  
*Sign your name*

**What if I am deaf or hard of hearing?**



**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for a *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Guardianship Information

*Committee or other entity submitting the proposal:*

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

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

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Court coordination and allegations of child abuse and neglect: A proposal to work collaboratively with Probate and Mental Health as well as the Committee on Providing Access and Fairness on issues related to court coordination and allegations of child abuse and neglect in guardianship cases. Initial joint work will include updating an existing pamphlet (JV-350) concerning guardianships established in juvenile court as well as the probate guardianship pamphlet (GC-205), both of which need significant revision.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SPR18-29

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Title	Action Requested
Juvenile Law: Guardianship Information	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms JV-330 and JV-350	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, Attorney
Hon. Jerilyn L. Borack, Cochair	415-865-4507 phone
Hon. Mark A. Juhas, Cochair	corby.sturges@jud.ca.gov

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising two forms to update legal information covering the establishment, supervision, modification, and termination of guardianships in juvenile court proceedings in language and a format easily understood by a person not trained in law. The proposal is needed to comply with an ongoing statutory mandate. Revisions were also suggested by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

### The Proposal

The Family and Juvenile Law Advisory Committee proposes revising two Judicial Council forms to give accurate legal information to guardians and prospective guardians appointed by the juvenile court. Much of the information in the pamphlet is out of date; the pamphlet was last revised in 2001.

The revisions are needed to conform to the continuing mandate in section 68511.1 of the Government Code, which requires the council to develop "a pamphlet explaining the nature of a guardianship of a minor and the rights, duties, and obligations of a person serving as guardian of a minor." (Gov. Code, § 68511.1.) The revisions are also intended to fulfill the statutory mandate to use "language easily understood by a lay person not trained in law." (*Ibid.*) The proposed revisions will help persons not trained in law to understand the process of appointing and supervising a guardian in a juvenile court proceeding as well as the duties of a guardian. Better-informed guardians will, in turn, reduce the need for court intervention after appointment.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*



Specifically, the committee proposes, effective January 1, 2019, to:

1. Revise *Guardianship Pamphlet (Juvenile)* (form JV-350) to:
  - Clarify and update legal information, including information about eligibility for financial support and other benefits;
  - Expand the pamphlet's scope to include juvenile justice proceedings; and
  - Use plain language and clear formatting to convey information to prospective guardians.<sup>1</sup>
  
2. Revise *Letters of Guardianship (Juvenile)* (form JV-330) to:
  - Indicate that the form applies to all guardianships established by the juvenile court, whether in child welfare proceedings, under Welfare and Institutions Code<sup>2</sup> sections 360 and 366.26, or in juvenile justice proceedings, under section 728.
  - Specify that the guardian's powers and duties are enumerated in the Probate Code even though the guardian is appointed by the juvenile court;
  - Inform a prospective guardian of the authority, added by Senate Bill 438 (Stats. 2017, ch. 307), to name a successor guardian in the assessment for appointment of an initial guardian;
  - Indicate clearly that the juvenile court, not the probate court, retains jurisdiction to supervise, modify, and terminate the guardianship; specify that this supervision includes the authority to appoint a successor guardian and to approve moving the child's residence out of California;
  - Separate the guardian's affirmation from the clerk's witness;
  - Separate the clerk's witness, which must be completed on the original Letters, from the clerk's certification of a true copy, which must be completed only when the clerk issues a certified copy of the form; and
  - Expand the notice of the purpose and intended use of the Letters.

### **Alternatives Considered**

The committee considered deferring revision of the forms, but determined that updates and clarification were urgently needed based on requests from multiple stakeholders and the Probate and Mental Health Advisory Committee.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal would require courts to create copies of the updated forms. Courts that issue paper copies of the guardianship pamphlet would incur more costs than courts that distribute the pamphlet electronically. All courts would incur costs to produce hard copies of the revised *Letters of Guardianship*, but, because that form is issued on a case-by-case basis, there may be no additional printing costs imposed. Courts would also need to integrate the revised Letters into

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<sup>1</sup> Please note that form JV-350 is formatted as a memorandum for public circulation. This format is intended to highlight proposed changes and does not indicate that the committee intends to recommend that the council adopt it. Formatting suggestions are welcome.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

their electronic case management systems. The revisions should make the process clearer and more accessible for guardians and prospective guardians, thereby reducing the overall time and cost of the process for courts, justice partners, and attorneys, too.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Forms JV-330 and JV-350, at pages 4–13
2. Gov. Code, § 68511.1,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=68511.1](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=68511.1)
3. Sen. Bill 438,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB438](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB438)

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  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>LETTERS OF GUARDIANSHIP (JUVENILE)</b>	CASE NUMBER:

**LETTERS**

1. (Name): \_\_\_\_\_ is appointed guardian of the person  
 of (child's name): \_\_\_\_\_ (date of birth): \_\_\_\_\_  
 with the authority and responsibility to make decisions and provide for the child's care, custody, control, education, residence, and medical treatment as set forth in the parts of sections 2351–2358 of the Probate Code that apply to guardianships.
2.  Other powers granted or conditions imposed (specify):

continued on Attachment 2.

**AFFIRMATION**

3. **I, the person named in 1, solemnly affirm** that I will perform the duties of guardian according to law. **I have received a copy of Duties of Guardian (form GC-248).**
- Signed on (date): \_\_\_\_\_ at (place): \_\_\_\_\_, California.

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF APPOINTEE)

**WITNESS**, clerk of the court, with seal of the court affixed:

(SEAL)

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

**NOTICE**

**The juvenile court named above will supervise this guardianship. Any request to change or end the guardianship, including a request to move the child's residence out of California or to appoint a successor guardian, must be filed in the juvenile court using Request to Change Court Order (form JV-180).**

Continued on the next page

CHILD'S NAME:	CASE NUMBER:
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**IMPORTANT NOTICE  
TO GUARDIAN OF CHILD**

**This form, known as *Letters of Guardianship*, is evidence of your appointment as guardian of the child. The *Letters* stay in effect until the guardianship is ended by the child reaching 18 years of age, by the child's emancipation or adoption—by you or another person—or by order of the juvenile court.**

**To verify your appointment to school personnel, medical personnel, and other service providers, you will need to show them a certified copy of the *Letters*. Be sure to keep this form in a safe place. If you can't find the form, you will need to request a new, certified copy from the clerk of the juvenile court. You may be charged a fee for the certified copy.**

**CERTIFICATION**

I certify that this is a correct copy of the original form on file in my office and that the *Letters* issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by \_\_\_\_\_, Deputy

# GUARDIANSHIP PAMPHLET

## (JUVENILE COURT)

A **legal guardianship** is a court order that gives a person who is not a child's parent the responsibility for the care, custody, control, education, and medical treatment of the child. This pamphlet gives general information about becoming the legal guardian of a child in a **juvenile court** case. It explains how to ask to become the child's guardian and discusses a guardian's rights and duties. If you want to become the guardian of a child who does not have a juvenile court case, you need to ask the probate court instead. Read Guardianship Pamphlet (Probate Court) (form GC-205) to find out how. If you need more information or have specific questions, think about talking to an attorney.

### WHAT IS A LEGAL GUARDIAN?

A child's legal guardian, also known as a *guardian of the person*, is

- An adult.
- Not the child's parent.
- Given legal powers and duties to take care, custody, and control of the child.
- By court order.

A guardian may be the child's relative—such as an aunt, uncle, or adult sibling—but does not need to be.

### HOW TO BECOME THE LEGAL GUARDIAN OF A CHILD IN A JUVENILE COURT CASE

The juvenile court decides *petitions*, filed by social workers or probation officers, asking the court to remove children from their parents' homes because the children cannot live there safely. If the court orders a child removed from home, the child will need a place to live. If you know a child who was removed from home and you are willing and able to take care of the child as a *foster parent*, let the child's social worker or probation officer know as soon as you can. Ask about applying and getting trained to be a *resource family*.

Foster parents have the right to attend their foster child's court *hearings* and to give the court information about the child's needs. Other caregivers and relatives can also give the court written information. If you're a relative, even if you're not the child's foster parent, think about getting involved this way in the child's case.

The court will usually order the social worker or probation officer to offer *reunification services* to the family for up to a year to help the child return home safely. In some cases, though, the

court decides that the child cannot be safely returned home even after services are offered. If the court doesn't order any services, or orders the services to stop, the social worker or probation officer will recommend to the court a *permanent plan* for the child's long-term custody and care.

Legal guardianship is one possible permanent plan. It requires appointment by court order and is intended to last until the child turns 18. If you are the child's adult relative, extended family member, current or former foster parent, or another adult, the department and the court may consider appointing you the child's guardian. If you want to become the child's guardian, tell the social worker or probation officer and write a letter to the judge.

After the juvenile court orders a guardianship, the court will supervise the guardianship. The juvenile court can make orders to add or remove the guardian's powers and duties, to direct the guardian to take specific actions, or to remove and replace the guardian.

**IMPORTANT:** The juvenile court will not end the guardianship and return custody to the parent unless it finds that something has changed and that ending the guardianship is best for the child.

## LEGAL PROCESS

The court will appoint you as guardian only after a hearing and only if you agree to serve. First, you will need to complete some legal forms. The social worker or probation officer will visit your home, make sure you're eligible, and write a report, called an *assessment*, for the court.

When the court hearing is scheduled, you will get *notice*, an official form telling you when and where the hearing will be. You have a right to go to the hearing and talk to the judge. The child's parents and other interested persons can also go to the hearing and tell the judge whether they think you would be a good guardian.

The court will read and consider the agency's report and all the other reasons for and against making you the child's guardian. If the court decides that guardianship is best for the child and that you would be a good guardian, the court will appoint you.

If the court appoints you as guardian, take the court order to the clerk's office and get at least one certified copy of *Letters of Guardianship* (form JV-330) as proof that you are the child's guardian. Take a certified copy of the Letters with you whenever you take the child to the doctor or sign the child up for school. Keep the Letters in a safe place; if you lose them, you will need to get another certified copy from the court.

**NOTE:** If more than one person asks to be appointed guardian, ask the social worker or probation officer to consider naming you as the *successor guardian* in the assessment if they don't recommend your appointment as the first guardian. That means that, even if you're not appointed, you could be assessed and appointed if the first guardian can't continue to serve.

## GUARDIANSHIP OR ADOPTION?

Guardianship of the person *suspends* the parents' rights and duties to make decisions about *care, custody, and control* of the child. As guardian, you will hold those rights and duties. A child in a guardianship, however, can still inherit property from the parents. (If the child owns or might inherit any property, the court will also consider appointing a *guardian of the estate*. This doesn't happen very often in juvenile court.)

**NOTE:** The juvenile court will supervise the guardianship as long as it lasts. The court can order you to take specific actions, to change your powers and duties, and to remove you as guardian. In particular, the court can order that the parents or other relatives be allowed to visit or spend time with the child. As the guardian, you must obey all court orders related to the guardianship.

The guardianship ends automatically when the child turns 18 and becomes a legal adult. The court may end the guardianship before the child turns 18, but, as noted earlier, the court won't do that unless it finds that the child's best interests require it.

**Adoption**, on the other hand, *ends* all legal rights and duties, including inheritance and visitation rights, between the birth parents and the child. The legal relationship with all other "birth relatives" also ends when adoption is final unless the court approves an agreement for contact after adoption. When you adopt a child, you become that child's legal parent, with the same parental rights and duties as if that child had been born to you. The court does not supervise an adoption. An adopted child becomes your own child in all respects; you will always be your adopted child's parent.

Because adoption is the most stable permanent plan for a child, it is the legally preferred plan. Government programs (*adoption assistance*) can give financial help and services for adopted children with special needs. You may want to discuss this option with your attorney or the child's social worker or attorney.

### **GUARDIAN OR FOSTER PARENT?**

A guardian has many more legal duties than a foster parent. Guardianship can give a child a stable home and relationship. Unlike foster care, which can end at any time, guardianship is a formal, long-term commitment by the guardian to the child. Guardianship may also affect the amount of government financial support a child living with a relative caregiver can receive. (For more information about financial support, see page x, below.)

A foster parent's main duties are to furnish food, clothing, housing, and nurturing care to a child. The foster parent is always under the supervision of the child welfare or probation department. Placement in foster care after the court orders family services to stop means that the department and the court will remain involved in the life of the child and foster family on a regular, continuing basis.

When it appoints a guardian, the juvenile court may keep dependency or delinquency jurisdiction over the child or end that jurisdiction. But even if it ends dependency or delinquency jurisdiction, the juvenile court will continue to supervise the guardianship.

## GUARDIAN'S RIGHTS AND DUTIES

Sections 2351–2360 of the Probate Code govern the rights and duties of a guardian of the person. As guardian, you must take care, custody, and control of the child and arrange for the child's education and medical treatment until the child turns 18, you are removed as guardian, or the guardianship ends for another reason. Your specific rights and duties include:

### RIGHTS

#### Child's Residence

You have the right to decide where the child will live. Ordinarily, the child will live with you, but you can arrange for the child to live somewhere else if that's necessary to meet the child's needs and in the child's best interests. You cannot, however, send the child to live with a parent unless you first get a court order.

If you want to move the child to a different home in California, you need to send written notice to the juvenile court and specific other people, including the child if 12 years old or older, the child's attorney, and the child's parents, at least 15 days *before* you plan to move. Use Judicial Council form GC-079 to send the required notice; follow the instructions on that form carefully. You must also send notice on form GC-080 within 30 days *after* you move; that form also includes detailed instructions that you should follow.

If you plan to move the child to a home outside California, you must get the juvenile court's permission *before* the child leaves the state. Use Judicial Council form GC-085 to ask the juvenile court for permission to move out of state. You'll need to send notice of the hearing and a copy of your request to the child's parents and others. If the court grants your request, it will also require you to bring the child back to California or start a new guardianship proceeding in the place of new residence within a specific period of time.

**NOTE:** Other states have different laws for guardianships. If you plan to move to another state, find out about your legal rights and duties in that state.

#### Education

You have the same right as a parent to choose the child's school and learning program. In special situations, the court may also be involved in this decision. Pay attention to how the child does in school and meet with the teacher. You also have the right to request special education and related services from schools or other providers and to attend meetings about educational services.

#### Medical Care

You have the right to give permission (*consent*) for most medical or dental treatment for the child. But for any surgery that is not an emergency, when a child 14 years old or older objects, you must get court approval first. In some cases, the law also allows older and more mature



children to get some medical treatment on their own without your approval. These cases can include outpatient mental health treatment, reproductive health care, and drug and alcohol treatment.

### **Social Services**

You have the right to arrange services for a child with special needs from government programs like Head Start, regional centers for developmentally disabled children, health care services, and after-school care.

### **Marriage**

Both you and the court must give permission before the child can get married.

### **Armed Services**

You must give permission for the child to enlist in the armed services.

### **Driver's License**

You must give permission for the child to get a driver's license. (See also the duties listed below.)

## **DUTIES**

In addition to the duties that accompany those rights, as guardian you are responsible for the child's well-being and the consequences of the child's actions. Although these responsibilities may seem challenging, remember that a parent would have the same duties toward the child.

### **Harm Caused by the Child's Driving**

You must give written permission for the child to get a driver's license. You will also need to get insurance in case the child has an accident while driving.

You will have to pay for harm caused by the child when driving. However, the law limits the amount of money that you can be forced to pay. If you're worried about this, talk to a lawyer.

If you change your mind later, you can sign a form at the DMV to cancel the child's driver's license.

### **Harm Caused by the Child's Conduct**

You are usually required to pay only for harm to another person caused by the child's *willful* misconduct. Even then, the law often limits how much you'll need to pay. On the other hand, you may sometimes be required to pay for harm caused by the child's *negligent* (or careless) conduct. Check with an attorney if you're worried about this possibility.

### **Financial Support of Child**

The parents remain legally responsible for the child's support, but you can voluntarily accept this responsibility. You may be able to get help from the government to pay for the child's care.

### **Additional Responsibilities**

In addition, the judge may require you to accept other special responsibilities. For example, the judge may order you to take the child to visits with his or her parents at specific times and places. Judicial Council form GC-248 gives more details about the duties of a guardian.

### **FINANCIAL HELP**

If you have trouble paying for the child's needs, you may be able to get financial help from the government. The amount of money can depend on the child's eligibility for assistance and whether the child is your relative.

**Before you become the child's guardian, discuss how to get financial help with your attorney, if you have one, or the child's social worker, probation officer, or attorney.**

### **IF THE CHILD IS RELATED TO YOU**

If you become the legal guardian of a child who is your relative, you might be able to get financial help from the government.

### **Kinship Guardianship Assistance Payment (KinGAP) Program**

If you are the relative guardian of an eligible former foster child, you can receive monthly KinGAP payments if (1) the court closes the dependency case, (2) you make a written agreement with the social worker or probation officer, and (3) the child has lived with you for six months in a row. In California, the payments are the same amount as the foster care payments the child received in foster care. You can continue to receive KinGAP payments if you move with the child to another county or state, but the amount may change in another state. If the youth continues to live with you, receive your financial support, and met all other eligibility requirements, KinGAP payments or, in some cases, foster care payments can continue after the child turns 18, even though you won't be the guardian anymore. Payments end when the child turns 21.

**NOTE:** For KinGAP purposes, California law defines *relative* to include not only a person related by blood, adoption, or affinity (marriage), but also an approved nonrelative extended-family member (NREFM), an Indian child's tribe or an Indian custodian, and a child's current foster parent who has been identified as the child's "permanent connection. If you're not sure whether you fit the definition, ask the social worker or probation officer.

### **CalWORKS (welfare)**

A relative guardian who cannot get KinGAP payments can still get CalWORKS support. If the guardian has a low income, they can get a full CalWORKS grant. A guardian whose income is too high to qualify for a full grant can still receive a "child-only" CalWORKS grant.

**Health Care–Medi-Cal:** A child is eligible for Medi-Cal as long as they are eligible for KinGAP.

**Independent Living Services:** Beginning at age 16, a child in a relative guardianship under KinGAP may receive Independent Living Services to help them become a successful adult.

### **IF THE CHILD IS NOT RELATED TO YOU**

In California, you can get the same government financial help as a foster parent if you are the guardian of a child who is not your relative. But if you move with the child to another state, California will stop making payments. The other state might not give you the same help.

### **Foster Care Payments**

If you are the nonrelative guardian of a former foster child, you can get foster care payments and other services. These payments are the same amount that a foster parent receives, and they are higher than CalWORKS. The state will check every six months to make sure the child is still eligible. If the child continues to live with you, receive your financial support, and meet all other eligibility requirements, foster care payments can continue after the child turns 18 even though you won't be the guardian anymore. Payments end when the child turns 21.

**Health Care–Medi-Cal:** A child is eligible for Medi-Cal as long as they are eligible for foster care payments.

**Independent Living Services:** Beginning at age 16, a child in a juvenile court guardianship may receive Independent Living Services to help them become a successful adult.

### **OTHER FINANCIAL HELP**

If KinGAP or foster care payments are not allowed, Social Security, Supplemental Income (SSI), Medi-Cal, or other financial help may still be available.

### **MORE INFORMATION**

You can get more information about financial options. Ask the child's social worker, probation officer, or attorney, or your own attorney. Here is a list of helpful local telephone numbers:

## **HOW IS A LEGAL GUARDIAN REPLACED?**

Any adult can ask the juvenile court to remove you as guardian and replace you with a new (or *successor*) guardian. If the child is 14 years old or older, they can also ask the court to appoint a new guardian. The judge will decide what to do based on what is in the child's *best interests*. The judge will look to see if you have performed your duties as guardian properly. If you don't want to be the guardian anymore, you can also ask the court for permission to resign.

## **HOW DOES A GUARDIANSHIP END?**

- The guardianship ends automatically when the child:
  - Turns 18 and becomes a legal adult,
  - Is adopted, or
  - Gets married or is legally emancipated for another reason.
  
- Sometimes, the juvenile court will end a guardianship before the child turns 18. But a guardianship is supposed to be a permanent relationship. The court will end a safe and stable guardianship only if that is in the child's best interests, even if the parent asks for custody and has fixed whatever problems led to juvenile court jurisdiction and your appointment as guardian.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** Thursday, April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Court Interpreters: California Court Interpreter Credential Review Procedures

Repeal and adopt Cal. Rules of Court, rule 2.891; adopt California Court Interpreter Credential Review Procedures

*Committee or other entity submitting the proposal:*

Court Interpreters Advisory Panel

*Staff contact (name, phone and e-mail):* Sonia Sierra Wolf, 415-865-4288, [sonia.sierrawolf@jud.ca.gov](mailto:sonia.sierrawolf@jud.ca.gov)

*Olivia Lawrence, 415-865-4227, [Olivia.Lawrence@jud.ca.gov](mailto:Olivia.Lawrence@jud.ca.gov)*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: E&P on March 1, 2018

Project description from annual agenda: From 2018 Annual Agenda: Completion of the post credential discipline process, known as the California Court Interpreter Credential Review Procedures, through which the quality and accuracy of an interpreter's skills and adherence to ethical requirements can be reviewed. Project includes recommending an amendment to existing rule 2.891, Periodic review of court interpreter skills and professional conduct, established in 1979, which calls for a biennial review by the courts to review all court interpreter skills. The newly revised rule of court amends the rule and directs courts to the procedures.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-30**

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Title	Action Requested
Court Interpreters: California Court Interpreter Credential Review Procedures	Review and submit comments by June 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Repeal and adopt Cal. Rules of Court, rule 2.891; adopt <i>California Court Interpreter Credential Review Procedures</i>	January 1, 2019
Proposed by	Contact
Court Interpreters Advisory Panel	Sonia Sierra Wolf
Hon. Brian L. McCabe, Chair	415-865-4288
Shawn Landry, Vice-Chair	<a href="mailto:sonia.sierrawolf@jud.ca.gov">sonia.sierrawolf@jud.ca.gov</a>

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### **Executive Summary and Origin**

To implement Recommendation 64 in the *Strategic Plan for Language Access in the California Courts* adopted by the Judicial Council in January 2015, and to fulfill the legislative mandate to adopt standards and requirements for interpreter discipline, the Court Interpreters Advisory Panel proposes to (1) repeal California Rules of Court, rule 2.891, on periodic review of court interpreter skills and professional conduct, and adopt new rule 2.891; and (2) adopt the *California Court Interpreter Credential Review Procedures*. The new rule of court directs the courts to the credential review procedures, which establish a process for the Judicial Council, as the court interpreter credentialing body, through Legal Services office staff, to review allegations of professional misconduct or malfeasance against a California certified or registered court interpreter. Any adjudications would be conducted by the California Office of Administrative Hearings.

### **Background**

The Judicial Council has yet to establish court interpreter discipline procedures at the state credentialing level. With the adoption of the *Strategic Plan for Language Access in the California Courts*, and to comply with the Judicial Council's legislative mandate, it became imperative to put procedures in place that address allegations in the form of a written complaint against a spoken-language, California certified or registered court interpreter that may rise to the level of initiating a review of the court interpreter's credential, which licenses an interpreter to

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

interpret in California. The results of the credential review may require sanctions against an interpreter's credential, up to and including revocation of the credential, and removal from the *Judicial Council's Master List of Certified and Registered Court Interpreters*, (Master List).<sup>1</sup>

The Court Interpreters Advisory Panel (CIAP) is charged, under rule 10.51 of the California Rules of Court,<sup>2</sup> with making recommendations to the council on: interpreter use and need for interpreters in court proceedings; and certification, registration, renewal of certification and registration, testing, recruitment, training, continuing education, and professional conduct of interpreters. CIAP's Professional Standards and Ethics Subcommittee undertook LAP Recommendation 64, *Complaints regarding court interpreters*, which states:

The Judicial Council, together with stakeholders, will develop a process by which the quality and accuracy of an interpreter's skills and adherence to ethical requirements can be reviewed. This process will allow for appropriate remedial action, where required, to ensure certified and registered interpreters meet all qualification standards. Development of the process should include determination of whether California Rule of Court 2.891 (regarding periodic review of court interpreter skills and professional conduct) should be amended, repealed, or remain in place. Once the review process is created, information regarding how it can be initiated must be clearly communicated to court staff, judicial officers, attorneys, and in plain language to court users (e.g., [limited English proficient (LEP)] persons and justice partners).

A court's decision to either terminate a contract or dismiss an employee for violation of rule 2.890, *Professional conduct for interpreters*, which establishes the ethical canons for court interpreters, or termination for acts of malfeasance, does not affect a court interpreter's credential and standing on the Master List. This allows a court interpreter to continue on the Master List, as the court interpreter remains credentialed and is able to accept other interpreting assignments. Rule 2.890 was adopted effective January 1999 and provides the legal authority and foundation for disciplinary procedures as legislatively mandated in Government Code section 68562(d), which provides, "The Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. The Judicial Council shall adopt standards of professional conduct for court interpreters."

To comply with Recommendation 64 in the LAP, CIAP's Professional Standards and Ethics Subcommittee developed a complaint-based credential review process.

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<sup>1</sup> The only way an interpreter currently risks losing his or her credential to interpret in the California courts is for nonpayment of the annual fee, or failure to complete continuing education and professional assignment requirements: <http://www.courts.ca.gov/23507.htm>.

<sup>2</sup> [http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_51](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_51)

Research found that all other state courts that have disciplinary procedures in place, and professional organizations, including the California Court Reporters Board, California State Bar, and Registry for Interpreters of the Deaf, share one common characteristic: disciplinary procedures result from the initiation of a complaint.

In addition, it was found that rule 2.891, which calls for local courts to conduct a biennial review of a court interpreter's interpreting skills—including both employees and independent contractors—needed to be repealed and replaced to account for realistic conditions that have impeded the courts' ability to comply with the rule as written.

## **The Proposal**

The Court Interpreters Advisory Panel proposes repeal and adoption of rule 2.891, and adoption of the *California Court Interpreter Credential Review Procedures*.

### **Rule 2.891**

As currently written, rule 2.891 requires the courts to conduct a biennial review of the skill level and performance of both employee and independent contractor interpreters. Trial courts have been unable to conduct such evaluations because:

- With over 150 languages interpreted in the California courts and with more than 1,850 court interpreters on the Master List,<sup>3</sup> it is extremely difficult to establish a consistent set of standards and guidelines against which to fairly evaluate interpreter services.
- Trial courts generally lack the resources and expertise to conduct such evaluations even if there were a clear set of guidelines and standards.
- An evaluation of interpreting requires an extremely detailed and expansive understanding of the language itself, as well as the technical, legal, and procedural skills involved in interpreting in a court environment.
- Trial courts lack access to third-party linguistic experts who have the command of court practices and terminology necessary to conduct the required evaluation.

As a result of these difficulties, evaluations of employee interpreters have been generally limited to compliance with local personnel policies and collective bargaining agreements for employee interpreters and contractual agreements for contract interpreters.

### **Proposed rule 2.891, Request for court interpreter credential review**

The proposed rule is intended to address the challenges faced by trial courts in complying with the current version of rule 2.891 by offering a realistic replacement that conforms to best practices and procedures in other professions and state court systems. In addition, the rule change recognizes the distinction between the obligation of the credentialing body to ensure interpreters abide by professional conduct and those of the employer to ensure employee interpreters follow workplace policies. Specifically, the replacement rule:

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<sup>3</sup> There are currently 858 court employees on the Master List.



- Reiterates the Judicial Council’s authority to review complaints against a court interpreter;
- Authorizes the implementation of the Judicial Council’s *California Court Interpreter Credential Review Procedures*, a new set of procedures designed to provide a standardized process for investigating and addressing interpreter performance issues as they relate to interpreter licensure; and
- Specifies that trial court authority remains unchanged as it pertains to each court’s local human resource procedures, collective bargaining agreements, or contractual agreements with independent contractors.

### **California Court Interpreter Credential Review Procedures**

The lack of a credential review process has been a source of frustration not only for the courts, but for the LEP community, as well as for the vast majority of interpreters who preserve and maintain the integrity of the profession. The proposed procedures focus on conduct that impacts the status of an interpreter’s credential and are procedures that will address the very few allegations that may rise to the level of requiring an investigation and possible hearing.

As more fully described in the *California Court Interpreter Credential Review Procedures*, allegations in the form of a written complaint, known as a request for a credential review, filed with the Judicial Council, will be reviewed and assessed by Legal Services staff. If warranted, an investigation will be conducted by the Legal Services office or its designees. The Legal Services office will provide written notice to the interpreter who is the subject of the request for review.

At the conclusion of the investigation, if it is determined that grounds for disciplinary action exist, Legal Services staff will prepare a charging document and serve it on the interpreter. The interpreter has the opportunity to request a resolution prior to Legal Services submitting the charging document to the California Office of Administrative Hearings, where an administrative law judge shall serve as the hearing officer. Any decision rendered by the administrative law judge may be reviewed and confirmed by a three-member panel from CIAP. The panel must include a certified or registered court interpreter member of CIAP. Requests for a credential review may also be resolved prior to the issuance of a charging document.

The credential review process does not preclude the courts from receiving complaints, conducting investigations, and taking corrective action against those employee interpreters who violate rules, policies, procedures, and/or collective bargaining agreement provisions applicable to the courts. The credential review process supplements local court actions and:

- Promotes integrity and respect for the profession;
- Aligns court interpreters with the majority of other professions and state courts;
- Provides meaningful access to justice and promotes public trust and confidence in the courts;
- Fulfills the Judicial Council’s mandate under Government Code section 68562 (g); and
- Allows for due process.

### **Alternatives Considered**

CIAP evaluated incorporating specific review and licensure action procedures in a new rule of court. Members determined that such procedures require a simple process for easy updating and modification to meet changing circumstances and requirements over time, which would be difficult to do with a rule. As support for this conclusion, CIAP found that guidelines and procedures for reviewing interpreters' licenses used by other state courts were also not contained in a fixed rule of court. For these reasons, the proposed rule addresses the policy issues of assigning authority to establish and carry out the necessary review procedures while separating the procedures themselves into a separate and more easily updated document.

### **Implementation Requirements, Costs, and Operational Impacts**

Prior to implementation, a comprehensive communication rollout will be implemented that will include operational guidance materials for court leadership, Judicial Council staff, and court personnel.

The estimated costs for those credential reviews that require an investigation and or hearing, as found in these procedures, is entirely dependent on the number of requests for credential reviews received, the number that rise to the level of requiring an investigation, the length and complexity of an investigation, attorney fees, and, if required, the costs associated with hearings that will be conducted by the California Office of Administrative Hearings. The current estimate for 10 hearings is: \$184,000 to \$359,000. CIAP will evaluate these costs after a full year of implementation.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there other grounds for disciplinary action not addressed in the procedures?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 2.891, at page 7
2. Attachment A: *California Court Interpreters Credential Review Procedures*
3. Link B: Cal. Rules of Court, rule 2.890,  
[http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_890](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_890)
4. Link C: *Strategic Plan for Language Access in the California Courts*,  
<http://www.courts.ca.gov/languageaccess.htm>

Rule 2.891 of the California Rules of Court would be repealed and adopted, effective January 1, 2019, to read:

1 Title 2. Trial Court Rules

2  
3 Division 6. Appointments by the Court or Agreement of the Parties

4  
5 Chapter 4. Court Interpreters

6  
7  
8 ***Rule 2.891. ~~Periodic review of~~ Request for court interpreter skills and professional***  
9 ***conduct credential review***

10  
11 ~~Each trial court must establish a procedure for biennial, or more frequent, review of the~~  
12 ~~performance and skills of each court interpreter certified under Government Code section~~  
13 ~~68560 et seq. The court may designate a review panel, which must include at least one~~  
14 ~~person qualified in the interpreter's language. The review procedure may include~~  
15 ~~interviews, observations of courtroom performance, rating forms, and other evaluation~~  
16 ~~techniques.~~

17  
18 Certified and registered court interpreters are credentialed by the Judicial Council under  
19 Government Code section 68562. The council, as the credentialing body, has authority to  
20 review a credentialed interpreter's performance, skills, and adherence to the professional  
21 conduct requirements of rule 2.890, and to impose discipline on interpreters.

22  
23 **(a) Purpose**

24  
25 This rule clarifies the council's authority to adopt disciplinary procedures and to  
26 conduct a credential review as set out in the *California Court Interpreter Review*  
27 *Procedures.*

28  
29 **(b) Application**

30  
31 Under the *California Court Interpreter Credential Review Procedures*, all court  
32 interpreters certified or registered by the council may be subject to a credential  
33 review process after a request for a credential review alleging professional  
34 misconduct or malfeasance. Nothing in this rule prevents an individual California  
35 court from conducting its own review of, and disciplinary process for, interpreter  
36 employees under the court's collective bargaining agreements, personnel policies,  
37 rules, and procedures, or, for interpreter contractors, under the court's contracting  
38 and general administrative policies and procedures.

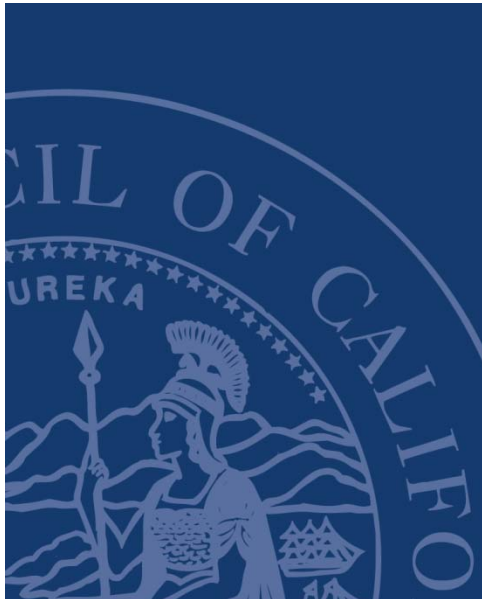
1 **(c) Procedure**  
2

3 (1) On a request made to the council by any person, local court, or other entity  
4 for the review of an interpreter's credential for alleged professional  
5 misconduct or malfeasance by an interpreter credentialed by the council, the  
6 council will respond in accordance with procedures stated in the *California*  
7 *Court Interpreter Credential Review Procedures.*  
8

9 (2) On request by the council in relation to allegations under investigation under  
10 the *California Court Interpreter Credential Review Procedures*, a California  
11 court is required to forward information to the council regarding a complaint  
12 or allegation of professional misconduct by a certified or registered court  
13 interpreter.  
14

15 **(d) Disciplinary action imposed**  
16

17 The appropriateness of disciplinary action and the degree of discipline to be  
18 imposed must depend on factors such as the seriousness of the violation, the intent  
19 of the interpreter, whether there is a pattern of improper activity, and the effect of  
20 the improper activity on others or on the judicial system.  
21



# California Court Interpreter Credential Review Procedures

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EFFECTIVE JANUARY 1, 2019



JUDICIAL COUNCIL  
OF CALIFORNIA

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COURT INTERPRETERS  
ADVISORY PANEL

## Table of Contents

A.	Purpose.....	1
B.	Jurisdiction .....	1
C.	Grounds for Disciplinary Action.....	2
D.	Statute of Limitations.....	2
E.	Submitting a Request for Review.....	2
F.	Assessment of a Request for Review .....	3
G.	Investigation of a Request for Review and Issuance of Charging Document.....	3
H.	Resolution without Issuance of a Charging Document .....	4
I.	Representation of Judicial Council in Disciplinary Hearings .....	5
J.	Right to Representation .....	5
K.	Administrative Law Judge .....	5
L.	Proceedings before the Administrative Law Judge.....	5
M.	Discipline.....	6
N.	Notification of Discipline .....	6
O.	Appeals .....	7
P.	Reinstatement.....	7
Q.	Confidentiality.....	7

# California Court Interpreter Credential Review Procedures

## A. Purpose

Court interpreters play a critical role in facilitating accurate communications between the court and limited-English-proficient users. In performing that crucial function, court interpreters are governed by the professional conduct provisions of rule 2.890 of the California Rules of Court.<sup>1</sup> The Judicial Council of California adopts these credential review procedures in accordance with Government Code section 68562(d), which provides: “The Judicial Council shall adopt standards and requirements for interpreter proficiency, continuing education, certification renewal, and discipline. The Judicial Council shall adopt standards of professional conduct for court interpreters.”

These procedures reinforce the professional standards for certified and registered court interpreters by:

- (1) Establishing a process for the Judicial Council, under its authority to issue court interpreter credentials, to review allegations of professional misconduct or malfeasance against certified and registered court interpreters;
- (2) Defining the due process protections and procedures governing the credential review process;
- (3) Seeing that California certified and registered court interpreters meet and maintain minimum professional standards of practice; and
- (4) Safeguarding the quality and integrity of credentialed court interpreters in California.

Nothing in these procedures will preclude a superior court—consistent with the court’s applicable memoranda of understanding, personnel policies, and/or local rules—from receiving and investigating complaints, conducting investigations, and taking the necessary disciplinary or corrective action against interpreter employees or contractors who violate a court’s rules, policies, and procedures.

## B. Jurisdiction

Every certified or registered spoken-language interpreter on the Judicial Council’s Master List of Certified and Registered Court Interpreters (Master List) is subject to these procedures.<sup>2</sup> Jurisdiction over an interpreter to enforce and act under these procedures exists regardless of whether the interpreter resides in California.

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<sup>1</sup> *Professional Standards and Ethics for California Court Interpreters*, published by the Judicial Council, is based largely on the principles and requirements set forth in rule 2.890 of the California Rules of Court. The manual is available at [www.courts.ca.gov/documents/CIP-Ethics-Manual.pdf](http://www.courts.ca.gov/documents/CIP-Ethics-Manual.pdf).

<sup>2</sup> American Sign Language interpreters are credentialed by the Registry of Interpreters for the Deaf (RID). Information about filing a request for review of an RID-certified interpreter is found at [www.rid.org/ethics/file-a-complaint/](http://www.rid.org/ethics/file-a-complaint/).



## California Court Interpreter Credential Review Procedures

### C. Grounds for Disciplinary Action

As the entity responsible for issuing credentials to court interpreters in California, the Judicial Council may discipline any certified or registered court interpreter. The grounds for disciplinary action include:

- (1) Violation of rule 2.890 of the California Rules of Court;
- (2) Gross incompetence;
- (3) Deliberate misrepresentation of a certified or registered court interpreter credential, including failure to notify relevant parties of a suspension or revocation of a court interpreter credential;
- (4) Knowing and reckless disclosure of confidential or privileged information obtained while serving in an official capacity;
- (5) Fraud, dishonesty, or corruption related to the functions and duties of a court interpreter;
- (6) Conviction of a felony or misdemeanor;
- (7) Violation of California or federal law, including discrimination and harassment laws;
- (8) False or deceptive advertising after receipt of notification to discontinue; and
- (9) Violation of duties imposed by these rules.

### D. Statute of Limitations

Complaints submitted to the Judicial Council more than 90 days after the alleged misconduct will be rejected as untimely.

### E. Submitting a Request for Review<sup>3</sup>

Any person or entity may submit a request for a credential review to the Judicial Council regarding a spoken-language interpreter who is a California certified or registered court interpreter and enrolled on the Master List. The request for review:

- (1) Must be submitted using the *Request for Court Interpreter Credential Review* form available on the “Court Interpreters Program” webpage of the California Courts website at [\[insert path once form available\]](#).
- (2) Must be signed under penalty of perjury.
- (3) May be submitted in person, sent by e-mail, or mailed to:

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<sup>3</sup> Consistent with the procedures outlined in rule 2.851 of the California Rules of Court, any person or entity may submit a language access services complaint to a local court using the language access services complaint form available on the local court’s website.

## California Court Interpreter Credential Review Procedures

Court Interpreters Program  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
*[will supply dedicated e-mail address]*

- (4) Must include a detailed description of the alleged misconduct including, if known or available, the date, time, location, name of interpreter, the interpreter's badge number, the case file number of the proceeding interpreted, the names and contact information of any potential witnesses, and any documents or evidence that support the allegations.
- (5) May be submitted anonymously, but no acknowledgment or notice of any action taken will be received.

### F. Assessment of a Request for Review

Within 30 days of receipt of the request for review, designated Judicial Council staff will assess the request for review and determine whether it is complete, meets jurisdictional requirements, and provides sufficient factual allegations that, if true, would constitute grounds for discipline.

- (1) If the request for review does not meet these requirements, it will be rejected and the petitioner will be notified; or
- (2) If the request for review meets the requirements, council staff will provide written notice to the interpreter who is the subject of the request for review. The notice will contain a summary of the allegation(s), the date the allegation(s) took place, and the case file number of the case interpreted, if available. The notice must be sent within 45 days of the receipt of the request for review by the council staff; or
- (3) If the interpreter whose conduct is the subject of the request for review is being prosecuted or for other good cause, council staff may defer assessment of the request for review. Council staff will notify the petitioner and the subject interpreter of the deferral, the reasons for the deferral, and its anticipated duration, if known.

### G. Investigation of a Request for Review and Issuance of Charging Document

Investigations of requests for review that proceed under section F, subdivision (2), will be conducted by the Judicial Council's Legal Services office, or its designees.

- (1) The investigation may include but is not limited to:
  - (a) Interviewing the petitioner, interpreter, witnesses, and other relevant persons. If the interpreter chooses not to respond, the investigation may continue without the interpreter's participation;
  - (b) Reviewing records, documents, case files, and other materials;

## California Court Interpreter Credential Review Procedures

- (c) Requesting information from the interpreter and other relevant parties. The interpreter must respond to all inquiries within 30 days of receipt of the notice of the inquiry. If the interpreter chooses not to respond, the investigation may continue without the interpreter's participation; and
  - (d) Consulting with a subject matter expert on the duties and requirements to serve as a court interpreter.
- (2) At the conclusion of the investigation, if Legal Services staff determines that grounds for discipline exist, they will prepare a charging document that includes the evidentiary basis for their conclusions and serve it on the interpreter.
  - (3) The interpreter may request a hearing to contest the charges after engaging in good faith dispute resolution efforts as set out in section G, subdivision (4). To request a hearing, the interpreter must serve a Notice of Defense to the Judicial Council's Legal Services office within 30 days of service of the charging document. Failure to timely serve a Notice of Defense by the deadline will result in the adoption of the findings.
  - (4) Prior to requesting a hearing, the interpreter and Legal Services staff must engage in good faith dispute resolution efforts. If they are unable to resolve the charges, the case will proceed to hearing.

### H. Resolution without Issuance of a Charging Document

With the approval of Judicial Council staff, a request for review may be resolved before the issuance of a charging document.

- (1) A request for review may be resolved by:
  - (a) Voluntary withdrawal of the request for review by the petitioner before the issuance of the charging document;
  - (b) Voluntary surrender of the interpreting credential by the interpreter and removal of the interpreter from the Master List; or
  - (c) A settlement agreement that is signed by the interpreter and the council's Administrative Director or his or her designee. Approval from the Administrative Director or his or her designee constitutes a final decision and is not subject to further review.
- (2) Voluntary surrender of the interpreting credential requires the interpreter to provide the council's Legal Services office with written notice of the interpreter's voluntary surrender of the interpreting credential. Upon submission of the written notice to Legal Services, any disciplinary proceedings will terminate. The request for review and the disciplinary proceedings may be reviewed in the event the interpreter seeks to reinstate his or her credential.

## **California Court Interpreter Credential Review Procedures**

- (3) Information about resolutions may be posted on the “Court Interpreters Program” webpage consistent with the rules regarding public disclosure.

### **I. Representation of Judicial Council in Disciplinary Hearings**

Attorneys in the Judicial Council’s Legal Services office or their designees will prosecute the allegations in the charging document on behalf of the council on all matters identified under these procedures, and perform other duties as required by these procedures, including representing the council in disciplinary hearings.

### **J. Right to Representation**

An interpreter may be represented by counsel under these procedures at the interpreter’s expense.

### **K. Administrative Law Judge**

An administrative law judge from the California Office of Administrative Hearings will serve as the hearing officer for all relevant proceedings identified under these procedures and perform other duties as required by these procedures.

### **L. Proceedings before the Administrative Law Judge**

The administrative law judge may do any of the following:

- (1) Set a hearing to review the charging document in accordance with the following requirements:
  - (a) Hearings will be governed by the Administrative Procedure Act (Gov. Code, § 11340 et seq.);
  - (b) Hearings must be reported or recorded and must be private and confidential, except upon request of the interpreter facing the allegation of misconduct; and
  - (c) The petitioner and interpreter must be given 30 days’ notice of the scheduled hearing. Each party will be able to testify under oath, present evidence, call witnesses, and may be represented by an attorney, at his or her expense.
- (2) Request additional evidence from the petitioner, witnesses, and other relevant sources.
- (3) Request additional evidence from the interpreter.
- (4) Upon making a determination regarding the allegation of misconduct in the charging document, the administrative law judge may:
  - (a) Dismiss the charging document, in whole or in part;
  - (b) Determine that the allegation warrants disciplinary action, based on a clear and convincing evidentiary standard; and

## California Court Interpreter Credential Review Procedures

- (c) Identify the specific disciplinary action to be taken.
- (5) Any decision made by the administrative law judge under subdivision (4) may be reviewed and confirmed by a review authority, composed of three members representing the Court Interpreters Advisory Panel.<sup>4</sup>

### M. Discipline

- (1) The specific disciplinary action and degree of discipline to be imposed must include consideration of aggravating and mitigating circumstances including but not limited to:
  - (a) The intent of the interpreter;
  - (b) The gravity and impact of the harm to the petitioner, the court, or judicial processes; and
  - (c) The interpreter's history of prior discipline, including any pattern of improper conduct.
- (2) Discipline may include but is not limited to one or more of the following:
  - (a) Revocation of certified or registered status that is permanent or of specified duration;
  - (b) Suspension of certified or registered status for a specified period of time after which the interpreter must make a written request to the council for reinstatement of his or her credential;
  - (c) Probation for a fixed period of two years or less during which time the interpreter must meet the probationary terms as defined by the review authority;
  - (d) Requirement that specific education courses be taken;
  - (e) Public or private reprimand on record; and
  - (f) Requirement that the court interpreter take the credential examinations in place at the time discipline is imposed.

### N. Notification of Discipline

- (1) The Judicial Council must notify the petitioner, the interpreter, and all relevant courts within 30 days of any disciplinary action taken.
- (2) The council may post information about disciplinary sanctions on the "Court Interpreters Program" webpage consistent with the rules governing public disclosure.

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<sup>4</sup> One member of the three-member review authority must be a certified or registered court interpreter member of the Judicial Council's Court Interpreters Advisory Panel.

## **California Court Interpreter Credential Review Procedures**

### **O. Appeals**

The interpreter may appeal the review authority's decision as authorized by Government Code section 11523 of the Administrative Procedure Act (Gov. Code, § 11370 et seq.).

### **P. Reinstatement**

An interpreter whose court interpreter credential has been suspended or revoked may apply in writing to the Judicial Council for reinstatement within the time established in the disciplinary order. The council will have sole discretion in determining whether the conditions for reinstatement have been satisfied.

### **Q. Confidentiality**

All requests for review, evidence collected, and investigations must be confidential, except when a final decision to impose a disciplinary action is reached. In those limited circumstances, the final decision, the grounds for the disciplinary action, and the facts cited to support the final decision must be accessible to the public.

For the purposes of this section, a final decision occurs in accordance with section L, after the expiration of the deadline to file an appeal, or, upon a decision in accordance with section O. Publicly accessible information may be posted on the Judicial Council's "Court Interpreters Program" webpage, or may be made available through a public records request to the Judicial Council under Government Code section 68106.2 and rule 10.500 et seq. of the California Rules of Court.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Probate Conservatorship: Major Neurocognitive Disorder

*Committee or other entity submitting the proposal:*

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

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

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Proposal to revise Capacity Declaration—Conservatorship (form GC-335) and Dementia Attachment to Capacity Declaration—Conservatorship (form GC-335A) to facilitate completion of the form by clinical psychologists and psychiatrists consistent with law without diminishing its usefulness to the courts. Provide expressly for placement of a submitted form in the confidential portion of the case file. Replace “dementia” with “major neurocognitive disorder” or “MNCD” to conform to SB 413 (Stats. 2017, ch. 122).

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

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

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# INVITATION TO COMMENT

**SPR18-31**

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Title	Action Requested
Probate Conservatorship: Major Neurocognitive Disorder	Review and provide comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385	January 1, 2019
Proposed by	Contact
Probate & Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Diana Glick, 916-643-7012 diana.glick@jud.ca.gov Corby Sturges. 415-865-4507 corby.sturges@jud.ca.gov

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## Executive Summary and Origin

The Probate & Mental Health Advisory Committee proposes revising eight forms to implement recent legislation that replaced the term “dementia” with “major neurocognitive disorder” to conform to current usage in the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*.

## Background

Until 2013, the DSM used the term “dementia” to refer to a syndrome characterized by “multiple cognitive deficits, which include memory impairment and at least one of the following: aphasia, apraxia, agnosia or disturbance in executive functioning. Social or occupational function is also impaired.”<sup>1</sup> Following the recommendations of a work group to revise the diagnostic criteria for dementia and other similar disorders, the American Psychological Association (APA) published extensive revisions as part of the 5th edition of the DSM (DSM-5) in 2013.<sup>2</sup>

The DSM-5 replaced the term “dementia” with “major neurocognitive disorder” and revised the disorder’s diagnostic criteria. The drafters intended not to eliminate the use of dementia entirely,

<sup>1</sup> Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revision (DSM-IV-TR)* (2000).

<sup>2</sup> Am. Psychiatric Assn., *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)* (2013).



but to recognize that the term comprised several separate diagnoses and subsume them all under the broad category of major neurocognitive disorders.<sup>3</sup> The work group proposed including the term dementia in parentheses to allow its continued use in contexts where it is the standard term.<sup>4</sup>

## **The Proposal**

The Probate and Mental Health Advisory Committee proposes revising eight Judicial Council forms, effective January 1, 2019, to implement Senate Bill 413 (Stats. 2017, ch. 122). Following the guidance of the DSM-5, SB 413 amended section 2356.5 of the Probate Code, effective January 1, 2018, to replace the term “dementia” with “major neurocognitive disorder.”

In a general probate conservatorship established under section 1830 of the Probate Code, the conservator does not hold authority to place the conservatee in a mental health treatment facility or to authorize the administration of medication to treat mental disorders against the conservatee’s will. But if the conservatee has a major neurocognitive disorder, formerly known as dementia, section 2356.5 allows a court to grant the conservator authority (1) to place the conservatee in a secured-perimeter residential care facility for the elderly and (2) to authorize the administration to the conservatee of medications appropriate for the care and treatment of major neurocognitive disorder. (Prob. Code, § 2356.5(b) & (c).) Both orders are contingent on specific judicial findings, by clear and convincing evidence, that the conservatee has a major neurocognitive disorder, lacks the capacity to give informed consent to the proposed placement or treatment, and needs or would benefit from the placement or treatment. (*Ibid.*)

Several Judicial Council guardianship and conservatorship forms directly implement the provisions of section 2356.5. Other forms refer to these forms or to so-called dementia powers. The proposal would replace uses of the term “dementia,” in all forms where the term occurs, with “major neurocognitive disorder (dementia).” In addition, the proposal would delete the term “psychotropic” from the phrase “psychotropic medications appropriate for the care and treatment of dementia” wherever that phrase occurs to promote internal consistency and conform to the language of Probate Code section 2356.5(c). Finally, the proposal would make technical changes to promote clarity and utility.

Specifically, the Probate and Mental Health Advisory Committee proposes revising Judicial Council forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385, effective January 1, 2019, as follows:

1. Revise form GC-310, *Petition for Appointment of Probate Conservator*, to replace “dementia” in item 1k with “major neurocognitive disorder (dementia)” and to track the language of Probate Code section 1420 more closely in item 5f.

<sup>3</sup> Mary Ganguli et al., “Classification of Neurocognitive Disorders in DSM-5: A Work in Progress” (Mar. 2011) 19(3) *Am. J. Geriatric Psychiatry* 205–210.

<sup>4</sup> *Ibid.*

2. Revise form GC-313, *Attachment Request Special Orders Regarding Dementia*, to replace “dementia” with “major neurocognitive disorder (dementia)” throughout, including in the title, to delete “dementia” from the heading of item 5 so that it would simply read “Medications,” and to make technical changes to clarify the context of the form’s use.
3. Revise form GC-333, *Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA*, to replace references to “dementia” in items 2c and 3 with “major neurocognitive disorder (dementia)” and to simplify the caption.
4. Revise form GC-334, *Ex Parte Order Re Completion of Capacity Declaration—HIPAA*, to replace “dementia” in items 1, 6c, and 8 with “major neurocognitive disorder (dementia)” and to simplify and clarify the caption, item 2, item 9, and the clerk’s certification.
5. Revise form GC-335, *Capacity Declaration—Conservatorship*, to replace “dementia” with “major neurocognitive disorder (dementia)” throughout, to clarify the instructions, .
6. Revise form GC-335A, *Dementia Attachment to Capacity Declaration—Conservatorship*, to replace “dementia” with “major neurocognitive disorder (dementia)” throughout, to delete “dementia” from the heading of item 9b so that it would read “administration of medications,” to delete “psychotropic” from the phrase “psychotropic medications appropriate to the care of major neurocognitive disorder (dementia)” to conform to the usage in Probate Code section 2356.5(c) and to ensure that conservatees receive the protection intended by the statute, to simplify the description of the standard for lack of capacity to give informed consent in items 9a(4) and 9b(4), and to make technical changes.
7. Revise form GC-380, *Petition for Exclusive Authority to Give Consent for Medical Treatment*, to replace the references to “dementia” in item 1d with “major neurocognitive disorder (dementia).”
8. Revise form GC-385, *Order Authorizing Conservator to Give Consent for Medical Treatment*, to replace the references to “dementia” in item 2e with “major neurocognitive disorder (dementia)” to clarify the instructions, and to make technical changes.

### **Alternatives Considered**

The committee considered removing all references to dementia from the forms, but concluded that this removal would be premature. Replacement of a commonly used term without a trace, especially when substituting each use of the former term with a new, undefined, technical term, seems calculated to lead to confusion and uncertainty among legal and medical professionals, other justice partners, and, especially, self-represented litigants. In light of this consideration and

consistent with the recommendation of the APA work group, the committee opted to use “major neurocognitive disorder” whenever dementia is used and to preserve “dementia” in parentheses for clarity.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation will require courts that provide paper versions of these forms to incur production and copying costs.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the term “psychotropic” be removed from references to “medications appropriate for the care and treatment of major neurocognitive disorder” on form GC-335A to make these references consistent with section 2356.5(c) and current usage on other forms?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380 and GC-385, at pages 5–23
2. Sen. Bill 413,  
[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB413](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB413)

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):	<i>FOR COURT USE ONLY</i>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF (name): <div style="text-align: right;">(PROPOSED) CONSERVATEE</div>	
<b>PETITION FOR APPOINTMENT OF</b> <input type="checkbox"/> <b>SUCCESSOR</b> <b>PROBATE CONSERVATOR OF THE</b> <input type="checkbox"/> <b>PERSON</b> <input type="checkbox"/> <b>ESTATE</b>  <input type="checkbox"/> <b>Limited Conservatorship</b>	CASE NUMBER:  HEARING DATE AND TIME: DEPT.:

1. Petitioner (name):

requests that

- a. (Name):
- (Address):

(Telephone):

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

- b. (Name):
- (Address):

(Telephone):

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

- c. (1)  bond not be required  because the proposed  successor conservator is a corporate fiduciary or an exempt government agency.  for the reasons stated in Attachment 1c.
- (2)  bond be fixed at: \$ \_\_\_\_\_ to be furnished by an authorized surety company or as otherwise provided by law. (Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code section 2320.)
- (3)  \$ \_\_\_\_\_ in deposits in a blocked account be allowed. Receipts will be filed. (Specify institution and location):

- d.  orders authorizing independent exercise of powers under Probate Code section 2590 be granted. Granting the proposed  successor conservator of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship estate. (Specify orders, powers, and reasons in Attachment 1d.)
- e.  orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted. (Specify orders, facts, and reasons in Attachment 1e.)
- f.  orders relating to the powers and duties of the proposed  successor conservator of the person under Probate Code sections 2351–2358 be granted. (Specify orders, facts, and reasons in Attachment 1f.)
- g.  the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer and that the proposed  successor conservator of the person be granted the powers specified in Probate Code section 2355. (Complete item 9 on page 6.)

Do NOT use this form for a temporary conservatorship.

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
(PROPOSED) CONSERVATEE	

1. h.  (for limited conservatorship only) orders relating to the powers and duties of the proposed limited conservator of the person under Probate Code section 2351.5 be granted. (Specify orders, powers, and duties in Attachment 1h and complete item 1j.)  successor \*
- i.  (for limited conservatorship only) orders relating to the powers and duties of the proposed limited conservator of the estate under Probate Code section 1830(b) be granted. (Specify orders, powers, and duties in Attachment 1i and complete item 1j.)  successor \*
- j.  (for limited conservatorship only) orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. (Specify limitations in Attachment 1j.)
- k.  orders related to placement or treatment for major neurocognitive disorder (dementia) as specified in the Attachment Requesting Special Orders Regarding Major Neurocognitive Disorder (Dementia) (form GC-313) under Probate Code section 2356.5 be granted. A Capacity Declaration—Conservatorship (form GC-335) and Major Neurocognitive Disorder (Dementia) Attachment to Capacity Declaration—Conservatorship (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure with at least two years experience diagnosing major neurocognitive disorder (dementia),  are filed herewith.  will be filed before the hearing.
  - (appointment of successor conservator only) will not be filed because an order relating to placement or treatment for major neurocognitive disorder (dementia) was filed on (date): . That order has neither expired by its terms nor been revoked.
- l.  other orders be granted. (Specify in Attachment 1l.)

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

3. a.  **Jurisdictional facts** (initial appointment only) The proposed conservatee has no conservator in California and is a
  - (1)  resident of California and
    - (a)  a resident of this county.
    - (b)  not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
  - (2)  nonresident of California but
    - (a)  is temporarily living in this county, or
    - (b)  has property in this county, or
    - (c)  commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.
- b. **Petitioner** (answer items (1) and (2) and check all other items that apply)
  - (1)  is  is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
  - (2)  is  is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
  - (3)  is the proposed  successor conservator.
  - (4)  is the (proposed) conservatee. (If this item is **not** checked, you must also complete item 3f.)
  - (5)  is the spouse of the (proposed) conservatee. (You must also complete item 6.)
  - (6)  is the domestic partner or former domestic partner of the (proposed) conservatee. (You must also complete item 7.)
  - (7)  is a relative of the (proposed) conservatee as (specify relationship):
  - (8)  is an interested person or friend of the (proposed) conservatee.
  - (9)  is a state or local public entity, officer, or employee.
  - (10)  is the guardian of the proposed conservatee.
  - (11)  is a bank  is another entity authorized to conduct the business of a trust company.
  - (12)  is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)

\* See item 5b on page 4.

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

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

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

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

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

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

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

(2)  Estimated value of personal property: \$ \_\_\_\_\_

(3) Annual gross income from

- (a) real property: \$ \_\_\_\_\_
- (b) personal property: \$ \_\_\_\_\_
- (c) pensions: \$ \_\_\_\_\_
- (d) wages: \$ \_\_\_\_\_
- (e) public assistance benefits: \$ \_\_\_\_\_
- (f) other: \$ \_\_\_\_\_

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

(5) Real property: \$ \_\_\_\_\_

- (a)  per Inventory and Appraisal identified in item (1).
- (b)  estimated value.

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

- (1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).
- (2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
(PROPOSED) CONSERVATEE	

3. g. So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee  has not  has been filed in another jurisdiction, including a court of an Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

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

**4. (Proposed) conservatee**

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

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

c.  is  is not, so far as is known to petitioner, a member of a federally recognized Indian tribe.  
*(If you answered "is," complete items (1)–(4)):*

(1) Name of tribe:

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

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

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

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

(1)  is an adult.

(2)  will be an adult on the effective date of the order *(date):*

(3)  is a married minor.

(4)  is a minor whose marriage has been dissolved.

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

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

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

CONSERVATORSHIP OF <i>(name):</i>  <p style="text-align: right;">(PROPOSED) CONSERVATEE</p>	CASE NUMBER:
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5. c. **(Proposed) conservatee** requires a conservator and is

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

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



CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
(PROPOSED) CONSERVATEE	

5. d.  (Proposed) conservatee voluntarily requests the appointment of a  successor conservator.  
*(Specify facts showing good cause in Attachment 5(d).)*
- e.  Confidential Supplemental Information (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*
- f. **(Proposed) conservatee**  does  does not have a developmental disability as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. *(Specify the nature and degree of the alleged disability in Attachment 5f).*
6.  **Petitioner or proposed**  **successor conservator is the spouse of the (proposed) conservatee.**  
*(If this statement is true, you must answer a or b.)*
- a.  The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
- b.  Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
- (1)  a  successor conservator be appointed.
- (2)  the spouse be appointed as the  successor conservator.  
*(If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)*
7.  **Petitioner or proposed**  **successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** *(If this statement is true, you must answer a or b.)*
- a.  The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
- b.  Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
- (1)  a  successor conservator be appointed.
- (2)  the domestic partner or former domestic partner be appointed as the  successor conservator.  
*(If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)*
8. **(Proposed) conservatee** *(check all that apply)*
- a.  will attend the hearing AND  is the petitioner  is not the petitioner AND  has  has not nominated the proposed  successor conservator.
- b.  *(initial appointment of conservator only)* is able but unwilling to attend the hearing AND  does  does not wish to contest the establishment of a conservatorship,  does  does not object to the proposed conservator, AND  does  does not prefer that another person act as conservator.
- c.  *(initial appointment of conservator only)*: is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner  is filed with this petition.  will be filed before the hearing.
- d.  *(initial appointment of conservator only)* is not the petitioner, is out of state, and will not attend the hearing.
- e.  *(appointment of successor conservator only)* will not attend the hearing.
9.  **Medical treatment of (proposed) conservatee**
- a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
- b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,  
 is filed with this petition.  will be filed before the hearing.  will not be filed for the reason stated in c.
- c.  *(appointment of successor conservator only)* The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on *(date)*:  
 That order has neither expired by its terms nor been revoked.
- d. (Proposed) conservatee  is  is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

CONSERVATORSHIP OF <i>(name):</i>  <div style="text-align: right;">(PROPOSED) CONSERVATEE</div>	CASE NUMBER:
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10.  **Temporary conservatorship**

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

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

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

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

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

Continued on Attachment 11.

CONSERVATORSHIP OF <i>(name):</i>  <div style="text-align: right;">(PROPOSED) CONSERVATEE</div>	CASE NUMBER:
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12.  **Confidential conservator screening form**

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

13.  **Court investigator**

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

14. Number of pages attached:

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

 \_\_\_\_\_

(SIGNATURE OF ATTORNEY FOR PETITIONER)

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

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

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME OF PETITIONER)

 \_\_\_\_\_

(SIGNATURE OF PETITIONER)

\_\_\_\_\_

(TYPE OR PRINT NAME OF PETITIONER)

 \_\_\_\_\_

(SIGNATURE OF PETITIONER)

CONSERVATORSHIP OF (Name):	CASE NUMBER:
CONSERVATEE	
<b>ATTACHMENT REQUESTING SPECIAL ORDERS REGARDING MAJOR NEUROCOGNITIVE DISORDER (DEMENTIA)</b>	
<input type="checkbox"/> <b>Petition for Appointment of Probate Conservator (form GC-310)</b>	
<input type="checkbox"/> <b>Petition for Exclusive Authority to Give Consent for Medical Treatment (form GC-380)</b>	

1. Petitioner **requests** that the conservator of the person be authorized
  - a.  to place the conservatee in a secured perimeter residential care facility for the elderly operated under Health and Safety Code section 1569.698 and which has a care plan that meets the requirements of California Code of Regulations, title 22, section 87724.
  - b.  to authorize the administration of medications appropriate for the care and treatment of **major neurocognitive disorder (dementia)**.
2. The conservatee or proposed conservatee has a **major neurocognitive disorder (dementia)** as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*.
3. A medical declaration executed by a licensed physician or a licensed psychologist acting within the scope of his or her licensure with at least two years' experience in diagnosing **major neurocognitive disorder (dementia)**:
  - a.  has been filed.
  - b.  will be filed before the hearing.
4.  **Restricted placement.** The conservatee needs or would benefit from placement as requested in item 1a. The conservatee lacks capacity to give informed consent to this placement. The placement requested is the least restrictive placement appropriate to the needs of the conservatee.
5.  **Medications.** The conservatee needs or would benefit from medications appropriate to the care and treatment of **major neurocognitive disorder (dementia)**. The conservatee lacks capacity to give informed consent to the administration of those medications.

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):	<b>FOR COURT USE ONLY</b>  <div style="border: 1px solid black; padding: 10px; text-align: center;"> <b>DRAFT</b>   <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b> </div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): PROPOSED CONSERVATEE	CASE NUMBER: CONSERVATORSHIP PETITION HEARING DATE:
<b>EX PARTE APPLICATION FOR ORDER AUTHORIZING          COMPLETION OF CAPACITY DECLARATION—HIPAA*</b>	DEPT.: TIME:

1. Applicant (name):  
has filed a petition for the appointment of a conservator for the above-named proposed conservatee. The petition is set for hearing on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ in  Dept.:  Rm.:
2. The petition requests (check all that apply):
  - a.  A finding that the proposed conservatee should be excused from attending the hearing on the petition.
  - b.  Exclusive authority to consent to medical treatment for the proposed conservatee.
  - c.  Major neurocognitive disorder (dementia) powers.
  - d.  Appointment of a conservator of the estate.
  - e.  Other (specify): \_\_\_\_\_
3. Applicant has requested (name each declarant): \_\_\_\_\_

to complete, sign, and deliver to applicant for use to support the petition a  
 Capacity Declaration—Conservatorship (form GC-335)  
 and a Major Neurocognitive Disorder (Dementia) Attachment to Capacity Declaration—Conservatorship (form GC-335A)  
 (the Declaration), concerning the medical condition or mental capacity of (name of proposed conservatee): \_\_\_\_\_

4. The proposed conservatee has not consented to the disclosure of any private medical information that would be disclosed by the completed Declaration.
5. Applicant requests this court to authorize each declarant named in item 3 to complete, sign, and deliver the Declaration to applicant within 15 days of the declarant's receipt of the court's order.
6. Applicant requests this court to dispense with notice of hearing on this application.

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 APPLICANT'S NAME) ▶ (APPLICANT'S SIGNATURE)

\* The federal Health Insurance Portability and Accountability Act of 1996. Use this form with *Ex Parte Order Re Completion of Capacity Declaration—HIPAA* (form GC-334).

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
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): PROPOSED CONSERVATEE	CASE NUMBER: CONSERVATORSHIP PETITION HEARING DATE:
<b>EX PARTE ORDER RE COMPLETION OF CAPACITY DECLARATION—HIPAA*</b>	DEPT.: TIME:

1. Attached to this order is a *Capacity Declaration—Conservatorship* (form GC-335)  and a *Major Neurocognitive Disorder (Dementia) Attachment to Capacity Declaration—Conservatorship* (form GC-335A) (the Declaration).
2. (Name):  having applied for an order authorizing the declarant(s) named in item 5 to complete, sign, and return the Declaration for the purpose specified in item 6, and good cause appearing:

**THE COURT FINDS**

3. Notice of the hearing on the application should be dispensed with and the application should be granted.
4. A petition for the appointment of a conservator has been filed in this proceeding by (name of petitioner):  
 This petition is set for hearing on (date): \_\_\_\_\_ at (time): \_\_\_\_\_ in  Dept. :  Rm. :
5. Declarant (name each):  
  
 has been requested to complete and sign the Declaration for the purpose specified in item 6.
6. Petitioner proposes to use the Declaration to provide evidence to support (check all that apply):
  - a.  A finding that the proposed conservatee should be excused from attending the hearing on the petition.
  - b.  A request for exclusive authority to consent to medical treatment for the proposed conservatee.
  - c.  A request for major neurocognitive disorder (dementia) powers.
  - d.  The appointment of a conservator of the estate.
  - e.  Other (specify): \_\_\_\_\_

\* The federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

CONSERVATORSHIP OF (Name):	CASE NUMBER:
PROPOSED CONSERVATEE	

**THE COURT ORDERS**

- 7. Notice of hearing on the application is dispensed with.
- 8. Each declarant named below is authorized to complete, sign, and deliver to the attorney or other person whose address appears at the top of page 1 of this order the original of the Declaration, consisting of:
  - a. *Capacity Declaration—Conservatorship* (form GC-335) (name each authorized declarant):

b.  and *Major Neurocognitive Disorder (Dementia) Attachment to Capacity Declaration—Conservatorship* (form GC-335A) (name authorized declarant):

regarding (name of proposed conservatee):

to enable the Court to determine whether the proposed conservatee should be excused from attending the hearing on the appointment of a conservator or the proposed conservator should be granted certain powers over the person or estate of the proposed conservatee.

- 9. Use of the Declaration is governed by the disclosure safeguards in the regulations of the federal Department of Health and Human Services (45 C.F.R. §§ 160 & 164) under HIPAA, and no use other than what is permitted in those regulations is permitted by this order.
- 10. The completed and signed original of the Declaration must be returned to the attorney or other person whose address appears at the top of this order within 15 days after its receipt by the declarant authorized to complete and sign it.
- 11. Other orders (specify):

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

**CERTIFICATION**

I certify that this document, including any attachments, is a correct copy of the original on file in my office.

Date:

Clerk, by \_\_\_\_\_, Deputy

(SEAL)

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):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):  <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	
<b>CAPACITY DECLARATION—CONSERVATORSHIP</b>	CASE NUMBER:

**TO PHYSICIAN, PSYCHOLOGIST, OR RELIGIOUS HEALING PRACTITIONER**

The purpose of this form is to enable the court to determine whether the (proposed) conservatee (check all that apply):

A.  is able to attend a court hearing to determine whether a conservator should be appointed to care for him or her. The court hearing is set for (date): . (Complete item 5, then sign and file page 1 of this form.)

B.  has the capacity to give informed consent to medical treatment. (Complete items 6 through 8, sign page 3, and file pages 1 through 3 of this form.)

C.  has a major neurocognitive disorder (dementia) and, if so, (1) whether he or she needs to be placed in a secured-perimeter residential care facility for the elderly, and (2) whether he or she needs or would benefit from medication for the treatment of major neurocognitive disorder (dementia). (Complete items 6 and 8 of this form and complete form GC-335A; sign and attach form GC-335A. File pages 1 through 3 of this form and file form GC-335A.)

(If more than one item is checked above, sign the last applicable page of this form or, if item C is checked, form GC-335A. File page 1 through the last applicable page of this form; if item C is checked, file form GC-335A as well.)

**COMPLETE ITEMS 1–4 OF THIS FORM IN EVERY CASE.**

**GENERAL INFORMATION**

1. (Name):
2. (Office address and telephone number):
3. I am
  - a.  a California-licensed  physician  psychologist acting within the scope of my licensure  with at least two years' experience in diagnosing and treating major neurocognitive disorder (dementia).
  - b.  an accredited practitioner of a religion whose tenets and healing practices call for reliance on prayer alone. The (proposed) conservatee is an adherent of my religion and under my care. (Practitioner may make ONLY the determination in item 5.)
4. (Proposed) conservatee (name):
  - a. I last saw the (proposed) conservatee on (date):
  - b. The (proposed) conservatee  is  is NOT a patient under my continuing treatment and care.

**ABILITY TO ATTEND COURT HEARING**

5. A court hearing on the petition for appointment of a conservator is set for the date indicated in item A above. (Complete a. or b.)
  - a.  The proposed conservatee is able to attend the court hearing.
  - b.  Because of medical inability, the proposed conservatee is NOT able to attend the court hearing (check all items below that apply)
    - (1)  on the date set (see date in box in item A above).
    - (2)  for the foreseeable future.
    - (3)  until (date):
    - (4) **Supporting facts** (State facts in the space below or check this box  and state the facts in Attachment 5.)

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

\_\_\_\_\_  
 (TYPE OR PRINT NAME) \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)



CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):	CASE NUMBER:
<input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	

## 6. EVALUATION OF (PROPOSED) CONSERVATEE'S MENTAL FUNCTIONS

**Note to practitioner:** This form is *not* a rating scale. It is intended to assist you in recording your impressions of the (proposed) conservatee's mental abilities. Where appropriate, you may refer to scores on standardized rating instruments.

**(Instructions for items 6A–6C):** Check the appropriate designation as follows: **a** = no apparent impairment; **b** = moderate impairment; **c** = major impairment; **d** = so impaired as to be incapable of being assessed; **e** = I have no opinion.)

### A. Alertness and attention

(1) Levels of arousal (lethargic, responds only to vigorous and persistent stimulation, stupor)

a  b  c  d  e

(2) Orientation (types of orientation impaired)

a  b  c  d  e  Person

a  b  c  d  e  Time (day, date, month, season, year)

a  b  c  d  e  Place (address, town, state)

a  b  c  d  e  Situation ("Why am I here?")

(3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)

a  b  c  d  e

### B. Information processing. Ability to:

(1) Remember (ability to remember a question before answering; to recall names, relatives, past presidents, and events of the past 24 hours)

i. Short-term memory a  b  c  d  e

ii. Long-term memory a  b  c  d  e

iii. Immediate recall a  b  c  d  e

(2) Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

a  b  c  d  e

(3) Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)

a  b  c  d  e

(4) Understand and appreciate quantities (deficits reflected by inability to perform simple calculations)

a  b  c  d  e

(5) Reason using abstract concepts (deficits reflected by inability to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs)

a  b  c  d  e

(6) Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break complex tasks down into simple steps and carry them out)

a  b  c  d  e

(7) Reason logically

a  b  c  d  e

### C. Thought disorders

(1) Severely disorganized thinking (rambling thoughts; nonsensical, incoherent, or nonlinear thinking)

a  b  c  d  e

(2) Hallucination (auditory, visual, olfactory)

a  b  c  d  e

(3) Delusions (demonstrably false belief maintained without or against reason or evidence)

a  b  c  d  e

(4) Uncontrollable or intrusive thoughts (unwanted compulsive thoughts, compulsive behavior)

a  b  c  d  e

(Continued on next page)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):  <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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6. (continued)

D. **Ability to modulate mood and affect.** The (proposed) conservatee  has  does NOT have a pervasive and persistent or recurrent emotional state that appears inappropriate in degree to his or her circumstances. (If so, complete remainder of item 6D.)  I have no opinion.

**(Instructions for item 6D):** Check the degree of impairment of each inappropriate mood state (if any) as follows: **a** = mildly inappropriate; **b** = moderately inappropriate; **c** = severely inappropriate.)

Anger	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Euphoria	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Helplessness	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>
Anxiety	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Depression	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Apathy	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>
Fear	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Hopelessness	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Indifference	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>
Panic	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>	Despair	a	<input type="checkbox"/>	b	<input type="checkbox"/>	c	<input type="checkbox"/>							

E. The (proposed) conservatee's periods of impairment from the deficits indicated in items 6A–6D

(1)  do NOT vary substantially in frequency, severity, or duration.

(2)  do vary substantially in frequency, severity, or duration (explain; continue on Attachment 6E if necessary):

F.  (Optional) Other information regarding my evaluation of the (proposed) conservatee's mental function (e.g., diagnosis, symptomatology, and other impressions) is  stated below  stated in Attachment 6F.

**ABILITY TO CONSENT TO MEDICAL TREATMENT**

7. Based on the information above, it is my opinion that the (proposed) conservatee

- a.  has the capacity to give informed consent to any form of medical treatment. This opinion is limited to medical consent capacity.
- b.  lacks the capacity to give informed consent to any form of medical treatment because he or she is **either** (1) unable to respond knowingly and intelligently regarding medical treatment **or** (2) unable to participate in a treatment decision by means of a rational thought process, **or both**. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions. This opinion is limited to medical consent capacity.

**(Declarant must initial here if item 7b applies: \_\_\_\_\_.)**

8. Number of pages attached: \_\_\_\_\_

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):  <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
---	--------------

**ATTACHMENT TO FORM GC-335, CAPACITY DECLARATION—CONSERVATORSHIP,  
ONLY FOR (PROPOSED) CONSERVATEE WITH MAJOR NEUROCOGNITIVE DISORDER (DEMENTIA)**

9. It is my opinion that the (proposed) conservatee  HAS  does NOT have major neurocognitive disorder (dementia) as defined in the current edition of *Diagnostic and Statistical Manual of Mental Disorders*.
- a.  **Placement of (proposed) conservatee.** (If the (proposed) conservatee requires placement in a secured-perimeter residential care facility for the elderly, please complete items 9a(1)–9a(5).)
- (1) The (proposed) conservatee needs or would benefit from placement in a restricted and secure facility because (state reasons; continue on Attachment 9a(1) if necessary):
  
  - (2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9b(2) if necessary):
  
  - (3)  The (proposed) conservatee HAS the capacity to give informed consent to this placement.
  - (4)  The (proposed) conservatee does NOT have the capacity to give informed consent to this placement. The deficits in mental function assessed in item 6 of form GC-335 and described in item 9a(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to placement in a restricted and secure environment.
  - (5) A locked or secured-perimeter facility  is  is NOT the least restrictive environment appropriate to the needs of the (proposed) conservatee.
- b.  **Administration of medications.** (If the (proposed) conservatee requires administration of medications appropriate to the care and treatment of major neurocognitive disorder (dementia), please complete items 9b(1)–9b(5).)
- (1) For the reasons stated in item 9b(5), the (proposed) conservatee needs or would benefit from the following medications appropriate to the care and treatment of major neurocognitive disorder (dementia). (List medications; continue on Attachment 9b(1) if necessary):
  
  - (2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of from GC-335, include (describe; continue on Attachment 9b(2) if necessary):
  
  - (3)  The (proposed) conservatee HAS the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorder (dementia).
  - (4)  The (proposed) conservatee does NOT have the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorder (dementia). The deficits in mental function assessed in item 6 of form GC-335 and described in item 9b(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to the administration of medications for the care and treatment of major neurocognitive disorder (dementia).
  - (5) The (proposed) conservatee needs or would benefit from the administration of the medications listed in item 9b(1) because (state reasons; continue on Attachment 9b(5) if necessary):

10. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name):  <div style="text-align: right;">CONSERVATEE</div>	
<b>PETITION FOR EXCLUSIVE AUTHORITY TO GIVE          CONSENT FOR MEDICAL TREATMENT</b>	CASE NUMBER:

1. **Petitioner (name):** \_\_\_\_\_ **requests that**
- a. the conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer.
  - b. the conservator of the person be granted the exclusive authority to give consent for medical treatment or healing by prayer that the conservator in good faith based on medical advice determines to be necessary.
  - c. the treatment be performed by  a licensed medical practitioner  a licensed psychologist within the scope of his or her licensure  an accredited practitioner of a religion that relies on prayer alone for healing.
  - d.  orders related to **major neurocognitive disorder (dementia)** treatment or placement as specified in the *Attachment Requesting Special Orders Regarding Major Neurocognitive Disorder (Dementia)* be granted. (Attach form GC-313.)
  - e.  the order dated (specify): \_\_\_\_\_ made under Probate Code section 1880  
 be revoked  be modified as specified in Attachment 1e  be modified as follows (specify): \_\_\_\_\_
  
  - f.  other orders be granted  as specified in Attachment 1f  as follows (specify): \_\_\_\_\_
  
  - g. *Letters of Conservatorship* be reissued to include a statement that conservator has the powers requested in this petition.
2. There is no form of medical treatment for which the proposed conservatee has the capacity to give informed consent.
3. Attached to this petition is a declaration executed by a licensed physician stating that the conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion. (*Label as Attachment 3.*)
4. Conservatee  is  is not an adherent of a religion that relies on prayer alone for healing as defined in Probate Code section 2355(b).

CONSERVATORSHIP OF (Name):	CASE NUMBER:
CONSERVATEE	

5. ATTENDANCE AT THE HEARING **Conservatee**

- a.  will attend the hearing.
- b.  is able but unwilling to attend the hearing AND  does  does not wish to contest this petition.
- c.  is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as Attachment 5c.
- d.  is not the petitioner, is out of state, and will not attend the hearing.

6. **Special notice**  has  has not been requested. (Specify the names and addresses of persons requesting special notice in Attachment 6.)

7.  Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330) that specifies the duties to be performed before granting an order relating to medical consent .

8. The names, residence addresses, and relationships of the spouse and all relatives within the second degree of the conservatee so far as known to petitioner are  listed below  listed in Attachment 8.

Relationship and name

Residence address

a. Spouse:

b.

9. Number of pages attached: \_\_\_\_\_

Date:

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

▶ \_\_\_\_\_  
(SIGNATURE OF ATTORNEY\*)

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME )

▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME )

▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

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):	<b>FOR COURT USE ONLY</b>  <div style="border: 1px solid black; padding: 20px; text-align: center;"> <p><b>DRAFT</b></p> <p><b>NOT APPROVED BY THE JUDICIAL COUNCIL</b></p> </div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name):  <div style="text-align: right;">CONSERVATEE</div>	
<b>ORDER AUTHORIZING CONSERVATOR TO GIVE CONSENT FOR MEDICAL TREATMENT</b>	CASE NUMBER:

1. The petition for authority to give consent for medical treatment came on for hearing as follows (check items c, d, and e to indicate personal presence; complete item f):
- a. Judge (name):
  - b. Hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Div.: \_\_\_\_\_ Room: \_\_\_\_\_
  - c.  Petitioner (name):
  - d.  Attorney for petitioner (name):
  - e.  Attorney for conservatee (name, address, and telephone):
  - f. Conservatee was  present  unable to attend  able but unwilling to attend and does not wish to contest the petition  out of state

**THE COURT FINDS**

2. a. All notices required by law have been given.
- b.  There is no form of medical treatment for which the conservatee has the capacity to give informed consent.
  - c.  Conservatee is an adherent of a religion that relies on prayer alone for healing as described in Probate Code section 2355(b).
  - d.  Attorney (name): \_\_\_\_\_ has been appointed by the court as legal counsel to represent the conservatee in this proceeding. The cost for representation is: \$ \_\_\_\_\_
  - e.  Conservatee has a major neurocognitive disorder (dementia) as described in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 4.

**THE COURT ORDERS**

3. a.  Conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the person is granted the powers specified in Probate Code section 2355.
- b.  Treatment is to be given by an accredited practitioner of the conservatee's religion under Probate Code section 2355(b).
  - c.  The order dated: \_\_\_\_\_ made under Probate Code section 1880 is  revoked  modified  as stated below  as stated in Attachment 3c.
  - d.  For legal services rendered,  conservatee  conservatee's estate shall pay to (name): \_\_\_\_\_ the sum of: \$ \_\_\_\_\_  forthwith  as follows (specify terms): \_\_\_\_\_
  - e.  other (specify): \_\_\_\_\_
  - f. Letters of Conservatorship shall reissue and include a statement that conservator has the powers ordered.
  - g.  This order shall terminate on (date): \_\_\_\_\_
4. a.  The conservator of the person is granted authority to place conservatee in a secured residential care or nursing facility as described in Probate Code section 2356.5(b).
- b.  The conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of major neurocognitive disorder (dementia) as described in Probate Code section 2356.5(c).

5. Total boxes checked in items 2-4: \_\_\_\_\_

6. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT  
 SIGNATURE FOLLOWS LAST ATTACHMENT

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**       **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Guardianship and Conservatorship: Court-Appointed Counsel

*Committee or other entity submitting the proposal:*

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

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

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Review and consider recommendations for changes in law, practice, and procedure in limited conservatorships for the developmentally disabled, including rules of court concerning qualifications and continuing education requirements for counsel appointed by the court in conservatorship proceedings, including counsel for (proposed) limited conservatees.

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

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

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR18-33**

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Title	Action Requested
Guardianship and Conservatorship: Court-Appointed Counsel	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011	January 1, 2019
Proposed by	Contact
Probate and Mental Health Advisory Committee	Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov
Hon. John H. Sugiyama, Chair	

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### Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes amending one rule of court that establishes minimum qualifications for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code. The committee also proposes revising two mandatory forms used by attorneys to certify that they meet the requirements for appointment. The rule amendments, in response to apparent inconsistencies with statute that were pointed out by courts, stakeholders, and disability rights advocates, would resolve any inconsistencies with statute, protect the rights of wards and conservatees by promoting more effective advocacy, and simplify the process of complying with the requirements.

### Background

Rule 7.1101 of the California Rules of Court was adopted, effective January 1, 2008, in response to the enactment of section 1456 of the Probate Code in the Omnibus Conservatorship and Guardianship Reform Act of 2006.<sup>1</sup> As required by section 1456, the rule established minimum qualifications, hours and content of required education, and compliance requirements for attorneys appointed by the court under sections 1470 and 1471 in guardianship and conservatorship proceedings. Judicial Council form GC-010 was adopted, effective March 1, 2008, to enable attorneys to certify their initial qualification for appointment, as required by rule

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<sup>1</sup> The Omnibus Act was a package of four separate bills, enacted as Stats. 2006, chs. 490–493: [Assem. Bill 1363](#) (Stats. 2006, ch. 493); [Sen. Bill 1116](#) (Stats. 2006, ch. 490); [Sen. Bill 1550](#) (Stats. 2006, ch. 491); and [Sen. Bill 1716](#) (Stats. 2006, ch. 492). Section 1456 was added by AB 1363, § 3. Unless otherwise specified, all further statutory references are to the Probate Code.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*



7.1101.<sup>2</sup> Form GC-011 was adopted, effective January 1, 2009, to enable attorneys to certify their ongoing compliance with the licensing, insurance, and annual continuing education requirements in rule 7.1101.<sup>3</sup>

## **The Proposal**

The Probate and Mental Health Advisory Committee proposes amending rule 7.1101 of the California Rules of Court to simplify the basic licensing and insurance requirements for court-appointed attorneys in conservatorship and guardianship proceedings, to add initial attorney education requirements, to specify the required subject matter of both initial and continuing education of court-appointed attorneys, and to add an alternative way for attorneys to meet the experience requirements. In addition, the committee proposes updating and simplifying Judicial Council forms GC-010 and GC-011.

As required by section 1456(a), rule 7.1101 specifies minimum qualifications, both the amount and content of required professional education, and requirements for counsel appointed under sections 1470 and 1471 to certify their compliance with the qualifications and education requirements. The committee intends the proposed amendments to rule 7.1101 to clarify its terms and requirements, to ensure that appointed attorneys have sufficient professional education in subjects “related to conservatorships or guardianships” (Prob. Code, § 1456(a)(3)–(4)), to increase the flexibility of the experience requirements, and to simplify the process for certifying attorney qualification and annual compliance. Forms GC-010 and GC-011 would be revised to reflect the amendments to rule 7.1101 and to simplify them to facilitate accuracy and ease of certification. Specifically, the committee proposes, effective January 1, 2019:

1. Amending subdivision (a) to:
  - Define “counsel of record” to allow a uniform set of requirements for all attorneys, whether employed by a private firm, a legal services organization, or a public defender’s office;
  - Separate the definitions of “probate guardianship” and probate conservatorship”;
  - Define “limited conservatorship” to allow specific application of the rule’s requirements to limited conservatorship proceedings for a developmentally disabled adult;
  - Make other amendments to state legal requirements more clearly;
2. Adding subdivision (b) to state the rule’s purpose clearly and separately;
3. Adding subdivision (c) to specify simplified licensing and insurance requirements that mirror those required for attorneys appointed by the court under Family Code section 3150 to represent children in custody proceedings;

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<sup>2</sup> Judicial Council of Cal., mins. (Feb. 22, 2008), pp. 13–14.

<sup>3</sup> Judicial Council of Cal., mins. (Oct. 24, 2008), p. 31.

4. Relettering former subdivision (b) as (d) and amending it to:
  - Add a requirement that, effective January 1, 2020, an attorney must have completed eight hours of approved education in subjects related to conservatorships or guardianships, as specified in rule 7.1101(g)(1), before accepting appointment;
  - Reduce the experience requirements, but tailor them more specifically to conservatorship and guardianship proceedings and require that they be satisfied more recently before appointment;
  - Add a specific experience requirement for an attorney appointed in a limited conservatorship proceeding; and
  - Specify that a court may develop local rules that impose additional experience requirements;
5. Deleting former subdivision (c), which established special qualifications for public defenders, and former subdivision (d), which supplied transitional provisions;
6. Adding subdivision (e) to provide that an attorney who does not meet the experience requirements in (d) may nevertheless be appointed if the attorney works for a firm, organization, or public defender's office approved by the court to accept appointments and is directly supervised by an attorney in the same organization who does meet the experience requirements;
7. Amending subdivision (f) to increase the annual continuing education requirements from three hours to six hours and specify that qualifying education must cover one or more of the subjects specified in rule 7.1101(g)(1);
8. Adding subdivision (g) to:
  - Specify the subject matter to be included in the qualifying education as required by section 1456(a)(4);
  - Specify the methods that may be used to complete the required education; and
  - State expressly that a court may develop local rules that impose additional education requirements;
9. Relettering former subdivision (e) as (h) and amending it to retain the exception to the appointment requirements for small courts and to clarify that a small court may not waive the licensing or self-insurance requirements;
10. Deleting former subdivision (g) and relocating its authorization of additional local requirements in subdivisions (d) and (g);
11. Relettering former subdivision (h) as (i) and amending it to clarify the requirements for initial and annual certification of compliance with the rule's requirements, add a requirement to notify the court of any disciplinary action within five days, and expressly require the use of mandatory forms GC-010 and GC-011;

12. Relettering former subdivision (i) as (j) and amending it to expressly authorize a court to require an attorney to submit documentation in support of a certificate of compliance;
13. Adding subdivision (k) to permit an attorney who meets the requirements of current rule 7.1101 to accept appointment through December 31, 2019, and to authorize a court to permit an appointed attorney who meets those requirements to continue to represent clients through the conclusion of the proceedings;
14. Revising *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to conform to the amended certification requirements and to simplify the certification process; and
15. Revising *Annual Certification of Court-Appointed Attorney* (form GC-011) to conform to the amended certification requirements and to simplify the certification process.

### **Alternatives Considered**

The committee considered not amending rule 7.1101. In particular, the committee considered leaving the rule's education requirements unmodified. However, committee members and stakeholders reported inconsistent and sometimes inadequate education of appointed counsel in conservatorship and guardianship proceedings across the state. In addition, a comparison of the existing rule to [section 1456](#) led the committee to conclude that the rule's authorization of education in general probate law and process was not fully consistent with the statute's specific focus on conservatorships and guardianships. The committee also considered not revising forms GC-010 and GC-011, but determined that the forms needed revision to reflect the amendments to rule 7.1101 and to simplify them.

The committee also considered proposing several additional rule amendments. First, the committee considered proposing a new, separate rule to apply only to representation in limited conservatorship proceedings, but decided to address limited conservatorships in the context of the existing rule. This approach is consistent with statute. The current statutory framework integrates limited conservatorship proceedings into the general conservatorship provisions of division 4 of the Probate Code. Unless otherwise specified, provisions addressing conservatorships are construed to apply to both general and limited conservatorships. When the Legislature has chosen to treat limited conservatorship proceedings differently, it has interpolated specific sections or subdivisions into the general statutory scheme. For example, [section 1801](#) of the Probate Code, which describes the persons for whom a court may appoint a conservator, addresses the appointment of a limited conservator for a developmentally disabled adult in subdivision (d). In the same way, [section 1471](#), which specifies the circumstances requiring appointment of counsel in a conservatorship proceeding, provides for mandatory appointment in a limited conservatorship proceeding in subdivision (c).

Second, the committee considered whether to directly specify the standards of professional conduct applicable to attorneys appointed by the court to represent (proposed) conservatees and wards. The committee determined, however, that standards of professional conduct fall in the first instance within the province of the Legislature and, to the extent that the Legislature has left gaps in the statutory scheme, of the State Bar. The State Bar Act (Bus. & Prof. Code, §§ 6000–6243) and the Rules of Professional Conduct govern the attorney-client relationship. The Judicial Council and the lower courts are not free to depart from this statutory and regulatory framework; any rule of court must be consistent with statute.<sup>4</sup> To the extent that sections 1456, 1470, and 1471 do permit or require departure from the normal standards of professional conduct in conservatorship proceedings, it seems appropriate to construe the statutory language narrowly. (See Prob. Code, §§ 1470(a), 1471(b).)

When the California Rules of Court do prescribe atypical ethical duties or standards of representation for appointed counsel, it is because the authorizing statutes expressly establish those standards and require rule-based direction. For example, Family Code sections 3150–3153 charge an attorney appointed for a child in a custody proceeding to represent the child’s best interests and requires both the court and appointed counsel to comply with rules 5.240, 5.241, and 5.242 of the California Rules of Court. (Fam. Code, §§ 3150, 3151(a).)

In addition, the court’s authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. The cost of appointed children’s counsel in family law proceedings is an element of court operations. (Gov. Code, § 77003(a)(4).) Courts frequently contract with counsel to represent children. By contrast, no financial relationship exists between the court and appointed counsel in conservatorship or guardianship proceedings. Sections 1470(a) and 1472 impose liability for the cost of appointed counsel in guardianships and conservatorships on the person represented, the person’s estate, or the county. Given these circumstances, the committee decided not to propose special standards of representation for court-appointed counsel in probate proceedings.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed amendments to the education requirements may lead to a short-term reduction in the number of qualified attorneys available for appointment. Any reduction is unlikely to last very long, however, because the hours required still fall below the 25 hours required of each California attorney every three years. To the extent that the new education requirements have this effect, the committee intends the alternative experience requirements in rule 7.1101(e) and the transitional provisions in rule 7.1101(k) to counteract it. With these provisions, the committee has tried to balance the need for attorneys to have specific knowledge and experience to provide adequate representation against the need to encourage new, less-experienced attorneys to enter the field. On the other hand, attorneys and courts would need to spend less time completing and processing the streamlined certificates of compliance. The committee believes that the proposed amendments, taken together, will lead to more effective representation of

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<sup>4</sup> See Cal. Const., art VI, § 6(d).

wards and conservatees, more efficient proceedings and better-informed judicial determinations, and fewer continued hearings. These benefits should offset any costs to courts or attorneys.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Rule 7.1101, at pages 7–16
2. Forms GC-010 and GC-011, at pages 17–18
3. Probate Code, §§ [1456](#), [1470–1474](#)

Rule 7.1101 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 7.1101. Minimum qualifications and continuing education required of counsel**  
2 **appointed by the court of court-appointed counsel in guardianships and**  
3 **conservatorships proceedings (§ 1456)**  
4

5 (a) **Definitions**  
6

7 As used in this rule, the following terms ~~have the meanings stated~~ are used as  
8 defined below:  
9

10 (1) “Appointed counsel,” or “counsel appointed by the court,” or “attorney  
11 appointed by the court” are legal counsel mean an attorney appointed by the  
12 court under Probate Code sections 1470 or 1471, including counsel in private  
13 practice and deputy public defenders directly responsible for the performance  
14 of legal services under the court’s appointment of a county’s public defender.  
15 to represent a ward, proposed ward, conservatee, or proposed conservatee as  
16 counsel of record in a proceeding under division 4 of the Probate Code.  
17

18 (2) “Counsel of record” means an attorney who assumes direct responsibility for  
19 the performance of legal services in proceedings under division 4 of the  
20 Probate Code, regardless of whether the attorney is a sole practitioner,  
21 employed or contracted by a private firm or nonprofit organization, or  
22 employed by a public agency.  
23

24 ~~(2)~~(3) “Probate guardianship” means any proceeding related to the establishment,  
25 supervision, modification, or termination of a general or temporary  
26 guardianship under division 4 of the Probate Code.  
27

28 (4) ~~A “Probate guardianship” or “probate conservatorship” is a guardianship or~~  
29 ~~conservatorship~~ means any proceeding related to the establishment,  
30 supervision, modification, or termination of a general or temporary  
31 conservatorship under division 4 of the Probate Code.  
32

33 (5) “Limited conservatorship” means any proceeding related to the  
34 establishment, supervision, modification, or termination of a limited  
35 conservatorship for a developmentally disabled adult under division 4 of the  
36 Probate Code.  
37

38 ~~(3)~~(6) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and  
39 Institutions Code section (Welf. & Inst. Code, § 5000 et seq.), which provides  
40 for involuntary mental health treatment and conservatorship for gravely  
41 disabled persons.  
42

1           ~~(4)(7)~~ An “LPS conservatorship” is means a conservatorship proceeding for a  
2           gravely disabled person under chapter 3 of the LPS Act, ~~Welfare and~~  
3           ~~Institutions Code sections 5350–5371~~ (Welf. & Inst. Code, §§ 5350–5371.)  
4

5           ~~(5)(8)~~ A “contested matter” ~~in a probate or LPS conservatorship proceeding~~ is a  
6           matter that requires a noticed hearing and in which ~~written~~ an objections ~~are~~  
7           is filed in writing before or at the hearing by any party or made orally at the  
8           hearing by the conservatee or proposed conservatee orally in open court any  
9           person entitled to appear at the hearing and support or oppose the petition.  
10

11           ~~(6)~~ “Counsel in private practice” ~~includes attorneys employed by or performing~~  
12           ~~services under contracts with nonprofit organizations.~~

13  
14       **(b) Purpose**

15  
16           This rule establishes minimum qualifications, education, and certification  
17           requirements for an attorney to qualify for appointment under section 1470 or 1471  
18           of the Probate Code to represent a ward, a proposed ward, a conservatee, or a  
19           proposed conservatee as counsel of record in a proceeding under division 4 of that  
20           code.  
21

22       **(c) General**

23  
24           To be qualified for appointment as counsel of record under section 1470 or 1471,  
25           an attorney must:  
26

- 27           (1) Be an active member in good standing of the State Bar of California;  
28  
29           (2) Have professional liability insurance or demonstrate to the court that the  
30           attorney or the attorney’s firm or employer is adequately self-insured; and  
31  
32           (3) Satisfy the other requirements of this rule and any applicable local rules.  
33

34       **(b)(d) Qualifications of appointed counsel in private practice Minimum initial**  
35       **education and experience requirements**  
36

37           Except as otherwise provided in this rule, ~~each counsel in private practice an~~  
38           attorney appointed by the court on or after January 1, ~~2008~~2020, must have  
39           completed at least eight hours of education approved by the State Bar for  
40           Mandatory Continuing Legal Education (MCLE) credit covering each of the  
41           subjects listed in (g)(1) ~~be an active member of the State Bar of California for at~~  
42           ~~least three years immediately before the date of appointment, with no discipline~~  
43           ~~imposed within the 12 months immediately preceding any date of availability for~~

1 appointment after January 1, 2008; and satisfied the following experience  
2 requirements.

3  
4 (1) *Appointments to represent minors in guardianships*

5  
6 To be qualified for an appointment to represent a minor ward or proposed  
7 ward in a guardianship proceeding, an attorney:

8  
9 (A) Within the ~~five~~ three years immediately before the date of first  
10 availability for appointment after January 1, ~~2008~~2020, must have  
11 served as counsel of record for a minor child in at least three  
12 proceedings of the following types:

- 13  
14 (i) a probate guardianship in which the child was the ward or  
15 proposed ward;  
16  
17 (ii) a juvenile court proceeding in which the child was the subject of  
18 a petition for dependency; or  
19  
20 (iii) a family law proceeding in which the child was the subject of a  
21 custody determination; represented at least three wards or  
22 proposed wards in probate guardianships, three children in  
23 juvenile court dependency or delinquency proceedings, or three  
24 children in proceedings under the Family Code; or

25  
26 (B) At the time of appointment, must be qualified:

- 27  
28 (i) Under rule 5.660 and local court rules for ~~For~~ appointments to  
29 represent children in juvenile dependency proceedings ~~under rule~~  
30 ~~5.660 and the court's local rules governing court-appointed~~  
31 ~~juvenile court dependency counsel; or~~  
32  
33 (ii) Under rule 5.242 for ~~For~~ appointments to represent children in  
34 custody proceedings under the Family Code ~~under rule 5.242,~~  
35 ~~including the alternative experience requirements of rule~~  
36 ~~5.242(g).~~

37  
38 (C) Except as provided in (f)(2), counsel qualified for appointments in  
39 guardianships under (B) must satisfy the continuing education  
40 requirements of this rule in addition to the education or training  
41 requirements of the rules mentioned in (B).  
42



1 (2) *Appointments to represent conservatees or proposed conservatees*

2  
3 To be qualified for an appointment to represent a conservatee or a proposed  
4 conservatee, within the five years immediately before the date of first  
5 availability for appointment after January 1, 2008, counsel in private practice  
6 an attorney must have, within the three years immediately before the date of  
7 first availability for appointment after January 1, 2020, satisfied (A) or both  
8 (B) and (C):

9  
10 (A) Represented at least three conservatees or proposed conservatees in  
11 either probate or LPS conservatorships; or

12  
13 (B) Completed ~~any three~~ at least two of the following ~~five~~ tasks:

14  
15 (i) Represented the petitioners for the appointment of a conservator  
16 at commencement of at least three probate conservatorship  
17 proceedings, from initial contact with the petitioner through the  
18 hearing and issuance of Letters of Conservatorship;

19  
20 (ii) Represented a petitioner, a conservatee or ~~a~~ proposed  
21 conservatee, or an interested third party in ~~two~~ at least three  
22 contested probate or LPS conservatorship matters. A contested  
23 matter that qualifies under this item and also qualifies under (i)  
24 may be applied toward satisfaction of both ~~items~~ tasks; or

25  
26 (iii) Represented a ~~party~~ person for whom the court could appoint  
27 legal counsel in ~~a total of~~ at least three matters described in  
28 Probate Code sections 1470, 1471, 1852, 1954, 2356.5, 2357,  
29 2620.2, 3140, or 3205; and

30  
31 (C) Completed at least one of the following:

32  
33 (i) Represented fiduciaries in at least three separate ~~eases~~  
34 proceedings for settlement of a court-filed account and report,  
35 through filing, hearing, and settlement, in any combination of  
36 probate conservatorships or guardianships, decedent's estates, or  
37 trust proceedings under ~~division 9~~ of the Probate Code; or

38  
39 (ii) Prepared at least ~~five~~ three wills or trusts, ~~five~~ three durable  
40 powers of attorney for health care, and ~~five~~ three durable powers  
41 of attorney for asset management.  
42

- 1 (3) To be qualified for appointment to represent a limited conservatee or a  
2 proposed limited conservatee, an attorney must have satisfied the  
3 requirements in (2) partly by representing at least one developmentally  
4 disabled adult in a proceeding to establish a general or limited  
5 conservatorship for that person.  
6  
7 (3) ~~Except as provided in (e)(2), private counsel qualified under (1) or (2) must~~  
8 ~~also be covered by professional liability insurance satisfactory to the court in~~  
9 ~~the amount of at least \$100,000 per claim and \$300,000 per year.~~  
10  
11 (4) A court may develop local rules that impose additional experience  
12 requirements for counsel appointed under section 1470 or 1471.  
13

14 **(e) ~~Qualifications of deputy public defenders performing legal services on court~~**  
15 **~~appointments of the public defender~~**  
16

- 17 (1) ~~Except as provided in this rule, beginning on January 1, 2008, each county~~  
18 ~~deputy public defender with direct responsibility for the performance of legal~~  
19 ~~services in a particular case on the appointment of the county public defender~~  
20 ~~under Probate Code sections 1470 or 1471 must be an active member of the~~  
21 ~~State Bar of California for at least three years immediately before the date of~~  
22 ~~appointment; and either~~  
23  
24 (A) ~~Satisfy the experience requirements for private counsel in (b)(1) for~~  
25 ~~appointments in guardianships or (b)(2) for appointments in~~  
26 ~~conservatorships; or~~  
27  
28 (B) ~~Have a minimum of three years' experience representing minors in~~  
29 ~~juvenile dependency or delinquency proceedings or patients in post~~  
30 ~~certification judicial proceedings or conservatorships under the LPS~~  
31 ~~Act.~~  
32  
33 (2) ~~A deputy public defender qualified under (1) must also be covered by~~  
34 ~~professional liability insurance satisfactory to the court in the amount of at~~  
35 ~~least \$100,000 per claim and \$300,000 per year, or be covered for~~  
36 ~~professional liability at an equivalent level by a self-insurance program for~~  
37 ~~the professional employees of his or her county.~~  
38  
39 (3) ~~A deputy public defender who is not qualified under this rule may~~  
40 ~~periodically substitute for a qualified deputy public defender with direct~~  
41 ~~responsibility for the performance of legal services in a particular case. In~~  
42 ~~that event, the county public defender or his or her designee, who may be the~~  
43 ~~qualified supervisor, must certify to the court that the substitute deputy is~~

1 working under the direct supervision of a deputy public defender who is  
2 qualified under this rule.

3  
4 **(d) Transitional provisions on qualifications**

5  
6 (1) ~~Counsel appointed before January 1, 2008, may continue to represent their~~  
7 ~~clients through March 2008, whether or not they are qualified under (b) or~~  
8 ~~(c). After March 2008, through conclusion of these matters, the court may~~  
9 ~~retain or replace appointed counsel who are not qualified under (b) or (c) or~~  
10 ~~may appoint qualified co-counsel to assist them.~~

11  
12 (2) ~~In January, February, and March 2008, the court may appoint counsel in new~~  
13 ~~matters who have not filed the certification of qualifications required under~~  
14 ~~(h) at the time of appointment but must replace counsel appointed under this~~  
15 ~~paragraph who have not filed the certificate before April 1, 2008.~~

16  
17 **(e) Alternative experience requirements**

18  
19 An attorney who does not meet the experience requirements in (d) may be  
20 appointed under Probate Code section 1470 or 1471 if the attorney has completed  
21 the education required in (d) and:

22  
23 (1) Works for a private law firm, a legal services organization, or a public  
24 defender's office that has been approved by the presiding judge of the local  
25 superior court or the supervising judge of the local probate court to accept  
26 appointments under Probate code section 1470 or 1471; and

27  
28 (2) Is directly supervised by an attorney working in the same firm, organization,  
29 or office who satisfies the applicable experience requirements in (d).

30  
31 **(f) Continuing education of appointed counsel**

32  
33 (1) ~~Except as provided in (2), beginning on January 1, 2008, counsel appointed~~  
34 ~~by the court must each calendar year an attorney must, as a condition of~~  
35 ~~ongoing or further appointment, complete three six hours of education~~  
36 ~~approved for MCLE credit by the State Bar that includes instruction each~~  
37 ~~calendar year that qualifies for Minimum Continuing Legal Education credit~~  
38 ~~for State Bar-certified specialists in estate planning, trust, and probate law. in~~  
39 ~~one or more of the subjects specified in (g)(1).~~

40  
41 (2) ~~Counsel qualified to represent minors in guardianships under (b)(1)(B) and~~  
42 ~~who are appointed to represent minors in guardianships of the person only~~  
43 ~~may satisfy the continuing education requirements of this rule by satisfying~~

1 ~~the annual education and training required under rule 5.242(d) or the~~  
2 ~~continuing education required under rule 5.660(d)(3). An attorney qualified~~  
3 ~~under (d)(1)(B) to represent wards or proposed wards in guardianship~~  
4 ~~proceedings who satisfies the annual education requirements of rule 5.242(d)~~  
5 ~~or the continuing education requirements of rule 5.660(d)(3) but does not~~  
6 ~~satisfy the requirements in (1) may be appointed in guardianships of the~~  
7 ~~person, but not in guardianships of the estate.~~

8  
9 **(g) Subject matter and methods of required education**

10  
11 (1) Education approved for MCLE credit by the State Bar in the following  
12 subjects may be used to satisfy this rule’s initial and continuing education  
13 requirements.

14  
15 (A) Statutes, rules of court, and case law applying to guardianship and  
16 conservatorship proceedings;

17  
18 (B) The rights of wards, conservatees, and persons with disabilities under  
19 state and federal law, including the Indian Child Welfare Act (25  
20 U.S.C. §§ 1901–1963) and the Americans with Disabilities Act (42  
21 U.S.C. §§ 12101–12213);

22  
23 (C) Strategies for communicating with a client who is a minor child, an  
24 older adult, or a developmentally disabled person, ascertaining the  
25 client’s wishes, and presenting those wishes to the court;

26  
27 (D) Estate management requirements, including proper recordkeeping and  
28 accounting practices; and

29  
30 (E) Special considerations for representing a child, an older adult, or a  
31 person with a disability, including the following:

32  
33 (i) The recognition, evaluation, and understanding of abuse,  
34 disability, mental health disorders—including major  
35 neurocognitive disorder (a.k.a. dementia)—and substance use  
36 disorders, especially in minor children and older adults;

37  
38 (ii) The effects of physical, intellectual, and developmental  
39 disabilities on a person’s capacity to function and make  
40 decisions; and

1                   (iii) The effective identification of and collaboration with experts  
2                   from other disciplines, including staff of the appropriate regional  
3                   center for the developmentally disabled, if applicable.  
4

5           (2) No more than two hours of required education may be completed by self-  
6           study, which must be under the supervision of an education provider that  
7           provides evidence of completion.  
8

9           (3) An attorney may complete education that satisfies the requirements of this  
10           rule by means of video presentations or other methods of distance learning.  
11           Education completed in this manner is not self-study within the meaning of  
12           this rule.  
13

14           (4) A court may adopt local rules imposing additional education requirements for  
15           attorneys to qualify for appointment under Probate Code section 1470 or  
16           1471.  
17

18 **(e)(h) Exemption for small courts**  
19

20           (1) ~~Except as provided in (2) and (3), the qualifications required under (b) or (c)~~  
21           ~~may be waived by~~ A court with four or fewer authorized judges may waive  
22           the requirements in (d) or (e) if it cannot find qualified counsel or for other  
23           ~~grounds of~~ because of other hardship.  
24

25           (2) ~~A court described in (1) may, without a waiver, appoint counsel in private~~  
26           ~~practice who do not satisfy the insurance requirements of (b)(3) if counsel~~  
27           ~~demonstrate to the court that they are adequately self insured.~~  
28

29           (3) ~~A court may not waive or disregard the self insurance requirements of (c)(2)~~  
30           ~~applicable to deputy public defenders.~~  
31

32           (4)(2) ~~A court waiving that waives the qualifications required under (b) or (c)~~  
33           requirements in (d) or (e) must make express written findings showing  
34           describing the circumstances supporting the waiver and disclosing all  
35           ~~alternatives considered, including appointment of qualified counsel from an~~  
36           ~~adjacent counties~~ county—that were considered and other alternatives not  
37           selected.  
38

39 **(g) Additional court-imposed qualifications, education, and other requirements**  
40

41           ~~The qualifications in (b) and (c) and the continuing education requirement in (f) are~~  
42           ~~minimums. A court may establish higher qualification or continuing education~~  
43           ~~requirements, including insurance requirements; require initial education or~~

1 training; and impose other requirements, including an application by private  
2 counsel.

3  
4 **(h)(i) Initial and annual attorney certification of qualifications; annual post-  
5 qualification reports and certifications**  
6

7 (1) ~~Each counsel appointed or eligible for appointment by the court before~~  
8 ~~January 1, 2008, including deputy public defenders, must certify to the court~~  
9 ~~in writing before April 1, 2008, that he or she satisfies the qualifications~~  
10 ~~under (b) or (c) to be eligible for a new appointment on or after that date.~~

11  
12 ~~(2)(1) After March 2008, Before accepting appointment under Probate Code section~~  
13 ~~1470 or 1471, each counsel an attorney must certify to the court on form GC-~~  
14 ~~010 that he or she is qualified meets the requirements under (b) or (c) before~~  
15 ~~becoming eligible for an appointment under this rule. and, unless appointed~~  
16 ~~by a court subject to (h), all applicable requirements under (d) or (e).~~

17  
18 ~~(3) Each counsel attorney appointed or eligible qualified for appointment by the~~  
19 ~~court under this rule must immediately advise the court of the imposition of~~  
20 ~~any State Bar discipline.~~

21 ~~(4)(2) Beginning in 2009, each appointed counsel An attorney who has submitted a~~  
22 ~~certificate under (1) must certify to the court on form GC-011 before the end~~  
23 ~~of no later than March 31 of each year that, in the period since the attorney's~~  
24 ~~most recent previous certification:~~

25  
26 (A) ~~His or her history of State Bar discipline and professional liability~~  
27 ~~insurance coverage or, if appointed by a court with four or fewer~~  
28 ~~authorized judges under (e)(2), the adequacy of his or her self-~~  
29 ~~insurance, either has or has not changed since the date of his or her~~  
30 ~~qualification certification or last annual certification; and The State Bar~~  
31 ~~has not taken any disciplinary action against the attorney;~~

32  
33 (B) ~~The attorney's level of professional liability insurance coverage or self-~~  
34 ~~insurance has not changed; and~~

35  
36 (C) ~~He or she The attorney has completed the continuing education~~  
37 ~~required for the preceding calendar year.~~

38  
39 ~~(5)(3) Annual certifications required under this subdivision showing changes in If~~  
40 ~~the attorney has been subject to State Bar disciplinary history, action or the~~  
41 ~~attorney's level of professional liability insurance coverage, or adequacy of~~  
42 ~~or self-insurance has changed, the annual certificate required by (2) must~~  
43 ~~include descriptions of the action or changes.~~

1  
2 ~~(6)(4)~~ Certifications required under this subdivision must be submitted to and  
3 recorded by the court but ~~are not to~~ must not be filed or lodged in a case file.

4  
5 (5) An attorney who has submitted a certificate under (1) or (2) must notify the  
6 court within five days of any disciplinary action taken against the attorney by  
7 the State Bar of California. The notification must describe the charges, the  
8 disposition, and the terms of any reproof, probation, or suspension.

9  
10 ~~(i)~~ **(j) Reporting Verification of Qualifications and Compliance**

11  
12 ~~The Judicial Council may require courts to report appointed counsel's~~  
13 ~~qualifications and completion of continuing education required by this rule to~~  
14 ~~ensure compliance with Probate Code section 1456.~~

15  
16 A court to which an attorney has submitted a certificate under (i) may require the  
17 attorney to submit documentation to support any of the statements made in the  
18 certificate.

19  
20 **(k) Transitional provisions**

21  
22 (1) Until December 31, 2019, an attorney who meets the requirements in this rule  
23 as it read on December 31, 2018, may accept court appointment under  
24 Probate Code section 1470 or 1471. An initial certificate of qualification  
25 based on those requirements remains valid until December 31, 2019.

26  
27 (2) On or after January 1, 2020, and subject to (h), an attorney must file a new  
28 initial certificate of qualification certifying that the attorney meets the  
29 requirements in (c) and, as applicable, (d) or (e) before the attorney may  
30 accept appointment under section 1470 or 1471.

31  
32 (3) The court may permit an attorney appointed before January 1, 2020, who had  
33 a valid certificate on file when appointed, to continue to represent clients  
34 through the conclusion of the proceedings for which the attorney was  
35 appointed.

ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>DO NOT FILE OR LODGE IN CASE FILE</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>INITIAL CERTIFICATE OF QUALIFICATION FOR APPOINTMENT AS COUNSEL OF RECORD IN</b> <input type="checkbox"/> <b>CONSERVATORSHIP</b> <input type="checkbox"/> <b>GUARDIANSHIP</b>	

**NOTICE TO ATTORNEY**

1. Before you may accept court appointment as counsel of record in a guardianship or conservatorship proceeding, you must certify to the court that you meet the applicable requirements in rule 7.1101 of the California Rules of Court.
2. Under the circumstances specified in rule 7.1101(h), a court with four or fewer authorized judges may waive the education and experience requirements in rule 7.1101(d) & (e).

I certify that (check all boxes that apply):

1.  I am a member in good standing of the State Bar of California. (Date of admission):
2. a.  I am covered by professional liability insurance. My insurer is:  
     or  
    b.  I am self-insured or covered by a self-insurance program through my firm, employer, or government agency.
3.  I am qualified under rule 7.1101 of the California Rules of Court to accept court appointment under Probate Code section 1470 to represent wards or proposed wards in guardianship proceedings, in that:
  - a.  I have satisfied the initial education and experience requirements in rule 7.1101(d)(1).  
     or  
     I have satisfied the alternative education and experience requirements in rule 7.1101(e).
  - b.  I have satisfied any additional requirements imposed by local rule of the superior court named above.
4.  I am qualified under rule 7.1101 to accept court appointment under Probate Code section 1470 or 1471 to represent conservatees or proposed conservatees in conservatorship proceedings, in that:
  - a.  I have satisfied the initial education and experience requirements in rule 7.1101(d)(2).  
     or  
     I have satisfied the alternative education and experience requirements in rule 7.1101(e).
  - b.  I have satisfied any additional requirements imposed by local rule of the superior court named above.
5.  I am qualified under rule 7.1101 to accept court appointment under Probate Code section 1471 to represent limited conservatees or proposed limited conservatees in limited conservatorship proceedings, in that:
  - a.  I have satisfied the initial education and experience requirements in rule 7.1101(d)(2) & (3).  
     or  
     I have satisfied the alternative education and experience requirements in rule 7.1101(e).
  - b.  I have satisfied any additional requirements imposed by local rule of the superior court named above.
6.  I meet the requirements of rule 7.1101(c)(1) & (2), but I do not meet the initial education and experience requirements in rule 7.1101(d) or (e). I ask the court named above, which has four (4) or fewer authorized judges, to waive those requirements under rule 7.1101(h) to allow me to accept appointment under Probate Code section 1470 or 1471.

I certify under penalty of perjury under the laws of the State of California that the foregoing statements, including statements in any attachment, are true and correct.

Date:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)	(SIGNATURE)
---	-------------



ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	DO NOT FILE OR LODGE IN CASE FILE
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>ANNUAL CERTIFICATE          OF COURT-APPOINTED ATTORNEY COMPLIANCE</b>	
<b>NOTICE TO COURT-APPOINTED ATTORNEYS IN CONSERVATORSHIPS OR GUARDIANSHIPS</b>	
1. Each calendar year, beginning in 2019, you must complete six (6) hours of continuing education approved by the State Bar for Minimum Continuing Legal Education (MCLE) credit in one or more of the subjects listed in rule 7.1101(g) of the California Rules of Court. 2. No later than March 31 of each calendar year, beginning in 2020, you must certify to the court on this form (1) that the State Bar has not taken disciplinary action against you and (2) that your professional liability insurance coverage or level of self-insurance has not changed since you filed your most recent initial or annual certification, and (3) that you completed the required continuing education during the previous calendar year. If you cannot certify (1) or (2), you must describe any disciplinary action or changes to your insurance coverage or self-insurance in attachments to this form. (See rule 7.1101(i)(3) & (4).)	

I certify that (check all boxes that apply):

- The State Bar has not taken any disciplinary action against me since I filed my most recent certificate of qualification or compliance.  
 The State Bar has taken disciplinary action against me since I filed my most recent certificate of qualification or compliance. The charges, disposition, and terms of discipline are described in Attachment 1.
- My professional liability insurance coverage or level of self-insurance (rule 7.1101(c)(2)) has not changed since I filed my most recent certificate of qualification or compliance.  
 My professional liability insurance coverage or level of self-insurance has changed since I filed my most recent certificate of qualification or compliance. My current level of insurance is described in Attachment 2.
- During calendar year \_\_\_\_\_, I completed a total of (specify): \_\_\_\_\_ hours of continuing education approved for MCLE credit by the State Bar in subjects listed in rule 7.1101(g).

I certify under penalty of perjury under the laws of the State of California that the foregoing statements, including statements in any attachment, are true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)

  
 \_\_\_\_\_  
 (SIGNATURE)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Amend Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257

*Committee or other entity submitting the proposal:*

Information Technology Advisory Committee

*Staff contact (name, phone and e-mail):* Andrea Jaramillo, 916-263-0991, [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: N/A. Approved by Judicial Council Technology Committee: January 8, 2018.

Project description from annual agenda: ITAC annual agenda item # 13.1. Modernize Rules of Court for the Trial Courts to Support E-Business

In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for more comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

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

N/A

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

# Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR18-36

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Title	Action Requested
Technology: Rules Modernization Project	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257	January 1, 2019
Proposed by	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary and Origin

As part of the Rules Modernization Project, the Information Technology Advisory Committee recommends amending several rules related to electronic service and electronic filing. The purpose of the proposal is to conform the rules to the Code of Civil Procedure, clarify and remove redundancies in rule definitions, and ensure indigent filers are not required to have a payment mechanism to create an account with electronic filing service providers (EFSPs). The proposal includes amendments required by statute and suggested by the public.

### Background

New provisions of Code of Civil Procedure section 1010.6 (section 1010.6) require express consent for electronic service, which will require rule amendments and adoption of a form for withdrawal of consent. In addition, new provisions of section 1010.6 require the Judicial Council to adopt rules of court related to disability access and electronic signatures for documents signed under penalty of perjury. Finally, the proposal includes amendments based on comments received from the public. These include amendments to the definitions and contract requirements between EFSPs and courts.

### The Proposal

The proposal would make the following amendments:

- **“Document.”** Amend the definition of “document” in rule 2.250(b). The current wording can be read to mean that a document must be a filing. The proposed amendment removes this

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

ambiguity by striking “filing” and replacing it with “writing” to clarify that a “document” is not necessarily a filing. The amendment was suggested by members of the public.

- **“Electronic service,” “electronic transmission,” and “electronic notification.”** Amend the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b) to refer to the definitions in section 1010.6 rather than duplicate them. This is to avoid risk of the rules and Code of Civil Procedure differing in their definitions should the Legislature amend section 1010.6.
- **“Electronic filing manager.”** Add a definition for “electronic filing manager.” The proposal includes amendments to rule 2.255 to include electronic filing managers. Accordingly, a definition was also added and is based on descriptions of electronic filing managers the Judicial Council used in a request for proposals in 2017.
- **“Self-represented.”** Add a definition for “self-represented” to rule 2.250(b) and exclude attorneys from the definition. Rules applicable to self-represented persons were intended to add protections for those without an attorney. For example, self-represented persons are exempt from mandatory electronic filing. Attorneys acting for themselves are not acting without an attorney. Accordingly, attorneys are excluded from the definition of “self-represented” under the electronic filing and service rules. Because section 1010.6 uses the term “unrepresented” and the rules of court use the term “self-represented,” the definition in the rules refers to self-represented parties or other persons as being those unrepresented by an attorney. This proposal was a suggestion from a member of the public.
- **Express consent.** Amend rule 2.251(b) to require express consent for permissive electronic service and add a provision for how a party or other person may manifest consent as required by statute. The current rules allow the act of electronic filing to serve as consent to electronic service. Effective January 1, 2019, section 1010.6 will no longer allow the act of electronic filing alone to serve as consent. (§ 1010.6(a)(2)(A)(ii).) Under section 1010.6, parties may still consent through electronic means by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic service address with that consent for the purpose of receiving electronic service.” The proposal amends the rules to remove the provision allowing the act of filing to serve as consent to electronic service and replaces it with the language for manifesting affirmative consent by electronic means from section 1010.6. The proposal also adds a provision for how a party or other person may “manifest affirmative consent.”
- **Electronic filing managers.** Amend rule 2.255 to add electronic filing managers within the scope of the rule. Section 1010.6(g)(2) requires that “[a]ny system for the electronic filing and service of documents, including any information technology applications, Internet Web sites, and Web-based applications, used by an electronic service provider or any other vendor or contractor that provides an electronic filing and service system to a trial court” be accessible by persons with disabilities and comply with certain access standards. Vendors

and contractors must comply as soon as practicable, but no later than June 30, 2019. (§ 1010.6(g)(3).) Likewise, the statute requires the Judicial Council to adopt rules to implement the requirements as soon as practicable, but no later than June 30, 2019. (§ 1010.6(g)(1).) Section 1010.6 includes specific requirements that courts and contractors must meet. Rule 2.255 already requires courts contracting with EFSPs to comply with section 1010.6. However, because the rules of court do not account for contracts with electronic filing managers, the proposal amends rule 2.255 to include them.

- **Payment information.** Amend rule 2.255 to add subdivision (f) requiring require EFSPs to allow filers to create an account without having to provide a credit card, debit card, or bank account information. The amendment is based on a suggestion from the State Bar’s Standing Committee on the Delivery of Legal Services. According to the standing committee, some EFSPs require such payment information even if the filer is never charged. According to the standing committee, this “creates an insurmountable barrier to those without access to credit or banking services.” Subdivision (f) provides that it only applies to the creation of an account, but not to the provision of services unless the filer has a fee waiver.
- **Electronic signatures.** Amend rule 2.257 to create a procedure for electronically filed documents signed under penalty of perjury. Section 1010.6(b)(2)(B)(ii) provides that when a document to be filed requires a signature made under penalty of perjury, the document is considered signed by the person if, in relevant part, “[t]he person has signed the document using a computer or other technology pursuant to the procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.” Accordingly, the proposal creates a procedure where the document is deemed signed when the “declarant has signed the document using an electronic signature, and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct.” The language is modeled after the requirements in the Uniform Electronic Transactions Act (UETA) for electronic signatures made under penalty of perjury. (Civ. Code, § 1633.11(b).) In addition, a definition of “electronic signature” is added to the rule, modeled after the definitions used in UETA and the Code of Civil Procedure.

### **Alternatives Considered**

The committee considered retaining the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b) rather than referencing section 1010.6 for the definitions. Referencing the Code of Civil Procedure will create an extra step in looking up the definitions. However, the committee opted for the proposed language to remove the risk of having differing definitions should the Legislature amend section 1010.6.

The committee considered making a technical amendment to the consent requirements in rule 2.251(b) to ensure the rules comply with section 1010.6’s express consent requirements without interpreting the statute. However, the committee received public comments from the EFSP community raising concerns over uncertainty in the meaning of “manifesting affirmative

consent” in section 1010.6’s express consent requirements. The public comment included a proposed interpretation, which was integrated into the proposal.

### **Implementation Requirements, Costs, and Operational Impacts**

It is expected that the new express consent requirements will result in one-time costs to EFSPs and courts to create a mechanism to capture affirmative consent by electronic means to electronic service. It is unknown whether or how these costs will impact the fees EFSPs charge filers for their services.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- The amendments to rule 2.251(b) bring the rule into compliance with section 1010.6’s express consent requirements. In addition, the rule adds a provision for how a party or other person may “manifest affirmative consent.”
  - Is the provision for manifesting affirmative consent clear and does it adequately capture how a party or other person may manifest affirmative consent?
  - Rule 2.251(b) does not detail (1) how notice is to be given to the court that a party or other person has provided express consent, or (2) how notice of the same is to be given to other parties or persons in the case. The committee seeks specific comments on how such notification should be addressed in the rules.

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.250, 2.251, 2.255, and 2.257, pages 5–10
2. Code of Civil Procedure section 1010.6,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP)

Rules 2.250, 2.251, 2.255, and 2.257 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 2.250. Construction and definitions**

2  
3 (a) \* \* \*

4  
5 (b) **Definitions**

6  
7 As used in this chapter, unless the context otherwise requires:

8  
9 (1) A “document” is a pleading, ~~a paper~~, a declaration, an exhibit, or another  
10 writing submitted by a party or other person, or by an agent of a party or  
11 other person on the party’s or other person’s behalf. A document is also a  
12 notice, order, judgment, or other issuance by the court. A document may be  
13 in paper or electronic form.

14  
15 (2) “Electronic service” has the same meaning as defined in Code of Civil  
16 Procedure section 1010.6 is service of a document on a party or other person  
17 by either electronic transmission or electronic notification. Electronic service  
18 may be performed directly by a party or other person, by an agent of a party  
19 or other person, including the party’s or other person’s attorney, through an  
20 electronic filing service provider, or by a court.

21  
22 (3) “Electronic transmission” has the same meaning as defined in Code of Civil  
23 Procedure section 1010.6 means the transmission of a document by electronic  
24 means to the electronic service address at or through which a party or other  
25 person has authorized electronic service.

26  
27 (4) “Electronic notification” has the same meaning as defined in Code of Civil  
28 Procedure section 1010.6 means the notification of a party or other person  
29 that a document is served by sending an electronic message to the electronic  
30 service address at or through which the party or other person has authorized  
31 electronic service, specifying the exact name of the document served and  
32 providing a hyperlink at which the served document can be viewed and  
33 downloaded.

34  
35 (5)–(8) \* \* \*

36  
37 (9) An “electronic filing manager” is a service that acts as an intermediary  
38 between a court and various electronic filing service provider solutions  
39 certified for filing into California courts.

40  
41 (10) “Self-represented” means a party or other person who is unrepresented in an  
42 action by an attorney and does not include an attorney appearing in an action  
43 who represents himself or herself.

1 **Rule 2.251. Electronic service**

2  
3 (a) \* \* \*

4  
5 (b) **Electronic service by express consent of the parties**

6  
7 (1) ~~Electronic service may be established by consent.~~ A party or other person  
8 indicates that the party or other person agrees to accept electronic service by:

9  
10 (A) Serving a notice on all parties and other persons that the party or other  
11 person accepts electronic service and filing the notice with the court.  
12 The notice must include the electronic service address at which the  
13 party or other person agrees to accept service; or

14  
15 (B) ~~Electronically filing any document with the court. The act of electronic~~  
16 ~~filing is evidence that the party or other person agrees to accept service~~  
17 ~~at the electronic service address the party or other person has furnished~~  
18 ~~to the court under rule 2.256(a)(4). This subparagraph (B) does not~~  
19 ~~apply to self-represented parties or other self-represented persons; they~~  
20 ~~must affirmatively consent to electronic service under subparagraph~~  
21 ~~(A). Manifesting affirmative consent through electronic means with the~~  
22 ~~court or the court's electronic filing service provider, and concurrently~~  
23 ~~providing the party's electronic service address with that consent for~~  
24 ~~the purpose of receiving electronic service.~~

25  
26 (C) A party or other person may manifest affirmative consent under (B) by:

27  
28 (i) Agreeing to the terms of service agreement with an electronic  
29 filing service provider, which clearly states that agreement  
30 constitutes consent to receive electronic service electronically;  
31 or

32  
33 (ii) Filing *Consent to Electronic Service and Notice of Electronic*  
34 *Service Address* (form EFS-005-CV).

35  
36 (2) A party or other person that has consented to electronic service under (1) and  
37 has used an electronic filing service provider to serve and file documents in a  
38 case consents to service on that electronic filing service provider as the  
39 designated agent for service for the party or other person in the case, until  
40 such time as the party or other person designates a different agent for service.

41  
42 (c)–(k) \* \* \*



1 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**  
2 **managers**

3  
4 **(a) Right to contract**

- 5  
6 (1) A court may contract with one or more electronic filing service providers to  
7 furnish and maintain an electronic filing system for the court.  
8  
9 (2) If the court contracts with an electronic filing service provider, it may require  
10 electronic filers to transmit the documents to the provider.  
11  
12 (3) A court may contract with one or more electronic filing managers to act as an  
13 intermediary between the court and electronic filing service providers.  
14  
15 ~~(3)~~(4) If the court contracts with an electronic service provider or the court has an  
16 in-house system, the provider or system must accept filing from other  
17 electronic filing service providers to the extent the provider or system is  
18 compatible with them.  
19

20 **(b) Provisions of contract**

- 21  
22 (1) The court's contract with an electronic filing service provider may:  
23  
24 (A) Allow the provider to charge electronic filers a reasonable fee in  
25 addition to the court's filing fee;  
26  
27 (B) Allow the provider to make other reasonable requirements for use of  
28 the electronic filing system.  
29  
30 (2) The court's contract with an electronic filing service provider must comply  
31 with the requirements of Code of Civil Procedure section 1010.6.  
32  
33 (3) The court's contract with an electronic filing manager must comply with the  
34 requirements of Code of Civil Procedure section 1010.6.  
35

36 **(c) Transmission of filing to court**

- 37  
38 (1) An electronic filing service provider must promptly transmit any electronic  
39 filing and any applicable filing fee to the court: directly or through the court's  
40 electronic filing manager.  
41  
42 (2) An electronic filing manager must promptly transmit an electronic filing and  
43 any applicable filing fee to the court.

1  
2 **(d) Confirmation of receipt and filing of document**

- 3  
4 (1) An electronic filing service provider must promptly send to an electronic filer  
5 its confirmation of the receipt of any document that the filer has transmitted  
6 to the provider for filing with the court.  
7  
8 (2) The electronic filing service provider must send its confirmation to the filer's  
9 electronic service address and must indicate the date and time of receipt, in  
10 accordance with rule 2.259(a).  
11  
12 (3) After reviewing the documents, the court must promptly transmit to the  
13 electronic filing service provider and the electronic filer the court's  
14 confirmation of filing or notice of rejection of filing, in accordance with rule  
15 2.259.

16  
17 **(e) Ownership of information**

18  
19 All contracts between the court and electronic filing service providers or the court  
20 and electronic filing managers must acknowledge that the court is the owner of the  
21 contents of the filing system and has the exclusive right to control the system's use.  
22

23 **(f) Establishing a filer account with an electronic filing service provider**

- 24  
25 (1) An electronic filing service provider may not require a filer to provide a credit  
26 card, debit card, or bank account information to create an account with the  
27 electronic filing service provider.  
28  
29 (2) This provision applies only to the creation of an account and not to the use of  
30 an electronic filing service provider's services. An electronic filing services  
31 provider may require a filer to provide a credit card, debit card, or bank account  
32 information before rendering services unless the services are within the scope  
33 of a fee waiver granted by the court to the filer.  
34

35 **Rule 2.257. Requirements for signatures on documents**

36  
37 **(a) Electronic signature**

38  
39 An electronic signature is an electronic sound, symbol, or process attached to or  
40 logically associated with an electronic record and executed or adopted by a person  
41 with the intent to sign a document or record created, generated, sent,  
42 communicated, received, or stored by electronic means.  
43

1 **(a)(b) Documents signed under penalty of perjury**

2  
3 When a document to be filed electronically provides for a signature under penalty  
4 of perjury of any person, the document is deemed to have been signed by that  
5 person if filed electronically provided that either of the following conditions is  
6 satisfied:

- 7
- 8 (1) The declarant has signed the document using an electronic signature ~~a~~  
9 ~~computer or other technology, in accordance with procedures, standards, and~~  
10 ~~guidelines established by the Judicial Council~~ and declares under penalty of  
11 perjury under the laws of the state of California that the information  
12 submitted is true and correct; or
- 13
- 14 (2) The declarant, before filing, has physically signed a printed form of the  
15 document. By electronically filing the document, the electronic filer certifies  
16 that the original, signed document is available for inspection and copying at  
17 the request of the court or any other party. In the event this second method of  
18 submitting documents electronically under penalty of perjury is used, the  
19 following conditions apply:
- 20
- 21 (A) At any time after the electronic version of the document is filed, any  
22 party may serve a demand for production of the original signed  
23 document. The demand must be served on all other parties but need not  
24 be filed with the court.
- 25
- 26 (B) Within five days of service of the demand under (A), the party or other  
27 person on whom the demand is made must make the original signed  
28 document available for inspection and copying by all other parties.
- 29
- 30 (C) At any time after the electronic version of the document is filed, the  
31 court may order the filing party or other person to produce the original  
32 signed document in court for inspection and copying by the court. The  
33 order must specify the date, time, and place for the production and must  
34 be served on all parties.
- 35
- 36 (D) Notwithstanding (A)–(C), local child support agencies may maintain  
37 original, signed pleadings by way of an electronic copy in the statewide  
38 automated child support system and must maintain them only for the  
39 period of time stated in Government Code section 68152(a). If the local  
40 child support agency maintains an electronic copy of the original,  
41 signed pleading in the statewide automated child support system, it may  
42 destroy the paper original.
- 43

1 ~~(b)(c)~~ \* \* \*

2

3 ~~(e)(d)~~ \* \* \*

4

5 ~~(d)(e)~~ \* \* \*

6

7 ~~(e)(f)~~ \* \* \*

8

9

**Advisory Committee Comment**

10

11 ~~Subdivision (a)(1). The standards and guidelines for electronic signatures that satisfy the~~  
12 ~~requirements for an electronic signature under penalty of perjury are contained in the Trial Court~~  
13 ~~Records Manual.~~

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** 04/05/18

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Technology: Remote Access to Electronic Records

*Committee or other entity submitting the proposal:*

Information Technology Advisory Committee (ITAC)

*Staff contact (name, phone and e-mail):* Andrea L. Jaramillo, 916-263-0991 [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: N/A. Approved by Judicial Council Technology Committee: January 8, 2018.

Project description from annual agenda: Project Summary: Develop Rule Proposal to Facilitate Remote Access to Trial Court Records By State and Local Government Entities, Parties, Parties' Attorneys, and Court-Appointed Persons

Key Objective: (a) Lead the Joint Ad Hoc Subcommittee on Remote Access to amend trial court rules to facilitate remote access to trial court records by state and local government entities, parties, parties' attorneys, and certain court-appointed persons.

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

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

ITAC approved the proposal at its February 2, 2018 meeting. There were minor substantive edits made afterward following feedback from the Family and Juvenile Law Advisory Committee and staff. First, in proposed rule 2.540(b), local child support agencies were added to the list of government entities and addition case types were added to California Department of Child Support Services. Second, references to the California Courts Protective Order Registry were removed as there are policy issues with respect to registry access that are still being resolved. The ITAC chairs are aware of the changes.

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-37**

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Title	Action Requested
Technology: Remote Access to Electronic Records	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503	January 1, 2019
Proposed by	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### **Executive Summary and Origin**

The proposal makes limited amendments to rules governing public access to electronic trial court records and creates a new set of rules governing remote access to such records by parties, parties’ attorneys, court-appointed persons, authorized persons working in a legal organization or qualified legal services project, and government entities. The purpose of the proposal is to facilitate existing relationships and provide clear authority to the courts.

The project to develop the new rules originated with the *California Judicial Branch Tactical Plan for Technology, 2017–2018*. Under the tactical plan, a major task under the “Technology Initiatives to Promote Rule and Legislative Changes” is to develop rules “for online access to court records for parties and justice partners.” (Judicial Council of Cal., *California Judicial Branch Tactical Plan for Technology, 2017–2018* (2017), p. 47.)

### **Background**

Existing rules govern public access to electronic trial court records (Cal. Rules of Court, rules 2.500–2.507) but do not govern access to such records by parties, their attorneys, or justice partners. (See Cal. Rules of Court, rule 2.501(b).) Because courts are moving swiftly toward making remote access to records available to these persons and entities, it is important to provide authority and guidance for the courts and others on these expanded forms of remote access.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Under the leadership of the Information Technology Advisory Committee, nine advisory committees<sup>1</sup> formed the Joint Ad Hoc Subcommittee on Remote Access to develop remote access rules applicable to parties, their attorneys, and justice partners. The formation of the Joint Ad Hoc Subcommittee for this purpose was approved by the advisory bodies' internal oversight committees.

## The Proposal

The existing rules governing electronic access to trial court records are found in chapter 2 of division 4 of title 2 of the California Rules of Court (hereafter, chapter 2). Chapter 2's rules currently apply "only to access to court records by the public" and limit what is remotely accessible by the public to registers of action, calendars, indexes, and court records in specific case types. (Cal. Rules of Court, rules 2.501(b), 2.503(b).) The rules in chapter 2 "do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule." (Rule 2.501(b).)

Because chapter 2 limits only *public* remote access, a gap exists in the rules with respect to persons and entities that are not the public at large, such as parties, parties' attorneys, and justice partners. Courts have had to fill this gap on a piecemeal, ad hoc basis. The purpose of the proposal is to create a new set of rules applicable statewide governing remote access to electronic records to provide more structure, guidance, and authority for the courts. The proposal neither creates a right to remote access nor provides for a higher level of access to court records using remote access than one would get by viewing court records at the courthouse.

The proposal restructures and expands the scope of chapter 2. It breaks chapter 2 into four articles to cover access not only by the public, but also by parties, their attorneys, legal organizations, court-appointed persons, and government entities. In brief, the new structure consists of:

- **Article 1: General Provisions.** This article builds on existing rules, covers broad concepts on access to electronic records, and expands on the definitions of terms used in chapter 2.
- **Article 2: Public Access.** This article consists of the existing public access rules, with minor amendments.
- **Article 3: Remote Access by a Party, Party's Attorney, Court-Appointed Person, or Authorized Person Working in a Legal Organization or Qualified Legal Services Project.** The content of this article is new and covers remote electronic access by those listed in the article's title.

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<sup>1</sup> Advisory Committee on Providing Access and Fairness, Appellate Advisory Committee, Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee, ITAC, Probate and Mental Health Advisory Committee, Traffic Advisory Committee, and Tribal Court–State Court Forum.

- **Article 4: Remote Access by Government Entities.** The content of this article is new and covers remote electronic access by government entities.

### **Article 1: General Provisions**

This article builds on existing rules and broadens the scope of chapter 2 beyond public access.

**Rule 2.500. Statement of Purpose.** The proposal amends the rule to expand the scope of the chapter to include access by parties, parties’ attorneys, legal organizations, court-appointed persons, and government entities. Language on access to confidential and sealed records is stricken from subdivision (c) because the rules allow access to such records by those who would be legally entitled to access them. For example, although the public at large may not be legally entitled to access a sealed record under any circumstance, a party who could access a sealed record at the courthouse would be able to access that record remotely under the new rules.

**Rule 2.501. Application, scope, and information to the public.** The proposal amends subdivision (a) to provide more explanation of what types of records are and are not within the scope of chapter 2’s provisions. Chapter 2 governs access only to “court records” as defined in chapter 2 and not to any other type of record that is not a “court record.” The proposal also adds an advisory committee comment providing additional details about the limitation in the scope of the rules to “court records.”

The proposal amends subdivision (b) by striking out the existing language and replacing it with a new provision. The existing language is stricken out because the rules of the chapter in the proposal expand the scope beyond public access and so the limitations in the existing language are no longer applicable. Because the new rules expand the scope of remote access by allowing a greater level of remote access by certain persons and entities, the new provision requires courts to provide information to the public on who may access their court records under the rules of the chapter. Courts may provide the information by linking to information that will be publicly posted on *courts.ca.gov* and may also supplement with information on their own sites in plain language.

**Rule 2.502. Definitions.** The proposal expands on the definitions found in rule 2.502 by adding new terms applicable to the expanded scope of chapter 2. The proposal also makes minor edits to the existing definitions. Most of the definitions are discussed in other sections, below, where the terms are applicable. For example, the meaning of “government entity” is discussed below in conjunction with article 4, which covers remote access by government entities.

One item of note, however, is that within the scope of chapter 2, a “person” is defined as a natural human being. The reason is that the remote access rules are highly person-centric when describing who can access what. Ultimately, the new rules contemplate that



some natural human being will be remotely accessing electronic court records, and the rules identify which natural humans are authorized to do so. This is not to say that the organizational entities that are legal persons, such as corporations, cannot have access, but they must do so through natural persons.

### **Article 2: Public Access**

Article 2 largely retains the existing public access rules found in rules 2.503—2.507. Rule 2.503 is the only one of these rules with substantive amendments and those amendments are minor. The amendments clarify that the rules in article 2 apply only to access to electronic records by the public.

The amendments also make a technical change to the list of electronic records to which a court must provide for electronic access by the public. Under rule 2.503(b), all records in civil cases must be available remotely, if feasible, except for those listed in rule 2.503(c)(1)—(9). Rule 2.503(c) lists all the case types where electronic access must be provided at the courthouse, but must not be provided remotely. However, under rule 2.503(c) there are 10 case types, not 9. The omission in rule 2.503(b) of reference to the 10th case type was accidental. Rule 2.503(c) was amended effective January 1, 2012, with an addition of a 10th case type, but there was no corresponding amendment to the reference to the list in rule 2.503(b). The proposal corrects the incongruity between subdivisions (b) and (c) of rule 2.503.

### **Article 3: Remote Access by a Party, Party's Attorney, Court-Appointed Person, or Authorized Persons Working in a Legal Organization or Qualified Legal Services Project**

Article 3 contains new rules to cover remote electronic access by a party, party's attorney, court-appointed person, or authorized persons working in a legal organization or qualified legal services project. Each of these types of users are discussed below. The rules make clear that article 3 is not intended to limit remote electronic access available under article 2 (the public access rules). Accordingly, if a user could have remote access to a court record under article 2, that user may do so without meeting the requirements of article 3. The rules under article 3, like the public access rules, require courts to provide remote electronic access if it is feasible to do so. Finally, the rules in article 3 include requirements for identity verification, security of confidential information, and additional conditions of access.

The rules in article 3 have occasional, intentional repetition to ensure that the rules are clear for a person accessing the records. For example, under rule 2.515, which is the rule explaining the scope of article 3, is a provision stating that the rules in article 3 do not limit the access available under article 2. This statement is repeated in and for rule 2.517, which is the rule applicable to parties, so that parties who may not be versed in reading rules of court do not have to search to understand that their ability to gain public access in article 2 is not limited by rule.

**Rule 2.515. Application and scope.** The proposed rule provides an overview of the scope of article 3 and who may access electronic records under article 3.

**Rule 2.516. Remote access to extent feasible.** The proposed rule requires courts to allow remote access to electronic records by the types of users identified in rule 2.515. This requirement is similar to the public access requirement in rule 2.503. The advisory committee comment recognizes that financial means and technical capabilities may affect the feasibility of providing remote access.

**Rule 2.517. Remote access by a party.** The proposed rule allows broad access to remote electronic court records by a *person* (defined as a natural human being in the definitions in rule 2.502) when accessing electronic records in actions or proceedings in which that person is a party. The reason for this limitation is that a natural human being must ultimately be the one who accesses the records. Parties that are not natural human beings can still gain access to their own electronic records but must do so through an attorney or other “authorized person” under the other rules in article 3 or, for certain government entities, article 4.

**Rule 2.518. Remote access by a party’s designee.** The proposed rule allows a party who is a natural person to designate other persons to access the party’s electronic records, provided that the party is at least 18 years of age. The rule allows the party to set limits on the designee’s access, such as to specific cases or for a specific period of time. In addition, the designee may have only the same access to a party’s electronic records that a member of the public would be entitled to if he or she were to inspect the party’s court records at the courthouse. For example, if a court record is sealed and the designee would not be entitled to view the court record at the courthouse, the designee cannot remotely access the electronic record. The rule states the basic terms of access, though additional terms may be set by the court in a user agreement. The rule does not prescribe a particular method for establishing a designation because the method may depend on the preferences and technical capabilities of individual courts.

**Rule 2.519. Remote access by a party’s attorney.** The proposed rule allows a party’s attorney to remotely access electronic records in the party’s actions or proceedings. Remote access may also be provided to an attorney appointed by the court to represent a party pending the final order of appointment. Attorneys may also potentially gain access through rule 2.518, in which case the provisions of that rule rather than those of rule 2.519 would apply.

Attorneys of record should be known to the court for remote access purposes because they are of record. The rule also accounts for providing remote access to attorneys who are not the attorneys of record in an underlying proceeding but may nonetheless be

assisting a party. For example, an attorney may be assisting a party with limited aspects of the case, like document preparation, without becoming the attorney of record.

Rule 2.519(c) requires an attorney who is not of record to obtain the party's consent to remotely access the party's court records and represent to the court in the remote access system that the attorney has obtained the party's consent. This process provides a mechanism for an attorney not of record to be known to the court and provides the court with assurance that the party has agreed to allow the attorney to remotely access the party's electronic records. The proposed rule also states the basic terms of access.

***Rule 2.520. Remote access by persons working in the same legal organization as a party's attorney.*** Because attorneys often work with other attorneys and legal staff, proposed rule 2.520 allows remote access by persons "working in the same legal organization" as a party's attorney. Both "legal organization" and "working in" are broad in scope. Under the definitions in amended rule 2.502, "legal organization" means "a licensed attorney or group of attorneys, nonprofit legal aid organization, government legal office, in-house legal office of a nongovernmental organization, or legal program organized to provide for indigent criminal, civil, or juvenile law representation." Those "working in" the same legal organization as a party's attorney may include partners, associates, employees, volunteers, and contractors. The goal with the definition of "legal organization" and the scope of "working in" is intended to capture a full range of ways that attorneys may be working together and with others to provide representation to a party.

Under rule 2.520, a party's attorney can designate other persons working in the same legal organization to have remote access, and the attorney must certify that those persons are working in the same legal organization and assisting the attorney with the party's case. The rule does not require certification to take any specific form. The proposed rule also states the terms of access.

***Rule 2.521. Remote access by a court-appointed person.*** In some proceedings, the court may appoint someone to participate in a proceeding or represent the interests of someone who is not technically a "party" to a proceeding (e.g., a minor child in a custody proceeding). The rule provides common examples of court-appointed persons but does not limit remote access to those examples. The proposed rule also states the basic terms of access.

***Rule 2.522. Remote access by persons working in a qualified legal services project providing brief legal services.*** The proposed rule allows remote access to electronic records by persons "working in" a "qualified legal services project" providing "brief legal services." The rule contemplates legal aid programs offering to individuals limited, short-term services for their court matters.

“Brief legal services” for purposes of chapter 2 is defined in rule 2.502 as “legal assistance provided without, or before, becoming a party’s attorney. It includes giving advice, having a consultation, performing research, investigating case facts, drafting documents, and making limited third-party contacts on behalf of a client.”

The rule applies only to qualified legal services projects as defined in Business and Professions Code section 6213(a). The purpose of this limitation is to ensure that the organizations are bona fide entities subject to professional standards. The definition of “qualified legal services project” under Business and Professions Code 6213(a) is:

- (1) A nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons and that has quality control procedures approved by the State Bar of California.
- (2) A program operated exclusively in California by a nonprofit law school accredited by the State Bar of California that meets the requirements of subparagraphs (A) and (B).
  - (A) The program shall have operated for at least two years at a cost of at least twenty thousand dollars (\$20,000) per year as an identifiable law school unit with a primary purpose and function of providing legal services without charge to indigent persons.
  - (B) The program shall have quality control procedures approved by the State Bar of California.

(Bus. & Prof. Code, § 6213(a).)

When an attorney from a qualified legal services project becomes a party’s attorney and offers services beyond the scope contemplated under this rule, the remote access rules for a party’s attorney would also provide a mechanism for access, as could the party’s designee rule. This proposed rule also states the basic terms of access.

***Rule 2.523. Identity verification, identity management, and user access.*** The proposed rule requires a court to verify the identity of a person eligible to have remote access to electronic records under article 3. Subdivision (b) describes the responsibilities of the court to verify identities and provide unique credentials to users. The rule does not prescribe any particular mechanism for identity verification or credentials because the best solutions may differ from court to court. Subdivision (c) describes responsibilities of users who seek remote access as follows: to provide necessary information for identity verification, to consent to conditions of access, and (3) to obtain authorization by the court to have remote access to electronic records. Subdivision (d) describes

responsibilities of legal organizations and qualified legal services projects to verify the identity of users it designates and notify the court when a user is no longer working in the legal organization or qualified legal services project. Subdivision (e) makes it clear that courts may enter into contracts or participate in statewide master agreements for identity verification, identity management, or access management systems.

***Rule 2.524. Security of confidential information.*** The proposed rule requires that when information in an electronic record is confidential by law or sealed by court order, remote access must be provided through a secure platform and transmissions of the information must be encrypted. Like with the identity verification requirements, courts may participate in contracts for secure access and encryption services.

***Rule 2.525. Searches and access to electronic records in search results.*** The proposed rule allows users who have remote access under article 3 to search for records by case number or case caption. The court must ensure that only users who are authorized to remotely access electronic records are able to access those records. The limitation on searches by case number or case caption is intended to prevent inadvertent unauthorized access. However, recognizing that unauthorized access may still occur, the rule includes measures for the user to take in that event.

***Rule 2.526. Audit trails.*** The purpose of this proposed rule is to ensure that courts are able to see who remotely accessed electronic records, under whose authority the user gained access, what electronic records were accessed, and when the record was accessed. The audit trail is a tool to assist the courts in identifying and investigating any potential issues or misuse of remote access. The rule also requires the court to provide limited audit trails to authorized users who are remotely accessing remote records under article 3. A limited audit trail would show who remotely accessed electronic records in a particular case but would not show which specific electronic records were accessed. The reason for this limited view is to protect confidential information.

***Rule 2.527. Additional conditions of access.*** The proposed rule requires courts to impose reasonable conditions on remote electronic access to preserve the integrity of court records, prevent the unauthorized use of information, and limit possible legal liability. The court may require users to enter into user agreements defining the terms of access, providing for compliance audits, specifying the scope of any liability, and providing for sanctions for misuse up to and including termination of remote access. The court may require each user to submit a signed, written agreement, but the rule does not prescribe any particular format or technical solution for the signature or agreement.

***Rule 2.528. Termination of remote access.*** The proposed rule makes clear that remote access to electronic records is a privilege and not a right and that courts may terminate any grant of permission for remote access.

#### **Article 4: Remote Access by Government Entities**

Article 4 contains new rules to cover remote access by persons authorized by government entities for legitimate governmental purposes. Under the definitions in amended rule 2.502, “government entity” means “a legal entity organized to carry on some function of the State of California or a political subdivision of the State of California. A government entity is also a federally recognized Indian tribe or a reservation, department, subdivision, or court of a federally recognized Indian tribe.”

***Rule 2.540. Application and scope.*** The proposed rule identifies which government entities may have remote access to which types of electronic records and is geared toward government entities that have a high volume of business before the court with respect to certain case types. To anticipate all needs across California’s 58 counties and superior courts is impossible; thus, the rule includes a “good cause” provision under which a court may grant remote access to electronic court records in particular case types beyond those specifically identified in the rule. The standard for “good cause” is that the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.

The proposed rule does not preclude government entities from gaining access to court records through articles 2 and 3. The proposed rule does not grant higher levels of access to court records than currently exists. Rather, like with the rules under article 3, it provides for remote access only to records that the government entity would be able to obtain if its agents appeared at the courthouse to inspect the records in person.

***Rule 2.541. Identity verification, identity management, and user access.*** The proposed rule largely mirrors rule 2.523 and describes responsibilities of the court, authorized persons, and government entities for identity verification and user access. The proposed rule also makes it clear that courts may enter into contracts or participate in statewide master agreements for identity verification, identity management, or access management systems.

***Rule 2.542. Security of confidential information.*** The proposed rule largely mirrors rule 2.524 in requiring secured platforms and encryption of confidential or sealed electronic records and in authorizing courts to participate in contracts for secure access and encryption services.

***Rule 2.543. Audit trails.*** The proposed rule mirrors rule 2.526, requiring the court to be able to generate audit trails and provide limited audit trails to authorized users.

***Rule 2.544. Additional conditions of access.*** The proposed rule mirrors rule 2.527, requiring courts to impose reasonable conditions on remote access.

***Rule 2.545. Termination of remote access.*** As with rule 2.528, this proposed rule makes clear that remote access to electronic records is a privilege and not a right and that courts may terminate any grant of permission for remote access.

### **Alternatives Considered**

The alternative to the proposed rules would be to maintain the status quo where courts handle remote electronic access on a piecemeal, ad hoc basis. Rules are recommended to provide comprehensive authority on a statewide level.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed remote access rules require the courts to provide remote access if it is feasible to do so and the rules recognize that financial and technological limitations may affect the feasibility of providing remote access. If feasible, implementation would require courts to create user agreements and have systems capable of complying with the rules. Costs and specific implementation requirements would vary across the courts depending on a court's current capabilities and its approach to providing services.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Proposed rule 2.518 would allow a person who is a party and at least 18 years of age to designate other persons to have remote access to the party's electronic records. What exceptions, if any, should apply where a person under 18 years of age could designate another?
- Should proposed rule 2.518 be limited to certain case types?
- The term "brief legal services" is used in the proposed rules in the context of staff and volunteers of "qualified legal services organizations" providing legal assistance to a client without becoming the client's attorney. The rule was developed to facilitate legal aid organizations providing short-term services without becoming the client's representative in a court matter. Is the term "brief legal services" and its definition clear? Would an alternative term like "preliminary legal services" be more clear?
- Is the term "legal organization" and its definition clear or necessary?
- Rather than using the term "legal organization" in rule 2.520, which covers remote access by persons working in the same legal organization as a person's attorney, would referring to persons "working at the direction of an attorney" be sufficient?
- The reference to "concurrent jurisdiction" in proposed rule 2.540(b)(1)(N) is intended to capture cases in which a tribal entity would have a right to access the court records at the court depending on the nature of the case and type of tribal involvement. Is "concurrent jurisdiction" the best way to describe such cases or would different phrasing be more accurate?
- Is the standard for "good cause" in proposed rule 2.540(b)(1)(O) clear?
- The proposed rules have some internal redundancies, which was intentional, with the goal of reducing the number of places someone reading the rules would need to look to understand how they apply. For example, "terms of remote access" in article 3 appears across different types of users to limit how many rules a user would need to review to understand certain requirements. As another example, rules on identity verification requirements appear in articles 3 and 4. Does the organization of the rules, including the redundant language, provide clear guidance? Would another organizational scheme be clearer?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising



processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?

- What implementation guidance, if any, would courts find helpful?
- The audit trail requirements are intended to provide both the courts and users with a mechanism to identify potential misuse of access. Would providing limited audit trails to users under rule 2.256 present a significant operational challenge to the court? If so, is there a more feasible alternative?

### **Attachments and Links**

1. Proposed rules 2.500–2.503, 2.515–2.528, and 2.540–2.545 of the California Rules of Court, at pages 13–35.

Rules 2.515–2.528 and 2.540–2.545 of the California Rules of Court are adopted and rules 2.500–2.503 are amended, effective January 1, 2019, to read:

1                                   **Chapter 2. ~~Public~~ Access to Electronic Trial Court Records**

2  
3   **Article 1. General Provisions**

4  
5                   **Rule 2.500. Statement of purpose**

6  
7           **(a) Intent**

8  
9           The rules in this chapter are intended to provide the public, parties, parties’  
10 attorneys, legal organizations, court-appointed persons, and government entities  
11 with reasonable access to trial court records that are maintained in electronic form,  
12 while protecting privacy interests.

13  
14           **(b) Benefits of electronic access**

15  
16           Improved technologies provide courts with many alternatives to the historical  
17 paper-based record receipt and retention process, including the creation and use of  
18 court records maintained in electronic form. Providing ~~public~~ access to trial court  
19 records that are maintained in electronic form may save the courts, ~~and the public,~~  
20 parties, parties’ attorneys, legal organizations, court-appointed persons, and  
21 government entities time, money, and effort and encourage courts to be more  
22 efficient in their operations. Improved access to trial court records may also foster  
23 in the public a more comprehensive understanding of the trial court system.

24  
25           **(c) No creation of rights**

26  
27           The rules in this chapter are not intended to give the public, parties, parties’  
28 attorneys, legal organizations, court-appointed persons, and government entities a  
29 right of access to any record that they are not otherwise legally entitled to access.  
30 ~~The rules do not create any right of access to records that are sealed by court order~~  
31 ~~or confidential as a matter of law.~~

32  
33   **Advisory Committee Comment**

34  
35           The rules in this chapter acknowledge the benefits that electronic ~~court~~ records provide but  
36 attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in  
37 litigation that can occur as a result of remote access to electronic ~~court~~ records. The proposed  
38 rules take into account the limited resources currently available in the trial courts. It is  
39 contemplated that the rules may be modified to provide greater electronic access as ~~the~~ courts’  
40 technical capabilities improve and ~~with the~~ knowledge is gained from the experience of ~~the courts~~  
41 ~~in~~ providing electronic access under these rules.

1  
2 **Rule 2.501. Application, and scope, and information to the public**

3  
4 **(a) Application and scope**

5  
6 The rules in this chapter apply only to trial court records as defined in rule  
7 2.502(4). They do not apply to statutorily mandated reporting between or within  
8 government entities, or any other documents or materials that are not court records.

9  
10 **(b) ~~Access by parties and attorneys~~ Information to the public**

11  
12 ~~The rules in this chapter apply only to access to court records by the public. They~~  
13 ~~do not limit access to court records by a party to an action or proceeding, by the~~  
14 ~~attorney of a party, or by other persons or entities that are entitled to access by~~  
15 ~~statute or rule.~~

16  
17 The websites for all trial courts must include a link to information that will inform  
18 the public of who may access their electronic records under the rules in this chapter  
19 and under what conditions they may do so. This information will be posted publicly  
20 on [www.courts.ca.gov](http://www.courts.ca.gov). Each trial court may post additional information, in plain  
21 language, as necessary to inform the public about the level of access that the  
22 particular trial court is providing.

23  
24 **Advisory Committee Comment**

25  
26 The rules on remote access do not apply beyond court records to other types of documents,  
27 information, or data. Rule 2.502 defines a court record as “any document, paper, or exhibit filed  
28 in an action or proceeding; any order or judgment of the court; and any item listed in Government  
29 Code section 68151(a), excluding any reporter’s transcript for which the reporter is entitled to  
30 receive a fee for any copy. The term does not include the personal notes or preliminary  
31 memoranda of judges or other judicial branch personnel, statutorily mandated reporting between  
32 government entities, judicial administrative records, court case information, or compilations of  
33 data drawn from court records where the compilations are not themselves contained in a court  
34 record.” (Rule 2.502(4), Cal. Rules of Court.) Thus, courts generate and maintain many types of  
35 information that are not court records and to which access may be restricted by law. Such  
36 information is not remotely accessible as court records, even to parties and their attorneys. If  
37 parties and their attorneys are entitled to access to any such additional information, separate and  
38 independent grounds for that access must exist.

39  
40 **Rule 2.502. Definitions**

41  
42 As used in this chapter, the following definitions apply:

- 1 (1) “Authorized person” means a person authorized by a legal organization, qualified  
2 legal services project, or government entity to access electronic records.  
3
- 4 (2) “Brief legal services” means legal assistance provided without, or before, becoming  
5 a party’s attorney. It includes giving advice, having a consultation, performing  
6 research, investigating case facts, drafting documents, and making limited third-  
7 party contacts on behalf of a client.  
8
- 9 ~~(1)~~(3) “Court record” is any document, paper, or exhibit filed by the parties to in an action  
10 or proceeding; any order or judgment of the court; and any item listed in  
11 Government Code section 68151(a),—excluding any reporter’s transcript for which  
12 the reporter is entitled to receive a fee for any copy—that is maintained by the court  
13 in the ordinary course of the judicial process. The term does not include the  
14 personal notes or preliminary memoranda of judges or other judicial branch  
15 personnel, statutorily mandated reporting between or within government entities,  
16 judicial administrative records, court case information, or compilations of data  
17 drawn from court records where the compilations are not themselves contained in a  
18 court record.  
19
- 20 (4) “Court case information” consists of information created and maintained by a court  
21 about a case or cases and not part of the court records that are filed with the court.  
22 This includes information in the case management system and case histories.  
23
- 24 ~~(4)~~(5) “Electronic access” means ~~computer~~ access by electronic means to court records  
25 available to the public through both public terminals at the courthouse and  
26 remotely, unless otherwise specified in the rules in this chapter.  
27
- 28 ~~(2)~~(6) “Electronic record” is a ~~computerized~~ court record, regardless of the manner in  
29 which it has been computerized that requires the use of an electronic device to  
30 access. The term includes both a ~~document~~ record that has been filed electronically  
31 and an electronic copy or version of a record that was filed in paper form. The term  
32 does not include a court record that is maintained only on microfiche, paper, or any  
33 other medium that can be read without the use of an electronic device.  
34
- 35 (7) “Government entity” means a legal entity organized to carry on some function of  
36 the State of California or a political subdivision of the State of California. A  
37 government entity is also a federally recognized Indian tribe or a reservation,  
38 department, subdivision, or court of a federally recognized Indian tribe.  
39
- 40 (8) “Legal organization” means a licensed attorney or group of attorneys, nonprofit  
41 legal aid organization, government legal office, in-house legal office of a  
42 nongovernmental organization, or legal program organized to provide for indigent  
43 criminal, civil, or juvenile law representation.

1  
2 (9) “Party” means a plaintiff, defendant, cross-complainant, cross-defendant,  
3 petitioner, respondent, intervenor, objector, or anyone expressly defined by statute  
4 as a party in a court case.

5  
6 (10) “Person” means a natural human being.

7  
8 ~~(3)~~(11) “The public” means an individual a person, a group, or an entity, including print  
9 or electronic media, or the representative of an individual, a group, or an entity  
10 regardless of any legal or other interest in a particular court record.

11  
12 (12) “Qualified legal services project” has the same meaning under the rules of this  
13 chapter as in 6213(a) of the Business and Professions Code.

14  
15 (13) “Remote access” means electronic access from a location other than a public  
16 terminal at the courthouse.

17  
18 (14) “User” means an individual person, a group, or an entity that accesses electronic  
19 records.

## 20 21 Article 2. Public Access

### 22 23 **Rule 2.503. Public access Application and scope**

#### 24 25 **(a) General right of access by the public**

26  
27 (1) All electronic records must be made reasonably available to the public in  
28 some form, whether in electronic or in paper form, except those that are  
29 sealed by court order or made confidential by law.

30  
31 (2) The rules in this article apply only to access to electronic records by the  
32 public.

#### 33 34 **(b) Electronic access required to extent feasible**

35  
36 A court that maintains the following records in electronic form must provide  
37 electronic access to them, both remotely and at the courthouse, to the extent it is  
38 feasible to do so:

39  
40 (1) \* \* \*

41  
42 (2) All records in civil cases, except those listed in (c)(1)–~~(9)~~(10).

1 (c) **Courthouse electronic access only**

2  
3 A court that maintains the following records in electronic form must provide  
4 electronic access to them at the courthouse, to the extent it is feasible to do so, but  
5 may provide public remote ~~electronic~~ access only to the records governed by  
6 specified in subdivision (b):  
7

8 (1)–(10) \* \* \*

9  
10 (d) \* \* \*

11  
12 (e) **Remote ~~electronic~~ access allowed in extraordinary criminal cases**

13  
14 Notwithstanding (c)(5), the presiding judge of the court, or a judge assigned by the  
15 presiding judge, may exercise discretion, subject to (e)(1), to permit remote  
16 ~~electronic~~ access by the public to all or a portion of the public court records in an  
17 individual criminal case if (1) the number of requests for access to documents in  
18 the case is extraordinarily high and (2) responding to those requests would  
19 significantly burden the operations of the court. An individualized determination  
20 must be made in each case in which such remote ~~electronic~~ access is provided.  
21

22 (1) In exercising discretion under (e), the judge should consider the relevant  
23 factors, such as:

24  
25 (A) \* \* \*

26  
27 (B) The benefits to and burdens on the parties in allowing remote ~~electronic~~  
28 access, including possible impacts on jury selection; and

29  
30 (C) \* \* \*

31  
32 (2) The court should, to the extent feasible, redact the following information  
33 from records to which it allows remote access under (e): driver license  
34 numbers; dates of birth; social security numbers; Criminal Identification and  
35 Information and National Crime Information numbers; addresses and phone  
36 numbers of parties, victims, witnesses, and court personnel; medical or  
37 psychiatric information; financial information; account numbers; and other  
38 personal identifying information. The court may order any party who files a  
39 document containing such information to provide the court with both an  
40 original unredacted version of the document for filing in the court file and a  
41 redacted version of the document for remote ~~electronic~~ access. No juror  
42 names or other juror identifying information may be provided by remote  
43 ~~electronic~~ access. This subdivision does not apply to any document in the

1 original court file; it applies only to documents that are available by remote  
2 ~~electronic~~ access.

3  
4 (3) Five days' notice must be provided to the parties and the public before the  
5 court makes a determination to provide remote ~~electronic~~ access under this  
6 rule. Notice to the public may be accomplished by posting notice on the  
7 court's ~~Web site~~ website. Any person may file comments with the court for  
8 consideration, but no hearing is required.

9  
10 (4) The court's order permitting remote ~~electronic~~ access must specify which  
11 court records will be available by remote ~~electronic~~ access and what  
12 categories of information are to be redacted. The court is not required to  
13 make findings of fact. The court's order must be posted on the court's ~~Web~~  
14 site website and a copy sent to the Judicial Council.

15  
16 **(f)–(i)** \* \* \*

17  
18 **Advisory Committee Comment**

19  
20 The rule allows a level of access by the public to all electronic records that is at least equivalent  
21 to the access that is available for paper records and, for some types of records, is much greater. At  
22 the same time, it seeks to protect legitimate privacy concerns.

23  
24 **Subdivision (c).** This subdivision excludes certain records (those other than the register, calendar,  
25 and indexes) in specified types of cases (notably criminal, juvenile, and family court matters)  
26 from public remote ~~electronic~~ access. The committee recognized that while these case records are  
27 public records and should remain available at the courthouse, either in paper or electronic form,  
28 they often contain sensitive personal information. The court should not publish that information  
29 over the Internet. However, the committee also recognized that the use of the Internet may be  
30 appropriate in certain criminal cases of extraordinary public interest where information regarding  
31 a case will be widely disseminated through the media. In such cases, posting of selected  
32 nonconfidential court records, redacted where necessary to protect the privacy of the participants,  
33 may provide more timely and accurate information regarding the court proceedings, and may  
34 relieve substantial burdens on court staff in responding to individual requests for documents and  
35 information. Thus, under subdivision (e), if the presiding judge makes individualized  
36 determinations in a specific case, certain records in criminal cases may be made available over  
37 the Internet.

38  
39 **Subdivisions (f) and (g).** These subdivisions limit electronic access to records (other than the  
40 register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those  
41 records. These limitations are based on the qualitative difference between obtaining information  
42 from a specific case file and obtaining bulk information that may be manipulated to compile  
43 personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of

1 aggregate information may be exploited for commercial or other purposes unrelated to the  
2 operations of the courts, at the expense of privacy rights of individuals.

3  
4 Courts must send a copy of the order permitting remote ~~electronic~~ access in extraordinary  
5 criminal cases to: Criminal Justice Services, Judicial Council of California, 455 Golden Gate  
6 Avenue, San Francisco, CA 94102-3688.

7  
8 **Rules 2.504–2.507 \* \* \***

9  
10 **Article 3. Remote Access by a Party, Party’s Designee, Party’s Attorney, Court-**  
11 **Appointed Person, or Authorized Person Working in a Legal Organization or**  
12 **Qualified Legal Services Project**

13  
14 **Rule 2.515. Application and scope**

15  
16 **(a) No limitation on access to electronic records available through article 2**

17  
18 The rules in this article do not limit remote access to electronic records available  
19 under article 2.

20  
21 **(b) Who may access**

22  
23 The rules in this article apply to remote access to electronic records by:

- 24  
25 (1) A person who is a party;  
26  
27 (2) A designee of a person who is a party,  
28  
29 (3) A party’s attorney;  
30  
31 (4) An authorized person working in the same legal organization as a party’s  
32 attorney;  
33  
34 (5) An authorized person working in a qualified legal services project providing  
35 brief legal services; and  
36  
37 (6) A court-appointed person.

38  
39 **Advisory Committee Comment**

40  
41 Article 2 allows remote access in most civil cases, and the rules in article 3 are not intended to  
42 limit that access. Rather, the article 3 rules allow broader remote access—by parties, parties’  
43 designees, parties’ attorneys, authorized persons working in legal organizations, authorized



1 persons working in a qualified legal services project providing brief services, and court-appointed  
2 persons—to those electronic records where remote access by the public is not allowed.

3  
4 Under the rules in article 3, a party, a party’s attorney, an authorized person working in the same  
5 legal organization as a party’s attorney, or a person appointed by the court in the proceeding  
6 basically has the same level of access to electronic records remotely that they would have if they  
7 were to seek to inspect the records in person at the courthouse. Thus, if they are legally entitled to  
8 inspect certain records at the courthouse, they could view the same records remotely; on the other  
9 hand, if they are restricted from inspecting certain court records at the courthouse (for example,  
10 because the records are confidential or sealed), they would not be permitted to view the records  
11 remotely. In some types of cases, such as unlimited civil cases, the access available to parties and  
12 their attorneys is generally similar to the public’s but in other types of cases, such as juvenile  
13 cases, it is much more extensive (see Cal. Rules of Court, rule 5.552).

14  
15 For authorized persons working in a qualified legal services program, the rule contemplates  
16 services offered in high-volume environments on an ad hoc basis. There are some limitations on  
17 access under the rule for qualified legal services projects. When an attorney at a qualified legal  
18 services project becomes a party’s attorney and offers services beyond the scope contemplated  
19 under this rule, the access rules for a party’s attorney would apply.

20  
21 **Rule 2.516. Remote access to extent feasible**

22  
23 To the extent feasible, a court that maintains records in electronic form must provide  
24 remote access to those records to the users described in rule 2.515, subject to the  
25 conditions and limitations stated in this article and otherwise provided by law.

26  
27 **Advisory Committee Comment**

28  
29 This rule takes into account the limited resources currently available in some trial courts. Many  
30 courts may not have the financial means or the technical capabilities necessary to provide the full  
31 range of remote access to electronic records authorized by this article. When it is more feasible  
32 and courts have had more experience with remote access, these rules may be modified to further  
33 expand remote access.

34  
35 **Rule 2.517. Remote access by a party**

36  
37 **(a) Remote access generally permitted**

38  
39 A person may have remote access to electronic records in actions or proceedings in  
40 which that person is a party.

1 **(b) Level of remote access**

2  
3 (1) In any action or proceeding, a party may be provided remote access to the  
4 same electronic records that he or she would be legally entitled to inspect at  
5 the courthouse.

6  
7 (2) This rule does not limit remote access to electronic records available under  
8 article 2.

9  
10 (3) This rule applies only to electronic records. A person is not entitled under  
11 these rules to remote access to documents, information, data, or other  
12 materials created or maintained by the courts that are not electronic records.

13  
14 **Advisory Committee Comment**

15  
16 Because this rule permits remote access only by a party who is a person (defined under rule 2.501  
17 as a natural person), remote access would not apply to organizational parties, which would need  
18 to gain remote access through the party's attorney rule or, for certain government entities with  
19 respect to specified electronic records, the rules in article 4.

20  
21 **Rule 2.518. Remote access by a party's designee**

22  
23 **(a) Remote access generally permitted**

24  
25 A person who is at least 18 years of age may designate other persons to have  
26 remote access to electronic records in actions or proceedings in which that person is  
27 a party.

28  
29 **(b) Level of remote access**

30  
31 (1) A party's designee may have the same access to a party's electronic records  
32 that a member of the public would be entitled to if he or she were to inspect  
33 the party's court records at the courthouse.

34  
35 (2) A party may limit the access to be afforded a designee to specific cases.

36  
37 (3) A party may limit the access to be afforded a designee to a specific period of  
38 time.

39  
40 (4) A party may modify or revoke a designee's level of access at any time.

1 **(c) Terms of access**

- 2
- 3 (1) A party’s designee may access electronic records only for the purpose of
- 4 assisting the party or the party’s attorney in the action or proceeding.
- 5
- 6 (2) Any distribution for sale of electronic records obtained remotely under the
- 7 rules in this article is strictly prohibited.
- 8
- 9 (3) All laws governing confidentiality and disclosure of court records apply to
- 10 the records obtained under this article.
- 11
- 12 (4) Party designees must comply with any other terms of remote access required
- 13 by the court.
- 14
- 15 (5) Failure to comply with these rules may result in the imposition of sanctions,
- 16 including termination of access.
- 17

18 **Advisory Committee Comment**

19

20 A party must be a natural person to authorize designees for remote access. Under rule 2.501, for

21 purposes of the rules, “persons” are natural persons. Accordingly, the party designee rule would

22 not apply to organizational parties, which would need to gain remote access through the party’s

23 attorney rule or, for certain government entities with respect to specified electronic records, the

24 rules in article 4.

25

26 **Rule 2.519. Remote access by a party’s attorney**

27

28 **(a) Remote access generally permitted**

- 29
- 30 (1) A party’s attorney may have remote access to electronic records in the party’s
- 31 actions or proceedings under this rule or rule 2.518. If a party’s attorney gains
- 32 remote access through rule 2.518, the requirements of rule 2.519 do not
- 33 apply.
- 34
- 35 (2) If a court notifies an attorney of the court’s intention to appoint the attorney
- 36 to represent a party in a criminal, juvenile justice, child welfare, family law,
- 37 or probate proceeding, the court may grant remote access to that attorney
- 38 before an order of appointment is issued by the court.
- 39

1 **(b) Level of remote access**

2  
3 A party's attorney may be provided remote access to the same electronic records in  
4 the party's actions or proceedings that the party's attorney would be legally entitled  
5 to view at the courthouse.

6  
7 **(c) Terms of remote access for attorneys who are not the attorney of record in the**  
8 **party's actions or proceedings in the trial court**

9  
10 An attorney who represents a party, but who is not the party's attorney of record,  
11 may remotely access the party's electronic records, provided that the attorney:

- 12  
13 (1) Obtains the party's consent to remotely access the party's electronic records;  
14 and  
15  
16 (2) Represents to the court in the remote access system that the attorney has  
17 obtained the party's consent to remotely access the party's electronic records.

18  
19 **(d) Terms of remote access for all attorneys accessing electronic records**

- 20  
21 (1) A party's attorney may remotely access the electronic records only for the  
22 purposes of assisting the party with the party's court matter.  
23  
24 (2) A party's attorney may not distribute for sale any electronic records obtained  
25 remotely under the rules in this article. Such sale is strictly prohibited.  
26  
27 (3) A party's attorney must comply with any other terms of remote access  
28 required by the court.  
29  
30 (4) Failure to comply with these rules may result in the imposition of sanctions,  
31 including termination of access.

32  
33 **Advisory Committee Comment**

34  
35 **Subdivision (c).** An attorney of record will be known to the court for purposes of remote access.  
36 However, a person may engage an attorney other than the attorney of record for assistance in an  
37 action or proceeding in which the person is a party. Examples include, but are not limited to,  
38 when a party engages an attorney to (1) prepare legal documents but not appear in the party's  
39 action (e.g., provide limited-scope representation); (2) assist the party with  
40 dismissal/expungement or sealing of a criminal record when the attorney did not represent the  
41 party in the criminal proceeding; or (3) represent the party in an appellate matter when the  
42 attorney did not represent the party in the trial court. Subdivision (c) provides a mechanism for an  
43 attorney not of record to be known to the court for purposes of remote access.

1  
2 **Rule 2.520. Remote access by persons working in the same legal organization as a**  
3 **party's attorney**

4  
5 **(a) Application and scope**

- 6  
7 (1) This rule applies when a party's attorney is assisted by others working in the  
8 same legal organization.  
9  
10 (2) "Working in the same legal organization" under this rule includes partners,  
11 associates, employees, volunteers, and contractors.  
12  
13 (3) This rule does not apply when a person working in the same legal  
14 organization as a party's attorney gains remote access to records as a party's  
15 designee under rule 2.518.

16  
17 **(b) Designation and certification**

- 18  
19 (1) A party's attorney may designate that other persons working in the same  
20 legal organization as the party's attorney have remote access.  
21  
22 (2) A party's attorney must certify that the other persons authorized for access  
23 are working in the same legal organization as the party's attorney and are  
24 assisting the party's attorney in the action or proceeding.

25  
26 **(c) Level of remote access**

- 27  
28 (1) Persons designated by a party's attorney under subdivision (b) must be  
29 provided access to the same electronic records as the party.  
30  
31 (2) Notwithstanding subdivision (b), when a court designates a legal organization  
32 to represent parties in criminal, juvenile, family, or probate proceedings, the  
33 court may grant remote access to a person working in the organization who  
34 assigns cases to attorneys working in that legal organization.

35  
36 **(d) Terms of remote access**

- 37  
38 (1) Persons working in a legal organization may remotely access electronic  
39 records only for purposes of assigning or assisting a party's attorney.  
40  
41 (2) Any distribution for sale of electronic records obtained remotely under the  
42 rules in this article is strictly prohibited.  
43

- 1           (3) All laws governing confidentiality and disclosure of court records apply to  
2           the records obtained under this article.
- 3
- 4           (4) Persons working in a legal organization must comply with any other terms of  
5           remote access required by the court.
- 6
- 7           (5) Failure to comply with these rules may result in the imposition of sanctions,  
8           including termination of access.
- 9

10 **Rule 2.521. Remote access by a court-appointed person**

11

12 **(a) Remote access generally permitted**

13

- 14           (1) A court may grant a court-appointed person remote access to electronic  
15           records in any action or proceeding in which the person has been appointed  
16           by the court.
- 17
- 18           (2) Court-appointed persons include an attorney appointed to represent a minor  
19           child under Family Code section 3150; a Court Appointed Special Advocate  
20           volunteer in a juvenile proceeding; an attorney appointed under Probate Code  
21           section 1470, 1471, or 1474; an investigator appointed under Probate Code  
22           section 1454; a probate referee designated under Probate Code section 8920;  
23           a fiduciary, as defined in Probate Code section 39; an attorney appointed  
24           under Welfare and Institutions Code section 5365; or a guardian ad litem  
25           appointed under Code of Civil Procedure section 372 or Probate Code section  
26           1003.
- 27

28 **(b) Level of remote access**

29

30 A court-appointed person may be provided with the same level of remote access to  
31 electronic records as the court-appointed person would be legally entitled to if he or  
32 she were to appear at the courthouse to inspect the court records.

33

34 **(c) Terms of remote access**

35

- 36           (1) A court-appointed person may remotely access electronic records only for  
37           purposes of fulfilling the responsibilities for which he or she was appointed.
- 38
- 39           (2) Any distribution for sale of electronic records obtained remotely under the  
40           rules in this article is strictly prohibited.
- 41
- 42           (3) All laws governing confidentiality and disclosure of court records apply to  
43           the records obtained under this article.

1  
2 (4) A court-appointed person must comply with any other terms of remote access  
3 required by the court.

4  
5 (5) Failure to comply with these rules may result in the imposition of sanctions,  
6 including termination of access.

7  
8 **Rule 2.522. Remote access by persons working in a qualified legal services project**  
9 **providing brief legal services**

10  
11 **(a) Application and scope**

12  
13 (1) This rule applies to qualified legal services projects as defined in section  
14 6213(a) of the Business and Professions Code.

15  
16 (2) “Working in a qualified legal services project” under this rule includes  
17 attorneys, employees, and volunteers.

18  
19 (3) This rule does not apply to a person working in or otherwise associated with  
20 a qualified legal services project who gains remote access to court records as  
21 a party’s designee under rule 2.518.

22  
23 **(b) Designation and certification**

24  
25 (1) A qualified legal services project may designate persons working in the  
26 qualified legal services project who provide brief legal services, as defined in  
27 article 1, to have remote access.

28  
29 (2) The qualified legal services project must certify that the authorized persons  
30 work in their organization.

31  
32 **(c) Level of remote access**

33  
34 Authorized persons may be provided remote access to the same electronic records  
35 that the authorized person would be legally entitled to inspect at the courthouse.

36  
37 **(d) Terms of remote access**

38  
39 (1) Qualified legal services projects must obtain the party’s consent to remotely  
40 access the party’s electronic records.

- 1           (2) Authorized persons must represent to the court in the remote access system  
2           that the qualified legal services project has obtained the party's consent to  
3           remotely access the party's electronic records.  
4  
5           (3) Qualified legal services projects providing services under this rule may  
6           remotely access electronic records only to provide brief legal services.  
7  
8           (4) Any distribution for sale of electronic records obtained under the rules in this  
9           article is strictly prohibited.  
10  
11          (5) All laws governing confidentiality and disclosure of court records apply to  
12          electronic records obtained under this article.  
13  
14          (6) Qualified legal services projects must comply with any other terms of remote  
15          access required by the court.  
16  
17          (7) Failure to comply with these rules may result in the imposition of sanctions,  
18          including termination of access.  
19

20 **Rule 2.523. Identity verification, identity management, and user access**

21  
22 **(a) Identity verification required**

23  
24 Before allowing a person who is eligible under the rules in article 3 to have remote  
25 access to electronic records, a court must verify the identity of the person seeking  
26 access.  
27

28 **(b) Responsibilities of the court**

29  
30 A court that allows persons eligible under the rules in article 3 to have remote  
31 access to electronic records must have an identity proofing solution that verifies the  
32 identity of, and provides a unique credential to, each person who is permitted  
33 remote access to the electronic records. The court may authorize remote access by a  
34 person only if that person's identity has been verified, the person accesses records  
35 using the credential provided to that individual, and the person complies with the  
36 terms and conditions of access, as prescribed by the court.  
37

38 **(c) Responsibilities of persons accessing records**

39  
40 A person eligible to be given remote access to electronic records under the rules in  
41 article 3 may be given such access only if that person:  
42



- 1           (1) Provides the court with all information it directs in order to identify the  
2           person to be a user;  
3  
4           (2) Consents to all conditions for remote access required by article 3 and the  
5           court; and  
6  
7           (3) Is authorized by the court to have remote access to electronic records.  
8

9   **(d) Responsibilities of the legal organizations or qualified legal services projects**  
10

- 11           (1) If a person is accessing electronic records on behalf of a legal organization or  
12           qualified legal services project, the organization or project must approve  
13           granting access to that person, verify the person’s identity, and provide the  
14           court with all the information it directs in order to authorize that person to  
15           have access to electronic records.  
16  
17           (2) If a person accessing electronic records on behalf of a legal organization or  
18           qualified legal services project leaves his or her position or for any other  
19           reason is no longer entitled to access, the organization or project must  
20           immediately notify the court so that it can terminate the person’s access.  
21

22   **(e) Vendor contracts, statewide master agreements, and identity and access**  
23   **management systems**  
24

25           A court may enter into a contract with a vendor to provide identity verification,  
26           identity management, or user access services. Alternatively, if a statewide identity  
27           verification, identity management, or access management system, or a statewide  
28           master agreement for such systems is available, courts may use those for identity  
29           verification, identity management, and user access services.  
30

31   **Rule 2.524. Security of confidential information**  
32

33   **(a) Secure access and encryption required**  
34

35           If any information in an electronic record that is confidential by law or sealed by  
36           court order may lawfully be provided remotely to a person or organization  
37           described in rule 2.515, any remote access to the confidential information must be  
38           provided through a secure platform and any electronic transmission of the  
39           information must be encrypted.  
40

1 **(b) Vendor contracts and statewide master agreements**

2  
3 A court may enter into a contract with a vendor to provide secure access and  
4 encryption services. Alternatively, if a statewide master agreement is available for  
5 secure access and encryption services, courts may use that master agreement.

6  
7 **Advisory Committee Comment**

8  
9 This rule describes security and encryption requirements; levels of access are provided for in  
10 rules 2.517–2.522.

11  
12 **Rule 2.525. Searches and access to electronic records in search results**

13  
14 **(a) Searches**

15  
16 A user authorized under this article to remotely access a party’s electronic records  
17 may search for the records by case number or case caption.

18  
19 **(b) Access to electronic records in search results**

20  
21 A court providing remote access to electronic records under this article must ensure  
22 that authorized users are able to access the electronic records only at the levels  
23 provided in this article.

24  
25 **(c) Unauthorized access**

26  
27 If a user gains access to an electronic record that the user is not authorized to access  
28 under this article, the user must:

- 29  
30 (1) Report the unauthorized access to the court as directed by the court for that  
31 purpose;  
32  
33 (2) Destroy all copies, in any form, of the record; and  
34  
35 (3) Delete from the user’s browser history all information that identifies the  
36 record.

37  
38 **Rule 2.526. Audit trails**

39  
40 **(a) Ability to generate audit trails required**

41  
42 The court must have the ability to generate an audit trail that identifies each  
43 remotely accessed record, when an electronic record was remotely accessed, who

1 remotely accessed the electronic record, and under whose authority the user gained  
2 access to the electronic record.

3  
4 **(b) Limited audit trails available to authorized users**

5  
6 (1) A court providing remote access to electronic records under this article must  
7 make limited audit trails available to authorized users under this article.

8  
9 (2) A limited audit trail must show the user who remotely accessed electronic  
10 records in a particular case but must not show which specific electronic  
11 records were accessed.

12  
13 **Rule 2.527. Additional conditions of access**

14  
15 To the extent consistent with these rules and other applicable law, a court must  
16 impose reasonable conditions on remote access to preserve the integrity of its  
17 records, prevent the unauthorized use of information, and limit possible legal  
18 liability. The court may choose to require each user to submit a signed, written  
19 agreement enumerating those conditions before it permits that user to remotely  
20 access electronic records. The agreements may define the terms of access, provide  
21 for compliance audits, specify the scope of liability, and provide for the imposition  
22 of sanctions for misuse up to and including termination of remote access.

23  
24 **Rule 2.528. Termination of remote access**

25  
26 **(a) Remote access is a privilege**

27  
28 Remote access to electronic records under this article is a privilege and not a right.

29  
30 **(b) Termination by court**

31  
32 A court that provides remote access may, at any time and for any reason, terminate  
33 the permission granted to any person eligible under the rules in article 3 to remotely  
34 access electronic records.

35  
36 **Article 4. Remote Access by Government Entities**

37  
38 **Rule 2.540. Application and scope**

39  
40 **(a) Applicability to government entities**

41  
42 The rules in this article provide for remote access to electronic records by  
43 government entities described in subdivision (b) below. The access allowed under

1 these rules is in addition to any access these entities or authorized persons working  
2 for such entities may have under the rules in articles 2–3.

3  
4 **(b) Level of remote access**

5  
6 (1) A court may provide authorized persons from government entities with  
7 remote access to electronic records as follows:

8  
9 (A) Office of the Attorney General: criminal electronic records and juvenile  
10 justice electronic records.

11  
12 (B) California Department of Child Support Services: family electronic  
13 records, child welfare electronic records, and parentage electronic  
14 records.

15  
16 (C) Office of a district attorney: criminal electronic records and juvenile  
17 justice electronic records.

18  
19 (D) Office of a public defender: criminal electronic records and juvenile  
20 justice electronic records.

21  
22 (E) Office of a county counsel: criminal electronic records, mental health  
23 electronic records, child welfare electronic records, and probate  
24 electronic records.

25  
26 (F) Office of a city attorney: criminal electronic records, juvenile justice  
27 electronic records, and child welfare electronic records.

28  
29 (G) County department of probation: criminal electronic records, juvenile  
30 justice electronic records, and child welfare electronic records.

31  
32 (H) County sheriff's department: criminal electronic records and juvenile  
33 justice electronic records.

34  
35 (I) Local police department: criminal electronic records and juvenile  
36 justice electronic records.

37  
38 (J) Local child support agency: family electronic records, child welfare  
39 electronic records, and parentage electronic records.

40  
41 (K) County child welfare agency: child welfare electronic records.  
42

1 (L) County public guardian: criminal electronic records, mental health  
2 electronic records, and probate electronic records.

3  
4 (M) County agency designated by the board of supervisors to provide  
5 conservatorship investigation under chapter 3 of the Lanterman-Petris-  
6 Short Act (Welf. & Inst. Code, §§ 5350–5372): criminal electronic  
7 records, mental health electronic records, and probate electronic  
8 records.

9  
10 (N) Federally recognized Indian tribe (including any reservation,  
11 department, subdivision, or court of the tribe) with concurrent  
12 jurisdiction: child welfare electronic records, family electronic records,  
13 juvenile justice electronic records, and probate electronic records.

14  
15 (O) For good cause, a court may grant remote access to electronic records  
16 in particular case types to government entities beyond those listed in  
17 (b)(1)(A)–(N). For purposes of this rule, “good cause” means that the  
18 government entity requires access to the electronic records in order to  
19 adequately perform its statutory duties or fulfill its responsibilities in  
20 litigation.

21  
22 (P) All other remote access for government entities is governed by articles  
23 2–3.

24  
25 (2) Subject to (b)(1), the court may provide a government entity with the same  
26 level of remote access to electronic records as the government entity would  
27 be legally entitled to if a person working for the government entity were to  
28 appear at the courthouse to inspect court records in that case type. If a court  
29 record is confidential by law or sealed by court order and a person working  
30 for the government entity would not be legally entitled to inspect the court  
31 record at the courthouse, the court may not provide the government entity  
32 with remote access to the confidential or sealed electronic record.

33  
34 (3) This rule applies only to electronic records. A government entity is not  
35 entitled under these rules to remote access to any documents, information,  
36 data, or other types of materials created or maintained by the courts that are  
37 not electronic records.

38  
39 **(c) Terms of remote access**

40  
41 (1) Government entities may remotely access electronic records only to perform  
42 official duties and for legitimate governmental purposes.



1           (2) Consents to all conditions for remote access required by article 4 and the  
2           court; and

3  
4           (3) Is authorized by the court to have remote access to electronic records.

5  
6           **(d) Responsibilities of government entities**

7  
8           (1) If a person is accessing electronic records on behalf of a government entity,  
9           the government entity must approve granting access to that person, verify the  
10           person's identity, and provide the court with all the information it needs to  
11           authorize that person to have access to electronic records.

12  
13           (2) If a person accessing electronic records on behalf of a government entity  
14           leaves his or her position or for any other reason is no longer entitled to  
15           access, the government entity must immediately notify the court so that it can  
16           terminate the person's access.

17  
18           **(e) Vendor contracts, statewide master agreements, and identity and access**  
19           **management systems**

20  
21           A court may enter into a contract with a vendor to provide identity verification,  
22           identity management, or user access services. Alternatively, if a statewide identity  
23           verification, identity management, or access management system or a statewide  
24           master agreement for such systems is available, courts may use those for identity  
25           verification, identity management, and user access services.

26  
27           **Rule 2.542. Security of confidential information**

28  
29           **(a) Secure access and encryption required**

30  
31           If any information in an electronic record that is confidential by law or sealed by  
32           court order may lawfully be provided remotely to a government entity, any remote  
33           access to the confidential information must be provided through a secure platform,  
34           and any electronic transmission of the information must be encrypted.

35  
36           **(b) Vendor contracts and statewide master agreements**

37  
38           A court may enter into a contract with a vendor to provide secure access and  
39           encryption services. Alternatively, if a statewide master agreement is available for  
40           secure access and encryption services, courts may use that master agreement.

1 **Rule 2.543. Audit trails**

2  
3 **(a) Ability to generate audit trails required**

4  
5 The court must have the ability to generate an audit trail that identifies each  
6 remotely accessed record, when an electronic record was remotely accessed, who  
7 remotely accessed the electronic record, and under whose authority the user gained  
8 access to the electronic record.

9  
10 **(b) Audit trails available to government entity**

11  
12 (1) A court providing remote access to electronic records under this article must  
13 make limited audit trails available to authorized users of the government  
14 entity.

15  
16 (2) A limited audit trail must show the user who remotely accessed electronic  
17 records in a particular case, but must not show which specific electronic  
18 records were accessed.

19  
20 **Rule 2.544. Additional conditions of access**

21  
22 To the extent consistent with these rules and other applicable law, a court must impose  
23 reasonable conditions on remote access to preserve the integrity of its records, prevent the  
24 unauthorized use of information, and protect itself from liability. The court may choose  
25 to require each user to submit a signed, written agreement enumerating those conditions  
26 before it permits that user to access electronic records remotely. The agreements may  
27 define the terms of access, provide for compliance audits, specify the scope of liability,  
28 and provide for sanctions for misuse up to and including termination of remote access.

29  
30 **Rule 2.545. Termination of remote access**

31  
32 **(a) Remote access is a privilege**

33  
34 Remote access under this article is a privilege and not a right.

35  
36 **(b) Termination by court**

37  
38 A court that provides remote access may terminate the permission granted to any  
39 person or entity eligible under the rules in article 4 to remotely access electronic  
40 records at any time for any reason.



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** 04/05/18

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Technology: Rules Modernization Project

*Committee or other entity submitting the proposal:*

Joint proposal: Information Technology Advisory Committee (ITAC) and Civil and Small Claims Advisory Committee (CSCAC)

*Staff contact (name, phone and e-mail):* ITAC: Andrea L. Jaramillo, 916-263-0991, [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

CSCAC: Anne Ronan, 415-865-8933, [anne.ronan@jud.ca.gov](mailto:anne.ronan@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO:

ITAC: N/A. Approved by Judicial Council Technology Committee: January 8, 2018.

CSCAC: October 24, 2017

Project description from annual agenda:

ITAC: Project Summary: Modernize Rules of Court for the Trial Courts to Support E-Business In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for more comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

CSCAC: Project Summary: Assist Information Technology Advisory Committee (ITAC) in its Rules Modernization Project, a collaborative multiyear effort to comprehensively review and modernize statutes and rules so that they will be consistent with and foster modern e-business practices.

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

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

# Judicial Council of California

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## INVITATION TO COMMENT SPR18-38

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Title	Action Requested
Technology: Rules Modernization Project	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form EFS-006	January 1, 2019
Proposed by	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

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### Executive Summary and Origin

As part of the Rules Modernization Project, the Information Technology Advisory Committee and Civil and Small Claims Advisory Committee recommend adopting a new form for withdrawal of consent to electronic service. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019.

### The Proposal

The proposed form is *Withdrawal of Consent to Electronic Service* (form EFS-006). Under Code of Civil Procedure section 1010.6(a)(6),

[a] party or other person who has provided express consent to accept service electronically may withdraw consent at any time by completing and filing with the court the appropriate Judicial Council form. The Judicial Council shall create the form by January 1, 2019.

The proposed form is modeled after *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV).

### Alternatives Considered

Because the form is required by statute, no alternative was considered.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **Implementation Requirements, Costs, and Operational Impacts**

It is not expected that the new form will result in any significant costs or operational impacts on the courts.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006?
  - If not, should language be included on EFS-006 directing the completion of a proof of service. For example, “You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”

### **Attachments and Links**

1. Form EFS-006, at pages 3–4
2. Code of Civil Procedure section 1010.6,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP)



CASE NAME:	CASE NUMBER:
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(Note: If you serve Withdrawal of Consent to Electronic Service by mail, you should use form POS-030, Proof of Service by First-Class Mail–Civil, instead of using this page.)

**PROOF OF ELECTRONIC SERVICE  
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE**

1. I am at least 18 years old.

My residence or business address is (specify):

2. I electronically served a copy of the *Withdrawal of Consent to Electronic Service* as follows:

a. Name of person served:

On behalf of (name or names of parties represented, if person served is an attorney):

b. Electronic service address of person served:

c. On (date):

Electronic service of the *Withdrawal of Consent to Electronic Service* on additional persons is described in an attachment.

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

Date:

\_\_\_\_\_  \_\_\_\_\_

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

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** April 5, 2018

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

Indian Child Welfare Act: Waiver of Certain Pro Hac Vice Requirements for Attorneys Representing Tribes in Indian Child Welfare Act cases

*Committee or other entity submitting the proposal:*

Tribal Court - State Court Forum

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207, [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: March 1, 2018

Project description from annual agenda: Project Title: Policy Recommendations: Revise Pro Hac Vice Requirements for attorneys representing Indian Tribes and Indian Parents in Indian Child Welfare Act Cases

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

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

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## INVITATION TO COMMENT

**SPR18-39**

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Title	Action Requested
Indian Child Welfare Act: Waiver of Certain <i>Pro Hac Vice</i> Requirements for Attorneys Representing Tribes in Indian Child Welfare Act cases	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rule 9.40	Proposed Effective Date January 1, 2019
Proposed by Tribal Court–State Court Forum Hon. Abby Abinanti, Cochair Hon. Dennis M. Perluss, Cochair	Contact Ann Gilmour, 415-865-4207 <a href="mailto:ann.gilmour@jud.ca.gov">ann.gilmour@jud.ca.gov</a>

---

### Executive Summary and Origin

The Tribal Court–State Court Forum recommends amending California Rules of Court, rule 9.40, governing out-of-state counsel appearing *pro hac vice*. The amendment would exempt from two of the requirements of rule 9.40 attorneys representing an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act (25 U.S.C. §§ 1903–1963; ICWA). Under ICWA, Indian parents and custodians are entitled to appointed counsel, and Indian tribes and custodians are entitled to intervene in state court child custody proceedings governed by ICWA. The California ICWA Compliance Task Force suggested that certain *pro hac vice* requirements should be waived for out-of-state attorneys in cases governed by the Indian Child Welfare Act to improve tribal representation in ICWA cases in California courts.

### Background

California has a high number of appeals related to the Indian Child Welfare Act.<sup>1</sup> Tribal advocates suggest that one reason for the high number of appeals is that tribes are often unable to participate fully in cases involving their children because, unlike every other party to a child welfare case, an Indian child’s tribe is not entitled to appointed counsel. Removing barriers to

---

<sup>1</sup> In 2016, California had 114 appeals related to ICWA. (Professor Kathryn E. Fort, “2016 ICWA Appellate Cases by the Numbers” *Turtle Talk* [Indigenous Law and Policy Center Blog], Michigan State University College of Law, January 4, 2017, <https://turtletalk.wordpress.com/2017/01/04/2016-icwa-appellate-cases-by-the-numbers/>.)

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

full and effective tribal participation in child welfare proceedings involving Indian children could improve ICWA compliance and reduce appeals.

Further, tribes assert that they have a federally protected right to participate in these cases and that right cannot be burdened by states' laws regulating attorneys and the practice of law.<sup>2</sup>

California's Indian population includes a large number of people affiliated with out-of-state tribes or tribes whose territories and primary headquarters are based in neighboring states, such as the Washoe, Fort Mojave, Chemehuevi, Colorado River, and Quechan tribes.<sup>3</sup>

In March of 2017, the California ICWA Compliance Task Force presented its report to California Attorney General Xavier Becerra.<sup>4</sup> Among the many recommendations contained in that report is a recommendation that "California's *pro hac vice* rules should be amended to permit an out-of-state attorney who represents an Indian tribe to appear in a child custody proceeding without being required to associate with local counsel" (p. 95). Several other states have recently taken steps to waive certain *pro hac vice* requirements for attorneys representing tribes in ICWA cases.<sup>5</sup> The goal is to remove barriers to tribal participation in these cases. The Tribal Court–State Court Forum and California ICWA Compliance Task Force considered that the restriction on repeated appearances could also create a barrier, particularly for tribes bordering other states.

## The Proposal

The proposal would amend California Rules of Court, rule 9.40, by adding subdivision (g) to exempt an attorney representing an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act from the requirement to associate with an active member of the State Bar of California. It would further remove the restriction on multiple appearances by an attorney representing a tribe in a child custody proceeding governed by ICWA by deeming that representation to be a special circumstance. The proposal is intended to improve compliance with the requirements of the Indian Child Welfare Act, reduce appeals, and improve outcomes for

---

<sup>2</sup> *State ex rel. Juvenile Dep't of Lane County v. Shuey* (1993) 119 Ore.App. 185; *In re N.N.E.* (Iowa 2008) 752 N.W.2d 1.

<sup>3</sup> Judicial Council of Cal., Center for Families, Children & Cts., "Native American Statistical Abstract: Population Characteristics" *Research Update* (Mar. 2012), [www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf](http://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf) and California Indian Tribal Homelands and Trust Land Map, [www.water.ca.gov/tribal/docs/maps/CaliforniaIndianTribalHomelands24x30\\_20110719.pdf](http://www.water.ca.gov/tribal/docs/maps/CaliforniaIndianTribalHomelands24x30_20110719.pdf).

<sup>4</sup> California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), [www.caltribalfamilies.org/news/ICWAComplianceTaskForceFinalReport2017.pdf/view](http://www.caltribalfamilies.org/news/ICWAComplianceTaskForceFinalReport2017.pdf/view).

<sup>5</sup> See, for example, Nebraska Revised Statute 43-1504, <https://nebraskalegislature.gov/laws/statutes.php?statute=43-1504>; Oregon Uniform Trial Court Rule 3.170 [www.osbar.org/docs/rulesregs/UTCR3.170.pdf](http://www.osbar.org/docs/rulesregs/UTCR3.170.pdf); Michigan Court Rules, rule 8.126, [http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2016-04\\_2017-05-24\\_FormattedOrder\\_AmendtOfMCR8.126.pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2016-04_2017-05-24_FormattedOrder_AmendtOfMCR8.126.pdf); and the proposed amendment to the Washington Rules of Court, Admission for Practice Rules 8, [www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=622](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=622).



Indian children and families by facilitating tribal participation in Indian child custody cases governed by the Indian Child Welfare Act.

### **Alternatives Considered**

The Tribal Court–State Court Forum considered taking no action but determined that an amendment to the rule supports the goal of removing barriers to tribal participation in ICWA cases involving Indian children.

### **Implementation Requirements, Costs, and Operational Impacts**

No implementation costs are anticipated.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the Tribal Court–State Court Forum is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

They also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rule 9.40, at page 4

Rule 9.40 of the California Rules of Court would be amended, effective January 1, 2019, to read:

1 **Rule 9.40. Counsel *pro hac vice***

2  
3 **(a)–(f) \* \* \***

4  
5 **(g) Representation in cases governed by the Indian Child Welfare Act (25 U.S.C.**  
6 **§ 1903 et seq.)**

- 7  
8 (1) The requirement in subdivision (a) that the applicant associate with an active  
9 member of the State Bar of California does not apply to an applicant seeking  
10 to appear in a California court to represent an Indian tribe in a child custody  
11 proceeding governed by the Indian Child Welfare Act; and  
12  
13 (2) The fact that an applicant is seeking to appear in a California court to  
14 represent an Indian tribe in a child custody proceeding governed by the  
15 Indian Child Welfare Act constitutes a special circumstance for the purposes  
16 of the restriction in subdivision (b) that an application may be denied because  
17 of repeated appearances.

18  
19 **~~(g)~~ (h) \* \* \***

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Circulate for comment (January 1 cycle)**

**RUPRO Meeting:** April 5, 2018

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Jury Service: Permanent Medical Excuse  
Adopt Cal. Rules of Court, rule 2.1009

*Committee or other entity submitting the proposal:*

Advisory Committee on Providing Access and Fairness

*Staff contact (name, phone and e-mail):* Daniel Pone, (916) 323-3121, [daniel.pone@jud.ca.gov](mailto:daniel.pone@jud.ca.gov) and Kyanna Williams, (415) 865-7911, [Kyanna.Williams@jud.ca.gov](mailto:Kyanna.Williams@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: Justice Hull and Judge So last year approved the formation of a working group to develop a proposed uniform rule of court on permanent medical excuse from jury service due to a permanent disability as an alternative to legislation on the subject that was being considered for introduction in 2017 by Senator Jerry Hill (D-San Mateo).

Project description from annual agenda: E&P approved the annual agenda of the Advisory Committee on Providing Access and Fairness on March 21, 2018. This project was described as follows: Participate in a joint working group to develop rules and forms for permanent excusal from jury duty for persons with serious, permanent disabilities that prevent them from participating in jury service. The rules and forms are being developed in response to a bill that California State Senator Jerry Hill considered introducing in early 2017. Senator Hill agreed to postpone introducing the bill to allow the Judicial Council the opportunity to address this juror issue through the adoption of a uniform rule of court. :

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

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

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## INVITATION TO COMMENT

**SPR18-40**

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<b>Title</b>	<b>Action Requested</b>
Jury Service: Permanent Medical Excuse	Review and submit comments by June 8, 2018
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt Cal. Rules of Court, rule 2.1009	January 1, 2019
<b>Proposed by</b>	<b>Contact</b>
Advisory Committee on Providing Access and Fairness	Daniel Pone, 916-323-3121 <a href="mailto:daniel.pone@jud.ca.gov">daniel.pone@jud.ca.gov</a>
Hon. Kathleen E. O’Leary, Cochair	
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### Executive Summary and Origin

The Advisory Committee on Providing Access and Fairness proposes new rule 2.1009 to establish a process for a person with a disability to request a permanent medical excuse from jury service in cases where the individual, with or without accommodations, including the provision of auxiliary aides or services, is incapable of performing jury service. Senator Jerry Hill (D-San Mateo) considered authoring a bill in this area last year but deferred introducing the legislation in order to give the Judicial Council the opportunity to address the issue through the adoption of a uniform rule of court.

### Background

Current law does not explicitly provide for a permanent medical excuse from jury service. Adult persons are generally considered eligible to serve as jurors, subject to specified exceptions. (Code Civ. Proc., § 203.) Existing law also provides that an eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council. (Code Civ. Proc., § 204.) In addition, “[a]ll requests to be excused from jury service that are granted for undue hardship must be put in writing by the prospective juror, reduced to writing, or placed on the court’s record. The prospective juror must support the request with facts specifying the hardship and a statement why the circumstances constituting the undue hardship cannot be avoided by deferring the prospective juror’s service.” (Cal. Rules of Court, rule 2.1008(c).)

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Rule 2.1008 specifies the reasons for excusing a juror because of undue hardship. These include, among other things, that “[t]he prospective juror has a physical or mental disability or impairment, not affecting that person’s competence to act as a juror, that would expose the potential juror to undue risk of mental or physical harm.” (Cal. Rules of Court, rule 2.1008(d)(5).) Rule 2.1008 also provides that, unless the person is aged 70 years or older, the prospective juror in any individual case “may be required to furnish verification or a method of verification of the disability or impairment, its probable duration, and the particular reasons for the person’s inability to serve as a juror.” (*Ibid.*)

Senator Hill considered introducing legislation in 2017 that would have required the court to permanently excuse from jury service an otherwise eligible person with a documented permanent disability that prevents the person from accessing the court, and to remove that person from the rolls of potential jurors upon receipt of confirmation of the permanent disability. According to Senator Hill’s staff, the idea for the legislation came from two of his constituents. Both of these constituents had family members with permanent disabilities who had received jury summonses from one of the superior courts in his district on multiple occasions after having previously provided documentation in support of their requests to be permanently excused from jury service based on their medical conditions.

There are varying practices among the courts for handling requests for permanent medical excuses from jury service. Some courts do grant permanent medical excuses, though what is required as evidence of permanent disability seems to vary from court to court. Other courts do not appear to provide for such excuses.

Senator Hill agreed to hold off on introducing legislation in order to give the Judicial Council time to study and address this issue through a uniform rule of court. The chairs of the council’s Policy Coordination and Liaison Committee and Rules and Projects Committee approved the formation of a workgroup to pursue this effort and its members include a representative from Disability Rights California and representatives from the council’s Advisory Committee on Providing Access and Fairness, Court Executive Officers Advisory Committee, and Trial Court Presiding Judges Advisory Committee.

## **The Proposal**

### **Rule 2.1009**

The proposal recommends adopting a new rule of court, rule 2.1009, that is designed to address the narrow subset of people with disabilities who, even with accommodations, are incapable of performing jury service. The purpose of the rule is to minimize the burden on these individuals and the courts by allowing a person with a disability whose condition is unlikely to resolve and who is unable for the foreseeable future to serve as a juror to seek a permanent medical excuse from jury service. The application of the new rule would relieve such individuals and their family members from the continuing obligation under existing law to provide medical documentation in support of an undue hardship excuse each time they receive a summons for

jury service. It would also improve the efficiency of the courts' jury management system by reducing the staff time and paperwork associated with processing repeated undue hardship excuse requests.

### **Policy**

The underlying policy of the rule seeks "to ensure people with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors." (Subd. (b)(2).) Consistent with this important policy, the rule emphasizes that "no eligible juror who can perform jury service, with or without disability-related accommodations, including auxiliary aids or services, may be excused from jury service due solely to his or her disability." (*Ibid.*)

### **Process for requesting permanent medical excuse from jury service**

The new rule would allow a person with a disability or the person's authorized representative (the applicant) to request a permanent medical excuse from jury service. (Subd. (c).) The applicant's request must be submitted in writing, together with a supporting letter, memo, or note from the treating healthcare provider. (Subd. (c)(1).) The supporting letter, memo, or note must be on the treating healthcare provider's letterhead, state that the person has a permanent disability that makes the person incapable of performing jury service, and be signed by the provider. (Subd. (c)(1)(A).)

The rule would require the applicant to submit the request and supporting letter, memo, or note to the court's jury management office on or before the date the person is to appear for jury service. (Subd. (c)(2).) In the event of an incomplete application, the rule would allow the court to require the applicant to furnish additional information in support of the request for permanent medical excuse. (Subd. (c)(3).)

The rule defines "permanent medical excuse" as "a release from jury service granted by the court to a person with a disability whose condition is unlikely to resolve and who, with or without disability-related accommodations, including auxiliary aids or services, is not capable of performing jury service." (Subd. (a)(5).) For purposes of this rule, "capable of performing jury service" means "a person can pay attention to evidence, testimony, and other court proceedings for up to six hours per day, with a lunch break and short breaks in the morning and afternoon, with or without disability-related accommodations, including auxiliary aids and services." (Subd. (a)(3).)

### **Response to request**

The new rule would require the court to promptly inform the applicant in writing of its determination to grant or deny the request. (Subd. (e)(1).) If the court grants the request, it would be required to remove the person from the rolls of potential jurors as soon as it is practicable to do so. (Subd. (e)(2).) If the permanent medical excuse request is denied, the court would be required to provide the applicant a written response with the reason for the denial. (Subd. (e)(3).) The rule further specifies that the court may deny the request only when the court determines that the applicant has failed to satisfy the requirements of the rule. (Subd. (d).)

### **Right to reapply**

The rule would allow a person whose request is denied to reapply at any time following receipt of the court's denial. (Subd. (f).)

### **Right to seek reinstatement**

The advisory committee recognizes that a person with a disability who has been granted a permanent medical excuse may regain the ability to perform jury service in the future through advances in medical technology or by other means. Accordingly, the rule would allow a person who has received a permanent medical excuse from jury service to be reinstated to the rolls of potential jurors at any time by filing a signed, written request with the court. (Subd. (g).)

### **Confidentiality requirements**

The new rule would require the court to “keep confidential all information concerning the request for permanent medical excuse, including any accompanying request for disability-related accommodation, including auxiliary aids or services, unless the applicant waives confidentiality in writing or the law requires disclosure.” (Subd. (c)(4).) The rule also specifies that the applicant's identity and confidential information may not be disclosed to the public, but it may be disclosed to court officials and other personnel involved in administering the permanent medical excuse process. (*Ibid.*)

### **Alternatives Considered**

The advisory committee considered not proposing a new rule of court since some courts already have local policies and practices that provide for a permanent excuse from jury service for individuals with permanent disabilities. However, as discussed above, not all courts provide for a permanent medical excuse, and the courts that do have policies or practices appear to vary significantly in the type of supporting medical documentation required and whether potential accommodations are being considered that might allow the person with a disability to perform jury service. The advisory committee decided that a rule of court would be preferable in order to ensure both uniformity and consistency with the important underlying policy that eligible jurors who *can* perform jury service—with or without disability-related accommodations, including auxiliary aids or services—not be excused due solely to their disability. The advisory committee also favored the rule of court approach rather than be subject to legislative direction in this area as it would provide the council increased flexibility by allowing for the possibility of amendments to the rule in the future for any needed refinements.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed rule would result in one-time costs for education and training for jury management staff regarding implementation of the new process. However, these costs should not be substantial and would be outweighed by increased efficiencies in the courts' jury management system by reducing the staff time and paperwork associated with issuing repeated summonses for individuals who are incapable of performing jury service and processing their resulting undue hardship excuse requests.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the Judicial Council create any optional or mandatory forms to assist in implementation of the proposed rule?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 2.1009, at pages 6–8



Rule 2.1009 of the California Rules of Court would be adopted, effective January 1, 2019, to read:

**Rule 2.1009. Permanent medical excuse from jury service**

**(a) Definitions**

As used in this rule:

- (1) “Applicant” means a person with a disability or his or her authorized representative.
- (2) “Authorized representative” means a conservator, agent under a power of attorney (attorney-in-fact), or any other individual designated by the person with a disability.
- (3) “Capable of performing jury service” means a person can pay attention to evidence, testimony, and other court proceedings for up to six hours per day, with a lunch break and short breaks in the morning and afternoon, with or without disability-related accommodations, including auxiliary aids and services.
- (4) “Health care provider” means a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, clinical social worker, or physician’s assistant authorized to practice by the state and performing within the scope of the practice as defined by state law, or a Christian Science practitioner.
- (5) “Permanent medical excuse” means a release from jury service granted by the court to a person with a disability whose condition is unlikely to resolve and who, with or without disability-related accommodations, including auxiliary aids or services, is not capable of performing jury service.
- (6) “Persons with disabilities” means individuals covered by Civil Code section 51 et seq., the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), or other applicable state and federal laws. This definition includes persons who have a physical or mental medical condition that limits one or more of the major life activities, have a record of such a condition, or are regarded as having such a condition.

**(b) Policy**

- (1) This rule is intended to allow a person with a disability whose condition is unlikely to resolve and who is unable for the foreseeable future to serve as a juror to seek a permanent medical excuse from jury service. This rule does not impose limitations on or invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law.

(2) It is the policy of the courts of this state to ensure that people with disabilities have equal and full access to the judicial system, including the opportunity to serve as jurors. No eligible juror who can perform jury service, with or without disability-related accommodations, including auxiliary aids or services, may be excused from jury service due solely to his or her disability.

**(c) Process for requesting permanent medical excuse**

The process for requesting a permanent medical excuse from jury service is as follows:

- (1) An applicant must submit to the court a written request for permanent medical excuse with a supporting letter, memo, or note from a treating health care provider. The supporting letter, memo, or note must be on the treating health care provider's letterhead, state that the person has a permanent disability that makes the person incapable of performing jury service, and be signed by the provider.
- (2) The applicant must submit the request and supporting letter, memo, or note to the court's jury management office on or before the date the person is to appear for jury service.
- (3) In the case of an incomplete application, the court may require the applicant to furnish additional information in support of the request for permanent medical excuse.
- (4) The court must keep confidential all information concerning the request for permanent medical excuse, including any accompanying request for disability-related accommodation, including auxiliary aids or services, unless the applicant waives confidentiality in writing or the law requires disclosure. The applicant's identity and confidential information may not be disclosed to the public but may be disclosed to court officials and personnel involved in the permanent medical excuse process. Confidential information includes all medical information pertaining to the applicant, and all oral or written communication from the applicant concerning the request for permanent medical excuse.

**(d) Response to request**

The court must respond to a request for a permanent medical excuse from jury service as follows:

- (1) The court must promptly inform the applicant in writing of the determination to grant or deny a permanent medical excuse request.

- (2) If the request is granted, the court must remove the person from the rolls of potential jurors as soon as it is practicable to do so.
- (3) If the request is denied, the court must provide the applicant a written response with the reason for the denial.

**(e) Denial of request**

Only if the court determines the applicant failed to satisfy the requirements of this rule may the court deny the permanent medical excuse request.

**(f) Right to reapply**

A person whose request for permanent medical excuse is denied may reapply at any time after receipt of the court's denial by following the process in (c).

**(g) Reinstatement**

A person who has received a permanent medical excuse from jury service under this rule may be reinstated to the rolls of potential jurors at any time by filing a signed, written request with the court that the permanent medical excuse be withdrawn.